# THE PUNJAB STATE, CHANDIGARH

*v.*

# SANSARI MAL PURAN CHAND

*August* 22, 1967

[K. N. WANCHOO, C.J., R. S. BACHAWAT, V. RAMASWAMI, G. K. MITTER AND K. S. HEGDE, JJ.]

*East Punjab General Sales Tax Act 46 of 1948, ss. 5 and 6(2)—Whether s. 5 as amended by East Punjab Act 19 of 1962 effective in imposition of Sales Tax on Essential goods prior to amendment of Art. 286(3) of the Constitution and repeal of s. 3 of Central Act 52 of 1952.*

The respondents were dealers assessable to sales tax under the East Punjab General Sales Tax Act, 1948, and, in respect of the assessment years 1955-56 to 1957-58, they claimed an exemption from tax on sales of edible oil produced by them in ghanis run by mechanical process. The assessing authority rejected this claim on the ground that such sales were not exempt from tax in view of the amendment of the Schedule to the Act specifying tax-free goods by the notification dated August 5, 1954. The respondent's appeals to the Excise and Taxation Commissioner and to the Financial Commissioner were rejected but the High Court, upon a reference, held that the notification was a law made by the State legislature after the enactment of Central Act No. 52 of 1952 which, read with Art. 286(3) of the Constitution, placed a bar on a State by a law imposing or authorising the imposition of a tax on the sale of essential goods unless the law in question had received the assent of the President; and since the notification had not received such assent, it was *ultra vires* and invalid; the respondents were, therefore, entitled to exemption under Item No. 57 of the Schedule prior to its amendment by the notification of August 5, 1954.

On appeal to this Court,

*Held*: The respondents were not liable to pay tax on sales of edible oils produced in ghanis run by mechanical power effected by them before September 11, 1956; but they were liable to pay tax on such sales made after September 11, 1956. [348E]

(i) The amended s. 5 inserted in East Punjab Act No. 46 of 1948 by East Punjab Act No. 19 of 1952 authorising the fixation of the rate of tax leviable on the taxable turnover, was a law authorising the imposition of a tax within the purview of the unamended Art. 286(3) of the Constitution. As the East Punjab Act No. 19 of 1952 was passed after the enactment of Art. 286(3) of the Constitution and after Parliament had by Central Act 52 of 1952 declared edible oil to be essential for the life of the community and it was not reserved for consideration of the President and did not receive his assent, it could not take effect during the currency of Art. 286(3) prior to its amendment in so far as it authorised the imposition of a tax on the sale or purchases of edible oil. It could however take effect in respect of sale and purchases of other goods. [344A—C; 348B-C]

(ii) The effect of the amendment of Art. 286(3) of the Constitution by the Constitution (Sixth Amendment) Act with effect from September 11, 1956 was that the restriction put by Art. 286(3) on the operation of the amended s. 5 in respect of essential goods was

A lifted and the section thereafter took effect on such goods also. There was no force in the contention that the amended s. 5 was a still-born law and that the section was not revived by the removal of the ban. It was inserted by the East Punjab Act No. 19 of 1952 which was passed by a competent legislature and always took effect in respect of non-essential goods. [344D—F]

Section 3 of Central Act 52 of 1952 had no independent existence B and after the amendment of Art. 286(3) it had no force from September 11, 1956 until its repeal with effect from January 5, 1957 by Central Act 74 of 1954. [345C-D, E-F]

(iii) The notification of August 5, 1954 which amended the Schedule of tax-free goods was authorised by s. 6(2) which was a pre-Constitution law outside the purview of Art. 286(3). The notification did not require the assent of the President for affecting essential goods. The notification was therefore valid and took effect in respect C of edible oil as from August 5, 1954 and thereafter sales of edible oil produced in ghanis run by mechanical power were taxable. But as the amended s. 5 could not then affect edible oil, no tax was effectively imposed on it until September 11, 1956 during the currency of the unamended Art. 286(3). [346A—C, E-F]

