* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : September 29, 2006.

% Date of Decision : October 19, 2006

\+ **Writ Petition (C) No. 8313/2002**

\# SAREE SANSAR .....Petitioner

! Through Mr. Harish Malhotra, Senior Advocate with Mr. Nitin Aggarwal, Advocate.

versus

$ GOVT. OF NCT OF DELHI ..... Respondent

^ Through Mr. H.L. Taneja with Mr. J.R. Goel, Advocates for R-1 & 2.

CORAM :-
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

: Dr. S. Muralidhar, J.

By the common judgment passed today in Writ Petition (C) No. 3750/2000 titled ***"Silk & Textiles Mercantile Traders Assn. v. Govt. of NCT of Delhi & Ors."*** and four other petitions, this writ petition has been dismissed. Registry is directed to place a copy of the said judgment passed on the record of this writ petition.

S. Muralidhar, J.

Vikramajit Sen, J.

October 19, 2006
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : September 29, 2006.
%
Date of Decision : October 19, 2006

+ 1. **Writ Petition (C) No. 3750/2000**

SILK & TEXTILES MERCANTILE TRADERS ASSN.
.....Petitioners
! Through Mr. Harish Malhotra, Senior Advocate with Mr. Nitin Aggarwal, Advocate.

versus

$ GOVT. OF NCT OF DELHI & Ors. ..... Respondents
^ Through Mr. J.R. Goel, Advocates for R-1 & 2.

+ 2. **Writ Petition (C) No. 6204/2002**

DEV TEXTILES .. Petitioners
Through Mr. Harish Malhotra, Senior Advocate with Mr. Nitin Aggarwal, Advocate.

versus

Union of India & Ors ..... Respondents
Through Mr. H.L. Taneja with Mr. J.R. Goel, Advocates for R-1 & 2.

+ 3. **Writ Petition (C) No. 8313/2002**

SAREE SANSAR .....Petitioner
Through Mr. Harish Malhotra, Senior Advocate with Mr. Nitin Aggarwal, Advocate.

versus

GOVT. OF NCT OF DELHI ..... Respondent
Through Mr.J.R. Goel, Advocates for R-1 & 2.

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+ 4. **Writ Petition (C) No. 6206/2002**

SAREE SANSAR .. Petitioner
Through Mr. Harish Malhotra, Senior Advocate with
Mr. Nitin Aggarwal, Advocate.

versus

Union of India & Ors ..... Respondents
Through Mr. J.R. Goel, Advocates for R-1 & 2.

+ 5. **Writ Petition (C) No. 6209/2002**

MEHRA SAREE .. Petitioner
Through Mr. Harish Malhotra, Senior Advocate with
Mr. Nitin Aggarwal, Advocate.

versus

Union of India & Ors ..... Respondents
Through Mr. H.L. Taneja with Mr. J.R.
Goel, Advocates for R-1 & 2.

CORAM :-

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. These five writ petitions filed by an association of silk and textiles

traders in Delhi and its members challenge the constitutional validity of the following notifications:

(i) Notification No. F.4 (i)/99-Fin(g) dated 31.3.1999 issued by the Lt. Governor of the National Capital Territory of Delhi (GNCTD), Finance General Department specifying the rate of local sales tax payable under the Delhi Sales Tax Act, 1975, as amended by Delhi Sales Tax (Amendment) Act, 1997, as 3 paise in a rupee in respect of silk fabric.

(ii) Notification Nos. F.4(52)/99/Fin(G)/(I) and (II) dated 15.1.2000 issued by the Sales Tax Department, GNCTD, including silk fabrics in the First Schedule to the Delhi Sales Tax Act 1975 and levying sales tax @ 12 paise in the rupee on silk fabrics and garments made of silk thereof.

