Supreme Court of India
Hira Lal Rattan Lal Etc. Etc vs State Of U.P. And Anr. Etc. Etc on 3 October, 1972
Equivalent citations: 1973 AIR 1034, 1973 SCR (2) 502
Author: K Hegde
Bench: Hegde, K.S.

PETITIONER:
HIRA LAL RATTAN LAL ETC. ETC.

Vs.

RESPONDENT:
STATE OF U.P. AND ANR. ETC. ETC.

DATE OF JUDGMENT03/10/1972

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
REDDY, P. JAGANMOHAN
DUA, I.D.
KHANNA, HANS RAJ

CITATION:
1973 AIR 1034 1973 SCR (2) 502
1973 SCC (1) 216
CITATOR INFO :
R 1979 SC1475 (24)
F 1985 SC 421 (25,78)
F 1985 SC 582 (4)
RF 1985 SC1416 (60)
R 1989 SC2227 (32)
R 1990 SC 560 (13)
R 1990 SC1637 (21)

ACT:
U.P. Sales Tax Act 1948 as amended by the Uttar Pradesh Sales Tax Act (Amendment and Validation) Act 1970, s. 3-D , explanation II, validity of--S. 7 whether effective for retrospective operation of explanation II--Single point tax on first purchase of split foodgrains whether leviable under amended Act--Explanation II whether an unlawful usurpation of judicial points--Whether violates Art. 14 or 19(1)(f) and (g) of Constitution--Tax on spilt grains whether leviable without amending notification under s. 3-D--Section 3-D whether suffers from excessive delegation of legislative powers.

HEADNOTE:

Under the U.P. Sales Tax Act 1948 as it originally stood the purchases of split or processed foodgrains and dal by dealers were sought to be brought to tax under s. 3-D of the principal Act read with the notification issued. in a writ petition relating to the assessment year 1966-67 (Tilok Chand Prasan Kumar v. Sale Tax Officer, Hathras 25 STC 118) the High Court of Allahabad struck down the levy holding that the dal purchased by the petitioner could not be said to be a commodity essentially different from the arhar dal purchased by the dal mills and accordingly the purchases effected by the petitioner could not be regarded as the first purchases. Thereafter the Governor of U.P. issued the Uttar Pradesh Sale Tax (Amendment and Validation) Ordinance,, 1970 adding inter alia Explanation to s. 3-D as well as a validating provision viz. s. 7 to the principal Act. The ordinance, was later enacted as the Uttar Pradesh Sales Tax Act (Amendment and Validation) Act 1970. Explanation II aforesaid provided that split or processed foodgrains such as in the form of dal shall be deemed to be different from unsplit or unprocessed foodgrains and accordingly tax could be levied on first purchases of split dal. In support of the writ petition under Art. 226 of the Constitution filed in the High Court by the appellant the validity of Explanation 11 of s. 3-D as well as s. 7 was challenged and it was contended that the amendments incorporated were not effective enough to bring to tax the first purchase of split or processed foodgrains and pulses. The High Court rejected these contentions and dismissed the writ petition. There after these recent appeals were brought with certificates,

Dismissing the appeals.

HELD : (i) The source of the legislative power to levy sales of purchases tax on goods is Entry 54 of List II of the Constitution. It is well settled that subject to constitutional restrictions a power to legislate includes a power to legislate prospectively as well as retrospectively. In Chhotabhai Jethabhai Patel it was specifically decided by this Court that where the legislature can make a valid law, it can provide net only for the prospective operation of the material provisions of the said law but it can also provide for the retrospective operation of the said provisions. The contention that no fresh levy can be imposed by retrospective legislation must therefore be rejected. [509 E]

The Union of India v. Madan Gopal Kamra, [1954] 3 S.C.R. 541, M.P. Sundararamer & Co. v. The State of Andhra Pradesh and' anr;

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[1958] S.C.R. 1422, J. K. Jute Mills Co. Ltd. v. The State of Uttar Pradesh and anr. 12, S.T.C. 429, Chhotabhai Jethabhai Patel and Co. v. The Union of India and anr.; [1962] Supp. 2 S.C.R., p. 1 and Sri Ramkrishna: & Ors. v. The State of Bihar, [1964] 1 S.C.R. 897, applied.