(iv) Although the notifications issued by the State Government under the unamended s. 5 which was invalid were not authorised by law and also invalid, after the passing of the East Punjab Act 19 of 1952 the result was that from the very commencement of the D main Act the amended s. 5 was deemed to have authorised the State Government to issue notifications fixing the rate of tax. The notifications issued under s. 5 before 1952 must, therefore, be deemed to be and always to have been valid and not still-born. It was not necessary to pass another Act validating those notifications nor was it necessary for the State Government to issue fresh notifications fixing the rate of tax. Here again, such notifications could not take effect in respect of sales or purchases of essential goods before E September 11, 1956. [346H—347C]

(v) There was no force in the contention that the present appeals were not maintainable because the Financial Commissioner had already directed disposal of the case under s. 22(5) of the East Punjab Act 46 of 1948 in accordance with the judgment of the High Court. Effect had to be given to the order of this Court and the Financial Commissioner must direct disposal of the cases accordingly. [347F—348A]

F Case law reviewed.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1182—1184 of 1965.

Appeals by special leave from the judgment and order dated August 19, 1963 of the Punjab High Court in General Sales Tax Reference Nos. 8, 10 and 11 of 1962.

G *R. Ganapathy Iyer, R. N. Sachthey for R. H. Dhebar*, for the appellant (in all the appeals).

*R. K. Garg, S. C. Agarwal, Shive Pujab Singh* and *Anil Kumar*, for the respondent (in all the appeals).

The Judgment of the Court was delivered by

H **Bachawat, J.** The respondents are dealers assessable to sales tax under the East Punjab General Sales Tax Act, 1948. In their return for the assessment years 1955-56, 1956-57 and 1957-58 they

claimed exemption from tax in respect of sales of edible oils. It is common case before us that this exemption was claimed in respect of sales of edible oil produced in ghanis run by mechanical process. By his orders dated March 3, 1959, April 9, 1959 and July 17, 1959, the Assessing Authority, Jullundur held that exemption from tax was not allowable under item No. 57 of the schedule of tax-free goods as substituted by the Punjab Government Notification No. 3483-E & T-54/723(CH) dated August 5, 1954. The appeals from these orders were dismissed by the Deputy Excise and Taxation Commissioner, Jullundur Division by his orders dated August 3, 1959 and February 16, 1960. Revision Petitions from these orders were dismissed by the Excise and Taxation Commissioner, Punjab by his orders dated November 24, 1961. Revision Petitions from the last orders were dismissed by the Financial Commissioner, Revenue, Punjab by his orders dated April 27, 1962. On the application of the respondents, the Financial Commissioner, Revenue, Punjab by his order dated August 9, 1962 referred under s. 22(1) of the Punjab General Sales Tax Act, 1948 the following question of law for the decision of the High Court of Punjab at Chandigarh:

> "Whether notification No. 3483-E & T-54/723(CH), dated the 5th August, 1954, whereby exemption from Sales Tax granted by the Government in respect of edible oils was abolished in the case of such edible oils produced in *ghanis* run by mechanical process was *intra vires* and not the law made by the Legislature of the State which requires the previous assent of the President of India."

These References were marked as Sales Tax References Nos. 8, 10 and 11 of 1962. By its judgment dated August 19, 1963 the High Court held following its earlier decision in *Ganga Ram Suraj Prakash* v. *The State of Punjab*(1) that the notification was a law made by the State Legislature after the enactment of Central Act No. 52 of 1952, and since it did not receive the assent of the President it was *ultra vires* and invalid. In the earlier decision, the Punjab High Court held that (1) s. 5 of the East Punjab General Sales Tax Act, 1948, as it originally stood, was invalid on the ground of excessive delegation of legislative power to the executive, (2) the remaining sections of the Act including s. 6 could not survive the invalidity of s. 5, (3) the Act did not become valid until the insertion of the new s. 5 in the main Act by the East Punjab Act No. 19 of 1952 and (4) as the East Punjab Act No. 19 of 1952 which alone could sustain the impugned notification dated August 5, 1954 was passed after the Central Act No. 52 of 1952, the impugned notification could not be justified and was invalid. The High Court observed that it was not impressed with the argument that the notification was not a law made by the legislature of the State and therefore the assent of the President could be dispensed with. The present appeals have been preferred from the orders of the High Court dated August 19, 1963.

(1) S.T.C. 476.