(iii) Notification No.F.4(75)/99-Fin(G)/2095 dated 31.3.2000 issued under Section 4(1) of the Delhi Sales Tax Act, 1975, as amended by the Delhi Sales Tax (Amendment) Act, 1997 read with the Delhi Sales Tax (Amendment) Ordinance, 2000 deleting 'silk fabrics' from the First Schedule and introducing it at Serial No.62 in the Second Schedule to the Delhi Sales Tax Act, 1975 thus levying sales tax @ 4 paise in the rupee on silk fabrics.

In short, the challenge is to the levy of local sales tax in Delhi on silk fabrics for the period 1.4.1999 till 31.3.2001.

The CST Act

2. A brief recounting of the background facts leading to the filing of the writ petitions may be useful to understand the issues that arise for determination. In 1957, the Central Sales Tax Act ('CST Act') was

enacted by the Parliament pursuant to the legislative power traceable to Article 286 (3) of the Constitution of India which reads as under:

> "286(3) Any law of a State shall, in so far as it imposes, or authorizes the imposition of, -
>
> (a) a law on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or
> (b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366,
>
> be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

3. The CST Act received the assent of the President on 24.12.1956. Section 14 of the CST Act declares that the goods listed in that provision "are of special importance in inter-state trade or commerce". These are referred to as 'declared goods'. In respect of such 'declared goods' there is a restriction provided in Section 15 CST Act on the power of the States to levy local sales tax on the intra-sale of such goods i.e., when they are sold within the State. Section 15 stipulates that the rate of local sales tax on such declared goods shall not exceed 4% of the sale or purchase price of such goods. Section 14 as it originally stood specified coal, cotton, oil seeds etc. as declared goods. 'Silk fabrics' was introduced into Section 14

as entry (xi) by the Finance Act 1961. The definition of 'silk fabrics' was, by reference, the same as its definition in item 20 of the First Schedule to the Central Excises and Salt act, 1944 (CE Act).

4. Since the States stood to lose revenue by the virtue of the provisions of Section 15 CST Act insofar as the sales of declared goods within the State were concerned, the Parliament decided to compensate the States to the extent of loss of such revenue by enacting the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (ADE Act).

The ADE Act

5. The Statement of Objects and Reasons (SOR) of the ADE Act read as under:

> "The object of this legislation is to impose additional duties of excise in replacement of the sales tax levied by the Union and the States on sugar, tobacco and mill made textiles and to distribute the net proceeds of these taxes, except the proceeds attributable to Union Territories, to the States. The distribution of the proceeds of the additional duties broadly followed the pattern recommended by the Second Finance Commission. Provision has been made that the States which levy a tax on the sale or purchase of these commodities after 1st April, 1958 do not participate in the distribution of the net proceeds. Provision is made in the Act for including these goods in the category of goods declared to be of special important in inter-state trade or commerce so that following the imposition of uniform duties of excise on them, the rates of sales tax, if levied by the State are subject from 1st April, 1958 to the restrictions in Section 15 of the Central Sales Tax Act, 1956."

6. S. 3 (1) of the ADE Act, which is the charging section, states that there shall be levied and collected an additional duty of excise on goods described in Column 3 of the First Schedule of the ADE Act at the rate specified in Column 4 thereof. These descriptions of goods correspond to the CE Act. When the CST Act was amended in 1961 to include 'silk fabrics' as entry (xi) in Section 14, a simultaneous amendment was made to the ADE Act by including 'silk fabrics' in the definition clause 2 (c), S. 3 (1) and the First Schedule of the ADE Act. By Act No.7 of 1986 further changes were made to the First Schedule to bring it in line with the Central Excise Tariff Act 1985. As of today, Column 3 of the First Schedule to the ADE Act has an entry concerning 'Woven Fabrics of Silk or Silk Waste' and the rate of duty specified in Column 4 is 'Nil'.