(ii) It is open to the legislature to define the nature of the goods, the sale or purchase of which should be brought to tax.. Legislature was not incompetent to separate the processed or split pulses from the unsplit or unprocessed pulses and treat the two as separate and independent goods. There was no basis for the contention that the legislature cannot for the purpose of tax under the Act separate the split or processed from the unsplit or unprocessed. [510A-D]
Jagannath and Ors. v. Union of India, [1962] 2 S.C.R. 118, referred to.

(iii) There was no justification for the contention that the legislature had usurped any judicial power. The legislature had not purported either directly or by implication to overrule the decision of the Allahabad High Court in Tilok Chand Prasan Kumar's case On the other hand it had accepted that decision as correct; but had sought to remove the basis of that decision by retrospectively changing the law. Encroachment on the judicial power is outside the competence of the legislature but the nullification of the effect of a judicial decision by changing the law retrospectively, is within its permissible limits. From the statement of objects and reasons, it appears that in the principal Act, the legislative intent was not clearly brought out. By means of the Amending Act the legislature wanted to make clear its intent. [510 D]

(iv) In a democratic set up it is for the legislature to decide what economic or social policy it should pursue or what administrative considerations it should bear in mind., The classification between the processed or split pulses and unprocessed or unsplit pulses is a reasonable classification. It is based on the use to which those goods can be put. Hence, the impugned classification was not violative of Art. 14 of the Constitution. [511 F]
Khandige Sham and ors. v. The Agricultural Income Tax Officer, [1963] 3 S.C.R. 809 referred to.

(v) The levy was not violative of Art. 19 (1) (f) and (g). amendment of the Act was necessitated because of the legislature's failure bring out clearly in the principal Act its intenion to separate the processed or split pulses from the unsplit or unprocessed pulses. Further the retrospective amendment became necessary as otherwise the State would have to refund large sums of money. The contention that the retrospective levy did Dot afford any opportunity to the dealers to pass on the tax payable to the consumers, has not much validity. The tax is levied on the dealers, the fact that he is allowed to pass on the tax to the consumers or he is generally in a position to pass on the same to the consumer has no relevance when legislative competence is under consideration. [511 G]

(vi) Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the main section. But cases have arisen in which this Court has held that despite the fact

that a provision is called proviso, 'it is really a separate provision and the so called proviso has substantially altered the main section. If on a true reading of an Explanation it appears that it has widened the scope of the main section, effect must be given to the legislative intent not withstanding the fact that the legislature named that provision as an Explanation. [512 C]

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Commissioner of Income.,tax, Bombay City. Bombay v. Bininchandra Maganlal & Co. Ltd. Bombay. [1961] 2 S.C.R. 493, State of Rajasthan v. Leela Jain, [1965]1 S.C.R. 276 and Bihta Cooperative Development Cane Marketing UnionLtd. and anr. v. Bank of Bihar and ors., [1967] 1 S.C.R. 848 referred to.

The contention thatExplanation 11 to s. 3 D did not widen the scope of s. 3-D could notbe accepted. Section 3-D as it originally stood dealt with foodgrainsand pulses. It did not treat the unprocessed or unsplit foodgrains and pulses as a separate item. The newly added Explanation brings to tax with retrospective effect the split or processed foodgrains as well. [513E]

(vii) It cannot be said that because the notification under s. 3D continues to refer to foodgrains only, it was not possible to tax processed or split foodgrains under it. Section 3 D refers to foodgrains, but be..cause of Explanaticon II, the expression "foodgrains" has to be read as containing two different items processed or split foodgrains and upprocessed or unsplit foodgrains. Consequtntly while reading the expression "foodgrains" in the notification also the same approach must be adopted. This conclusion is also obvious from s. 7 which says in plain words that the notification must be deemed to have been issued under s. 3-D as amended. While a taxing statute must be strictly construed, but that ,does not mean that a provision in a taxing statute should not be read reasonably. [514 H]

(viii) Section 3 -D does not suffer from the vice of delegation of legislative power to the executive.