A To appreciate the points in controversy, it is necessary to refer to the course of legislation. The East Punjab General Sales Tax Act (East Punjab Act No. 46 of 1948) was enacted on November 15, 1948. Section 4 of the Act provided for the incidence of taxation and declared that the classes of dealers specified in subss. (1), (2), (3) and (4) would be liabe to pay tax under the Act. B Section 5(1) was in these terms:

> "5. *Rate of tax*—(1) Subject to the provisions of this Act there shall be levied on the taxable turnover every year of a dealer a tax at such rates as the Provincial Government may by notification direct."

'Turnover' as defined in s. 2(i) included the aggregate of the amount C of sales. 'Taxable turnover' as defined in s. 5(2) was ascertained after deducting from the gross turnover *inter alia* sales of goods declared tax-free under s. 6. Section 6(1) provided that no tax shall be payable under the Act on the sale of goods specified in the first column of the schedule to the Act. Section 6(2) provided:

> "The Provincial Government after giving by notification D not less than three months' notice of its intention so to do, may by like notification add to or delete from the schedule, and thereupon the schedule shall be deemed to be amended accordingly."

On November 19, 1952 the East Punjab General Sales Tax (Second Amendment) Act, 1952 (Act No. 19 of 1952) was passed amending s. 5 of the East Punjab Act No. 46 of 1948. Section 2 E of the amending Act was in these terms:

> "In sub-section (1) of section 5 of the East Punjab General Sales Tax Act, 1948, after the word 'rates' the following words shall be inserted, namely, 'not exceeding two pice in a rupee'."

It is common ground before us that before the passing of F the East Punjab Act No. 19 of 1952 the State Government had issued notifications under s. 5 fixing the rates of tax. In exercise of its powers under s. 6(2) of the Act, the Punjab Government issued the notification No. 3483-E & T-51/2518, dated May 30, 1951 adding item No. 57 (edible oils) to the schedule referred to in s. 6(2). The entry was as follows:

> "57. Edible oils produced from *sarson, toria* and *till* G ghanis but not in hydrogenated from *e.g.* vegetable, ghee, vanaspati etc."

By a later notification No. 3483-E & T-54/723(CH) dated August 5, 1954, the Punjab Government substituted the following entry No. 57 in the schedule:

H "57. Edible oils produced from *sarson, toria and till* indigenous *kohlus* worked by animal or human agency when sold by the owners of such *kohlus* only".

It is common case before us that as a result of this notification, sales of edible oil produced by ghanis run by mechanical power ceased to be tax-free after August 5, 1954. It may be recalled that Art. 286(3) of the Constitution as it stood before the Constitution (Sixth Amendment) Act, 1956 provided:

> "No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent."

On August 9, 1952 Parliament passed the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952 (Central Act No. 52 of 1952). By s. 2 of this Act read with item 5 of the schedule, edible oils were declared to be essential for the life of the community. Section 3 of this Act was in these terms:

> "3. *Regulation of tax on sale or purchase of essential goods.*—No law made after the commencement of this Act by the legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods declared by this Act to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent."

On Sepember 11, 1956 the Constitution (Sixth Amendment) Act, 1956 was passed substituting a new cl. (3) in Art. 286. The amended Art. 286(3) did not put any check on a State law imposing or authorising the imposition of a tax on the sale or purchase of essential goods. The Central Act No. 52 of 1952 was repealed by s. 16 of the Central Sales Tax Act, 1956 (Act No. 74 of 1954) passed on December 21, 1956. The repealing section came into force on January 5, 1957.

It is to be noticed that the respondents claimed that they were not liable to pay tax on their sales of edible oil produced in ghanis run by mechanical power. The revenue authorities rejected this claim on the ground that such sales were not exempt from tax in view of the amendment of the schedule of tax-free goods by the notification dated August 5, 1954. Confronted with this notification, the respondents challenged its validity on the ground that it required the assent of the President of India. On the materials and arguments before us, we are satisfied that the real dispute between the respondents and the revenue authorities was whether the tax was effectively imposed on those sales so that the respondents may be held liable to pay tax thereon during the assessment years in question. This dispute was not properly brought out in the question referred to the High Court. We, therefore, re-frame the question thus: "Was tax effectively imposed on sales of edible oil produced

A in ghanis run by mechanical power, so that the respondents can be held liable to pay tax on such sales during the assessment years, 1955-56, 1956-57 and 1957-58?" This question involves consideration of the validity of s. 5 and other sections of the East Punjab Act No. 46 of 1948, s. 5 as amended by East Punjab Act No. 19 of 1952 and the notifications issued under ss. 5 and 6(2) as also B the effect of Art. 286(3) of the Constitution, its amendment by the Constitution (Sixth Amendment) Act, s. 3 of Central Act No. 52 of 1952 and its repeal by Central Act No. 74 of 1954.

