A

STATE OF KARNATAKA & ANR.

v.

B

M/S. HANSA CORPORATION

September 25, 1980

[Y. V. CHANDRACHUD, C. J. AND D. A. DESAI, J.]

C

Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1979—Section 3—Validity of—Power of State Government to levy tax on select goods entering some local areas—State if bound to impose tax on all goods entering any local area.

The Karnataka Tax on Entry of Goods Into Local Areas for Consumption, Use or Sale therein Act 1979 was enacted by the State Legislature to levy tax on certain select goods at the time of their entry into a local area. This tax was devised to off set the short fall in the funds of municipal and other local bodies by reason of the abolition of octroi which by experience was found to impede the development of trade and commerce.

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Section 3 of the impugned Act provides that the tax shall be levied on entry of the scheduled goods into *a local area* for consumption, use or sale therein *at such rate* as may be specified by the State Government and different rates may be specified for different local areas.

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By a notification issued under section 3 of the Act the State Government specified 27 local areas in the State which could levy the tax on scheduled goods and specified the rate of tax for each such local area therein. The Scheduled goods are all varieties of textile; tobacco, sugar and the like.

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Upholding the two principal contentions, among others, raised by the appellants in their writ petitions before the High Court that (i) section 3 does not empower the State Government to apply the provisions of the Act to such local areas only and to exclude other local areas and (ii) the levy of tax on all dealers irrespective of the value of scheduled goods brought by them into a local area without exempting petty dealers imposes an unreasonable restriction on the right to carry articles, the High Court struck down the Act as invalid.

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Allowing the appeal

HELD : The express power of choosing and specifying different rates subject to maximum for different local areas is conferred on the State Government not by the expression 'such rate' but by the expression 'rates' with the adjectival clause 'different rates may be specified for different local areas'. It was, therefore, not necessary to qualify the expression 'such rate' again by the expression 'as may be specified by the State Government' because that

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A is covered by the express power conferred by the expression 'different rates may be specified for different local areas'. The use of article 'a' before 'local area' signifies not every local area but any local area. [831C-D]

In re. Sanders; ex parte Serqueant, Law Journal (1885) 54 Q.B. 331, *The Queen* v. *Justices of Durham,* [1895] 1 Q.B. 801, *Coast Brick & Tile Works Ltd. & Ors.* v. *Prem Chand Raichand & Anr.* [1967] 1 Appeal Cases 192 referred to.

B Although, the taxing event is entry of scheduled goods in a local area, section 3 empowers the State Government to specify different rates of tax in respect of different scheduled goods for different local areas. A local area means an area in a city governed by the Karnataka Municipalities Act or a municipal corporation governed by the Karnataka Municipal Corporation Act. The local areas vary immensely both in dimension, population, industrial growth, and the scale and kind of municipal services rendered by them. If the C argument that 'a local area' should be interpreted to mean 'every local area' is accepted it would be obligatory on the State Government to levy tax on entry of scheduled goods in every local area. It would be unjust and inequitable to levy tax on entry of goods at the same rates for a big municipal corporation and a small municipal area, each of which does not stand comparison with the other. The choice to select local areas is a necessary concomitant of a choice to select the rates which is a power conferred on the State Government. The purpose underlying the statute, namely, to provide financial assistance to D the municipalities would be better effectuated if the tax realised considerably outweighs the administrative cost in collection. The High Court fell into an error because it adopted a literal, grammatical construction and overlooked the underlying object of the Act and the historical background in levying the tax. [831C-G; 832C-E]

There is no force in the contention that if the State Government is granted E a choice in the matter of selection of local areas *ipso facto* the statute would be unconstitutional as being violative of Article 14. It is a well accepted principle of constitutional law that there is always a presumption of constitutionality of a statute. In the matter of taxing statutes the legislature which is competent to levy a tax, has full freedom to determine the articles, the manner and the rate of tax. [832G-H; 834E]

Khyerbari Tea Co. Ltd. & Anr. v. *The State of Assam* [1964] 5 S.C.R. F 975 and *East India Tobacco Co.* v. *State of Andhra Pradesh* [1963] 1 S.C.R. 404, 409 referred to.

The High Court was wrong in its view that section 3 did not permit the State Government to pick and choose the local areas for the levy of tax. In selecting the local areas and the rates of tax to be levied on different scheduled goods the State has adopted the criterion of population of a local area which undeniably is a reasonable criterion because the yield of the tax G would be directly proportionate to the consumption of the goods in the local areas and the consumption of goods is directly related to the population within the local area. [835F-G]

Non-exemption of petty dealers from the operation of the Act does not lead to the conclusion that the impugned legislation constituted an unreasonable restriction on the fundamental right of the petty dealers to carry on their H trade or business. If petty dealers were to be exempt, the criterion of turnover in the scheduled goods for classifying the petty dealers will have to be kept high in which event the big registered dealers could conveniently bring the scheduled goods into local areas in the name of petty dealers. The taxing

event being entry of scheduled goods in a local area at the instance of a dealer, the volume or quantum of business of the dealer is not at all relevant. Unlike under the old system of octroi where every importer was taxed, under the Act only a dealer, dealing in scheduled goods is required to pay the tax. [838B-C] A

If a State tax law accords identical treatment in the matter of levy and collection of taxes on the goods manufactured within the State and identical goods imported from outside the State, Art. 304(a) would be complied with. There is an underlying assumption in Article 304(a) that such a tax when levied within the constraints of Article 304(a) would not be violative of Article 301 and the State Legislature has the power to levy such tax. [841E] B

In the instant case the tax is non-discriminatory in that it does not discriminate between scheduled goods manufactured within the State and those imported from outside the State. A minor discrimination between two types of goods if any is hardly relevant for the purposes of Article 304(a). Therefore, the impugned tax satisfies the requirements of Article 304(a). [841F-G] C

There is no evidence to show that the burden of tax would be so heavy as to constitute an unreasonable restriction on the freedom of trade and commerce. Although, in theory the tax leviable is not a single point tax and becomes leviable at every point whenever the goods are taken from one local area to another and then on to yet another no attempt was made to substantiate how the goods are so successively moved because if they are taken for consumption or use in one place, there is no question of taking them from that local area to another local area and so on. [842D-G] D

Even if the tax, to some extent, imposes an economic impediment to the activity taxed that by itself is not sufficient to stigmatise the levy as unreasonable or not in public interest. What is sought to be done is to impose a modest levy on certain goods at the time of their entry into a local area by removing the obnoxious features of octroi. The tax is not intended to augment the finance of the local bodies but to compensate them for loss suffered by the abolition of the octroi. [844A-B] E

The requirements of the proviso to Article 304(b) are satisfied because the President accorded sanction to the impugned Act. [844F] F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3094 of 1979.

