

STATE OF MADHYA PRADESH & ORS.

November 15, 1966

[K. SUBBA RAO, C.J., J.C. SHAH, S.M. SIKRI, V. RAMASWAMI AND
C.A. VAIDIALINGAM, JJ.]

Central Provinces and Berar Sales Tax Act (21 of 1947) as amended by Madhya Pradesh Sales Tax Act (20 of 1953), ss. 27A and 4(6)—Goods declared and mentioned in registration certificate as meant for use as raw material for manufacture of goods for sale, delivery and consumption in Madhya Pradesh actually used for export out of State—Whether liable to purchase tax—Effect of Sales Tax Laws Validation Act, 1956.

The appellant was a firm in Madhya Pradesh and was registered as a 'dealer' under the Central Provinces and Berar Sales Tax Act, 1947 as amended by the Madhya Pradesh Sales Tax (Amendment) Act, 1953. During 1951 and 1955 the firm imported tobacco from the State of Bombay on the declaration that it would be used as raw material in the manufacture of goods for sale by actual delivery in Madhya Pradesh for consumption in that State. Tobacco was mentioned as one of the raw materials in the firm's registration certificate issued under s. 8 of the Act. However the goods manufactured by the firm were utilised for a different purposes i.e. for export outside the State. Under s. 4(6) of the Act when goods were used for a different purpose other than the one declared and mentioned in the registration certificate the price paid by the dealer for such goods would be included in his taxable turnover. However in a writ petition before the High Court the appellant firm contended that the goods exempt as inter-State sales were exempted from levy of sales tax under s. 27A of the Act which incorporated the bans in Art. 286 of the Constitution. The writ petition was allowed in September 1955. However in 1956 the Sales Tax Validation Ordinance and thereafter the Sales Tax Laws Validation Act were passed. Accordingly the Sales Tax Authorities issued notices to the appellant firm proposing to levy purchase tax on the tobacco purchased by it from non-resident dealers during the period November 7, 1953 to September 5, 1955. The appellant thereupon filed another writ petition before the High Court challenging the levy but it was dismissed. With certificate the appellant came to this Court.

It was urged on behalf of the appellant that (i) before advantage could be taken of the Sales Tax Laws Validation Act, 1956 there had to be in existence a State Act imposing tax on inter-State sales and s. 27A of the Act imposed no such tax, (ii) s. 4(6) had no application because tobacco was not specified in the certificate of registration granted to the appellant "as intended for use by it as raw material in the manufacture of any goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State."

HELD : (i) Read with the third explanation to s. 2(g) of the Act s. 27-A had a positive and not merely a negative content. It gave power to the State of Madhya Pradesh to impose a tax on a transaction falling within its purview. It was therefore a pre-existing law validated by the Sales Tax Laws Validation Act, 1956 and the appellant could be taxed under it in respect of inter-State sales only during the relevant period. [95 H; 96 G-H]

A *M.P.V. Sundararamier & Co. v. The State of Andhra Pradesh*, [1958] S.C.R. 1422, relied on.

(ii) The declaration made by the appellant to the Bombay dealers was for the purpose of obtaining exemption from purchase tax. The same was the purpose of the mention of tobacco in the registration certificate under s. 8. If the language of the certificate were construed in the context of the s. 8. of the Act (as amended) and along with the declaration of the appellant, it was manifest that the appellant was liable to pay tax on tobacco imported from Bombay dealers and that the requirements of s. 4(6) were satisfied. The technical omission of the Sales Tax Officer to make a specific entry in the certificate would not confer any benefit on the appellant when there was other incontrovertible evidence to show that the appellant did purchase the goods specified in the certificate as raw materials in the manufacture of any goods for the purpose of sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State. [98 F-H; 99 A]

Modi Spinning & Weaving Mills Co. Ltd. v. Commissioner of Sales Tax, Punjab & Anr. 16 S.T.C. 310, relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 242 of 1965.

D Appeal from the judgment and order dated February 19, 1962 of the Madhya Pradesh High Court in Misc. Petition No. 395 of 1958.

A. K. Sen, R. M. Hazarnavis, D. N. Verma, O. P. Malhotra, O. C. Mathur, J. B. Dadachanji and Ravinder Narain, for the appellant.

E *B. Sen and I. N. Shroff*, for the respondent.

The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought, by certificate, from the judgment of the High Court of Madhya Pradesh dated February 19, 1962 in Miscellaneous Petition No. 395 of 1958.