On the arguments addressed before us, the following questions arise for decisions:

C (1) Was s. 5 of the East Punjab Act No. 46 of 1948 as originally passed in 1948, invalid?

(2) If so, did the invalidity of s. 5 invalidate the other provisions of the Act?

(3) Is s. 5 of the East Punjab Act No. 46 of 1948 as amended by East Punjab Act No. 19 of 1962 invalid?

D (4) Was the amended s. 5 a law imposing or authorising the imposition of a tax within the meaning of Art. 286(3) of the Constitution as it stood before the Constitution (Sixth Amendment) Act? If so, with what effect?

(5) What is the effect of the amendment of Art. 286(3) of the Constitution by the Constitution (Sixth Amendment) Act and the repeal of Central Act No. 52 of 1952 by E Central Act No. 74 of 1954?

(6) Is the notification dated August 5, 1954 issued under s. 6(2) valid?

(7) Are the notifications issued under s. 5 before the passing of the East Punjab Act No. 19 of 1952 valid?

(8) Was tax effectively imposed on sales of the edible oil F in question during the relevant assessment years?

The first three questions are concluded by the decision of this Court in *M/s. Devi Das Gopal Krishan and others* v. *State of Punjab and others*(1). In that decision, this Court held that (1) s. 5 of East Punjab Act No. 46 of 1948, as originally passed in 1948, was void on the ground of excessive delegation of legislative power G to the State Government, (2) the striking down of s. 5 did not render void s. 4 and the other sections of the Act though till an appropriate s. 5 was inserted s. 4 remained unenforceable and (3) s. 5 as amended by the East Punjab Act No. 19 of 1952 was not invalid on the ground of excessive delegation of legislative authority nor was it invalid on the ground that Act 19 of 1952 purported to amend a stillborn section. The Court held that though in H

(1) [1967] 3 S.C.R. 557.

terms Act No. 19 of 1952 amended s. 5, in substance it inserted a new amended s. 5 in Act No. 46 of 1948 with retrospective effect. A

The fourth question is whether the amended s. 5 inserted by East Punjab Act No. 19 of 1952 levying a tax on the taxable turnover of the dealer at such rates not exceeding 2 pice in a rupee as the State Government by notification may direct was a law imposing or authorising the imposition of a tax on essential goods within the meaning of Art. 286(3) of the Constitution as it stood before the Constitution (Sixth Amendment) Act, and if so, what are the consequences. As pointed out by Ramachandra Iyer, J. in *Sreenivas and Co.* v. *Deputy Commercial Tax Officer*(1), the decisions on the interpretation of s. 55 of the Australian Constitution are not a reliable guide to the interpretation of the words "imposing or authorising the imposition of a tax" in Art. 286(3) of the Constitution and s. 3 of Central Act No. 52 of 1952. Section 55 which is directed to preserving the privileges of the House of Representatives with respect to finance and providing against their abuse has received a somewhat narrow interpretation from the Australian Courts. See the cases collected in Wynes. Legislative, Executive and Judicial Powers, 3rd Edn., p. 240. We may add that the observations of Isaccs, J. in *Federal Commissioner of Taxation* v. *Munro*(2) suggest that an Act naming the rate but leaving the persons on whom the tax should fall to be thereafter determined would be a measure "imposing taxation" even for the purposes of s. 55. B C D