Appeal by Special Leave from the Judgment and Order dated 24-8-1979 of the Karnataka High Court in W.P. No. 7039/79.

L. N. Sinha, Attorney General of India and *N. Nettar* for the Appellant. G

S. T. Desai, N. Srinivasan, M. Mudgal and *Vineet Kumar* for the Respondent.

The Judgment of the Court was delivered by

Desai, J.—Constitutional validity of Karnataka Tax on Entry of Goods Into Local Areas for Consumption, Use or Sale Therein Act, 1979 ('Act' for short), and the Notification No. FD 66 H

A CSL 79 dated May 31, 1979, issued by the State Government in exercise of the powers conferred by section 3 of the Act is involved in this appeal by special leave at the instance of the State of Karnataka and one other.

Karnataka State enacted the Act to provide for the levy of tax B on entry of goods into local areas for consumption, use or sale therein, being Karnataka Act No. 27 of 1979. Section 3 empowers the State Government to levy and collect tax on entry of scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding 2% *ad valorem,* as may be specified by the State Government. Armed with the power conferred by s. 3, the State C Government issued notification — 1 No. FD 66 CSL 79 dated May 31, 1979, specifying the local areas and the rates of tax at which the tax shall be levied and collected under the Act on the entry of scheduled goods mentioned in col. 2 of the table appended to the notification into local areas specified in the corresponding entries. Goods liable to levy of tax under the Act on entry in the specified D local areas at the specified rates are those set out in the schedule annexed to the Act. They are (i) all varieties of textiles, viz., cotton, woollen, silk or artificial silk including rayon or nylon whether manufactured in mills, powerlooms or handlooms and hosiery cloth in lengths; (ii) tobacco and all its products; (iii) sugar other than sugar candy confectionery and the like. In all 27 local areas were specified E for the purpose of levy of tax on entry of scheduled goods in the respective local areas at varying rates specified in the notification. The Act received the assent of the President on May 17, 1979, and it was published in the State Government Gazette on June 1, 1979, and came into force from that very day.

F Numerous petitions were filed under Article 226 of the Constitution in the High Court of Karnataka contending that the Act and the Notification issued thereunder were unconstitutional on diverse grounds. As many as 24 different contentions were canvassed before the High Court. Of them two, viz., contention nos. 13 and 19 found favour with the High Court with the result that the Act and G the Notification issued thereunder were declared unconstitutional and a mandamus was issued directing the State Government and its officers to forebear from enforcing the provisions of the Act against the petitioners before the High Court.

The contentions which found favour with the High Court, are : H (i) section 3 of the Act does not empower the State Government to apply the provisions of the Act to certain local areas only and to exclude other local areas; (ii) as the Act imposes the tax on dealers

irrespective of the value of scheduled goods brought by them into a local area and does not exempt petty dealers, the Act imposes unreasonable restrictions on petty dealers. The remaining 22 contentions were rejected some of which were canvassed before us on behalf of the respondents to sustain the decision of the High Court.

It is necessary at this stage to notice the broad features of the Act. The long title and the preamble of the Act demonstrate the purpose for which the Act was enacted, it being to empower the State Government to levy tax on entry of goods specified in the schedule ('scheduled goods' for short) in local areas to be specified by the State Government in this behalf. Section 2, the dictionary clause of the Act, defines 'dealer' in the Act to have the same meaning assigned to it in clause (k) of s. 2 of the Karnataka Sales Tax Act, 1957. Section 2, sub-section (5) defines 'local area' as under :

> "2(5). 'Local area' means the area within the limits of a City under the Karnataka Municipal Corporations Act, 1976 (Karnataka Act 14 of 1977), or a municipality under the Karnataka Municipalities Act, 1964 (Karnataka Act 22 of 1964)".

Section 2, sub-s. (7) defines 'scheduled goods' to mean goods specified in the schedule to the Act. Section 3 is the charging section. It reads as under :

> "3. Levy of tax — There shall be levied and collected a tax on entry of the scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding two percent *ad valorem* as may be specified by the State Government and different rates may be specified for different local areas".

Section 4 provides for registration of dealers and makes it obligatory upon every dealer in scheduled goods to get himself registered under the Act in the prescribed manner. Rule 4, sub-rule (3) of the Karnataka Tax on Entry of Goods into Local Areas for consumption, Use or Sale therein Rules, 1979 ('Rules' for short), enacted under the Act has prescribed a fee of Rs. 25/- for registration as a dealer. Chapter III of the Act contains provisions for return, assessment, payment, recovery and collection of tax. Chapter IV prescribes taxing authorities. Chapter V deals with appeals and revisions and Chapter VI contains miscellaneous provisions. Schedule annexed to the Act sets out the goods on the entry of which in the specified local areas tax can be levied.

