"The Crown cannot deprive a legislature of its legislative authority by the mere fact that in the exercise of its prerogative it makes a grant of land within the territory over which such legislative authority exists and no court can annul the enactment of a legislative body acting within the legitimate scope of its sovereign competence. If, therefore, it be found that the subject of a Crown grant is within the competence of a provincial legislature, nothing can prevent that legislature from legislating about it, unless the Constitution Act itself expressly prohibits legislation on the subject either absolutely or conditionally."

For the reasons given above, we hold that none of the three points urged on behalf of the appellants has any substance. The appeals fail and are dismissed with costs; there will be only one hearing fee.

Appeals dismissed.

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v.

THE STATE OF BOMBAY (NOW MAHARASHTRA) AND OTHERS

(S. K. DAS, M. HIDAYATULLAH, K. C. DAS GUPTA, J. C. SHAH and N. RAJAGOPALA AYYANGAR JJ.)

Purchase Tax—If leviable on goods not specifically mentioned as taxable but come under the general description "all goods other than those specified"—Conversion of one commodity into another commercially different article—If amounts to consumption—Place of purchase for the purpose of taxation—Constitution of India, Art. 19 (f) & (g), 286—Bombay Sales Tax Act, 1953 (Bom. Act III of 1953), s. 10, Schedule B, Entry 80.

The petitioner Company carrying on the business of manufacturing *bidis* and having its head office at Jabalpur in the State of Madhya Pradesh made certain purchases of tobacco in the State of Bombay. The Sales Tax Officer assessed the petitioner to a purchase tax under the provisions of the Bombay Sales Tax Act, 1953. The petitioner contested the assessment of

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purchase tax on the grounds that those transactions and purchases were "Outside the State of Bombay" within the meaning of Art. 286(1)(a) of the Constitution read with the Explanation, that the provisions of the Bombay Sales Tax Act, 1953, did not authorise the imposition, levy or collection of any purchase tax on the transactions in question and that the transactions took place in the course of inter State trade and commerce. The petitioner's appeal to the Assistant Collector of Sales Tax was dismissed and then the present petition for writs of *mandamus* and *certiorari* was filed in the Supreme Court. The petitioner contended that the Bombay Sales Tax Act, 1953, did not authorise the imposition of a tax on the purchase of bidi-tobacco which was not one of the goods specified in column 4 of Schedule B of the said Act. The petitioner further contended that the purchased tobacco was delivered to it within the State of Bombay as a direct result of the purchase but it was intended to be sent to the State of Madhya Pradesh to be manufactured into *bidis* at that place. The only thing which was done in the Bombay State was to remove the stem and dust from the tobacco which process did neither amount to "consumption" of tobacco as contemplated under the Explanation to Art. 286 of the Constitution nor did it convert the tobacco which was sent to the Head Office into an article "commercially different" from the tobacco purchased from the cultivators. In their counter-affidavit the respondents averred that the raw tobacco was converted into *bidi* pattis before it was sent outside Bombay State both of which were commercially different articles and the market value of which was also different. These averments were not controverted by the petitioner.

Held, that the words "all goods other than those specified from time to time in Schedule A and in the preceding entries" in entry 80 of Schedule B of the Bombay Sales Tax Act, 1953, amounted to a specification of goods for the purposes of s. 10 of the Act and as bidi tobacco purchased by the petitioner was not within Schedule A or any of the earlier entries in Schedule B purchase tax at the rate mentioned against entry 80 was leviable under s. 10 of the Act.

Whenever a commodity was so dealt with as to change it into another commercial commodity there was consumption of the first commodity within the meaning of the Explanation to Art. 286 of the Constitution.

State of Travancore-Cochin v. *Shanmugha Vilas Cashew Nut Factory*, [1954] S.C.R. 53, followed.

The delivery of tobacco in Bombay State for changing it into *bidi* patti which is a commercially different article amounted to delivery for the purpose of consumption and the purchase fell within the meaning of Art. 286(1)(a) of the Constitution and took place inside the Bombay State.

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ORIGINAL JURISDICTION: Petition No. 125 of 1958.

Petition under Article 32 of the Constitution of India for enforcement of Fundamental Rights.