Nor is much light thrown on the interpretation of those words by the decisions under the Indian Income-tax Act. In *Messrs. Chatturam Horilram Ltd.* v. *Commissioner of Income-tax, Bihar and Orissa*(3) this Court held that income was chargeable under s. 3 of the Indian Income-tax Act though the Finance Act was not extended to the relevant area during the year in question. In *Kesoram Industries* v. *Commissioner of Wealth Tax*(4) this Court by a majority following the dicta in *Wallace Brothers & Co. Ltd.* v. *Commissioner of Income-tax, Bombay*(5), *Chatturam* v. *Commissioner of Income-tax, Bihar*(6) and explaining the dicta in *Commissioner of Income-tax* v. *Western India Turf Club Ltd.*(7) and *Maharaja of Pithapuram* v. *Commissioner of Income-tax, Madras*(8), held that there was a liability to pay income-tax and a debt owed by the assessee in respect of income-tax on the last day of the accounting year within the meaning of s. 2(m) of the Wealth Tax Act, 1957. None of these decisions dealt with the construction of the words "imposing or authorising the imposition of a tax" in Art. 286(3) of the Constitution. It is remarkable, however, E F G

(1) [1960] 11 S.T.C. 68, 75—77, on appeal from (1959) 10 S.T.C. 171.
(2) 38 C.L.R. 153. 189. (3) [1955] 2 S.C.R. 290, 297—300 H
(4) [1966] 2 S.C.R. 688. (5) (1948) 16 I.T.R. 240, 244.
(6) (1947) 15 I.T.R. 302. 308. (7) (1927) L.R. 55 I.A. 14, 17.
(8) (1945) 13 I.T.R. 221, 223-24.

A that in the *Maharaja of Pithapuram's case*(1) the language used by Lord Thankerton suggests that the income-tax is imposed for a particular fiscal year by a Finance Act and in *Chatturam Horilram's case*(2), Jagannadhadas, J. said that the Finance Act of each year imposed the obligation for the payment of a determinate sum for each such year. Moreover, in *Luipaard's Vlei Estate and Gold* B *Mining Co. Ltd.* v. *The Commissioner of Inland Revenue*(3), Rowlatt, J. said the English Income-tax was annually imposed by the Finance Act and in *Bowels* v. *Bank of England*(4), Parker, J. held that the Crown could not lawfully levy income-tax before the rate of tax was ascertained and the tax was actually imposed by Act of Parliament. These dicta suggest that an Act fixing the rate of tax is a law imposing a tax.

C The specification of the class or classes of persons liable to pay the tax and the fixation of the rate of tax are both necessary for the imposition of a tax. Section 4 of the East Punjab Act No. 46 of 1948 took the first step for imposing the tax. It declared who were the persons liable to pay tax under the Act. But s. 5 of East Punjab Act No. 46 of 1948 was invalid and until the passing of the East Punjab Act No. 19 of 1952 and the insertion of the D amended s. 5 there was no provision in the main Act fixing or authorising the fixation of the rate at which the tax was to be levied. In the absence of such a provision, there could be no levy, assessment and collection of the tax from the dealer and s. 4 remained unenforceable. The East Punjab Act No. 19 of 1952 by inserting the amended s. 5 in the main Act for the first time provided for the levy on the taxable turnover of every dealer a tax E at a rate to be fixed by the State Government. The rate of tax could be fixed and the tax could be actually imposed under the amended s. 5 only. The East Punjab Act No. 19 of 1952 therefore belonged to the category of laws authorising the imposition of a tax on the sale of goods.

The object of Art. 286(3) of the Constitution was to put a constitutional check on the operation of a State law imposing or F authorising the imposition of a tax on the sale or purchase of essential goods. Commerce in such goods was a matter of national concern and no such law could take effect unless it had been reserved for the consideration of the President and had received his assent. An arbitrary or unjust rate of sales tax would unduly hamper dealings in such goods, and it is reasonable to think that a measure fixing or authorising the rate of tax would be subject G to the salutary check of Art. 286(3). In our opinion, the amended s. 5 inserted in East Punjab Act No. 46 of 1948 by East Punjab Act No. 19 of 1952 authorising the fixation of the rate of tax leviable on the taxable turnover was a law authorising the imposition of a tax within the purview of the unamended Art. 286(3) of the Constitution.

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(1) (1945) 13 I.T.R. 221. (2) [1955] 2 S.C.R. 290.
(3) (1929) 15 T.C. 573, 581. (4) (1913) 1. Ch. 57, 87.

