STATE OF KERALA

v.

ATTESEE (AGRO INDUSTRIAL TRADING CORPORATION)

OCTOBER 27, 1988

[SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.]

Kerala General Sales Tax Act—Section 9 and Third Schedule Item 7—'Cotton fabrics'—Definition of—'As defined in Central Excises and Salt Act 1944'—Subsequent amendment of definition in Central Excises and Salt Act—Whether to be taken note of in construing definition of 'Cotton fabrics' in Sales Tax Act—PVC cloth—Exemption of from tax.

Statutory Interpretation—Legislation by incorporation or reference—Principle of interpretation.

Section 9 read with Third Schedule item 7 of the Kerala General Sales Tax Act 1963 granted exemption from sales tax to certain items including cotton fabrics. 'Cotton fabrics' was defined as having the same meaning as assigned to it in item 19 of the First Schedule to the Central Excises and Salt Act, 1944. This definition of 'cotton fabrics' in 1944 Act was amended in 1969 by the Finance Act 1969.

In 1957, Parliament enacted the Central Sales Tax Act, 1956 and Additional Duties of Excise (Goods of Special Importance) Act, 1957 affecting the levy of sales tax and excise duty. Definition of 'cotton fabrics' occuring in the aforesaid Acts was also related to its definition under the 1944 Act.

The respondent-assessee was manufacturing PVC cloth, an item of goods which was clearly covered by the amended definition but, perhaps, not by the original one. He claimed exemption from sales tax in respect of assessment years 1971-72 and 1972-73.

On a reference made to the High Court under the 1963 Act, it observed that the concept of 'cotton fabrics' in the Central Excises and Salt Act seemed to be integrally linked with the provisions of the General Sales Tax Act (the Act under which the levy of sales tax was governed, prior to enforcement of the 1963 Act), and that it would not be justified in regarding the latter Act as unaffected by the growing con-

A cept of the term 'cotton fabrics' in the Central Excises and Salt Act, and that unless the extended definition of the Central Excises and Salt Act is imported into the Sales Tax Act, the latter Act would become unworkable and ineffectual.

In the appeals by certificate to this Court, it was submitted on B behalf of the State-appellant that the PVC cloth manufactured by respondent was not entitled to exemption from sales tax if the earlier definition of the 1944 Act, before the amendment, was to apply, and that the 1963 Act has incorporated in its Third Schedule the definition of the 1944 Act as it stood at the time of its enactment and that this incorporation is unaffected by the subsequent changes made in the 1944 C Act, that the concept of 'cotton fabrics' in the 1944 and 1963 Acts were not integrally linked and that it is not appropriate to say that unless the extended definition of the former were imported into the latter, the latter Act would become unworkable and ineffectual.

D On the question whether the exemption given to 'cotton fabrics' in item 7 should be restricted to 'cotton fabrics' as defined in the 1944 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.

Dismissing the appeals, this Court,

E HELD: (1) It would be correct to say that the 1963 Act brings in the definitions of the 1944 Act by way of reference or citation and not by way of incorporation. For a reading of the Act shows that the Act intended to confer exemption on a number of goods set out in the Schedule. Of these, since items 5 to 7 are defined in the 1944 Act, the F Act referes to those definitions to ascertain the scope of these items. There are no express words used by the statute which will justify an inference that the intention was to incorporate those definitions, as standing on that date into the 1963 Act. [613A-C]

Secretary of State v. *Hindustan Cooperative Insurance Society* G *Ltd.*, [1931] 58 I.A. 259; *Collector of Customs* v. *Nathella Sampathu Chetty & another*, [1962] 3 SCR 786; *Ram Sarup* v. *State*, [1963] 3 SCR 858; *Ram Kirpal* v. *State*, [1970] 3 SCR 233; *New Central Jute Mills Co. Ltd.* v. *The Assistant Collector*, [1971] 2 SCR 92; *Bhajva* v. *Gopikabai*, [1978] 3 SCR 561; *Mahindra & Mahindra Ltd.* v. *Union*, [1979] 2 SCR 1038 and *Western Coal Fields* v. *Special Area Development Authority*, H [1982] 2 SCR 1, referred to.