G. S. Pathak, A. P. Sen and *J. B. Dadachanji*, for the Petitioners.

H. J. Umrigar and *T. M. Sen*, for the Respondents.

1960. September 20. The Judgment of the Court was delivered by

DAS GUPTA J.—In this petition under Art. 32 of the Constitution the petitioner, a partnership firm carrying on the business of manufacture of *bidis* and having its head office at Jabalpur within the State of Madhya Pradesh complain that its fundamental rights under Art. 19(1)(f) and (g) of the Constitution have been violated by the illegal imposition of a purchase tax on certain purchases of tobacco made by it in the State of Bombay. It appears that the Sales Tax Officer, Baroda, made an order assessing the petitioner to a purchase tax under s. 14, sub-s. (6), of the Bombay Sales Tax Act, 1953 (Bom. Act III of 1953) for the period April 1, 1954 to September 29, 1955. The petitioner contends that this assessment was illegal inasmuch as these transactions are purchases "outside the State of Bombay" within the meaning of Art. 286(1)(a) of the Constitution read with the Explanation and also because these transactions took place in the course of inter-State trade and commerce within the meaning of Art. 286(2) of the Constitution. It was also urged that the provisions of the Bombay Sales Tax Act, 1953, do not authorise the imposition, levy or collection of any purchase tax on the transactions in question.

In appears that against this assessment order made by the Sales Tax Officer on October 18, 1955, the petitioner preferred an appeal to the Assistant Collector of Sales Tax. This officer set aside the order of the Sales Tax Officer imposing a penalty under s. 16(4) but dismissed the appeal against the order of assessment to tax. The order in appeal was made on

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November 26, 1957. The present petition was filed on August 4, 1958, praying for a writ in the nature of mandamus or any other appropriate direction or order against the respondents—The State of Bombay, The Collector of Sales Tax, State of Bombay, The Sales Tax Officer, Baroda and the Assistant Collector of Sales Tax, Northern Division, Range III, Baroda—preventing them from enforcing the provisions of the Bombay Sales Tax Act against the petitioner on the transactions in question, for a writ in the nature of certiorari for quashing the proceedings taken against the petitioner and the orders of assessment made by the Sales Tax Officer and the order in appeal by the Assistant Collector of Sales Tax and for a declaration that the Act does not authorise the imposition, levy or collection of tax on the transactions in question.

It will be convenient to consider first the petitioner's contention that the Bombay Sales Tax Act, 1953, does not authorise the imposition of a tax on the purchase of bidi-tobacco. The relevant portion of s. 10(1) which provides for the levy of a purchase tax is in these words :—

"there shall be levied a purchase tax on the turnover of purchase of goods specified in column 1 of Schedule B at the rates, if any, specified against such goods in column 4 of the said schedule.....".

The petitioner's contention is that bidi-tobacco which was purchased by it is not one of the goods specified in Column 4 of the said schedule. Turing to Schedule B we find there are 80 entries in the first column. Against each of these entries the second column of the schedule mentions the rates of sales tax leviable under s. 8 of the Act : the third column mentions the rate of general sales tax leviable under s. 9, while the fourth column which is the last column mentions the rate of purchase tax. While the entries from 1 to 79 mention specific articles, entry 80 as it stood before its amendment in 1957 was in these words :—"All goods other than those specified from time to time in Schedule A and in the preceding entries." (An amendment by the Bombay Act, 71 of

1958, added the words "and sec. 7A" after the words "Schedule A"). The question is whether these words "all goods other than those specified from time to time in Schedule A and in the preceding entries" amount to a specification of goods for the purpose of s. 10. On behalf of the petitioner Mr. Pathak contends that only the mention of specific goods can amount to specification and mention of goods in such general language as "all goods other than those specified from time to time in Schedule A and in the preceding entries" cannot be said to be a specification of goods. We are unable to accept this argument. While it is true that mention of specific goods is specification for the purpose of s. 10 as also for the purpose of ss. 8 and 9 of the Act, we see no reason to think that mention of goods in a general way as "all goods other than those specified from time to time in Schedule A and in the preceding entries" of Schedule B itself is not a specification. We are of opinion that the entry 80 in Schedule B is a specification of goods within the meaning of s. 10 and as bidi-tobacco which the petitioner purchased is not within either Schedule A or any of the earlier entries in Schedule B, purchase tax under s. 10 is leviable on these purchases, at the rate mentioned against Entry 80.