F The appellant is a firm carrying on the business of manufacturing and selling bidis. During the period April 1, 1951 to September 6, 1955, the appellant was registered as a "dealer" under the Central Provinces & Berar Sales Tax Act, 1947 (C.P. & Berar Act 21 of 1947) (hereinafter called the 'Act'). For the purposes of manufacture of bidis, the appellant imported from the State of Bombay large quantities of tobacco. During the period from November 7, 1953 to October 26, 1954, the appellant imported from that State tobacco worth Rs. 84,29,580-15-0 and during the period from October 27, 1954 to November 14, 1955 the appellant imported tobacco worth Rs. 1,38,27,630-12-6. In the usual course, the tobacco, after being imported into the State of Madhya Pradesh, was rolled into bidis which were largely exported to other States for sale and consumption in those States. In respect of the imports of tobacco the Sales Tax authorities required the appellant to file returns in Part B of Form IV clause 2 of which stated as follows:

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"2. Purchase price of goods other than those mentioned in Schedule II purchased on declaration under rule 26 as being goods specified in the registration certificate as intended for use as raw materials in the manufacture of any goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State but utilised for any other purpose; such as one's own consumption or for export outside the State for which deduction is claimed under section 27-A or for use in the manufacture of goods exported outside the State for which deduction is claimed under section 27-A, etc."

The appellant filed a return for the quarter from May 3, 1954 to July 29, 1954 showing the amount of Rs. 16,47,567-3-3- as the purchase price of goods purchased on declaration as being goods specified in the registration certificate as intended for use as raw material in the manufacture of goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State but utilised for any other purpose. In the return which was filed for the quarter beginning from July 27, 1954 and ending with October 26, 1954, the appellant did not fill in any figure but showed the above item as blank contending that the Sales Tax authorities were not entitled to levy any purchase tax against it in respect of the same. The appellant thereafter moved this Court under Art. 32 of the Constitution for the issue of a writ of *mandamus* or any other suitable writ to restrain the respondents from enforcing the provisions of the Act and for other consequential reliefs. In Writ Petition No. 67 of 1955 decided on September 20, 1955 *M/s Mohanlal Hargovind Das v. The State of Madhya Pradesh*(1) this court observed in the course of its judgment as follows:

"All the transactions entered into by a registered dealer, however, do not necessarily import a liability to pay tax under the Act because, whenever the question arises in regard to his liability to pay any tax under the Act, such liability would have to be determined in spite of his being a registered dealer with reference, *inter alia*, to the provisions of Section 27-A of the Act which incorporates within its terms the bans which have been imposed on the powers of the State Legislatures to tax under Article 286(1) (a) and (2) of the Constitution. If, therefore, a dealer who has got himself registered as dealer under the provisions of Section 8(1) of the Act is sought to be made liable in respect of transactions of sale effected by him he could claim exemption from such liability if the transactions of sale or purchase took place in the course of inter-State trade or commerce after the 31st March, 1951, except in so far

(1) [1955] 2 S.C.R. 509.

A as Parliament may by law otherwise provide. In the case
 before us there was no such provision made by Parliament
 and the transactions in question were all after the 31st
 March, 1951, with the result that the ban imposed by
 Article 286(2) was in operation and if the transactions
 took place in the course of inter-State trade or commerce
 B not only were Shri Chhaganlal Ugarchand Nipani and Shri
 Maniklal Chunanlal Baroda exempt from the liability
 to pay the tax on these transactions but the petitioners
 also were similarly exempt. No liability, therefore, could
 be imposed either for Sales Tax or for Purchase Tax within
 the terms of the Act on these transactions which as above
 C stated took place in the course of inter-State trade or
 commerce."

This Court accordingly granted a writ to the following
 effect:

"The respondents will be restrained from enforcing
 the Central Provinces and Berar Sales Tax Act, 1947,
 D and its provisions against the petitioners and from imposing
 a tax in respect of the transactions in question and in
 particular from imposing a tax on the purchase price of
 goods purchased on the declarations under Rule 26
 being goods specified in the registration certificate as in-
 tended for use as raw material in the manufacture of
 E goods for sale by actual delivery in Madhya Pradesh for
 the purpose of consumption in that State but utilised for
 any other purpose under the provisions of Section 4(6)
 of the Act."