(2) 'Silk fabrics' as defined in item 20 of the 1944 Act was included in 1961 in the CST Act and the 1957 Act. The fact that 'cotton fabrics' though listed as item 12 in the Schedule to the 1944 Act was not brought into the list in s. 14 till 1.10.1958 or that 'silk fabrics' was dropped from the list in s. 14 w.e.f. 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. [615A-B] A B

(3) 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. 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 the decision of this Court in *State of Madhya Pradesh* v. *Narasimhan,* [1976] 1 SCR 6. They certainly fall within the scope of exception (a) mentioned therein and also fall within exception (c) if 'unworkable and ineffectual' are read to take in also 'unrealistic and impractical'. [616D-E] C D

(4) The 1963 Act on a proper construction, does indicate a policy that certain items which are subject to additional excise duty should be left out of sales tax levy except in cases where there is a specific indication or provision of the Act to the contrary. The Kerala State legislature cannot be said to have attracted the 1944 Act definition with their future amendment, blindly and without application of mind. On the other hand, it has been done in pursuance of a scheme, a purpose and a policy. It cannot, therefore, be said that there has been any abdication of its legislative functions by the Kerala legislature. [618F-G] E F

B. Shama Rao v. *The Union Territory of Pondicherry,* [1967] 2 SCR 650, distinguished.

Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. *The Assistant Commissioner of Sales Tax and Ors.,* [1974] 2 SCR 879, referred to. G

(5) The High Court was right in the view it took viz., that the scope of the exemption available under item 7 of the Third Schedule to the 1963 Act will vary according to the scope of the corresponding entry in the Schedule to the 1944 Act as it stands at the relevant time. So far as assessment years 1971-72 and 1972-73 are concerned the definition of H

A **cotton fabrics in item 19 of the Schedule to the 1944 Act, as amended by the Finance Act 1969 w.e.f. 1.4.1969, will apply. [618H; 619A-B]**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 207-208 (NT) of 1979.

B From the Judgment and Order dated 10th August, 1977 of the Kerala High Court in T.R.C. Nos. 61 and 62 of 1976.

P.S. Poti and K.R. Nambiar for the Appellants.

T.S. Krishnamoorthy Iyer, S.B. Sawhney and V.B. Saharya for the Respondents.
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The Judgment of the Court was delivered by

S. RANGANATHAN, J. 1. A very interesting question as to the principles of interpretation of legislation by incorporation or references arises for consideration in these appeals arising out of certain
D assessments to sales tax in Kerala. Section 9 of the Kerala General Sales Tax Act 1963 which came into force on 1.4.1963 granted exemption from sales tax on goods specified in the third Schedule to the said Act. These included the following:

E 5. Sugar as defined in item 1 of the First Schedule to the Central Excises and Salt Act, 1944;

6. Tobacco as defined in item 4 of the First Schedule to the Central Excises and Salt Act, 1944 and

F 7. Cotton fabrics, silk fabrics, woollen fabrics and rayon or artificial silk fabrics as defined in item Nos. 19, 20, 21 and 22 respectively of the First Schedule to the Central Excises and Salt Act, 1944.

The question before us is whether, in respect of the assessment years
G 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 Central Excises & Salt Act, 1944 ('the 1944 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.

H 2. Though we are concerned only with the interpretation of the

Kerala General Sales Tax Act, 1963, it is necessary to refer back to the earlier history of some Central as well as State legislations: A

(i) We start with the 1944 Act. By this Act, excise duty was levied on the manufacture or production of various types of goods enumerated in the First Schedule to the Act. Item 19 (originally item 12) of the First Schedule, as it stood on 1.4.1963, defined 'cotton fabrics' thus: B

> "cotton fabrics—
>
> 'Cotton Fabrics' mean all varieties of fabrics manufactured either wholly or partly from cotton and include dhoties, sarees, chadars, bed sheets, bed-spreads, counter-panes and table cloths, but do not include any such fabric xxx xxx C
>
> xxx xxx xxx"

Item 19 was amended by the Finance Act, 1969. After amendment, it reads thus: D

> "*Cotton Fabrics*
>
> 'Cotton Fabrics' means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chaddars, bed sheets, bed spreads, counter E
> panes, table cloths, embroidery in the piece, in strips or in motifs *and fabrics impregnated or coated with preparations of cellulose derivatives or of other artificial plastic materials* but does not include xxx xxx"
>
> (Underlining ours)

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The question set out earlier assumes importance because the respondents-assessees deal in "P.V.C. Cloth", an item of goods which is clearly covered by the amended definition but, perhaps, not by the original one.