The East Punjab Act No. 19 of 1952 was passed after the enactment of Art. 286(3) of the Constitution and after Parliament had by Central Act No. 52 of 1952 declared edible oil to be essential for the life of the community. It was not reserved for the consideration of the President and did not receive his assent. It was a law authorising the imposition of a tax on the sale of goods. In so far as it authorised the imposition of a tax on the sales or purchases of edible oil, it could not take effect during the currency of Art. 286(3) of the Constitution as it stood before its amendment by the Constitution (Sixth Amendment) Act. The fact that the amended s. 5 inserted by the East Punjab Act No. 52 of 1952 was retrospective in operation made no difference. It was still a law made after the Constitution came into force and after Parliament had by law declared edible oil to be essential for the life of the community. As the East Punjab Act No. 52 of 1952 did not receive the assent of the President, the amended s. 5 could not take effect at all either prospectively or retrospectively in respect of sales and purchases of essential goods while the ban of Art. 286(3) continued. But it could take effect in respect of sales and purchases of other goods.

The fifth question involves consideration of the effect of the amendment of Art. 286(3) of the Constitution and the repeal of Central Act No. 52 of 1952. The Constitution (Sixth Amendment) Act, 1956 passed on September 11, 1956 substituted a new cl. (3) in Art. 286. The effect of this amendment was that the restriction put by Art. 286(3) on the operation of the amended s. 5 inserted by the East Punjab Act No. 19 of 1952 in respect of essential goods was lifted, and the section thereafter took effect on such goods also. Counsel for the respondent submitted that in view of the ban imposed by Art. 286(3), the amended s. 5 was a stillborn law and the section was not revived by the removal of the ban. In this connection, our attention was drawn to the decisions under Arts. 286(2) and 13 of the Constitution. Article 286(2), as it stood before the Constitution (Sixth Amendment) Act provided that "Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce". In spite of the prohibitory words of Art. 286(2), in *M. P. V. Sundararamier & Co.* v. *The State of Andhra Pradesh*(1) and *Messrs. Ashok Leyland Ltd.* v. *The State of Madras*(2), this Court held that a State law imposing a tax on sales of goods in the course of inter-State trade and commerce was not void, and the effect of the Sales Tax Laws Validation Act, 1956 was to liberate State laws from the fetter placed on them by Art. 286(2) and enable such laws to operate on their own terms. In *Mahendra Lal Jaini* v. *State of U. P.*(3) this Court held, reviewing the earlier cases, that a post-Constitution

(1) [1958] S.C.R. 1422, 1459.
(2) [1962] 1 S.C.R. 607.
(3) [1953] Supp. 1 S.C.R. 912.

A Act taking away or abridging the fundamental rights in contravention of Article 13(2) was a stillborn law but a pre-Constitution Act inconsistent with a fundamental right was in view of Art. 13(1) eclipsed for the time being and on the abolition of the fundamental right by a constitutional amendment the pre-Constitution Act would begin to operate once again from the date of the amend-
B ment. These decisions show that a law made by an incompetent legislature or in contravention of some constitutional limitation is void from its inception. But the amended s. 5 inserted by the East Punjab Act No. 19 of 1952 was passed by a competent legislature. It always took effect in respect of non-essential goods. Article 286 (3) did not prohibit its making. While the restriction imposed by Art. 286(3) continued, the section could not affect essential goods,
C but as soon as the restriction was removed, it became fully effective. The section was not void or stillborn.