In the Act under s. 3 the legislature has sought to impose multi-point tax on all 'sales and purchase. After having done that it has given power to the executive, a high authority and which is presumed to command the majority support in the legislative, to select for special treatment dealings in certain class of goods. In the very nature of things, it is impossible for the legislature to enumerate goods, dealings in which sales tax or purchase tax should be imposed. it is also impossible for the legislature to select the goods which should be subjected to a single point sales or purchase tax. Before making such selections several aspects such as the impact of the levy on the society, economic consequences and the administrative convenience will have to he considered. These factors may change from time to time. Hence in the very nature of things, these

details have got to be left to the executive. [515 B]
Pt. Banarsi Das Bhanot and ors. v. The State of Madhya Pradesh and others, [1959] S.C.R. 427, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 821 and 822 of 1971.

Appeals by certificates from the judgment and orders dated July 14, and August 22, 1970 of the Allahabad High Court in Civil Misc. Writ Petitions Nos. 957 and 3784 of 1970. Civil Appeals Nos. 1625 and 2008 of 1971. Appeals by certificates from the judgments and orders dated July 14, 1970 of the Allahabad High Court at Allahabad in Civil Misc. Writ Nos. 953 and 928 of 1970.

Som Nath Iyer, R. G. Sharma and Subodh Markendeya, for the appellant (in C. As. Nos. 821-822/71).

S. T. Desai, R. K. Upadhya, P. C. Bhartari, Ravinder Narain, for the appellant, (in C. A. No. 1625/71). M. C. Chagla, Anil B. Divanji, P. C. Bhartari and Ravinder Narain for the appellants, (in C.A. No. 2008/71). O. P. Rana and Ravindra Bana, for the respondents (in C. As. Nos. 821-822/71).

N. D. Karkhanis, O. P. Rana and Ravindra Bana, for the respondents (in C. A. No. 1625/71).

S. C. Manchanda, O. P. Rana and Ravindra Bana, for the respondents. (in C. A. No. 2008/71).

The Judgment of the, Court was delivered by Hegde, J. These are appeals by certificate. They raise common questions of law for decision, and they are directed against a common judgment of the Allahabad High Court. The facts of the case lie within a narrow compass. The appellants are dealers in foodgrains including cereals and pulses especially split or processed foodgrains and dal. The dispute in this case centers round the question whether the Government is competent to levy sales-tax on the purchases made by the appellants of split processed foodgrains and dal under the provisions of the United Provinces Sales Tax Act, 1948 as amended by the Uttar Pradesh Sales Tax Act (Amendment and Validation) Act, 1970 (which will hereinafter be referred to as the Act). Under the Sales Tax Act as it originally stood which will

-hereinafter be referred to as the principal Act), the purchases of split or processed foodgrains and dal by dealers were sought, to be brought to tax under s. 3-D of the principal Act read with the notification issued. The validity of the levy was challenged by Tilock Chand Prasan Kumar, the appellant in Civil Appeal NO'. 1625 of 1971 in respect of the assessment made on him for the assessment year 1966-67 by assessment order dated June 30, 1968 by means of a writ petition under Art. 226 of the Constitution. The High Court of Allahabad struck down the levy holding that the dal purchased by the petitioner before it could not be said to be a commodity essentially different from the arhar dal purchased by the dal mills and accordingly the purchases effected by the petitioner could not be regarded as the first purchases. This decision is reported in 25, S.T.C. p. 118. Thereafter

the Governor of U.P. issued an ordinance known as Uttar Pradesh Sales Tax (Amendment and Validation) Ordinance, 1970 (U.P. Ordinance No. 2 of 1970) adding inter alia Explanation 11 to s. 3-D as well as s. 7 to the principal Act. This ordinance was later on enacted as an Act to which we have already made reference. The provisions of the Amending Act are identical with the provisions in the Ordinance. Though at the time of the institution of the writ petitions from which these appeals arise, the Ordinance had not yet been made into the Act, the Amending Act came into force during the pendency of the writ petitions. Hence we shall refer to the provisions of the Amending Act.