In view of this writ the Assistant Commissioner of Sales Tax,
 Jabalpur, by his two orders dated September 9, 1956 and September
 F 10, 1956, exempted the appellant from tax on the purchases of
 tobacco made in the State of Bombay, which, after being imported
 into the State of Madhya Pradesh, was used as raw material for
 manufacturing bidis exported to other States. The appellant
 preferred appeals to the Deputy Commissioner of Sales Tax
 against the two orders dated September 9, 1956 and September 10,
 1956. In the meantime, on March 21, 1956, the Sales Tax Laws
 G Validation Act, 1956 (Act 7 of 1956), which repealed the Sales Tax
 Validation Ordinance 3 of 1956, had come into force. Thereupon,
 on December 5, 1958, the Deputy Commissioner of Sales Tax
 issued two notices to the appellant proposing to levy tax on pur-
 chases of tobacco during the period from November 7, 1953 to
 September 5, 1955 from non-resident dealers under s. 4(6) of the
 Act. The appellant filed in the High Court of Madhya Pradesh
 H Miscellaneous Petition No. 395 of 1953 praying for grant of a writ
 of *certiorari* to quash the notices dated December 5, 1958 issued by
 the Deputy Commissioner of Sales Tax and for a writ in the nature

of *mandamus* restraining the respondents from enforcing the provisions of the Act and of the Central Act 7 of 1956 and from imposing any tax on purchases of tobacco and other raw materials from non-resident dealers. By its judgment dated February 19, 1962, the High Court of Madhya Pradesh rejected the petition of the appellant.

By the Madhya Pradesh Sales Tax (Amendment) Act, 1953 (M.P. Act 20 of 1953) certain amendments were made in the Act. The material provisions of the latter Act, as amended by the former Act, were as follows:

"2. (c) 'dealer' means any person who whether as principal or agent, carries on in Madhya Pradesh the business of selling or supplying goods, whether for commission, remuneration or otherwise and includes a firm, a partnership....."

"2. (g) 'sale' with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods made in course of the execution of a contract,.....and the word 'purchase' shall be construed accordingly;

Explanation (II).—(Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, but subject to the provision contained in the Explanation to clause (i) of Article 286 of the Constitution) the sale or purchase of any goods shall be deemed for the purposes of this Act, to have taken place in this State wherever the contract of sale or purchase might have been made—

- (a) if the goods were actually in this State at the time when the contract of sale or purchase in respect thereof was made, or
- (b) in case the contract was for the sale or purchase of future goods by description, then, if the goods are actually produced or found in this State at any time after the contract of sale or purchase in respect thereof was made;

Explanation (III).—Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale of any goods which have actually been delivered in the State of Madhya Pradesh as a direct result of such sale for the purpose of consumption in the said State, shall be deemed,

A for the purpose of this Act, to have taken place in the said State, irrespective of the fact that the property in the goods has by reason of such sale passed in another State."

B "2. (j) 'turnover' means the aggregate of the amounts of sale prices and parts of sale prices received or receivable by a dealer in respect of the sale or supply of goods or in respect of sales or supply of goods in the carrying out of any contract affected or made during the prescribed period; and the expression 'taxable turnover' means that part of a dealer's turnover during such period which remains after deducting therefrom (a) his turnover during that period on—

C

D (ii) sales to a registered dealer of goods declared by him in the prescribed form as being intended for resale by him by actual delivery in Madhya Pradesh for the purpose of consumption in that State or of goods specified in such dealer's certificate of registration as being intended for use by him as raw materials in the manufacture of any goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State, and of containers and other materials used in the packing of such goods;"

E "4. (6) Where any goods are purchased by a registered dealer as being intended for resale by him by actual delivery in Madhya Pradesh for the purpose of consumption in that State, or as being goods specified in such dealer's certificate of registration as intended for use by him as raw materials in the manufacture of any goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State and such goods are utilised by him for any other purpose, the price paid by him for such goods shall be included in his turnover and be liable to tax in accordance with the provisions of this Act."

G "27-A. (a) Notwithstanding anything contained in this Act—

- (a) a tax on the sale or purchase of goods shall not be imposed under this Act—
- (i) where such sale or purchase takes place outside the State of Madhya Pradesh; or
- H (ii) where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territories of India;

(b) a tax on the sale or purchase of any goods shall not, after the 31st day of March 1951, be imposed where such sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide.

(2) The Explanation to clause (1) of Article 286 of the Constitution shall apply for the interpretation of sub-clause (i) of clause (a) of sub-section (1)."

Article 286(1) and (2) of the Constitution, as it stood at the material time, is reproduced below:

"286(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place:—

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation.—For the purposes of sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce.

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951."

In *M/s Mohanlal Hargovind Das v. The State of Madhya Pradesh*,⁽¹⁾ it was held by this Court that the transaction of purchase of tobacco by the appellant from dealers outside the territory of Madhya Pradesh were transactions in the course of inter-State

(1) [1955] 2 S.C.R. 509.