(ii) In 1957, there were certain legislations of Parliament affecting the levy of sales tax and excise duty. The first of these was the Central Sales Tax Act, 1956, (C.S.T. Act) passed in pursuance of Article 286 (3) of the Constitution of India which reads thus: G

> "Any law of a State shall, in so far as it imposes or authorises the imposition of, a tax on the sale or purchase H

A of goods declared by Parliament by law to be of special importance in inter-state trade or commerce, 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."

B The C.S.T. Act received the assent of the President on 24.12.56. S. 14 of the Act declared certain goods to be goods of special importance in inter-state trade or commerce. (hereinafter referred to as 'declared goods'.) These included, as on 1.4.1963, the following:

"(ii-a) cotton fabrics, as defined in Item No. 19 of the First Schedule to the Central Excises and Salt Act, 1944;

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xxx xxx xxx

(vii) rayon or artificial silk fabrics, as defined in Item No. 22 of the First Schedule to the Central Excises and Salt D Act, 1944 (1 of 1944),

(viii) sugar, as defined in Item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944)

(ix) tobacco, as defined in Item No. 4 of the First Schedule E to the Central Excises and Salt Act, 1944 (1 of 1944)

(x) woollen fabrics, as defined in Item No. 21 of the First Schedule to the Central Excises and Salt Act, 1944.

(xi) silk fabrics as defined in Item No. 20 of the First F Schedule to the Central Excises and Salt Act, 1944."

The definitions of the above goods were thus related to their definitions under the 1944 Act. S. 15 of the Act imposed certain restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. It may be mentioned that this section, as originally G enacted in 1956, had been amended w.e.f. 6.6.1957, by Act 16 of 1957 and , again, by Act 31 of 1956, w.e.f. 1.10.1958.

(iii) About the same time as the C.S.T. Act, Parliament also enacted the Additional Duties of Excise (Goods of Special Importance) Act, 1957 ('the 1957 Act'). The statement of objects and H reasons of this Act reads as follows:

"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 Ist 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 importance 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 Ist April, 1958 to the restrictions in s. 15 of the Central Sales Tax Act, 1956."

S. 3 of this Act originally levied an additional excise duty on sugar, tobacco, cotton fabrics, rayon or artificial silk and woollen fabrics and s. 2(c) defined the above goods as having the meanings respectively assigned to them in item Nos. 8, 9, 12, 12A and 12B (subsequently changed as item 1, 4, 19, 21 and 22 respectively) of the First Schedule to the 1944 Act. It may be mentioned here that the Finance Act, 1961 had amended s. 14 of the C.S.T. Act by including, as item (xi): "silk fabrics as defined in item 20 of the First Schedule of the 1944 Act". It also simultaneously amended the 1957 Act by adding a reference to 'silk fabrics' in s. 3(1), in the definition clause s. 2(c) as well in the Schedule. However, in 1968, when the Central Sales Tax Act was amended against by deleting the reference to 'silk fabrics', there was no corresponding amendment in the 1957 Act. The Finance (No. 2) Act, 1977, substituted the word "man-made fabrics" for the words "rayon or artificial silk fabrics" w.e.f. 8.8.1977 and included a definition of the new expression in item 22 of the Schedule to the 1944 Act and the 1957 Act.

S. 7 of the Act, as originally enacted, declared that the goods declared to be of special importance would, from 1.4.1968, be subject to the restrictions and conditions specified in s. 15 of the Central Sales Tax Act. This section was omitted, w.e.f. 1.10.1958, by Act 31 of 1958 which also amended s. 15 of the Central Sales Tax Act.