Entry 52 in State List read with Article 246 of the Constitution confers power on the State legislature to enact a law to levy tax

on the entry of goods into a local area for consumption, use or sale therein. This tax in common parlance is known as 'octroi'. Octroi was leviable by the municipality under the power delegated to it under various laws providing for setting up of and administration of municipal corporations and municipalities. Octroi thus understood was being levied by various municipalities and municipal corporations in Karnataka State. Since some time a feeling had grown that octroi was obnoxious in character and impeded the development of trade and commerce and there was a clamour for its abolition. Taking note of the resentment of the business community, Karnataka State abolished octroi with effect from April 1, 1979. However, no one was in doubt that octroi was a major source of revenue to municipalities and its abolition would cause such a dent on municipal finances that compensation for the loss would be inevitable. Accordingly, the State Government undertook a policy of compensating the municipalities year by year. For generating funds for this compensation, rates of sales tax were raised and in some cases a surcharge was levied. The amount so collected was not sufficient to bridge the gap in municipal budget. To further augment the finances for compensating the municipalities, additional fund was sought to be generated by levy of tax under the impugned legislation. No doubt, the tax levied was one on entry of scheduled goods in local areas meaning thereby it had all the broad features of octroi, yet the manner of levy, the method of collection and the persons liable to pay the same were so devised by the impugned Act as to remove the obnoxious features of octroi. As the charging section shows, the tax was to be levied on entry of scheduled goods in a local area at a rate to be specified by the Government not exceeding 2% *ad valorem*. The taxing event would be the entry of scheduled goods in a local area. In fact, octroi was being levied on almost all conceivable goods entering into a local area for consumption, use or sale therein. There appears to be a discernible policy in selecting the goods set out in the schedule, the entry of which in a local area would provide the taxing event. The goods selected for levy are textiles, tobacco and sugar. Way back in 1957 there was a demand for abolition of sales tax on the scheduled goods and at the instance of the Union Government the State Governments agreed to forego their right to levy sales tax on the aforementioned scheduled goods on the condition that the Union Government would levy additional excise duty on them and distribute the net proceeds of such duty amongst the consenting States. Parliament accordingly has enacted the Additional Duties on Goods (Goods of Special Importance) Act, 1957. Therefore, while raising rates of sales tax

and levying surcharge in respect of some other items the State Government could not have levied sales tax on the scheduled goods. They were, therefore, selected for the levy of the tax under the impugned Act on their entry into a local area. A

Having noticed the historical background leading to the enactment of the impugned legislation we may now examine the two contentions which found favour with the High Court and as a result of which the Act and the notification issued thereunder were struck down by the High Court. B

The respondents contend that upon a true construction s. 3 permits the State Government only to specify defferent rates of tax not exceeding the maximum prescribed in the section to be levied on entry of scheduled goods into a local area but the State Government has no power to pick and choose local area. In other words, the respondents say that the tax has to be levied on entry of scheduled goods in each and every local area as the word is understood in the Act. The submission is that the expression 'as may be specified by the State Government' qualifies the expression 'such rates' and not "local area" and this was sought to be reinforced by saying that Article 'a' precedes local area which would mean every local area and not any local area. It was further stated that if what is contended on behalf of the State is correct, one will have to read the word 'and' between the words 'therein' and 'at such rate' which might imply on a grammatical construction that discretion was conferred upon the State Government not only to specify rate but also the local area. C D E

Legislative drafting will reach its peak of glory when perfection is attained in demonstrably manifesting the legislative intent by unequivocal language. But it is equally undeniable that language at its best is a very imperfect vehicle of conveying the intent of the speaker. Legislature speaks through legislation and tries its utmost to convey what it intends to do by the legislation but even best of draftsmen cannot claim to attain perfection. On a very superficial view one may be tempted to accept the construction canvassed for on behalf of the respondents but when the section is read more minutely with necessary pause and emphasis and the policy enacting the legislation is kept in view and also the inconceivable situation that may arise if the construction canvassed for or behalf of the respondents is kept in focus, the contention will have to be repelled. F G

There is a two-fold answer to the contention that upon a literal grammatical construction of s. 3 the State has no choice in the matter of selecting local areas and that choice is limited to specifying rates H

A but after choosing rates all local areas will have to be covered for the levy of tax. It is easy to read the section with a pause and punctuation after the word *'ad valorem'* so that the expression 'as may be specified by the State Government' would qualify both the expressions 'local area' and 'such rate'. This would be clear from the fact that the last expression in the section 'different rates may be specified B for different local areas' would be an adjectival clause to the word 'rate' so that the power to choose and specify different rates is not implicit in the words 'such rate' but in the expression 'different rates may be specified for different local areas'. Thus an express power of choosing and specifying different rates subject to maximum for different local areas is conferred on the State Government not by C the expression 'such rate' but by the expression 'rates' with the adjectival clause 'different rates may be specified for different local areas'. It was, therefore, not necessary to qualify the expression 'such rate' again by the expression 'as may be specified by the State Government' because that is covered by the express power conferred by the expression 'different rates may be specified for different local D areas'. In approaching the matter from this angle the expression 'as may be specified by the State Government' would qualify the expression 'local area' and this construction would be further reinforced by use of Article 'a' prefixing 'local area' meaning thereby not every local area but any local area. In this connection reference E may be made with advantage to *In re. Sanders; ex parte Sergeant*(1), wherein the expression 'under the hand of the Judge of a county court' came up for construction. The construction canvassed for was that a county court would not mean any county court but the country court having jurisdiction in the matter. Repelling this construction the Court, after ascertaining the object of the legislation, F held that a county court would mean any county court, an approach dictated by strict grammatical construction. Similarly, in *The Queen* v. *Justices of Durham,*(2) the expression 'a Court' was interpreted to mean any court and in accepting this construction the Court was guided by the bare letter of the statute which would be a proper guide unless there would be something in it to modify the ordinary G meaning of the words used. The Privy Council in *Coast Brick & Tile Works Ltd. & Ors.* v. *Premchand Raichand & Anr.,*(3) observed that the expression 'the security' should be read as 'a security', a variation which in a poorly drawn section does not do great violence to the language used. Even if, therefore, a literal grammatical

H (1) Law Journal [1885] 54 Q.B. 331.

(2) [1895] 1 Q.B. 801.

