

STATEMENT OF OBJECTS AND REASONS

While "taxes on the sale or purchase of goods other than newspapers" is an entry in the State List, article 286 of the Constitution subjects the States' power to impose such taxes to four restrictions, of which two are total and two are partial. Under clause (1) of the article, a State is debarred from imposing such a tax when the sale or purchase takes place outside the State or in the course of import into, or export from, the country. With regard to the first restriction, namely, the non-taxability of sales outside the State, an explanation is given in the clause that "a sale or purchase shall be deemed to have taken place in the State in which goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State". Then, under clause (2), a State is debarred from imposing the tax on inter-State sales except in so far as Parliament may otherwise provide. Lastly, under clause (3), Parliament is authorised to declare the goods which are essential to the life of the community, and when such a declaration has been made, any law made by a State Legislature imposing a tax on the sale or purchase of those goods has to receive the President's assent in order to be effective.

High judicial authorities have found the interpretation of the article a difficult task and expressed divergent views as to the scope and effect, in particular, of the explanation in clause (1) and of clause (2). The majority view of the Supreme Court in *the State of Bombay v. the United Motors (India) Ltd.*, (1953) S.C.R. 1069, was that sub-clause (a) and the explanation in clause (1) prohibited the taxation of a sale involving inter-State elements by all States except the State in which the goods are delivered for the purpose of consumption therein, and furthermore, that clause (2) did not affect the power of that State to tax the inter-State sale even though Parliament had not made a law removing the ban imposed by that clause. This resulted in dealers resident in one State being subjected to the sales tax jurisdiction and procedure of several other States with which they had dealings in the normal course of their business. Two-and-a-half years later, the second part of this decision was reversed by the Supreme Court in *the Bengal Immunity Company Ltd. v. the State of Bihar*. (1955) S.C.A. 1140 but here too the Court was not unanimous.

In pursuance of clause (3) of the article, Parliament passed an Act in 1952 declaring a number of goods like foodstuffs of various kinds, cloth, raw cotton, cattle feeds, iron and steel, coal, etc. to be essential to the life of the community. Since this declaration could not affect pre-existing State laws imposing sales tax on these goods,

the result was a wide disparity from State to State, not only in the range of exempted goods, but also in the rates applicable to them.

The Taxation Enquiry Commission, after examining the problem with great care and thoroughness, have made certain recommendations which may be summarised as follows. In essence, sales tax must continue to be a State source of revenue and its levy and administration must substantially pertain to the State Governments. The sphere of power and responsibility of the State may, however, be said to end, and that of the Union to begin, when the sales tax of one State impinges, administratively on the dealers, and fiscally on the consumers, of another State. Broadly, therefore, inter-State sales should be the concern of the Union, but the responsibilities pertaining to the Union could be exercised through the State Governments, and in any case, the revenue should appropriately devolve on them. Intra-State sales, on the other hand, should be left to the States, but with one important exception. Where, for instance, raw material produced in a State is important from the point of view of the consumer or the industry of another State, certain restrictions have to be placed on the taxing power of the State Government, as otherwise it can effect an increase in the cost of the manufactured article, whether such manufacture takes place in the State which produces the raw material, or in another State which imports the material from that State. In either case, to the extent that the finished goods are consumed in a State other than the one which taxes the raw material, the increase in cost on account of the tax is a matter of direct concern to the consumer of another State. Such cases of intra-State sales should appropriately be brought under the full control of the Union. These recommendations of the Commission have been generally accepted by all the State Governments.

The object of this Bill is to give effect to the recommendations of the Commission as regards the amendment of the constitutional provisions relating to sales tax.

In clause 2, it is proposed to add a new entry 92A in the Union List placing taxes on inter-State sales and purchases within the exclusive legislative and executive power of the Union, and to make entry 54 of the State List "subject to the provisions" of this new entry.

In clause 3, it is proposed to add these taxes to the list given in clause (1) of article 269, so that, although they will be levied and collected in accordance with an Act of Parliament, they will not form part of the Consolidated Fund of India, but will accrue to the States themselves in accordance with such principles of distribution as may be formulated by Parliament by law. A further provision is

proposed in article 269 expressly empowering Parliament to formulate by law principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.

It is proposed in clause 4 to omit from clause (1) of article 286 the explanation which has given rise to a great deal of legal controversy and practical difficulty. In view of the centralisation of inter-State sales tax proposed in clause 2 of this Bill, clause (2) of article 286 in its present form will cease to be appropriate. In its place it is proposed to insert a provision empowering Parliament to formulate principles for determining when a sale or purchase of goods takes place (a) outside a State, or (b) in the course of import of the goods into the territory of India, or (c) in the course of export of the goods out of the territory of India.

It is further proposed to replace clause (3) of article 286 by a new clause on the lines recommended by the Taxation Enquiry Commission. Under this revised clause Parliament will have the power to declare by law the goods which are of special importance in inter-State trade or commerce and also to specify the restrictions and conditions to which any State law (whether made before or after the Parliamentary law) will be subject in regard to the system of levy, rates and other incidents of the tax on the sale or purchase of those goods.

MANILAL SHAH.

NEW DELHI;

The 30th April, 1956.

M. N. KAUL,
Secretary