(iv) The levy of sales tax in Kerala was formerly governed by the

Central Sales Tax Act (Act XI of 1125)—Malayalam Era 1125 corresponds to 1950 of the Gregorian Calendar. This Act was amended by the General Sales Tax (Amendment) Ordinance, (No. 8 of 1957) w.e.f. 14.12.57, the Ordinance being replaced by the General Sales Tax (Amendment) Act VII of 1958 with retrospective effect from the same date. This amendment Act inserted s. 5A in the 1125 Act which exempted certain goods from the levy of sales tax. Sub-section (1) of this section read thus:

> "5A. Exemption of the tax on the sale of mill-made textile (other than pure silk), tobacco and sugar:
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> (1) The sale by any dealer of—
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> (i) mill-made textile, other than pure silk,
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> (ii) tobacco, and
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> (iii) sugar;
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> other than stock of such goods in his possession, custody or control immediately before the 14th day of December, 1957, shall, as from that date, be exempt from taxation under s. 3, sub-s. (1)."

This Act was replaced by the Kerala General Sales Tax Act, 1963 ('the 1963 Act'), as already mentioned w.e.f. 1.4.63.

(v) We have already referred to s. 9 and item 7 of the Third Schedule to the 1963 Act. The Kerala General Sales Tax (Second Amendment) Act, (Act 16 of 1967) amended item 7 of 1963 Act to read as follows w.e.f. 1.9.1967:

> "7. Cotton fabrics, woollen fabrics, and rayon or artificial silk fabrics as defined in item nos. 19, 21 and 22 respectively of the First Schedule to the Central Excises & Salt Act, 1944."

In other words, the exemption granted to 'silk fabrics' was taken away. A mention may also be made that by reason of a later amendment, 'silk fabrics' was included as one of the items on which single point tax was leviable under the 1963 Act. This item, in the First Schedule to the Act as it stood on 1.4.1980, read:

"101 'Silk fabrics', that is to say, all varieties of fabrics manufactured either wholly or partly from silk including embroidery in piece, in strips or in mofits, but not including such fabrics on which duty of excise is leviable under sub-section (1) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act (Central Act 58 of 1957)". A B

(vi) Reference may also be made to one more enactment, though it has no direct bearing on the issue before us. This is the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (Central Act 40 of 1978). This Act charged an additional duty of excise in respect of various goods specified in the Schedule to the Act over and above the duty chargeable on them under the 1944 Act. These goods included "cotton fabrics" "silk fabrics", "woollen fabrics", "man-made fabrics" and "wool tops" as defined in items 19, 20, 21, 22 and 43 of the First Schedule to the 1944 Act. C

3. These are the relevant statutory provisions. On these the question to be considered is: What is the effect of the mention of the definition of "cotton fabrics" given in the 1944 Act in the Schedule to the 1963 Act? Does it attract only the said definition as on 1.4.1963 or also the subsequent amendments thereto? To appreciate the contentions urged, it is necessary to make a brief reference to the principles of interpretation of an enactment which, for purposes of convenience, refers to or incorporates a provision of another. These have been discussed in various earlier decisions viz. *Secretary of State* v. *Hindustan Cooperative Insurance Society Ltd.*, [1931] 58 I.A. 259, *Collector of Customs* v. *Nathella Sampathu Chetty & another*, [1962] 3 S.C.R. 786, *Ram Sarup* v. *State*, [1963] 3 SCR 858, *Ram Kirpal* v. *State*, [1970] 3 S.C.R. 233, *New Central Jute Mills Co. Ltd.* v. *The Assistant Collector*, [1971] 2 SCR 92, *State of Madhya Pradesh* v. *Narasimhan*, [1976] 1 S.C.R. 61, *Bhajya* v. *Gopikabai*, [1978] 3 S.C.R. 561, *Mahindra & Mahindra Ltd.* v. *Union*, [1979] 2 S.C.R. 1038 and *Western Coal Fields* v. *Special Area Development Authority*, [1982] 2 S.C.R. 1. It is unnecessary to make a detailed reference to these decisions. It is sufficient to say that they draw a distinction between referential legislation which merely contains a 'reference to, or citation of', a provision of another statute and a piece of referential legislation which incorporates within itself a provision of another statute. In the former case, the provision of the second statute, along with all its amendments and variations from time to time, should be read into the first statute. In the latter case, the position will be as outlined in D E F G H

A *Narasimhan*, [1976] 1 S.C.R. 6 where, after referring to Secretary of *State* v. *Hindustan Cooperative Insurance Society Ltd.*, [1931] 58 I.A. 259, this Court summed up the position thus:

> "On a consideration of these authorities, therefore, it seems that the following proposition emerges:
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> Where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases:
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> (a) where the subsequent Act and the previous Act are supplemental to each other;
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> (b) where the two Acts are *in pari materia*;
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> (c) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and
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> (d) where the amendment of the previous Act, either
> E expressly or by necessary intendment, applies the said provisions to the subsequent Act."