7. S.4 ADE Act states that "During each financial year, there shall be paid out of the Consolidated Fund of India to the States in accordance with the Second Schedule such sums, representing a part of the net proceeds of the additional duties levied and collected during that financial year, as are specified in that Schedule." Clause 4 of the Second Schedule to the ADE Act sets out, in a table appended thereto, the precise percentage of the distribution among the States the ADE collected in respect of 'Fabrics' described in Column 3 of the First Schedule to the

ADE Act. The proviso to Clause 4 stipulates that if any State levies and collects local sales tax on the goods specified under S. 3 (1) of the ADE Act, then "no sums shall be payable to that State under this paragraph in respect of that financial year, unless the Central Government by special order directs otherwise." In other words, the consequence of a State levying and collecting local sales tax on the sale of declared goods is that it might entail, subject to the Central Government directing otherwise, such state losing its share of the ADE collected in that financial year. Significantly, Delhi is not one of the States mentioned therein.

8. With effect from 1.3.1965 mill-made silk fabrics was totally exempt from both excise duty under the CE Act as well as from additional duty under the ADE Act. In 1968 it was decided to take silk fabrics outside the purview of Section 14 CST Act on account of the fact that the States were not going to be compensated by additional duties of excise in relation to silk fabrics. Accordingly in the Finance Act, 1968 the following change was proposed:

> "***Provision Relation to Central Sales Tax***
>
> All items on which additional duties of excise are being levied in lieu of sales tax have been included in Section 14 of the Central Sales Act, which read with Section 14 imposes a restriction on the levy of local sales tax. Mill-made silk fabrics was also included with effect from 1.3.1961, due to the replacement of sales tax by

additional excise duties. **As basic as well as additional excise duties have been totally exempted on mill-made fabrics with effect from 1.3.1965, it has been decided to delete item (xi) from section 14 of the Central Sales Tax Act, thereby lifting the restrictions imposed on the States to levy sales tax under their local laws on silk fabrics.** [clause 43]. " (emphasis supplied)

9. As a result, with effect from 11.5.1968, 'silk fabrics' was dropped from Section 14 CST Act. Consequent upon the above change, the restriction on levy of local sales tax as stipulated by Section 15 of the CST Act did not apply. However, silk fabrics continued to feature in the First Schedule to the ADE Act.

The DST Act

10. Prior to its becoming a State, Delhi was a Union Territory in respect of which the Parliament exercised legislative powers. Accordingly, in respect of Delhi, Parliament was competent to enact a law imposing tax on the sale and purchase of goods other than newspapers, under Article 245 of the Constitution of India read with Item No. 54 in List II of Schedule VII thereof. Thus the Delhi Sales Tax Act 1975 (DST Act) was enacted by Parliament providing for sales tax to be levied on sales taking place within the Union Territory of Delhi. Under the DST Act, sales tax

was levied on silk fabrics till its withdrawal with effect from 1.4.1998 upon representations made by the petitioner, an association of silk and textiles traders. At this stage the question of the applicability of the restriction under S.15 CST Act did not arise as Delhi was still a Union Territory.

11. After the 69th Amendment in the Constitution, effective 21.12.1991, Delhi was given the status of a State and called the National Capital Territory of Delhi(NCTD). The legislative assembly of the NCTD empowered to make laws on all the matters in List II of Schedule 7 except those mentioned in Entries No. 1, 2 and 18 of the State List and Entries 64, 65 and 66 so far as it related to Entries 1,2 and 18. In other words, the legislative competence of the Delhi State Legislative assembly to levy local sales tax on silk fabrics remained unchanged.

12. What is important to note is that although 'silk fabrics' continued to feature in the First Schedule to the ADE Act, it did not mean that the legislative assembly of the NCTD could not make a law levying local sales tax on such goods. What it meant was that if NCTD chose to levy sales tax on silk fabrics in any financial year, then, subject to the central government directing otherwise, NCTD might stand to lose its share of the ADE for that financial year. As far as the rate of local sales tax was

concerned, since the restriction under Section 15 CST stood removed with effect from 11.5.1968, the local sales tax on silk fabrics under the DST could be higher than 4%.