Under the principal Act a dealer is defined in s. 2(c) as " "dealer" means any person or association of persons carrying on the business of buying or selling goods in Uttar Pradesh, whether for commission, remuneration or otherwise, and includes any firm or Hindu Joint Family and any society, club or association which sells goods to its members and also includes any department of the State Government or the Central Government which carries on such business and any undertaking engaged in the generation or distribution of electrical energy or any other form of power." (Explanation to the section is not relevant for our present purpose).

Section 3 of the Act provides for the levy of multi-point tax. The portion of that section which is material for our present purpose reads :

"Subject to the provisions of this Act, every dealer shall, for each assessment year, pay a lax at the rate of two naye paise per rupee on his turnover of such year, which shall be determined in such manner as may be prescribed....."

Section 3-A provides for a single point taxation in respect of sale of certain goods. At present we are only concerned with s. 3- D(1). It provides :

"Except as provided in sub-section (2), there shall be levied and paid, for each assessment year or part thereof, a tax on the turnover, to be determined in such manner as may be prescribed, of first purchases made by a dealer or through a dealer, acting as a purchasing agent in respect of such goods or class of goods, and at such rates, not exceeding two paise per rupee in the case of foodgrains, including cereals and pulses, and five paise per rupee in the case of other goods and with effect from such date, as may, from time to time, be notified by the, State Government in this behalf."

(Explanation 1 to this section is not relevant for our purpose).

The notification issued under s. 3-D of the principal Act on October 1, 1964 (Notification No. S. T. 7122/X) provided that with effect from October 1, 1964, the turnover of purchases in respect of goods mentioned therein shall be liable to tax under s. 3-D at the rate mentioned: "Foodgrains 1.5 paise per rupee on first purchase On the basis of s. 3-D read with the notification, as mentioned earlier, the authorities under the Act sought to bring to tax under the principal Act the first purchases of processed or split foodgrains including dal on the ground that they constituted a separate item of foodgrains quite independent of the unprocessed or unsplit foodgains. This view, as

seen above, was negatived by the High Court. After the decision of the High Court, the principal Act was amended. Under the. Amending Act one more Explanation viz., Explanation 11 was added to s. 3-D.

> "For the purposes of this sub-section, split or processed foodgrains, such as in the form of dal shall be deemed to be different from unsplit or unprocessed foodgrains, and accordingly, nothing in this sub-section shall be construed to prevent the imposition, levy or collection of the tax in respect of the first purchases of split or processed foodgrains merely because. tax had been im- posed levied or collected earlier in respect of the first purchases of those foodgrains in their unsplit or unprocessed form." The Amending Act also added a validating provision to the principal Act viz. s. 7. That section reads :
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> "Notwithstanding any judgment, decree or order of any court or tribunal to the contrary, every notification issued or purporting to have been issued under Section 3-A or Section 3-D of the principal Act before the com- mencement of this Act shall be deemed to have been issued under that section as amended by this Act and shall be so interpreted and be deemed to be and always to have been as valid as if the provisions of this Act were in force at all material times; and accordingly anything done or any action taken (including any order made, proceeding taken, jurisdiction exercised, assessment made, or tax levied, collected or paid purporting to have been done or taken in pursuance of any such notification) shall be deemed to be, and always to have been, validly and lawfully done or taken."
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> It will be necessary later on to consider what was the vice that the legislature intended to cure by the Amending Act. The
>
> --L498Sup Cl/73 sequence of events itself discloses the purpose of the Ordinance as well as the Amending Act. That apart, the statement of objects and reasons which can be usefully looked into for the purpose of finding the vice that the legislature was trying to provide against reads thus "Sections 3-A and 3-D of the U.P. Sales Tax Act, 1948 provide for single point taxation. Under the fondler section the tax is levied on the turnover of sales, while under the latter the tax is levied on the turnover of first purchases. Plain and ornamented glass bangles are subject to tax separately under section 3- A. Similarly, unsplit and split pulses are separately subject to tax under section 3-D. It has been held by the High Court in one case that tax cannot be levied separately on plain and ornamented glass bangles under section 3-A and in another that tax cannot be levied separately on unsplit and split pulses under section 3-D because in their opinion plain glass bangles are not a commodity different from ornamented glass bangles and similarly unsplit pulses and split pulses are also not two different commodities. These judgments have created legal difficulties in the assessment and collection of tax on the aforesaid commodities. Besides, the dealers have started applying for the refund of tax already collected on these commodities. Ibis will have serious repercussions on the State's revenue. Accordingly, it is