(3) [1967] 1 Appeal Cases 192.

construction were to be adopted, on a proper reading of the section power is conferred on the State Government by s. 3 not only to specify different rates for different areas but also to specify local areas entry into which of scheduled goods would provide the taxing event. There is thus a power to choose and specify local areas as well as choose and specify rate of taxation subject to maximum prescribed in the section. A B

Assuming our reading of the section is not correct, there is another way of approaching the matter. It cannot be gainsaid that the State Government is empowered to specify the different rates of tax not exceeding the maximum in respect of different scheduled goods for different local areas. This implies that even though the taxing event is entry of scheduled goods in a local area, nonetheless different rates may be prescribed for different local areas and express power in that behalf is conferred on the Government by providing in section 3 that different rates may be specified for different local areas. If at this stage the definition of local area is recalled which means an area in a city governed by the Karnataka Municipalities Act or a municipal corporation governed by the Karnataka Municipal Corporations Act it would immediately appear that local areas vary immensely both in dimension, population, industrial growth, economic development and scale and kind of municipal service rendered. One has to keep in view a local area like Bangalore City, a highly industrially advanced capital city of Karnataka and a small municipality having a population of 10,000. Now, if the expression 'a local area' in s. 3 is interpreted to mean 'every local area' as contended on behalf of the respondents, before any tax can be levied under s. 3 it would be obligatory on State Government to levy tax on entry of scheduled goods in every local area in Karnataka State for consumption, use or sale therein. The contention thus is that coverage of all local areas for levy of tax would provide outside maximum limit of power under s. 3. The question is : Is it a minimum condition for exercise of power? If it is, the rates of tax will have to vary considerably in direct relation to the local area for which the rate is being prescribed. It would be unjust and inequitable to levy tax on entry of goods at the same rate for such local area as Bangalore Municipal Corporation and a small municipal area, the two local areas being uncomparable with regard to area, population, industrial growth and consumption of such scheduled goods in the area. Now, if the impact of the tax is to be equitable keeping in view cost of its collection, a tax levied at such a small rate as one paise for goods worth Rs. 100 *ad valorem* for a small local area and 2% *ad valorem* for such industrially developed local area like Bangalore Corporation, C D E F G H

A it would make nonsense of the levy apart from the uneconomic outcome keeping in view the administrative cost of collection. If the Government is obliged on the construction canvassed on behalf of the respondents to encompass all local areas for the purpose of levying tax under the statute, the rates would have to be varied so much to avoid the evil of making the impost unjust and if the rates have B to be varied from area to area the administrative cost in smaller areas with lower rates and negligible entry of scheduled goods in such area would make the tax wholly uneconomic. It must, therefore, logically follow that choice to select local area is a necessary concomitant of a choice to select rates, which power is admittedly conferred on the State Government. Purpose underlying the statute, C namely, to provide financial assistance to the municipalities would be better effectuated if the tax realised considerably outweighs the administrative cost involved in collecting the tax. And it is a well known canon of construction that the purpose underlying the statute would provide a reliable external aid for proper construction because D the Court would adopt that construction which would effectuate the purpose.

The High Court unfortunately approached the matter from the standpoint of literal grammatical construction of the section overlooking the object underlying the Act, the historical background which the High Court itself had noticed, and holding that unless the E section is re-written as understood by the High Court, the State Government had no power to pick and choose local areas. Mr. S. T. Desai, learned counsel for the respondents, after drawing our attention to the reasoning that appealed to the High Court for holding that s. 3 does not permit choice of local areas, urged that if the section is so read as to enable the State Government to pick and F choose or select local areas the section would be violative of Art. 14 of the Constitution because while all municipalities need additional finances to recoup the loss suffered by them on abolition of octroi, only some local areas are selected for the purpose of levy of tax leaving others out and there being no reasonable basis to sustain the classification, s. 3 would be unconstitutional. G

There is always a presumption of constitutionality of a statute. If the language is rather not clear and precise as it ought to be, attempt of the Court is to ascertain the intention of the legislature and put that construction which would lean in favour of the constitutionality unless such construction is wholly untenable. However, H where one has to look at a section not very well drafted but the object behind the legislation and the purpose of enacting the same is clearly discernible, the Court cannot hold its hand and blame the draftsman

and chart an easy course of striking down the statute. In such a situation the Court should be guided by a creative approach to ascertain what was intended to be done by the legislature in enacting the legislation and so construe it as to give force and life to the intention of the legislature. This is not charting any hazardous course but is amply borne out by an observation worth reproducing in extenso in *Seaford Court Estates Ltd.* v. *Asher.*(1) It reads as under :

> "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. That was clearly laid down (3 Co. Rep. 7b) by the resolution of the judges (SIR ROGER MANWOOD, C.B., and the other barons of the Exchequer) in *Heydon's* case (1584) 3 Co. Rep. 7a, and it is the safest guide today. Good practical advice on the subject was given about the same time by PLOWDEN in his note (2 Plowd. 465) to *Eyston* v. *Studd* (1574), 2 Plowd. 463. Put into homely metaphor it is this : A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases".

(1) [1949] 2 All E.R. 155 at 164.

A This view was re-affirmed in *Norman* v. *Norman.*(1)

Let it be remembered that the impugned measure is a taxing statute and in the matter of taxing statute the legislature enjoys a larger discretion in the matter of classification so long as it adheres to the fundamental principle underlying the doctrine of classification. B The power of the legislature to classify is of wide range and flexibility so that it can adjust its taxation in all proper and reasonable ways. *In Khyerbari Tea Co. Ltd., & Anr.* v. *The State of Assam*(2) this Court observed as under :

> "It is, of course, true that the validity of tax laws can be C questioned in the light of the provisions of Arts. 14, 19; and Art. 301 if the said tax directly and immediately imposes a restriction on the freedom of trade; but the power conferred on this Court to strike down a taxing statute if it contravenes the provisions of Arts. 14, 19 or 301 has to be exercised with circumspection, bearing in mind that the power of the State to D levy taxes for the purpose of governance and for carrying out its welfare activities is a necessary attribute of sovereignty and in that sense it is a power of paramount character".

It was also observed that legislature which is competent to levy a E tax must inevitably be given full freedom to determine which articles should be taxed, in what manner and at what rate. It would, therefore, be idle to contend that a State must tax everything in order to tax something. In tax matters, "the State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably" (see Willis on 'Constitutional Law', F p. 587). This statement of law has been approved by this Court in the case of *East India Tobacco Co.* v. *State of Andhra Pradesh*(3). The question, therefore, is, whether a tax of a certain kind can be levied on entry of goods in certain local areas, the classification of local areas, if found to be reasonable, the levy of tax would not be invalid on the ground that choosing certain areas only excluding G some others would violate Article 14. Whether in this case the classification is reasonable would be presently examined but the contention that if the State Government is granted a choice in the matter of selection of local area, *ipso facto,* the statute would be unconstitutional as being violative of Art. 14, must be negatived.