Facts of the present case

13. The present petitions challenge the impugned notifications levying local sales tax on silk fabrics and issued under the DST Act. The first is a notification issued on 31.3.1999 by the Lt. Governor GNCTD, Respondent No.2 herein, imposing sales tax on silk fabrics with effect from 1.4.1999 at the rate of 3 paise in the rupee. This was initially challenged by the petitioner association in Writ Petition (C) 3173/1999 in this Court. Rule DB was issued and the matter was listed for final disposal. According to the petitioners, during the pendency of this writ petition the Finance Minister gave an assurance to a delegation of the silk traders that the sales tax would be withdrawn. Acting on this assurance, the petitioner on 10.1.2000 withdrew the said writ petition.

14. According to the petitioners, instead of withdrawing the sales tax as assured, Respondent No.2 issued two notifications on 15.1.2000. By the first notification, 'silk fabrics' was inserted as Entry 34 in the First Schedule to the DST Act. By the second notification, the rate of sales tax was increased to 12 paise in a rupee on silk fabrics. This was followed by

a further notification dated 31.3.2000 whereby 'silk fabrics' was deleted from the First Schedule of the DST Act and added to the Second Schedule. As a result, the rate of sales tax on silk fabrics was reduced from 12 paise to 4 paise in the rupee.

15. Thereafter, the present writ petitions were filed challenging the notifications as mentioned in para 1 hereinabove. On 14.7.2000 this Court directed notice to issue in the writ petitions and rule DB was issued on 18.5.2001. Meanwhile by a Notification dated 31.3.2001 'silk fabrics' was deleted from the Second Schedule to the DST Act and included in the Third Schedule thereof which meant that under Section 7 DST Act it was fully exempt from sales tax. With effect from 3.7.2003, 'silk and garments made of silk but not including sarees made of silk' was included in the First Schedule (subject to tax @ 12 paise in the rupee) and 'Sarees made of silk' was included in the Second Schedule (subject to tax @ 4 paise in the rupee). `Silk fabrics' continued in the Third Schedule and was totally exempt from sales tax. The resultant position is that since 1.4.2001 there is no local sales tax on silk fabrics.

16. Therefore, the issue in the present petitions concerns the validity of the imposition of local sales tax on silk fabrics under the DST Act at the following rates for the following periods:

(i) At the rate of 3 paise in the rupee for the period from 31.3.1999 till 15.1.2000

(ii) At the rate of 12 paise in the rupee for the period from 16.1.2000 till 31.3.2000

(iii) At the rate of 4 paise in the rupee for the period from 1.4.2000 till 31.3.2001

17. On 1.8.2002 the following interim order was passed by this Court on an application for stay (CM No 1128/2002) filed by the petitioners:

> "Before we take up this application for orders, let the members of the petitioner association file affidavits stating as to what amount they had collected as sales tax on silk fabrics for the period 15 January to 31 March, 2000 and when was the same deposited within the Sales Tax Department. The requisite affidavits shall be filed within two weeks with advance copies to learned counsel for the respondents, who will have instructions thereon before the next date. If any further information is required by the Department, learned counsel for them may have the same collected from learned counsel for the petitioner."

18. Pursuant to the aforesaid order, members of the petitioner association have filed individual affidavits in this Court. While the proprietor of M/s. Saree Sansar has filed an affidavit indicating that he has charged only 3% sales tax on silk fabrics for the for the period 15 January to 31 March, 2000 all the others have said that they have charged, for this period, 12%

sales tax.

Submissions of Counsel

19. Mr. Harish Malhotra, learned senior counsel appearing for the petitioners submits that since silk fabrics continue to figure as goods of special importance in the First Schedule to the ADE Act, the GNCTD was precluded from levying local sales tax on those goods. Relying on a letter dated 5.10.19998 written by the Additional Secretary in the Ministry of Finance, Government of India, he submitted that as long as the GNCTD was partaking of the share of the proceeds under the ADE Act, it could not levy local sales tax on silk fabrics. Accordingly the notifications imposing sales tax at the rate of 3%, 12% and 4% were invalid. Alternatively, he submitted that even if one were to assume that local sales tax could be levied on silk fabrics, it could not in any event exceed 4% as long as it was listed in the ADE Act as goods of special importance. In support of this submission, Mr.Malhotra placed reliance upon the judgment of the Hon'ble Supreme Court in ***State of Kerala v. M/s. Attesee (Agro Industrial Trading Corporation)*** AIR 1989 SC 222 and in particular the observations contained in para 6 of the judgment to the following effect:

"The fact that 'cotton fabrics' though listed as item 12 in the

Schedule to the 1944 Act was not brought into the list in Section 14 till 1.10.1958 or that 'silk fabrics' was dropped from the list in Section 14 with effect from 11.6.1968 though it continues in the Schedule to the 1944 Act does not alter the position that these three Acts are inter-connected and that certain goods taken out from the Schedule to the 1944 Act were to be subjected to the special treatment outlined in the CST Act and the 1957 Act."

It is submitted that by virtue of the above declaration of the law, it becomes clear that 'declared goods' which continue to feature in the First Schedule to the ADE Act, cannot be subject to local sales tax in excess of what is stipulated in Section 15 of the CST Act, notwithstanding the fact that the goods no longer feature in Section 14 of the CST Act.

20. In reply, Mr. H.L. Taneja and Mr. J.R. Goel, learned counsel appearing for the Respondents 1 and 2, submitted that the decision in ***Attesee*** (supra) is distinguishable in its application to the facts of the present case. They further submit that State is not precluded from levying sales tax on silk fabrics at the rate of 4 paise in the rupee or any higher rate notwithstanding the fact that the rate of ADE in relation to these goods under the ADE Act is 'Nil'. Mr. Goel further submitted the mere fact that an item figured in the First Schedule to the ADE Act did not affect the legislative competence of the State to enact a law levying

local sales tax under Entry 54 of List II of Schedule VII to the Constitution.

The legal position on the inter-connectedness of the CST, CE and ADE Acts

21. The legal position that emerges from the above discussion in paras 2 to 12 on the inter-connectedness of the CST, CE and ADE Acts may be summarized thus:

(a) From 29.4.1961 till 11.5.1968 'silk fabrics' featured as `goods of special importance' (declared goods) in Section 14 CST Act. During this period, by virtue of the restriction in Section 15 (a) CST Act, the local sales tax on silk fabrics in the States including Delhi could not be higher than 4%.

(b) The ADE was enacted with a view to compensating the States for the loss of revenue on account of the restriction on their powers to levy local sales tax on declared goods higher than 4% (which was the maximum permissible CST in relation to such goods). In other words declared goods within the meaning of Section 14 CST Act would be amenable to the levy of ADE and the ensuing revenue collected would be shared between the States on an agreed revenue sharing basis as spelt out in Schedule II to the ADE.

(c) Silk fabrics continued to figure in the Schedule to the ADE from

1961 onwards but the rate of duty of ADE was 'Nil' with effect from 1.3.1965. What this meant was that with effect from 1.3.1965, Delhi (or for that matter any State) was not in fact being compensated with the revenue collected as ADE on 'silk fabrics'.

(d) Acknowledging this anomaly, the Finance Act, 1968 removed 'silk fabrics' from the purview of Section 14 CST Act with effect from 11.5.1968. This was done to enable the states to levy local sales tax on silk fabrics at a rate higher than 4%. However, 'silk fabrics' continued to feature in the First Schedule to the ADE Act with 'nil' rate of duty.

(e) Although 'silk fabrics' continued to feature in the First Schedule to the ADE Act, it did not mean that the legislative assembly of the NCTD could not make a law levying local sales tax on such goods. What it only meant was that if NCTD chose to levy sales tax on silk fabrics in any financial year, then, subject to the central government directing otherwise, NCTD might stand to lose its share of the ADE for that financial year.

22. At the time when the impugned notifications were made, the above position prevailed. In other words, by virtue of the removal of silk fabrics

from the purview of Section 14 CST there was no restriction on the levy of local sales tax on silk fabrics at a rate higher than 4%. Even assuming that silk fabrics continued to remain as declared goods for the purpose of Section 14 CST Act, that only meant that the local sales tax in respect of such goods could not be higher than 4% by virtue of Section 15 (a) CST Act. Therefore, in any view of the matter the challenge to the validity of the impugned notifications to the extent they seek to levy local sales tax on silk fabrics at the rate of 3% and later 4% cannot be sustained.