proposed to amend sections 3-A and 3-D to provide for the levy of tax on the aforesaid commodities as separate items. It is also proposed to validate the past levy, assessment and collection of tax on the above commodities." (The remaining part of the statement of objects and reasons is not relevant for our present purpose).

The appellants challenged the validity of Explanation 11 of S. 3-D as well as s. 7 introduced by the Amending Act before the High Court of Allahabad in petitions under Art. 226 of the Constitution. They further took the plea that the amendments incorporated were not effective enough to bring to tax the first purchases of split or processed foodgrains and pulses. The High Court rejected these contentions and dismissed the writ petitions. Thereafter these appeals have been brought after obtaining certificates from the High Court.

The validity of the levy in question was challenged on the following grounds': (1) That no fresh levy can be imposed by a retrospective legislation;

(2) That the legislature cannot in case of legislation of the nature with which we are concerned, separate into independent commodities split and unsplit pulses or processed or unprocessed pulses and on that footing seek to impose tax twice over on the same commodity in respect of the goods liable to be taxed at a single point;

(3) That the newly added Explanation to s. 3-D read with s. 7 of the Amending Act amounts to an unlawful usurpation of judicial power by the legislature;

(4) The newly added Explanation II to s. 3-D is violative of Art. 14 of the Constitution.. There is no rational basis for separating split or processed pulses from unsplit or unprocessed pulses;

(5) On a true construction of Explanation It to s. 3-D no fresh charge can be held to have been imposed, (6) No levy of purchase tax can be made without a fresh Notification under s. 3-D read with Explanation 11 showing therein separately foodgrains unsplit or unprocessed as well as foodgrains split or processed; and (7) That the power conferred on the Government under s. 3-D amounts to an excessive delegation of legislative power. and consequently void.

The source of the legislative power to levy sales or purchase tax on goods is Entry 54 of the List II of the Constitution. It is well settled that subject to constitutional restrictions a power to legislate includes a power to legislate prospectively as well as retrospectively. In this regard legislative power to impose tax also includes within itself the power to tax retrospectively--see The Union of India v. Madan Gopal Kabra;(1) M. P. Sundararamier & Co. v. The State of Andhra Pradesh and Anr. (2) ; J. K. Jute Mills Co. Ltd. v. The State of Uttar Pradesh and Anr.; (3) Chhotabhai Jethabhai Patel and Co. v. The Union of India and Anr. (4 Sri Ramkrishna & Ors. v. The State of Bihar. (5) In the last mentioned case it was specifically decided that where the legislature can make a valid law, it can provide not only for the prospective operation of the material provisions of the said law but it can

also provide for the retrospective operation of the said provisions. We see no force in the second contention advanced on behalf of the appellants. As seen earlier the general rule as enunciated in s. 3 is multi point tax sales tax or purchase tax; but power (1) [1954] S. C. R. 541.

(2) [1958] S. C. R. 1422.

(3) 12. S.T.C. 429.

(4) [1962] Supp, (2) S.C.R. p. 1.