Applying the above principles to the facts of the present case, the High Court in its judgment on a reference made to it under the 1963 Act (and reported in 41 S.T.C. 1) observed:

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> "In the light of the principles thus formulated, it seems unnecessary for us to labour the point whether we are confronted in these cases with a "reference" or "citation" on the one hand, or an "incorporation" on the other, of the definition of 'cotton fabrics' in item 19 of the Schedule 1 of
> G the Central Excise and Salt Act, into the provisions of Section 9 read with item No. 7 of the III Schedule of the General Sales Tax Act, 1963. If the definition was merely by way of 'reference or 'citation', the referred or cited provision grows and shrinks with the changes in the parent statute. Even in the case of an incorporated definition
> H while the general principle is that the incorporated defini-

tion remains static and is unaffected by the developments or fluctuations of the parental source from which it was incorporated, two of the well-recognised exceptions formulated by the Supreme Court in *State of M.P.* v. *M.V. Narasimhan*, AIR 1975 SC 1835 seem to apply here, that is, exceptions (a) and (c), xxx. The concept of 'cotton fabrics' in the Central Excises and Salt Act seems to be integrally linked with the provisions of the General Sales Tax Act and we do not think that we would be justified in regarding the latter Act as unaffected by the growing concept of the term 'cotton fabrics' in the Central Excises and Salt Act. We feel too, that unless the extended definition of the Central Excises and Salt Act is imported into the Sales Tax Act, the latter Act would become unworkable and ineffectual."

4. Sri Potti, learned counsel for the State of Kerala, submitted that the P.V.C. cloth manufactured by the respondents in this case was not entitled to exemption from sales tax if the earlier definition of the 1944 Act, before the amendment, were to apply. He submitted that the 1963 Act has incorporated in its third schedule the definition of the 1944 Act as it stood at the time of its enactment and that this incorporation is unaffected by subsequent changes in the 1944 Act. He contested the correctness of the High Court's observations that the concept of 'cotton fabrics' in the 1944 and 1963 Acts were integrally linked and that, unless the extended definitions of the former were imported into the latter, the latter Act would become unworkable and ineffectual. According to him, the provisions of the CST Act and the 1957 Act have been unnecessarily brought into the discussion in order to forge a connection between the various enactments and in an attempt to lend strength to an argument that the exemption of an item of goods from the levy of sales tax by the State was correlated to the existence of a levy of additional excise duty in respect of those very goods under the 1957 Act. He submits that this argument is not tenable and that there is no connection between the 1944 Act, the CST Act, the 1957 Act and the 1963 Act. His submissions are these:

(a) When the Kerala Act of 1125—M.E. was amended by Act VII of 1958 w.e.f. 14.12.1957, the Kerala State Legislature was fully alive to the proposals to introduce the CST Act and the 1957 Act; nevertheless, the description of items granted exemption from sales tax was worded differently and not correlated to the definitions of the 1944 Act;

A (b) Silk fabrics were not eligible for exemption under the 1125 Act as amended in 1957 and remained liable to sales tax till 31.3.1963 though additional excise on them had been introduced w.e.f. 1.4.1963. The exemption from sales tax was conferred only on 1.4.1963 by the 1963 Act. Again, this exemption was taken away w.e.f. 1.9.1967 although such fabrics continued to be B subject to additional excise duty. Thus, though it is true that, between 14.12.1957 and 31.3.1961 there was sales tax but no additional excise duty on pure silk textiles and between 1.4.1863 and 31.8.1967 there was additional excise duty but no sales tax on silk fabrics, it is equally true that between 1.4.1961 and 31.3.1963 and again after 1.9.1967 they are liable to both sales tax and additional excise duty. It is thus not possible to view the C two levies as supplementary to, or inter—dependent on, each other.