The Supreme Court's decision in Attesee

23.The only question that remains is whether there was any restriction on the state charging local sales tax higher than 4% on account of the fact that silk fabrics continued to figure in the ADE Act as goods of special importance. In other words are the impugned notifications dated 15.1.2000 by which sales tax was levied at the rate of 12% on silk fabrics from 16.1.2000 till 31.3.2000 invalid on this score. Considerable reliance has been placed by the petitioners on the observations of the Hon'ble Supreme Court in ***Attesee*** (supra). Therefore, we propose to examine this judgment in some detail.

24. The goods involved in the said case was 'P.V.C. Cloth' which was covered by the definition of 'cotton fabrics' under the First Schedule to

the CE Act after its amendment in 1969. However, PVC Cloth was not covered by the original definition of 'cotton fabrics' as on 1.4.1963. Under the Kerala General Sales Tax, 1963 (Kerala Act), Item No. 7 of the Third Schedule exempted mill-made textile as specified in the First Schedule to the CE Act from local sales tax. The Kerala Act was amended with effect from 1.9.1967 by taking away the exemption for silk fabrics and retaining it only for "cotton fabrics", "woollen fabrics" and "artificial silk fabrics". The Hon'ble Supreme Court formulated the question arising in the case in para 1 of the judgment thus: "whether in respect of assessment years 1971-72 and 1972-73, with which we are concerned, the exemption given to 'cotton fabrics' under item 7 above should be restricted to 'cotton fabrics' as defined in the CE Act as it stood on 1.4.1963 or whether it would also cover goods falling under the said definition after its amendment in 1969." The Supreme Court applied the doctrine of 'legislation by reference and legislation by incorporation' and concluded that the subsequent amendments to the CE Act would apply to the definition of `cotton fabrics' under the Kerala Act as well.

25. In para 6 of its judgment, the Hon'ble Supreme Court observed (as extracted in para 18 hereinabove) that there was an interconnection in the three enactments, viz., the CE Act, the CST Act and the ADE Act. It

thereafter noticed the submission of the learned counsel for the State in this context as under:

> "7. This may be so, says Sri Potti, but there is no justification to bring the 1963 Act into this group. His short point is that the State legislature is completely free within its domain. Its power to levy sales tax includes a power to levy a tax on sales of declared goods as well. Nor is such power inhibited by the levy of an additional excise duty on certain goods. The 1957 amendment to the 1125 Act made no reference even to the 1944 Act. The 1963 Act makes no reference either to the CST Act or to the 1957 Act. Sri Potti emphasizes, pointing out to the practical effects of the two legislations (the 1963 Act and the 1957 Act) to which attention has been invited already, that it was not the policy of the Kerala State legislature to exempt from sales tax goods which suffered additional excise duty. The sales tax exemption is conferred on a totally independent basis. It is not linked to the fluctuations in, or variation of, the treatment under the CST Act and the 1957 Act. The description of items 5,7 and 8, by simply incorporating the definitions then readily available in the 1944 Act (not the CST Act or the 1957 Act), was not intended to bring out the result that these definitions should be read in the light of the changes that they may undergo for the purposes of the 1944 Act.