(5) [1964] 1 S.C.R. 897.

is conferred on the Government to select any transaction in respect of such goods or class of goods as the Government may choose to levy a single point sales tax or purchase tax. It is open to the legislature to define the nature of the goods, the sale or purchase of which should be brought to tax. Legislature was not incompetent to separate the processed or split pulses from the unsplit or unprocessed pulses and treat the two as separate and independent goods. In Jagannath and Ors. v. Union of India,(1) question arose for decision whether it was open to the legislature to impose separate excise duty on tobacco leaf as well as on broken leaf of tobacco. This Court overruled the contention that such a levy was invalid. It head that it was open for the legislature to separate the two items. We see no basis for the contention that the legislature cannot for the purpose of tax under the Act separate the split or processed Pulses from the unsplit or unprocessed. The power of the legislature to specify the nature of the goods the sale or purchase of which, it will bring to tax is very wide. Now coming to point No. 3, there is no justification for the contention that the legislature has usurped any judicial power. The legislature has not purported either directly or by necessary implication to overrule the decisions of the Allahabad High. Court in Tilok Chand Prasan Kumar's case (supra). On the other hand it. has accepted that decision as correct; but has sought to remove the basis of that decision by retrospectively changing the law. This Court has pointed out in several cases the distinction between the encroachment on the judicial power and the nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the legislature but, the latter is within its permissible limits. From the statement of objects and reasons, it appears that in the principal Act, the legislative intent was not clearly brought out. By means of the Amending Act the legislature wanted to make clear its intent. The fourth contention also appears to be without any basis. It is true that the taxing statutes are not outside the scope of Art. 14 of the Constitution. But the legislature has wide powers of classification in the case of taxing statutes.

In Jagannath's case (supra), this Court ruled that there was no unconstitutional discrimination in the imposition of the excise duty on tobacco in the broken leaf form. Therein it was observed that tobacco in the, broken leaf form was capable of being used in the manufacture of bidis while tobacco in the whole leaf form could not be so used economically; the two forms of tobacco were different by the test of capability of user; the tariff is not based either wholly or even primarily by reference to the (1) [1962] 2 S.C.R. 118.

use of tobacco and there was a clear and unambiguous distinction between tobacco the whole leaf form covered by item 5 and tobacco in the broken leaf form covered by item 6 which had a reasonable relation to the object intended by the imposition of the tariff.

In Khandige Sham Bhat and Ors. v. The Agricultural Income Tax Officer,(1) this Court laid down the tests to find out whether there are discriminatory provisions in a taxing statute. Therein this Court observed that in order to judge whether a law was discriminatory what had primarily to be looked into was not its phraseology but its real effect. If there was equality and uniformity within each group, the law could :pot be discriminatory, though due to fortuitous circumstances in a peculiar situation some included in a class might get some advantage over others, so long as they were not sought out for special treatment. Although taxation laws could be no exception to this rule, the courts would, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the legislature in the matter of classification so long as there was no transgression of the fundamental principles underlying the doctrine of classification. The power of the legislature to classify must necessarily be wide and flexible so as to enable it to adjust its system of taxation in all proper and reasonable ways.

It must be noticed that generally speaking the primary purpose of the levy of all taxes is to raise funds for pub- lie good. Which person should be taxed, what transaction should be taxed or what goods should be taxed, depends upon social, economic and administrative considerations. In a democratic set up it is for the legislature to decide what economic or social policy it should pursue or what administrative consideration it should bear in mind. The classification between the processed or split pulses and un- processed or unsplit pulses is a reasonable classification. It is based on the use to which those goods can, be put. Hence, in our opinion, the impugned classification is not violative of. Art. 14.

A feeble attempt was made to' show that the retrospective levy made under the Act is violative of Art. 19 (1) (f) and

(g) But we see no substance in that contention. As seen earlier, the amendment of the Act was necessitated because of the legislatures failure to bring out clearly in the principal Act its intention to separate the processed or split pulses from the, unsplit or unprocessed pulses. Further the retrospective amendment became necessary as otherwise the State would have to refund large sum of money. The contention that the retrospective levy did not afford any opportunity to the dealers to pass on the tax payable to the consumers, has not much validity. The tax is levied on the dealer;

(1) [1963] 3 S.C.R. 809.

the fact that he is allowed to pass on the tax to the consumers or he is generally in position to pass on the same to the consumer has no relevance when we consider the legislative competence.