H (1) [1950] All E.R. 1082.

(2) [1964] 5 S.C.R. 975.

(3) [1963] 1 S.CR. 404, 409.

In order to ascertain whether the classification of local areas for the purposes of levy of tax is reasonable or not, a reference may be made to the impugned notification. Table annexed to the notification shows in all 27 local areas selected for levy of tax. They are again divided into three groups, A, B and C for selecting rates to be levied on different scheduled goods. A mere glance at the local areas selected and those according to the petitioner excluded, viz., areas within the jurisdiction of various Gram Panchayats would bring in bold relief that population criterion appears to have been adopted in selecting local areas for levy of tax. Does population criterion provide a reasonable basis for classification vis-a-vis a tax levied on entry of goods in the area? It would be undeniable that population basis would provide a reasonable criterion for selecting local areas for the purpose of levy tax simultaneously excluding those which do not answer the population criterion. One unquestionable element scientifically established about a taxing statute is that the yield from the tax must be sufficiently in excess of cost of collection so that the tax which is levied for augmenting public finances to be utilised for public good would be productive. Where the cost of administrative machinery required to be set up for collecting tax is either marginally lower or equal or marginally higher than the yield from the tax, the measure would be uneconomic if not counterproductive. Now, if the tax in this case is levied on the entry of scheduled goods in local areas, the yield would be directly proportionate to the consumption of the goods in local areas and the consumption of goods is directly related to the population within the local area. Viewed from this angle, population criterion would provide a reasonable basis for classification for selectively levying the tax by choosing local area and by specifying different rates so as to make the tax productive. Therefore, there is no substance in the contention that the classification in this case was unreasonable. The High Court was accordingly in error in holding that s. 3 did not permit the State Government to pick and choose local areas for the levy of tax and that levy of tax under s. 3 in all local areas within Karnataka State was a minimum condition for exercise of the power under s. 3. The contention must, accordingly be negatived.

Another contention that found favour with the High Court was contention No. 13 before the High Court which in the opinion of the High Court was a formidable one. The contention was that the Act in its application has not excluded petty dealers from its purview. Developing the contention it was said that the abolished octroi would have been less oppressive in its application than the tax under the impugned legislation falling on petty dealers. What appealed to the

A High Court was that if a petty dealer brought within the local area scheduled goods of the value of Rs. 5 for consumption, use or sale therein, he is to get himself registered after paying the registration fee, maintain accounts for his dealings in such goods and submit monthly and annual returns and to appear before the assessing authority when called upon to do so. The High Court thereafter B contrasted the position of a dealer under the Karnataka Sales Tax Act, 1957, and observed that a dealer whose total turnover is less than Rs. 25,000 was not liable to pay sales tax and one whose turnover was less than Rs. 10,000 was not required to get registered, to maintain accounts or to submit returns. The High Court also found C the registration fee of Rs. 25 prescribed under the rules, the liability to maintain accounts in the manner prescribed and to submit monthly and yearly returns as constituting unreasonable restrictions on the fundamental right of the petty dealers to carry on their trade or business.

D Learned Attorney-General urged that this contention was nowhere to be found in the petition filed by the petitioners in the High Court and, therefore, the High Court was in error in entertaining the contention. Unfortunately, the judgment does not show that learned Advocate-General who appeared for the State raised such an objection to the entertaining of the contention on behalf of the E petitioners by the High Court. Not only has the High Court permitted the contention to be raised but accepted the same. In fairness to the petitioners it would be unjust to shut out the contention on this technical ground, though we must note that Mr. S. T. Desai learned counsel who appeared for the respondents found it difficult to pursue the contention. We, however, propose to deal with the F contention on merits.

The taxing event under the statute is entry of scheduled goods in a local area for consumption, use or sale therein at the instance of a dealer. The expression 'dealer' has the same meaning as assigned to it in clause (k) of s. 2 of Karnataka Sales Tax Act, 1957, which G defines dealer to mean any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes amongst others, a casual trader. Section 10(1) makes it obligatory upon every dealer whose total turnover in any year is not less than the specified H sum to get himself registered under the Act. Sub-s. (2) carves out an exception to sub-s. (1) that notwithstanding anything contained in sub-s. (1) every casual trader dealing in goods mentioned in the

Third Schedule or the Fourth Schedule irrespective of the quantum of his total turnover in such goods shall get himself registered. And in passing it may be mentioned that Schedule Three includes 12 items and Schedule Four includes seven items. In other words, casual trader who is included in the expression 'dealer' in respect of the goods mentioned in the Third or Fourth Schedule, irrespective of his turnover, has to get himself registered. Therefore, it cannot be said that all petty dealers are excluded from the application of Karnataka Sales Tax Act. That apart, the taxing event under the impugned Act being entry of scheduled goods in a local area at the instance of a dealer, the volume or quantum of business of the dealer is not at all relevant. The situation now obtaining may be contrasted with the situation when octroi was levied. Octroi was payable by anyone irrespective of the fact whether he was a dealer in the goods or not, on goods which were liable to octroi when they were brought within the octroi limits. It was payable at the octroi limits where there used to be an office called 'octroi naka'. This was found to be cumbersome and the present Act seeks to replace to some extent that infamous octroi. The noteworthy departure made by the Act is that now unlike every importer only a dealer dealing in the scheduled goods will have to pay the tax and that too not at the octroi limit but afterwards while submitting returns. It would be a case of wild imagination that a dealer in scheduled goods would bring within the local area scheduled goods in such a small quantity as to make maintenance of accounts a very difficult task as also a registration fee of Rs. 25 so heavy as to dub it an unreasonable restriction on his right to carry on trade or commerce. Only three items are included in scheduled goods and it is legitimate to believe that a dealer not dealing in either of the scheduled goods would not be required to get himself registered. And if he is going to deal in the goods his turnover would not be so small in scheduled goods as to make maintenance of accounts and payment of registration fee of Rs. 25 so disproportionately heavy as to render it as an unreasonable restriction on his right to carry on trade.