The Supreme Court disposed of this submission as under:

> "8. Sri Potti is certainly correct in saying that the wordings of the Acts do not show an exact correlation between the liability to pay additional excise duty and the exemption from the levy of sales tax under the 1963 Act. But it would not be correct to say that the provisions of the latter can be interpreted without reference to the other two legislations. The CST Act has a definite impact on the manner and extent of sales tax levy, in so far as declared goods are concerned, for such levy cannot transgress the limitations and restrictions of Section 15 thereof. Section 15 applies in respect of goods listed in Section 14 which, in turn, is linked to the list in the 1944 Act. **The 1957 Act also has a**

bearing on the sales tax levy of various States. **By levying sales tax on an item covered by the Schedule to the 1957 Act, the State will have to forgo its share on distribution of the proceeds of the additional duty levied. Whether it should impose sales tax on an item of declared goods, limited by the restrictions in Section 15 of the CST Act and at the risk of losing a share in the additional excise duty levied in respect of those very items, is for the State to determine.** As pointed out by Sri Potti, it was open to the Kerala Legislature to decide – and it did so also – that on some items there should be one or other of the levies or both of them and to modify these levies depending upon its own financial exigencies. But these factual or periodical variations do not detract from the basic reality that **the policy of sales tax levy on declared goods has to keep in view, and be influenced by, the provisions of the CST Act and the 1957 Act.** The reference to the 1944 Act definitions for purposes of grant of exemption in the 1963 Act as enacted originally as well as when the latter was amended in 1967 and the specific reference to the 1957 Act when the First Schedule to the 1963 Act was amended in 1980 are quite significant in this context. We, therefore, think that, though the 1963 Act referred only to the definitions in the 1944 Act, the entries in the Schedule have to be juxtaposed into the broad pattern or scheme evolved by the 1956-57 enactments set out earlier in the judgment. Doing so, and **even assuming that the reference in the items of the Schedule to the definitions in the 1944 Act is by way of incorporation and not reference, one cannot escape the conclusion that the circumstances are covered by the exceptions outlined in Narasimhan (1976) 1 SCR 6: (AIR 1975 SC 1835). They certainly fall within the scope of exception (a) mentioned therein and also fall within exception (c) if we read "unworkable and ineffectual" to take in also "unrealistic and impractical."**

26. The central question in ***Attessee*** was about the definition of the

words 'PVC Cloth' and whether the assessee could take advantage of the doctrine of legislation by seeking to contend that the amended definition of the term 'cotton fabrics' as obtaining in the ADE Act and the CE Act should be read into the definition of those very words occurring in the Kerala Act. The Hon'ble Supreme Court, keeping in view the particular provisions of the Kerala Act and the legislative policy followed by that State, answered the point in favour of the assessee. This is therefore the ratio of ***Attesee***. The issue there did not concern the legislative competence of the Kerala Legislature to levy sales tax on 'PVC Cloth' considering the fact that cotton fabrics continued to figure in the ADE Act. In the circumstances, we fail to see how the said judgment in ***Attesee*** can apply to the facts of the present cases. Here the question is whether the impugned notifications levying local sales tax on 'silk fabrics' can be legally sustained in view of the same item figuring in the First Schedule to the ADE Act.

27. Secondly, even while discussing the interconnectedness of the CE Act, the CST and the ADE the Hon'ble Supreme Court in ***Attesee*** did not say that the State lacked legislative competence to levy local sales tax on an item that figures in the First Schedule to the ADE Act. On the contrary. it was pointed out in para 8 that the only consequence was that

if it did choose to levy sales tax on such commodity in any financial year, the State would have to forego its share of the revenues collected under the ADE Act for that financial year, subject to any directions to the contrary by the central government.

Conclusions on the present cases

28. As already noticed, the underlying scheme of the ADE Act is that the States that are made to forego higher rate of local sales tax *vis-a-vis* declared goods by virtue of Section 15 of CST Act should be compensated through the ADE Act in respect of such 'declared goods'. If, however, the States are unable to recover any duty whatsoever as additional tax of excise under the ADE Act, as in the present case, then there would no be justification for retention of the said goods in Section 14 of the CST Act. Worse still would be to subject such goods to the restriction in terms of Section 15 CST even after such goods have been deleted from Section 14 thereof merely because it continues to figure in the First Schedule to the ADE Act. The intention of Parliament certainly was not that the States be made to lose revenue at both ends, i.e., through the CST Act by inclusion of the declared goods under Section 14 resulting in the restriction on the rate of local sales tax by virtue of Section 15 thereof and by not being able to collect ADE as well since the