It was next urged that on a true contribution of Explanation II to s. 3-D, no charge can be said to have been created on the purchases of split or processed pulses. It was firstly contended that an Explanation cannot extend the scope of the main section; it can only explain that section. In

construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say ? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear. Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section-. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the socalled proviso has substantially altered' the main section. In Commissioner of Income-tax, Bombay, City. Bombay v. Bipinchandra Maganlal & Co. Ltd., Bombay,(1) this Court held that by the fiction in S. 10(2)(vii) second proviso read with S. 2 (6C) of the Indian Income-tax Act, 1922 what is really not income is, for the purpose of computation of assessable income, made, taxable income.

In State of Rajasthan v. Leela Jain 2 this Court observed "The primary purpose of the proviso now under consideration is, it is apparent, to provide a substitute or an alternative remedy to that which is prohibited by the main part of S. 4(1). There is, therefore, no question of the proviso carving out any portion out of the area covered by the main part and leaving the other part unaffected. What we have stated earlier should suffice to establish that the proviso- now before us is really not a proviso in the accepted sense but an independent legislative provision by which to a remedy which is prohibited by the main part of the section, an alternative is provided.. It is further obvious to us that the proviso is not coextensive with but covers a field wider than the main part of S. 4 (1) ".

In Bihta Co-operative Development Cane Marketing Union Ltd. and Anr. v. Bank of Bihar and Ors. (3) this Court was called upon to consider the Explanation to s. 48 (1) of the Bihar and' (1) [1961] 2 S.C.R.493.

(2) [1965] 1 S.C..R., 276 (3) [1967] 1 S.C.R. 848.

Orissa Co-operative Societies Act 1935. Therein this Court observed:

"The question then arises whether the first Explanation to the section widens the scope of sub-s. (1) of s. 48 so as to include claims by registered societies against non-members even if the same are not covered by clause (c)." On the basis of the language of the Explanation this Court held that it did not widen the scope of clause (c). But from what has been said in the case, it is clear that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect must be given to the legislative intent notwithstanding the fact that the legislature named that provision as an Explanation. In all these matters the courts have to find out the true intention of the legislature.

We are unable to accept the contention that Explanation II to s. 3-D did not widen. the scope of s. 3-D. Section 3-D s it originally stood dealt with foodgrains and pulses. It did not treat the unprocessed or unsplit foodgrains and pulses as a separate item but because of Explanation 11, we have now to read the expression "foodgrains" in s. 3-D as containing two separate items viz. (1) foodgrains unprocessed or unsplit and (2) foodgrains processed or split. It is true that Explanation

11 is not very happily worded but the intention of the legislature is clear and unambiguous. The newly added Explanation brings to tax with retrospective effect the split or processed foodgrains as well.

We next come to the contention that no levy of purchase tax can be made on split or unprocessed pulses without a fresh notification under S. 3-D read with Explanation 11 showing therein separately foodgrains unsplit or unprocessed as well as foodgrains split or processed. As seen earlier that the notification issued merely refers to foodgrains. That notification does not classify foodgrains into two separate categories-processed or split and unprocessed or unsplit. Therefore we were told that no tax can be levied on processed or split foodgrains on the basis of that notification. This contention cannot be accepted as correct. The notification in question was issued under S. 3-D, Section 3-D refers to foodgrains; but because of Explanation 11 to that section, we have now to read the expression "foodgrains" as containing two different items, processed or split foodgrains and unprocessed or unsplit foodgrains. Consequently while reading the expression "foodgrains" in the notification also, we must adopt the same approach. This conclusion is also obvious from S. 7. If the legislature had not retrospectively validated the assessments made on the first purchases of split or processed foodgrain. what did s. 7 seek to achieve ? That section says in plain words that not-