Looking at the matter from a slightly different angle it must be confessed that if the contention of the respondents were to be upheld it would provide a fruitful source for evasion of tax. If petty dealers are to be excluded some criterion will have to be provided relatable to his turnover in scheduled goods for classifying who are petty dealers. That turnover will have to be kept reasonably high to make it rational but in that event the big registered dealer can always conveniently defeat the tax by bringing into the local area scheduled goods in the name of such petty dealer. It would be an incentive to

A a big registered dealer to set up a number of petty dealers and import scheduled goods into local area in the name of those petty dealers. To avoid any such contingency, if the tax is levied on the entry of scheduled goods in the local area at the hands of a dealer irrespective of his turnover a potential source of evasion can be checkmated. Viewed from either angle, non-exemption of petty dealers from the B operation of the Act does not lead to the conclusion that the impugned legislation constitutes unreasonable restrictions on the fundamental right of the petty dealers to carry on their trade or business. The High Court was, therefore, in our opinion, in error in striking down the impugned legislation on the ground that the Act imposes unreasonable restrictions on the fundamental right of the petty dealers C to carry on their trade.

The two contentions which found favour with the High Court for striking down the impugned Act and the notification issued thereunder, in our opinion, are not sustainable and, therefore, the Act and the notification issued thereunder would have to be upheld. D

Mr. S. T. Desai, learned counsel for the respondents, however, wanted us to affirm the judgment of the High Court on some of the contentions which the High Court negatived. It would, therefore, be necessary to examine some of those contentions which were repeated before us. E

The contention which was put into forefront was that the impugned Act violates the constitutional guarantee of freedom of trade, commerce and intercourse throughout India as enshrined in Part XIII of the Constitution and is not saved by Art. 304. At one stage there was some controversy whether a tax law was within the inhibition of F Part XIII of the Constitution, but this controversy is no more *res integra* and it has been set at rest by the majority view in *Atiabari Tea Co. Ltd.* v. *The State of Assam & Ors.*,(1) Gajendragadkar, J. speaking for the majority, observed that the intrinsic evidence furnished by some of the Articles of Part XIII shows that taxing laws are not excluded from the operation of Art. 301 which means that G tax laws can and do amount to restrictions freedom from which is guaranteed to trade under the said Part. He then posed a question whether all tax laws attract the provisions of Part XIII irrespective of the fact whether their impact on trade or its movement is direct and immediate or indirect and remote, and proceeded to answer it observing that if any Act imposes any direct restrictions on the very H movement of such goods it attracts the provisions of Art. 301 and

(1) [1963] 1 S.C.R. 491.

its validity can be sustained only if it satisfies the requirements of Art. 302 or Art. 304 of Part XIII. Accordingly, the contention that all taxes should be governed by Art. 301 whether or not their impact on trade is immediate or mediate, direct or remote, was negatived. The majority view in *Atiabari Tea Co. Ltd.* case (Supra) was re-examined and affirmed in *The Automobile Transport (Rajasthan) Ltd.* v. *The State of Rajasthan & Ors.*(1) Das, J. speaking for the majority in this context observed as under :

> "After carefully considering the arguments advanced before us we have come to the conclusion that the narrow interpretation canvassed for on behalf of the majority of the State cannot be accepted, namely, that the relevant articles in Part XIII apply only to legislation in respect of the entries relating to trade and commerce in any of the lists of the Seventh Schedule. But we must advert here to one exception which we have already indicated in an earlier part of this judgment. Such regulatory measures as do not impede the freedom of trade, commerce and intercourse and compensatory taxes for the use of trading facilities are not hit by the freedom declared by Art. 301. They are excluded from the purview of the provisions of Part XIII of the Constitution for the simple reason that they do not hamper trade, commerce and intercourse but rather facilitate them".

The law was thus further clarified by pointing out that all taxes should and could not be prohibited by Art. 301 and must of necessity for their sustenance seek the coverage of Art. 304. If a measure is shown to be regulatory or the tax imposed is compensatory in character meaning the tax instead of hampering trade or commerce would facilitate the same, it would be immune from a challenge under Art, 301. In other words, if the tax is shown to be compensatory in character irrespective of the fact whether it is saved by Art. 304 or not it does not come within the inhibition of Art. 301. Accordingly, if validity of a tax law is challenged on the ground that it violates freedom of inter-State commerce, trade and intercourse, guaranteed by Art. 301, the contention may be repelled by showing (i) that the tax is compensatory in character as explained in *The Automobile Transport (Rajasthan) Ltd.* case (Supra); or (ii) that it satisfies the requirements of Art. 304.

This very question came up for further examination in *Khyerbari Tea Co. Ltd.* case (Supra) wherein constitutional validity

(1) [1963] 1 S.C.R. 491.

A of Assam Taxation (On Goods carried by Road or on Inland Waterways) Act, 1961, was challenged on the ground that it was violative of Art. 301 and was not saved by Art. 304. This Court analysed the majority view in *Atiabari Tea Co. Ltd.* case (Supra) and *The Automobile Transport (Rajasthan) Ltd.*, case (Supra) and observed as under :

B "It would immediately be noticed that though the majority view in the *Automobile Transport (Rajasthan)* case substantially agreed with the majority decision in the case of *Atiabari Tea Co.*, there would be a clear difference between the said two views in relation to the scope and effect of the provisions of
C Art. 304(b). According to the majority view in the case of *Atiabari Tea Co.*, if an Act is passed under Art. 304(b) and its validity is impeached, then the State may seek to justify the Act on the ground that the restrictions imposed by it are reasonable and in the public interest, and in doing so, it may, for instance, rely on the fact that the taxes levied by the impugned
D Act are compensatory in character. On the other hand, according to the majority decision in the *Automobile Transport Rajasthan* case, compensatory taxation would be outside Art. 301 and cannot, therefore, fall under Art. 304(b)".