- A** trade or commerce and since the ban imposed by Art. 286(2) was in operation, the appellant was exempt from liability to pay tax on those transactions. On January 30, 1956, the President of India promulgated an O-dinance called 'The Sales Tax Laws Validation Ordinance, 1956' (Ordinance No. 3 of 1956) which was repealed and replaced by the Sales Tax Law
- B** Validation Act, 1956 (Act 7 of 1956) which came into force on March 21, 1956. Section 2 of this Act states:

C "Notwithstanding any judgment, decree or order of any Court, no law of a State imposing or authorising the imposition of, a tax on the sale or purchase of any goods where such sale or purchase took place in the course of inter-State trade or commerce during the period between the 1st day of April, 1951 and the 6th day of September, 1955, shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such sale or purchase took place in the course of inter-State trade or commerce; and all such taxes levied or collected or purporting to have been

D validly levied or collected during the aforesaid period shall be deemed always to have been validly levied or collected in accordance with law.

E Explanation.—In this section 'law of a State' in relation to a State specified in Part C of the First Schedule to the Constitution, means any law made by the Legislative Assembly, if any, of that State or extended to that State by a notification issued under Section 2 of the Part C States (Laws) Act, 1950 (30 of 1950)".

- F** It was argued by Mr. A. K. Sen on behalf of the appellant, in the first place, that s. 27-A of the Act places a restriction on the power of the taxing authorities and so long as it stood unrepealed there was no pre-existing law authorising the imposition of tax on sales made in the course of inter-State trade or commerce and in consequence the Sales Tax Laws Validation Act, 1956 which merely lifted the ban and did not impose any tax, had no application to the case of the appellant. To put it differently, the contention of Mr. A. K. Sen was that before advantage could be taken
- G** of the Sales Tax Laws Validation Act, 1956 there had to be in existence a State Act imposing tax on such sales and s. 27-A of the Act imposed no such tax on the sales. We are unable to accept this argument as correct. An identical question was the subject-matter of consideration by this Court in *M. P. V. Sundararamier & Co. v. The State of Andhra Pradesh & another*(¹) and it was held
- H** that s. 22 of the Madras Sales Tax Act had a positive content and the Explanation in the context of s. 22 authorised the State of

(1) [1958] S.C.R. 1422.

Madras to impose tax on sales falling within its purview. In the course of his judgment Venkatarama Aiyar, J., speaking for the Court, observed:

"These considerations will clearly be inapposite in construing a taxing statute like the Madras Act, the object of which is primarily to confer power on the State to levy and collect tax. When we find in such a statute a provision containing a prohibition followed by an Explanation which is positive in its terms, the true interpretation to be put on it is that while the prohibition is intended to prevent taxation of outside sales on the basis of the nexus doctrine, the explanation is intended to authorise taxation of sales falling within its purview, subject of course to the other provisions of the Constitution, such as Art. 286(2). It should be remembered that unlike the Constitution, the law of a State can speak only within its own territories. It cannot operate either to invest another State with a power which it does not possess, or divest it of a power which it does possess under the Constitution. Its mandates can run only within its own borders. That being the position, what purpose would the Explanation serve in s. 22 of the Madras Act, if it merely meant that when goods are delivered under a contract of sale for consumption in the State of Madras, the outside State in which property in the goods passes has no power to tax the sale? That is not the concern of the State of Madras, and indeed, the Legislature of Madras would be incompetent to enact such a law. In its context and setting, therefore, the Explanation to s. 22 must mean that it authorises the State of Madras to impose a tax on sales falling within its purview. Thus, while in the context of Art. 286(1) (a) the Explanation thereto could be construed as purely negative in character though positive in form, it cannot be so construed in its setting in s. 22 of the Madras Act, where it must have a positive content."

Section 22 of the Madras Act is couched in a similar language to s. 27-A of the Act. In our opinion, the principle of the decision in *M. P. V. Sundararamier & Co. v. The State of Andhra Pradesh & another*⁽¹⁾ therefore governs the present case. We should also refer to the additional circumstance that in the present case the third Explanation to s. 2(g) incorporates into the definition of 'sale' the Explanation occurring in Art. 286 in contrast to the Madras Act where there is no such incorporation in the definition of sale under s. 2(h) of that Act. We are accordingly of the opinion that the argument of the appellant must be rejected on this aspect of the case.

(1) [1958] S.C.R. 1422.