withstanding any judgment, decree or order of any court or tribunal to the contrary, every notification issued or purporting to have been issued under s. 3-D of the principal Act. before the commencement of the Amending Act shall be deemed to have been issued under that section as amended by the Amending Act and shall be so interpreted and be deemed to be and always to. have been as valid as if the provisions of the amending Act were in force at all material times and accordingly, anything done or any action taken (including any order made, proceedings taken, jurisdiction exercised, assessment made, or tax levied, collected or paid, purporting to have, been done or taken in pursuance of any such notification) shall be deemed to be, and always to have been validly and lawfully done or taken. We asked the learned Counsel appearing for the appellant's to let us know the field in which S. 7 can be said to operate. Their answer was that though the legislature intended to validate the assessments made on the first purchases of the split or processed dal, it failed to achieve that object because of the defective phraseology employed in Explanation 11 to s. 3-D and S. 7 of the Amending Act. In other words their submission was that S. 7 has become otios. It was urged on behalf of the appellants that a taxing provision will have to be strictly interpreted and in finding out the intention of the legislature in the matter of imposing tax, we cannot travel beyond the words of the section.

There is no doubt that a taxing provision has to be strictly interpreted. If any legislature intends to impose any tax, that intention must be made clear by the language employed in the statute; but that does not mean that the provision in a taxing statute should not be read reasonably. The contention that we should ignore S. 7 of the Amending Act is a contention difficult of acceptance. Dealing with a similar contention Venkatarama Ayyar J. speaking for the Court in J. K. Jute Mills' case (supra) observed at p. 435 "The object of the legislation as stated in the long title and in the preamble to the Act was to validate the impugned notification in relation to the amended section. Schedule B to the Act expressly mentions that notifica- tion. And if we are now to accede to the, contention of' the petitioner, we must hold that though the legislature set about avowedly to validate the notification

dated March 31, 1956, it failed to achieve that object. A construction which will lead to such a result must, if that is possible, be avoided."

We have earlier come to the conclusion that because Explanation II to S. 3-D the, expression "foodgrains including pulses" in s. 3-D should be read as including two different items i.e., (1) unsplit or unprocessed foodgrains including pulses and (2) split or processed foodgrains including pulses. Consequently the expression "foodgrains" in the notification will also have to be read in the same manner. This, in our opinion, is the reasonable way of reading the notification in the light of s. 3-D, Explanation 11 to that section and s. 7 of the Act.

The only remaining contention is that the delegation made to the executive under s. 3-D is an excessive delegation. It is true that the legislature cannot delegate its legislative functions to any other body-. But subject to, that qualification, it is permissible for the legislature to delegate the power to select the persons on whom the tax is to be levied or the goods or the transactions on which the tax is to be lievied. In the Act, under s. 3 the legislature has sought to impose multi-point tax on all sales and purchases. After having done that it has given power to the executive, a high authority and which is presumed to command the majority support in the legislature, to select for special treatment dealings in certain class of goods. In the very nature of things, it is impossible for the legislature to enumerate goods, dealings in which sales tax or purchase, tax should be imposed. It is also impossible for the legislature to select the goods which should be subjected to a single point sales or purchase tax. Before making such selections several aspects such as the impact of the levy on the society, economic consequences and the administrative convenience will have to be considered. These factors may change from time to time. Hence in the very nature of things, these details have got to be left to the executive.

In Pt. Banarsi Das Bhanot and Ors. v. The State of Madhya Pradesh and Ors. (1) the question arose whether it was permissible for the legislature to empower the executive to amend the Schedule relating to exemptions. This Court by majority answered that question in the affirmative. It further held that it is not unconstitutional for the legislature to leave it to the executive to determine the details relating to the working of the taxation laws, such as the selection of the persons on whom the tax is to be levied, the rates at which it is to be charged in respect of different classes of goods and the like. We have not found any substance in any of the contentions advanced on behalf of the appellants. Hence these appeals fail and they are dismissed with costs--hearing fee one set. G.C.

Appeals dismissed.

(1) [1959] S.CR. 427.