But the question still remains whether the check on a State law imposing or authorising the imposition of a tax on the sale or purchase of essential goods continued even after September 11, 1956 until January 5, 1957 when Central Act No. 52 of 1952 was
D repealed. Article 286(3) authorised Parliament to declare by law which goods were essential for the life of the community. Accordingly, Parliament passed Act No. 52 of 1952. The preamable to the Act shows that it was an Act to declare in pursuance of cl. 3 of Art. 286 of the Constitution certain goods to be essential for the life of the community. By s. 2, the goods specified in the schedule were declared to be so essential. As soon as this declaration
E was made, Art. 286(3) came into play. Section 3 stated the conjoint effect of Art. 286(3) and s. 2 and declared that no law made after the commencement of the Act by the legislature of a State imposing or authorising the imposition of a tax on the sale or purchase of any goods declared by the Act to be essential for the life of the community would have effect unless it had been reserved for the consideration of the President and had received his
F assent. But s. 3 had no independent existence. The subject of a tax on the sale or purchase of goods other than newspapers was exclusively a State subject, see List II, Entry 54. Article 286(3) did not authorise Parliament to legislate on this subject. It only conferred on Parliament the authority to declare that certain goods were essential for the life of the community. On such a declaration being made, the check imposed by Art. 286(3) came into operation. But on the amendment of Art. 286(3) this check was lifted and
G thereafter s. 3 had no force. It follows that as from September 11, 1956 the amended s. 5 inserted by East Punjab Act No. 19 of 1952 took effect on sales or purchases of edible oil also.

The sixth question relating to the validity of the notification dated August 5, 1954 involves the interpretation of the expression
H "law made by the legislature of a State" in Art. 286(3) as it stood before the Constitution (Sixth Amendment) Act. We are not concerned in these appeals with the interpretation of the expression

"law of a State" in the amended Art. 286(3) and other Articles. The notification dated August 5, 1954 was authorised by s. 6(2) of East Punjab Act No. 46 of 1948. Section 6(2) being a pre-Constitution law was outside the purview of Art. 286(3) of the Constitution and Central Act No. 52 of 1952. See *Sardar Soma Singh* v. *The State of Pepsu and Union of India*(1). Consequently, s. 6(2) from its inception affected essential goods. By force of s. 6(2) the notification dated August 5, 1954 issued under it took effect immediately in respect of essential goods. The notification issued by the State Government was not a "law made by the legislature of a State" within the meaning of Art. 286(3). Though issued after the passing of Central Act No. 52 of 1952, it did not require the assent of the President for affecting essential goods. In *The Indore Iron & Steel Registered Stockholders' Association* v. *The State of Madhya Pradesh*(2), this Court held that a notification dated October 24, 1953 specifying the goods whose sales were taxable under s. 5(2) of the Madhya Bharat Sales Tax Act, 1950, a pre-Constitution Act, was outside the purview of Art. 286(3) of the Constitution and s. 3 of Central Act No. 52 of 1952. Similarly, in *Sreenivas & Co.* v. *Deputy Commercial Tax Officer*(3), the Madras High Court held that Rules 15 and 16 of the Madras General Sales Tax (Turnover and Assessment) Rules specifying the transactions attracting the tax liability and framed under the Madras General Sales Tax Act, 1939, a pre-Constitution Act, did not require the assent of the President for affecting hides and skins which had been declared by Parliament to be essential for the life of the community by Central Act No. 52 of 1952. These decisions show that a notification issued under the authority of a pre-Constitution Act is not a law made by the legislature of a State within the meaning of the unamended Art. 286(3). It follows that the impugned notification took effect in respect of edible oil as from August 5, 1954 and thereafter sales of edible oil produced in ghanis run by mechanical power were taxable. But as the amended s. 5 could not then affect edible oil, no tax was effectively imposed on it until September 11, 1956 during the currency of the unamended Art. 286(3) of the Constitution. The respondents were, therefore, not liable to pay tax on their sales of such edible oil effected before September 11, 1956.

It is common case before us that before the insertion of the amended s. 5 by East Punjab Act No. 19 of 1952 the State Government had issued notifications under s. 5 fixing the rate of tax. The seventh question relates to the validity of those notifications. As the unamended s. 5 was invalid, under the law as it stood before the passing of the East Punjab Act No. 19 of 1952 those notifications were not authorised by law and were invalid. The East Punjab Act No. 19 of 1952, however, inserted s. 5 with retrospective effect. The effect of the East Punjab Act No. 19 of 1952 was that the amended s. 5 was inserted and was deemed to have always been inserted in the main Act. After the passing of

(1) [1954] S.C.R. 955. (2) [1962] 2 S.C.R. 924
(3) [1960] 11 S.T.C. 68, 75—77, on appeal from [1959] 10 S.T.C. 171.