- A The next question to be considered in this appeal is whether the provisions of s. 4(6) of the Act are attracted in the circumstances of the case. It was submitted for the appellant that the section has no application because tobacco was not specified in the certificate of registration granted to the appellant "as intended for use by it as raw material in the manufacture of any goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State". Section 2(j) of the Act, as it originally stood, was to the following effect :

- C "Sales to a registered dealer of goods specified in such dealer's certificate of registration as being intended for re-sale by him, or for use by him in the manufacture of any goods for sale or in the execution of any contract and on sales to a registered dealer of containers and other materials for the packing of such goods;"

The section was amended from time to time until, with effect from December 1, 1953 it stood as follows:

- D "Sales to a registered dealer of goods declared by him in the prescribed form as being intended for resale by him by actual delivery in Madhya Pradesh for the purpose of consumption in that State or of goods specified in such dealer's certificate of registration as being intended for use by him as raw materials in the manufacture of any goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State, and of containers and other materials used in the packing of such goods;"

- F Section 4(6) of the Act was also inserted with effect from December 1, 1953 by the Madhya Pradesh Sales Tax (Amendment) Act 1953 (Act 20 of 1953). In consequence of these amendments it became necessary to amend the certificate of registration granted to the appellant before the amendment of the Act. Therefore, on January 5, 1954, even before the relevant Rule was amended, the appellant applied for substitution of the words "raw materials" for the words "for the purpose of manufacture". In allowing the application the Sales Tax Officer did not comply with the language of Form II but merely specified as raw materials "Tendu leaves, Tobacco, Yarn".
- G The contention of the appellant is that the purchase of tobacco cannot be taxed because it was not "specified in the dealers' certificate of registration as intended for use by him as raw materials in the manufacture of any goods for the purpose of sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State" as required by s. 4(6) of the Act.
- H We are unable to accept the argument of the appellant as correct. It is true that there is a technical omission in the order of the Sales Tax Officer amending the certificate of registration, but the certificate must be fairly construed in the light of the language

of s. 8 and other relevant provisions of the Act. Before the amendment made by Act XX of 1953 s. 8(3) read as follows: A

"8. (3) If the said authority is satisfied that an application for registration is in order, it shall in accordance with such rules as may be made under this Act, register the applicant and grant him a certificate of registration in the prescribed form which, in the case of a registered dealer who himself manufactures any goods for purposes of sale shall specify the class or classes of goods which are intended to be used by him in the manufacture of such goods." B

After the amendment the sub-section was to the following effect: C

"8. (3) If the said authority is satisfied that an application for registration is in order, it shall in accordance with such rules as may be made under this Act, register the applicant and grant him a certificate of registration in the prescribed form which, in the case of a registered dealer who manufactures any goods for purposes of sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State shall specify the raw materials which are intended to be used by him in the manufacture of such goods." D

In this connection reference may be made to s. 2(j) (a) (ii) which states that a selling dealer is entitled to deduct from his turnover sales to a registered dealer of goods "specified in such dealer's certificate of registration as being intended for use by him as raw materials in the manufacture of any goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State". It is manifest that the only legitimate object which the purchasing dealer seeks in having a class of good specified in the certificate of registration as "raw materials" is to purchase the goods tax-free in the sense contemplated by the Act. By asking for such specification the dealer represents that he intends to use the goods specified in the manufacture of other goods for the purpose of sale by actual delivery in the State of Madhya Pradesh for the purpose of consumption in that State. In this context reference should be made to declarations made by the appellant to the Bombay dealers printed at page 88 of the Paper Book. In these declarations the appellant stated that it was purchasing tobacco for use as raw materials in the manufacture of goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State and that tobacco was so specified in its certificate of registration. As we have already said, the certificate of registration granted to the appellant must be construed in the context of s. 8 as it stood after its amendment and the declarations of the appellant made to the Bombay dealers. If the language of the certificate is so construed E F G H

- A** in the context of the amended s. 8 of the Act and along with the declarations of the appellant, it is manifest that the appellant is liable to pay tax on tobacco imported from Bombay dealers for the relevant periods and that the requirements of s. 4(6) of the Act are satisfied in this case. The view that we have taken is borne out by the decision of this Court in *Modi Spinning & Weaving Mills Co. Ltd. v. Commissioner of Sales Tax Punjab, and another*⁽¹⁾ in which it was held that the registration certificate was only evidence that the assessee was a registered dealer for purposes of certain commodities to be used in manufacture and any formal defect in the registration certificate was not material. We therefore hold that the technical omission of the Sales Tax Officer to make a specific entry in the certificate will not confer any benefit on the appellant if there is other incontrovertible evidence in the case to show that the appellant did purchase the goods specified in the certificate as raw materials in the manufacture of any goods for the purpose of sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State. We, therefore, hold that **Mr. A. K. Sen** has not been able to make good his argument on this aspect of the case.

For these reasons this appeal fails and must be dismissed with costs.

G.C.

Appeal dismissed.

(1) 16 S. T. C. 310.