rate of duty for that purpose is 'Nil'. Therefore, the intention of the Parliament in the instant case in deleting the 'silk fabrics' from the purview of the CST Act is clear. It was with a view to permitting the States to levy local sales tax on the said goods without the fetter of Section 15 of the CST Act. That fetter cannot be sought to be continued to be imposed by the mere fact that the goods figure in the ADE Act even if they are subject to 'Nil' duty. In that view of the matter, we do not think that the letter dated 11.10.1998 of the Additional Secretary of the Department of Revenue is based on a correct understanding of the legal position and therefore it is of no assistance to the petitioners.

29. Even if one were to accept the argument that the rate of duty of ADE being 'Nil' makes no difference as long as the States share the overall revenues under the ADE, even then there is nothing in the ADE Act that impinges on the legislative competence of the state to levy local sales tax on such goods. The only consequence as spelt out in the Second Schedule to the ADE Act is that the State has to forego its share of the ADE subject to the directions of the Central Government. This legal position has been explained by the Hon'ble Supreme Court in ***Attesee*** as well as in the subsequent decision in ***State of Bihar v. Bihar Chamber of Commerce*** [(1996) 9 SCC 136 = (1996) 103 STC 1]. Here the challenge was to the

validity of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993. It was contended on behalf of certain assessees that insofar as tobacco figured in the First Schedule to the ADE Act, no entry tax on those goods could be levied by the State of Bihar. Repelling this contention the Hon'ble Supreme Court explained thus (SCC, p.156):

> "The ADE Act is enacted by Parliament with reference to Entry 84 in List I of the Seventh Schedule to the Constitution whereas the impugned enactment is made by the State with reference to Entry 52 in List II. The power to levy taxes on sale or purchase of goods is conferred upon the States and the States alone by Entry 52 in List II. Parliament cannot make a law either with reference to Entry 52 or for that matter with reference to Entry 54. The ADE Act is also not a law made under and with reference to Article 252 of the Constitution, which article empowers Parliament to make a law with respect to any matter mentioned in List II, if two or more States pass resolutions requesting Parliament to make a law in that behalf. The impugned Act is also not relatable to any of the Articles 249 to 253 which are in the nature of exceptions to the normal rule that Parliament can make no law with respect to the entries in List II. If so, it follows that **the State Legislatures are not denuded or deprived of their power to make a law either with reference to Entry 52 or with reference to Entry 54 in List II. That power remains untouched and unaffected.** All that Parliament has said by enacting the ADE Act is that it will levy additional duties of excise and distribute a part of the proceeds among the States provided the States do not levy taxes on sale or purchase of the scheduled commodities. Parliament has also provided the consequence that follows if any State levies tax on sale or purchase of scheduled commodities; all that happens is that the State will be deprived of its share in the proceeds of additional duties of excise for that financial year. Even this is subject to the power of the Central Government to direct otherwise. **Parliament could not, and did not, prohibit any State from making any law or levying any tax which a State can levy by virtue of the entries in List II.**" (emphasis supplied)

30. Recently a Division Bench of this Court in ***M.R.Tobacco Pvt. Ltd. v.***

Union of India (2006) 145 STC 211 upheld the validity of the notification dated 31.3.2000, which is one of the notifications challenged here, in the context of the inclusion of 'gutka' in the First Schedule to the DST Act. A similar argument as advanced in the present case was negatived by this Court in the said decision. The resultant position is that even if silk fabrics continued to figure in the First Schedule to the ADE Act, the GNCTD is not precluded from levying local sales tax on the said goods at a rate higher than 4%. Therefore the challenge to the notifications dated 15.1.2000 that levied sales tax at the rate of 12% on silk fabrics from 16.1.2000 till 31.3.2000 must also fail.

31. For all the above reasons, these writ petitions are dismissed with no order as to costs. Stay Application stands disposed of accordingly.

S. MURALIDHAR, J.

VIKRAMAJIT SEN, J.

OCTOBER 19, 2006
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