On a conspectus of these decisions it appears well settled that if a tax is compensatory in character it would be immune from the
E challenge under Art. 301. If on the other hand the tax is not shown to be compensatory in character it would be necessary for the party seeking to sustain the validity of the tax law to show that the requirements of Art. 304 have been satisfied.

The State did not attempt in the High Court to sustain the
F validity of the impugned tax law on the submission that it was compensatory in character. No attempt was made to establish that the dealers in scheduled goods in a local area would be availing of municipal services and municipal services can be efficiently rendered if the municipality charged with a duty to render services has enough and adequate funds and that the impugned tax was a measure for
G compensating the municipalities for the loss of revenue or for augmenting its finances. As such a stand was not taken, it is not necessary for us to examine whether the tax is compensatory in character.

It was, however, strenuously contended that the tax was not discriminatory in character inasmuch as the impugned tax was levied
H both on scheduled goods manufactured within the State of Karnataka and similar goods brought into Karnataka State from outside and accordingly Art. 304(a) has been complied with. It was further urged

that the requirements of Art. 304(b) are fully satisfied. The High Court was of the opinion that the impugned tax was non-discriminatory in character inasmuch as scheduled goods imported from other States and scheduled goods produced or manufactured within the State but outside the local area were treated alike by the impugned Act. In the opinion of the High Court the discrimination, if at all, was between goods produced or manufactured within a local area and those brought from outside the local area into it, but Art. 304(a) has no relevance to such differential treatment.

Article 304 lifts the embargo placed on the legislative power of State to enact law which may infringe the freedom of inter-State trade and commerce if its requirements are fulfilled. Article 304(a) imposes a restriction on the power of legislature of a State to levy tax which may be discriminatory in character by according discriminatory treatment to goods manufactured in the State and identical goods imported from outside the State. The effect of Art. 304(a) is to treat imported goods on the same basis as goods manufactured or produced in a State. This article further enables the State to levy tax on such imported goods in the same manner and to the same extent as may be levied on the goods manufactured or produced inside the State. If a State tax law accords identical treatment in the matter of levy and collection of tax on the goods manufactured within the State and identical goods imported from outside the State, Art. 304(a) would be complied with. There is an underlying assumption in Art. 304(a) that such a tax when levied within the constraints of Art. 304(a) would not be violative of Art. 301 and State legislature has the power to levy such tax.

Tax under the impugned legislation would be levied on scheduled goods either manufactured or produced within Karnataka State or imported from outside on their entry in a local area. Thus, this tax is non-discriminatory in that it does not discriminate between scheduled goods manufactured or produced within Karnataka State or those imported from outside. And the microscopic discrimination relied upon by the respondents that there is differential treatment accorded to goods produced within a local area and those imported from outside the local area is hardly relevant for the purpose of Art. 304(a). The High Court was accordingly right in concluding that the impugned tax satisfies the requirements of Art. 304(a).

The next limb of the contention is that the impugned tax being leviable on the entry of goods into a local area will have a direct and immediate impact on the movement of goods and consequently would infringe freedom of inter-State trade guaranteed by Art. 301. It must for its validity also satisfy the requirements of Art. 304(b). In order

A to satisfy the requirements of Art. 304(b) it must be shown that the restrictions imposed by the tax law on inter-State freedom of trade and commerce are reasonable and are in public interest as also the bill for the purpose of levy of such tax has been introduced or moved in the State legislature with the previous sanction of the President. To the extent the impugned tax is levied on the entry of goods in a local B area it cannot be gainsaid that its immediate impact would be on movement of goods and the measure would fall within the inhibition of Art. 301. Can it, however, be said that this tax imposes restrictions which in the facts and circumstances of the case could not be said to be reasonable? It was contended on behalf of the respondents that the tax not being single point tax it would impose a heavy burden and C a very burden of tax would certainly constitute unreasonable restriction on the freedom of trade and commerce.

To substantiate the contention that the Act places unreasonable restrictions on the freedom of trade it was submitted that it is a multi- D point tax and in final analysis the burden would be disproportionately heavy. It was said that whenever goods are taken from one local area to another local area to third local area at every point of entry the tax would be levied and, therefore, in ultimate result the burden would be very heavy so as to make it thoroughly unreasonable. Undoubtedly, the tax would have to be paid every time when scheduled goods enter E a local area. In other words, it is not a single point tax and, therefore, if some scheduled goods successively enter different local areas for consumption, use or sale therein, there would be multiple levy. But no attempt was made to substantiate this charge by showing as to how goods are taken from one local area to another local area to third local area for successive sales because if they are taken for F consumption or use, there is no question of taking the scheduled goods from one local area to another local area. It is, therefore, difficult to conceive a situation realistically that the impost would be very heavy so as to make it unreasonable. The High Court negatived the contention and in our opinion rightly observing that the petitioners have not been able to show that the burden of the tax was so heavy as to G constitute unreasonable restriction on the freedom of trade and commerce. In this connection, however, reliance was placed on the decision of this Court in *Kalyani Stores* v. *State of Orissa & Ors.*(1). In that case the State enhanced the duty in respect of foreign liquors from Rs. 40 to Rs. 70 per L.P. gallon and this levy was challenged on the ground that it infringed the guarantee of Art. 301. The State attempt- H ed to save the levy by contending that it was saved by Art. 304(b).

(1) [1966] 1 S.C.R. 865.