(c) The 1963 Act only incorporates a definition contained in the 1944 Act. The 1957 Act is an independent Act, applicable D to some of the goods to which the 1944 Act are applicable. It has its own schedule, the descriptions in which need not be—though they generally are—identical with those in the schedule to the 1944 Act. The 1944 and 1957 Acts may be somewhat inter-linked but there is no justification to import that connection also for the purposes of the 1963 Act.

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(d) The objects and reasons of the 1957 Act explicitly state that the levy of additional excise duty on goods thereunder does not preclude the State legislatures from levying any sales tax on only, such levy will be subject to the restrictions contained in the CST Act.

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(e) It should not also be overlooked that the 1963 Act is an enactment of a State legislature. To construe entry 7 in its Schedule as authorising the applicability, not merely of the then current definition of the 1944 Act but its future amendments as well, will render it subject to the vice of excessive delegation. In G this context, our attention is drawn to the decisions of the Supreme Court in *Shama Rao,* [1967] 2 SCR 657, *Gwalior Rayon,* [1974] 2 SCR 345 and *International Cotton,* [1975] 2 S.C.R 879. To avoid such an infirmity, we are asked to place a restrictive interpretation on the 1963 Act, even assuming for purposes of argument that it may be capable of a wider H interpretation.

5. There is some force in these contentions, but, after hearing both counsel, we are of opinion that the conclusion of the High Court should be upheld. In the first place, we think it would be correct to say that the 1963 Act brings in the definitions of the 1944 act by way of reference or citation and not by way of incorporation. For, a reading the Act shows that the Act intended to confer exemption on a number of goods set out in the Schedule. Of these, since items 5 to 7 are defined in the 1944 Act, the Act refers to those definitions to ascertain the scope of these items. There are no express words used by the statute which will justify an inference that the intention was to incorporate those definitions, as standing on that date, into the 1963 Act. That apart, as pointed out by the High Court, the question whether it is an instance of reference or citation as contrasted with incorporation pales into significance if all the Central and State enactments referred to at the outset are really part of an integrated scheme evolved to achieve a particular purpose. In this context, Sri Krishnamurthy Iyer, invited our attention to a passage from *Hind Engineering Co.* v. *CST,* [1973] 31 STC 115, dealing with an identical entry in regard to 'cotton fabrics' in Schedule A of the Bombay Sales Tax Act, 1959, where a deivision bench of the Gujarat High Court traced the genesis of the exemption of 'cotton fabrics' from the liability to sales tax. We do not think it necessary to extract the whole of it here, particularly as the provisions of the Bombay legislations in this context and their history are not identical with those of the Kerala statute. It is clear, however, that the provisions of exemption from sales tax on the items with which we are concerned here and certain others cannot be understood in isolation but should be read in the background of certain historical developments pertaining to sales tax levy. These may now be briefly referred to.

6. Article 286 of the Constitution of India imposed certain restrictions on the legislative powers of the States in the matter of levy of sales tax on sales taking place outside the State, sales in the course of import or export, sales in the course of interestate trade or commerce and sales of declared goods. The Sales Tax Acts in force in several States were not in conformity with the provisions of the Constitution and attempts to bring those laws to be in conformity with these provisions gave rise to a lot of litigation. This led to an amendment of Art. 286. Clause (2) of the article, as it stands, since 11th September, 1956, authorised Parliament to formulate principles for determining when sale or purchase of goods can be said to take place in the course of import or export or in the course of inter-State trade or commerce. Clause (3) was amended, in terms already set out, to