This brings us to the petitioner's main contention that the purchases took place outside the State of Bombay. The contention as stated in para. 11 of the petition is that the purchases would be deemed to have taken place in the State of Madhya Pradesh, where the tobacco was delivered for consumption. At the hearing, however, it was not disputed that the tobacco was delivered to the Company's Ranoli Branch within the State of Bombay which made the purchase. The despatch by the Ranoli Branch to the company's head office at Jabalpur is not a delivery as a direct result of the sale.

It has been urged however that even though there was delivery in Bombay State, that delivery was not for the purpose of consumption within Bombay State; and so, the Explanation to Art. 286 (1)(a) does not come into operation.

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The sales tax authorities have proceeded on the basis that as a direct result of the purchase goods were delivered in the State of Bombay for the purpose of consumption in the State of Bombay. Unless that view is shown to be wrong, the purchase must be held to have taken place within the State of Bombay and it will be unnecessary to consider the larger question whether even if the Explanation be not applicable, Bombay State is entitled to tax.

The definite case of the petitioner is that the purchased tobacco is delivered to it within the State of Bombay as a direct result of the purchase. The further question that has been raised is whether such delivery was for the purpose of consumption in the State of Bombay. On behalf of the petitioner it was contended that after its delivery, the tobacco was intended to be sent to the State of Madhya Pradesh to be manufactured into *bidis* at that place. All that used to be done to the purchased tobacco in the State of Bombay was to have the stems and dust removed from the tobacco. Such removal of the waste material, like stems and earth, it is urged, does not amount to consumption of tobacco. It is further stated that the tobacco which is despatched to the head office after removal of the waste material is not an article "commercially different" from the tobacco purchased from the cultivators. In the respondents' counter affidavit it is stated that "the petitioners after purchasing raw tobacco from the cultivators in the State of Bombay, subject the raw tobacco so purchased to process leading to its conversion into bidi pattis for immediate use in the manufacture of bidis..... that marketable value of raw tobacco and bidi pattis differs and that both these are commercially different articles.....". There was no further affidavit filed on behalf of the petitioner to traverse the averments of the respondents that the raw tobacco is converted into bidi patti before it is despatched outside Bombay State and that the market value of raw tobacco and bidi patti differs. Mr. Pathak also conceded at the hearing the correctness of the statement that anybody could go to the market to purchase the

article known as raw tobacco or Akho Bhuko and that he could also go and purchase from the market the article known as "*bidi* patti". That itself is sufficient proof that raw tobacco and *bidi* patti are distinct and different commercial articles.

It is in the background of these facts that we have to consider the question whether tobacco was delivered in the State of Bombay for consumption in that State. In answering that question it is unnecessary and indeed inexpedient to attempt an exhaustive definition of the word "consumption" as used in the explanation to Art. 286 of the Constitution. The act of consumption with which people are most familiar occurs when they eat, or drink or smoke. Thus, we speak of people consuming bread, or fish or meat or vegetables, when they eat these articles of food; we speak of people consuming tea or coffee or water or wine, when they drink these articles; we speak of people consuming cigars or cigarettes or bidis, when they smoke these. The production of wealth, as economists put it, consists in the creation of "utilities". Consumption consists in the act of taking such advantage of the commodities and services produced as constitutes the "utilization" thereof. For each commodity, there is ordinarily what is generally considered to be the final act of consumption. For some commodities, there may be even more than one kind of final consumption. Thus grapes may be "finally consumed" by eating them as fruits; they may also be consumed by drinking the wine prepared from "grapes". Again, the final act of consumption may in some cases be spread over a considerable period of time. Books, articles of furniture, paintings may be mentioned as examples. It may even happen in such cases, that after one consumer has performed part of the final act of consumption, another portion of the final act of consumption may be performed by his heir or successor-in-interest, a transferee, or even one who has obtained possession by wrongful means. But the fact that there is for each commodity what may be considered ordinarily to be the final act of consumption, should not make us forget that in reaching

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the stage at which this final act of consumption takes place the commodity may pass through different stages of production and for such different stages, there would exist one or more intermediate acts of consumption. Thus, the final act of consumption of cotton may be considered to be the use as wearing apparel of the cloth produced from it. But before cotton has become a wearing apparel, it passes, through the hands of different producers, each of whom adds some utility to the commodity received by him. There is first the act of ginning; ginned cotton is spun into yarn by the spinner; the spun yarn is woven into cloth by the weaver; the woven cloth is made into wearing apparel by the tailor. At each of these stages distinct utilities are produced and what is produced is at the next stage consumed. It is usual, and correct to speak of raw cotton being consumed in ginning; of ginned cotton being consumed in spinning; of spun yarn being consumed in weaving; of woven cloth being consumed in the making of wearing apparel. The final product—the wearing apparel—is ultimately consumed by men, women and children in using it as dress. In the absence of any words to limit the connotation of the word "consumption" to the final act of consumption, it will be proper to think that the Constitution-makers used the word to connote any kind of user which is ordinarily spoken of as consumption of the particular commodity.