The Court struck down the levy as being violative of Art. 301 observing as under : A

> "Article 301 has declared freedom of trade, commerce and intercourse throughout the territory of India, and restriction on that freedom may only be justified if it falls within Art. 304. Reasonableness of the restriction would have to be adjudged in the light of the purpose for which the restriction is imposed, that is "as may be required in the public interest". Without entering upon an exhaustive categorization of what may be deemed "required in the public interest" it may be said that restrictions which may validly be imposed under Art. 304(b) are those which seek to protect public health, safety, morals and property within the territory". B C

The later decision has shown that the observation in *Kalyani Stores*(1) case is confined to the facts of that case. This would be evident from the decision of this Court in *State of Kerala* v. *A.B. Abdul Khadir & Ors.*(2) wherein it is observed that in *Kalyani Stores case* (Supra) the Court did not intend to lay down a proposition of universal applicability that the imposition of a duty or tax in every case would tantamount *per se* to an infringement of Art. 301 and that only such restrictions or impediments which directly or immediately impede free flow of trade, commerce and intercourse would fall within the prohibition contained in Art. 301. Even apart from this, a levy which appears to be quite reasonable in its impact on the movement of goods and is imposed for the purpose of augmenting municipal finances which suffered a dent on account of abolition of octroi cannot be said to impose an unreasonable restriction on the freedom of inter-State trade, commerce and intercourse. In this connection it would be useful to recall the observations of this Court in *Khyerbari Tea Co. Ltd.* case that the power conferred on this Court to strike down a taxing statute if it contravenes the provisions of Arts. 14, 19 or 301 has to be exercised with circumspection, bearing in mind that the power of the State to levy taxes for the purpose of governance and for carrying out its welfare activities is a necessary attribute of sovereignty and in that sense it is a power of paramount character. It is, therefore, idle to contend that the levy imposed an unreasonable restriction on the freedom of trade and commerce. D E F G

The next question is whether this levy is in public interest. As has been pointed out earlier, the levy was to compensate the loss suffered by abolition of octroi. These very people were paying octroi H

(1) [1966] 1 S.C.R. 865.

(2) [1970] 1 S.C.R. 700.

without a demur. After removing the obnoxious features of octroi a very modest impost is levied on entry of goods in a local area and that too not for further augmenting finances of the municipalities but for compensating the loss suffered by the abolition of octroi is certainly a levy in public interest. As has been repeatedly observed by this Court, the taxes generally are imposed for raising public revenue for better governance of the country and for carrying out welfare activities of our welfare State envisaged in the constitution and, therefore, even if a tax to some extent imposes an economic impediment to the activity taxed, that by itself is not sufficient either to stigmatise the levy as unreasonable or not in public interest.

The last limb of the argument is whether the proviso to Art. 304(b) is satisfied or not. The proviso imposes an obligation to obtain the Presidential sanction before introducing the bill or amendment for the purpose of clause (b) of Art. 304 in the legislature of a State. It cannot be gainsaid that Presidential sanction was not obtained before introducing the bill which was ultimately enacted into the impugned Act but after the bill was enacted into an Act the same was submitted to the President for his assent and it is common ground that the President has accorded his assent. If prior presidential sanction is a *sine qua non,* the requirement of the proviso is not satisfied but in this context it would be advantageous to refer to Art. 255 which provides that no Act of Parliament or of the Legislature of a State and no provision in any such Act shall be invalid by reason only that some recommendation or previous sanction required by the Constitution was not given if assent to that Act was given by the President. Now, in this case it is common ground that the President did accord his sanction to the impugned Act. Therefore, the requirement of the proviso is satisfied.

To sum up, the impugned tax is not discriminatory in character as envisaged by Art. 304(a) and it does impose restrictions but the restrictions imposed are reasonable and in public interest and the Act subsequently having received the assent of the President, the proviso to Art. 304(b) is complied with and, therefore, the impugned Act is saved by Art. 304 and could not be struck down on the ground that it was violative of Art. 301. The contention must accordingly be negatived.

Two minor subsidiary points were sought to be made *en passant* by Mr. S. T. Desai and a brief mention of them would be in order. It was urged that there is a certain amount of vagueness in s. 3 inasmuch as no light is thrown by the words of the section or the other provisions of the Act on the question as to computation of tax to be

made at specified percentage *ad valorem* without specifying which price is to be taken into consideration for levy of tax, namely, the sale price or the purchase price of the concerned scheduled goods. It was said that sale price and purchase price of a dealer would be different and in the absence of any guideline in the charging section or any other provision in the Act it would lead to arbitrary determination or computation of tax by taking "in one case sale price of the scheduled goods and in another case purchase price". The contention overlooks the specific guideline to be found in the charging section itself. The taxing event is the entry of scheduled goods into a local area. The tax becomes payable on the entry of scheduled goods in a local area. Therefore, the price of the scheduled goods at the time of entry paid by the dealer who is the importer of goods within the scheduled area would be the *ad valorem price* on the basis of which tax would be computed. No subsequent rise or fall in price has any relevance to the computation of the tax. The charging section says that the tax shall be levied and collected on the entry of scheduled goods in a local area at specified percentage not exceeding two per cent *ad valorem*. Therefore, the price of the scheduled goods at the time when the tax becomes chargeable irrespective of the fact that it would be computed at a later date when the dealer submits his return as required by the other provisions of the Act, would be the price for computation of tax. And there is no ambiguity or any vagueness in this behalf. There is thus specific guideline in the charging section itself for taking into account the price according to which tax would be computed. The Hight Court negatived this contention by observing that it would be open to the dealer to choose either the sale price or the purchase price whichever is favourable to him for computation of his liability to tax. This approach overlooks the specific language of s. 3 which clearly indicates what price is to be taken into account for computing the tax. When the goods are brought within the local area they have a certain price. The price may be the price which the importer of goods has paid before bringing the goods within the local area. Even if the dealer is the manufacturer of goods at a place outside the local area and brings the goods within the local area he must have determined the price of the goods. Therefore, the dealer has some specific price of the scheduled goods which are being brought within the local area at the time of entry in the local area and the entry being the taxing event that would be the price which alone can be taken into account for computing the tax *ad valorem*. Therefore, we find it difficult to agree with the reasoning adopted by the High Court in rejecting the contention but for the reasons hereinabove mentioned the contention is devoid of merits and accordingly it must be negatived.

A As we are not able to uphold the contentions which found favour with the High Court in striking down the impugned Act and the notification issued thereunder and as we find no merit in other contentions canvassed on behalf of the respondents for sustaining the judgment of the High Court, this appeal must succeed. Accordingly this appeal is allowed and the judgment of the High Court is quashed B and set aside and the petition filed by the Respondent in the High Court is dismissed with costs throughout.

P.B.R. *Appeal allowed.*