A restrict the powers of a State to impose sales or purchase tax on declared goods. The C.S.T. Act, 1956 which came into force on 5:1.1957 formulated the principles referred to in Article 286(2). As already mentioned, this Act was amended, *inter alia*, by Act 16 of 1957 w.e.f. 6.6.1957 and by Act 31 of 1958 w.e.f. 1.10.1958. S. 14 listed the goods which are considered to be of special importance in inter-state B trade or commerce which included the six items set out earlier. S. 15 of the Act, as originally enacted, was brought into force only w.e.f. 1.10.1958. It stipulated that levy of sales tax on declared goods should not be at a rate exceeding 2% or be levied at more than one point in a State. Before this section came into force, it was amended by Act 16 of 1957 which retained the first restriction and, so far as the second is C concerned, provided that the tax should be levied only on the last sale or purchase inside the State and even that should not be levied when that last sale or purchase is in the course of inter-state trade or commerce as defined. Act 31 of 1958 amended S. 15 to impose certain modified restrictions and conditions with the details of which we are not here concerned. These restrictions clearly entailed loss of revenue D to the States and it was cosidered expedient and desirable to compensate the State for the proportionate loss of sales tax incurred by them. Thus, even before s. 15 was brought into force, the Central Government decided to pass an Act to provide for the levy and collection of additional duties of excise on certain goods and for the distribution of a part of the net proceeds thereof among the State in pursuance E of the principles of distribution recommended by the Second Finance Commission in its report dated 30.9.1957. This proposal to levy additional duties of excise on certain special goods was a part and parcel of an integrated scheme under which sales tax levied at different rates by the States on certain goods was ultimately substituted by the levy of additional duties of excise on such goods and the States were com- F pensated by payment of a part of the net proceeds of the said additional levy on such goods. That this clearly was the genesis and object of the 1957 Act also appears from its objects and reasons set out earlier. Some of the items liable to excise duty were picked out from the Schedule to the 1944 Act. They were listed among the declared goods of section 14 of the CST Act and also made liable to additional G excise duty under the 1957 Act. A perusal of the lists under these three enactments show that out of the items listed in the Schedule to the 1944 Act, sugar, tobacco, cotton fabrics, rayon or artificial fabrics and woollen fabrics were categorised as declared goods and subjected to additional excise duty. When the numerical order of these items in the 1944 Act (originally 8, 9, 12, 12A, 12B) came to be changed in 1960 (as H 1, 4, 19, 22, 21) a corresponding change was effected in the 1957 Act.

'Silk fabrics' as defined in item 20 of the 1944 Act was included in 1961 in the CST Act and the 1957 Act. The fact that 'cotton fabrics' though listed as item 12 in the Schedule to the 1944 Act was not brought into the list in s. 14 till 1.10.1958 or that 'silk fabrics' was dropped from the list in s. 14 w.e.f. 11.6.1968 though it continues in the Schedule to the 1944 Act does not alter the position that these three acts are interconnected 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.

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 emphasises, 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 about 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.

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 s. 15 thereof. S. 15 applies in respect of goods listed in s. 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 forego its share on distribution of the proceeds of the additional excise duty

levied. Whether it should impose sales tax on an item of declared goods, limited by the restrictions in s. 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. 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".

9. We do not find much substance in the arguments of Shri Potti based on *Shama Rao,* [1967] 2 SCR 657. This decision really concerned a delegation of power to the executive Government to decide contents of a legislation by allowing it a latitude in fixing a date for its commencement. It cannot be understood as an authority for the proposition that a State legislature can adopt only the existing provisions of a statutes passed by another legislature *but not its future amendments and modifications.* In the first place, such a proposition will strike at the very root of the concept of referential legislation as explained in the decisions referred to above and the distinction drawn by them between cases of mere reference or citation on the one hand and of incoporation, on the other. Secondly, in *Shama Rao* only three of the five Judges expressed an opinion about this aspect of the case. Their view point was presented by Shelat J. in the following words:

"The question then is whether in extending the Madras Act

in the manner and to the extent it did under sec. (2)(1) of the Principal Act the Pondicherry legislature abdicated its legislative power in favour of the Madras legislature. It is manifest that the Assembly refused to perform its legislative functions entrusted under the Act constituting it. It may be that a mere refusal may not amount to abdication if the legislature instead of going through the full formality of legislation applies its mind to an existing statute enacted by another legislature for another jurisdiction, adopts such an Act and enacts to extend it to the territory under its jurisdiction. In doing so, it may perhaps be said that it has laid down a policy to extend such an Act and directs the executive to apply and implement such an Act. But when it not only adopts such an Act but also provides that the Act applicable to its territory shall be the Act amended in future by the other legislature, there is nothing for it to predicate what the amended Act would be. Such a case would be clearly one of non-application of mind and one of refusal to discharge the function entrusted to it by the Instrument constituting it. It is difficult to see how such a case is not one of abdication or effacement in favour of another legislature at least in regard to that particular matter."