A the East Punjab Act No. 19 of 1952 the result was that from the very commencement of the main Act the amended s. 5 was deemed to have authorised the State Government to issue notifications fixing the rate of tax. The notifications issued by the State Government under s. 5 before 1952 must, therefore, be deemed to be and always to have been valid and not stillborn. It was not necessary
B to pass another Act validating those notifications, nor was it necessary for the State Government to issue fresh notifications fixing the rate of tax. In view of Art. 286(3), the amended s. 5 and the notifications issued under it before 1952 could not take effect in respect of sales or purchases of essential goods before September 11, 1956. But they took effect in respect of such sales after September 11, 1956. The validity of the notifications issued after 1952
C under the amended s. 5 is not challenged before us.

It follows that the State law and the notifications issued thereunder effectively imposed tax on sales of edible oil from September 11, 1956 and not before. The respondents are liable to pay tax on all sales of edible oil effected by them after September 11, 1956, but they are not liable to pay tax on their sales made before that
D date.

In C. M. Ps. No. 877 to 879 of 1964, the respondents raised several additional contentions. The first contention was that the consideration of the several questions arising in this case is precluded by *res judicata* in view of the decisions of the Punjab High Court in Sales Tax References Nos. 4 and 13 of 1961. But this
E plea of *res judicata* has now been abandoned before us by counsel for the respondents. Secondly, it was urged that the appeals are infructuous because the respondents had obtained refund of the tax deposited by them in respect of the years, 1958-59 and 1959-60. But the present appeals do not relate to those assessment years, and the fact that the respondents obtained refund of the tax for those years is irrelevant in these appeals. Thirdly, it was pointed
F out that by an order dated September 23, 1963 the Financial Commissioner gave effect to the decision of the High Court under appeal and directed that the assessment cases be disposed of accordingly. The contention of the respondents was that in view of this order of the Financial Commissioner the present appeals are not maintainable. There is no substance in this contention. The order of the Financial Commissioner was passed under s. 22(5) of East Punjab Act No. 46 of 1948. Section 22(5) provides that the
G High Court shall send to the Financial Commissioner a copy of its judgment in a Sales Tax reference under its seal and the signature of the Registrar and the Financial Commissioner shall dispose of the case accordingly. On receipt of the copy of the judgment of the High Court in Sales Tax References Nos. 8, 10, and 11 of 1962 the Financial Commissioner acting under s. 22(5) directed that the
H cases should be disposed of according to the judgment of the High Court. But those very judgments are under appeal in this Court. In so far as those judgments are varied or reversed in these appeals,

effect must be given to the order of this Court and the Financial Commissioner must direct the disposal of the cases accordingly. In C. M. Ps. Nos. 877 to 879 of 1964, the respondents prayed for revocation of the special leave granted by this Court. There is no ground for revoking the special leave, and the petitions must be dismissed.

To summarise our conclusions: (1) The unamended s. 5 of East Punjab Act No. 46 of 1948 was void. (2) The invalidity of s. 5 did not render ss. 4 and 6 and other sections of the Act invalid. (3) The amended s. 5 inserted by East Punjab Act No. 19 of 1952 is valid. (4) The amended s. 5 was a law authorising the imposition of a tax within the meaning of Art. 286(3) of the Constitution as it stood before the Constitution (Sixth Amendment) Act. (5) The amended s. 5 and the notifications issued under it did not take effect before September 11, 1956 in respect of sales or purchases of goods declared essential to the life of the community by Central Act No. 52 of 1952, but they took effect in respect of such sales or purchases after September 11, 1956. (6) The notification dated August 5, 1954 issued under s. 6(2) is valid. (7) The notifications issued under s. 5 before the passing of the East Punjab Act No. 19 of 1952 are valid. (8) Tax was effectively imposed on the sales or purchases of edible oil from September 11, 1956 and not before.

We, therefore, hold that the respondents are not liable to pay tax on sales of edible oil produced in ghanis run by mechanical power effected by them before September 11, 1956. But they are liable to pay tax on such sales made after September 11, 1956. The Sales Tax References and the appeals are disposed of accordingly. C.M.Ps. Nos. 877 to 879 of 1964 are dismissed. There will be no order as to costs.

R.K.P.S. *Appeals partly allowed.*