Reverting to the instance of cotton, mentioned above, it will be proper to hold that when raw cotton is delivered in State A for being ginned in that State, it is delivered for consumption in State A; when ginned cotton is delivered in State B for being spun into yarn, it is delivered for consumption in State B; when yarn is delivered in State C for being woven into cloth in that State, it is delivered for consumption in State C; when woven cloth is delivered in State D for being made by tailor in that State into wearing apparel, there is delivery of cloth for consumption in State D; and finally when, wearing apparel is delivered in State E for being sold as dress

in that State, it is delivery of wearing apparel for consumption in State E. Except at the final stage of consumption which consists in using the finished commodity as an article of clothing, there will be noticed at each stage of production the bringing into existence of a commercial commodity different from what was received by the producers. This conversion of a commodity into a different commercial commodity by subjecting it to some processing, is consumption within the meaning of the Explanation to Art. 286 no less than the final act of user when no distinct commodity is being brought into existence but what was brought into existence is being used up. At one stage of the argument what Mr. Pathak appeared to insist was that there must be destruction of the substance of the thing before the thing can be said to be consumed. That takes us nowhere, because we have still to find out what is meant by destruction of the substance. It may well be said that when a commodity is converted into a commercially different commodity its former identity is destroyed and so there is destruction of the substance, to satisfy the test suggested by the learned counsel. We think it unnecessary however to enter into a discussion of what amounts to "destruction" as even without deciding, whether there was destruction or not, we think it proper and reasonable to say that whenever a commodity is so dealt with as to change it into another commercial commodity there is consumption of the first commodity within the meaning of the Explanation to Art. 286. This aspect of consumption was pointed out by Das, J. (as he then was), in *State of Travancore-Cochin* v. *Shanmugha Vilas Cashew Nut Factory* (1) at p. 113 of the Report. The purchase there was of raw cashew nuts. Discussing the question whether the delivery of these nuts in Travancore was for the purpose of consumption in that State, Das, J., observed :—

"The raw cashew-nuts, after they reach the respondents, are put through a process and new articles of commerce, namely, cashew-nut oil and edible cashew-nut kernels, are obtained. It follows,

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therefore, that the raw cashew-nut is consumed by the respondents in the sense I have mentioned".

Das, J., here proceeded on the view that using a commodity so as to turn it into a different commercial article amounts to consumption, within the meaning of the Explanation to Art. 286(1)(a)—a view which he had earlier indicated at p. 110 of the Report. We are not aware of any case where such use of a commodity has been held not to amount to consumption.

It must therefore be held on the facts of this case that when tobacco was delivered in the State of Bombay for the purpose of changing it into a commercially different article, viz., bidi patti the delivery was for the purpose of consumption. The purchases in this case therefore fall within the meaning of Explanation to Art. 286(1)(a) and must be held to have taken place inside the State of Bombay.

There remains for consideration the objection that the transactions took place in the course of inter-State trade or commerce within the meaning of Art. 286(2) of the Constitution and the levy of tax was therefore prohibited by the provisions thereof. Even if these transactions were in the course of inter-State trade, the bar of Art. 286(2) of the Constitution stands removed by the Sales Tax Laws Validation Act, for the entire period upto September 6, 1955. The levy of tax for the period September 7, 1955, to September 29, 1955, would be illegal if these transactions are in the course of inter-State trade. The petitioner's counsel however informed us that he did not want a decision on his question and would not, in this case, press his objection under Art. 286(2). It is unnecessary for us therefore to decide whether the transactions in question took place in the course of inter-State trade or commerce within the meaning of Art. 286(2) of the Constitution. As the petitioner has failed to establish any violation of its fundamental right, the petition is dismissed with costs.

Petition dismissed.