This conclusion has been explained and distinguished in the *Gwalior Rayon,* case [1974] 2 SCR 879 in which Khanna J. and Mathew J. delivered separate but concurring judgments. Khanna J. said:

"It would appear from the above that the reason which prevailed with the majority in striking down the Pondicherry Act was the total surrender in the matter of sales tax legislation by the Pondicherry Legislature in favour of the Madras Legislature. No such surrender is involved in the present case because of the Parliament having adopted in one particular respect the rate of local sales tax for the purpose of central sales tax. Indeed, as mentioned earlier, the adoption of the local sales tax is in pursuance of a legislative policy induced by the desire to prevent evasion of the payment of central sales tax by discouraging inter-State sales to unregistered dealers. No such policy could be discerned in the Pondicherry Act which was struck down by this Court.

A Another distinction, though not very material, is that in the Pondicherry case the provisions of the Madras Act along with the subsequent amendments were made applicable to an area which was within the Union Territory of Pondicherry and not in Madras State. As against that, in the present case we find that the Parliament has adopted the B rate of local sales tax for certain purposes of the Central Sales Tax Act only for the territory of the Stae for which the Legislature of that State had prescribed the rate of sales tax. The central sales tax in respect of the territory of a State is ultimately assigned to that State under artcle 269 of the Constitution and is imposed for the benefit of that State. We would, therefore, hold that the appellants C cannot derive much assistance from the above mentioned decision of this Court."

Methew J. observed:

D "We think that the principle of the ruling in *Shama Rao* v. *Pondicherry,* (supra) must be confined to the facts of the case. It is doubtful whether there is any general principle which precludes either Parliament or a State legislature from adoptlng a law and the future amendments to the law passed respectively by a State legislature or Parliament and E incorporating them in its legislation. At any rate, there can be no such prohibition when the adoption is not of the entire corpus of law on a subject but only of a provision and its future amendments and that for a special reason or purpose."

F 10. We have attempted to show that the 1963 Act, on a proper construction, does indicate a policy that certain items which are subject to additional excise duty should be left out of sales tax levy except in cases where there is a specific indication or provision of the Act to the contrary. The Kerala State legislature cannot be said to have attracted the 1944 Act definitions with their future amendment, G blindly and without application of mind. On the other hand, it has been done in pursuance of a scheme, a purpose and a policy. It cannot, therefore, be said that there has been any abdication of its legislative functions by the Kerala legislature.

11. For the above reasons, we are of opinion, that the High H Court was right in the view it took viz. that the scope of the exemption

available under item 7 of the third Schedule to the 1963 Act will vary according to the scope of the corresponding entry in the Schedule to the 1944 Act as it stands at the relevant time. So far as assessment years 1971-72 and 1972-73 are concerned, the definition of 'cotton fabrics' in item 19 of the Schedule to the 1944 Act, as amended by the Finance Act 1969 w.e.f. 1.4.1969, will apply.

12. Sri Krishnamurthy Iyyer for the assessees contended that it is possible to spell out, from certain passages in the judgment of the High Court where judicial decisions are discussed, an inference that the High Court was inclined to the view that PVC Cloth would be covered even by the previous unamended definition in the 1944 Act. He also attempted to support this view by citing certain cases. Sri Potti contested the correctness of both these arguments. In the view we have taken on the main issue, we consider it unnecessary to go into this question. In any event, the High Court has returned no specific answer to this issue which was clearly an aspect of the questions posed for its consideration by the Tribunal (at page 42 of the paper book) and, even if we had accepted the contention of Sri Potti that only the definition as on 1.4.1964 would apply, we would have perhaps only left it to the High Court to consider this aspect of the matter afresh.

13. Sri Krishnamurthy Iyer also submitted that the certificate of fitness of appeal granted by the High Court (page 115 of the paper book) is defective inasmuch as it does not specify the substantial questions of law which, in the view of the High Court, needed consideration by this Court. But we do not think we need go into this aspect or reject the appeal as defective. Since the appeal does involve a substantial question of law of great importance (which we have discussed above), we have proceeded to dispose of the appeal on merits.

14. In the result, the appeal fails and is dismissed. We, however, make no order as to costs.

R.P.D. Appeal dismissed.