REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5302 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 23592 OF 2014)

THE STATE OF MADHYA PRADESH ..... APPELLANT(S)
AND OTHERS

VERSUS

LAFARGE DEALERS ASSOCIATION
AND OTHERS ..... RESPONDENT(S)

W I T H

CIVIL APPEAL NO. 460 OF 2005

CIVIL APPEAL NO. 461 OF 2005

CIVIL APPEAL NO. 7073 OF 2005

CIVIL APPEAL NO. 2343 OF 2007

CIVIL APPEAL NO. 5303 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.10520 OF 2013)

CIVIL APPEAL NO. 5304 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 1334 OF 2014)

CIVIL APPEAL NO. 5305 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 10165 OF 2014)

CIVIL APPEAL NO. 5306 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 23297 OF 2014)

CIVIL APPEAL NO. 5308 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 6729 OF 2016)

A N D

CIVIL APPEAL NO. 5307 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 16550 OF 2016)

J U D G M E N T

SANJIV KHANNA, J.

Leave granted in all the special leave petitions.

2. This judgment would dispose of the afore-captioned appeals which relate to the legal effect of bifurcation of the State of Madhya Pradesh into the successor State of Madhya Pradesh and the State of Chhattisgarh by the Madhya Pradesh Reorganisation Act, 2000 ("Reorganisation Act", for short) on exemption or benefit of deferment of sales tax granted under the Madhya Pradesh Commercial Tax Act, 1994 read with the applicable rules. The question to be answered is whether the industrial unit in the reorganised State of Madhya Pradesh and under the new State of Chhattisgarh would continue to avail the benefit of such exemption or deferment even after the bifurcation in both the states, irrespective of the location of the industrial unit which would be in one of the two states.

3. Civil Appeal Nos. 460, 461, 7073 of 2005 and 2343 of 2007 arise from the judgments of the Division Bench of the Madhya Pradesh High Court, Jabalpur Bench, upholding judgment of the learned Single Judge dismissing the Writ Petition by the manufacturer/dealer of cement *inter-alia* recording that on enforcement of the Reorganisation Act, two separate states viz., the State of Madhya Pradesh and the State of Chhattisgarh had come into existence as postulated by the Constitution of India and hence, benefit of the exemption or deferment of sales tax would be restricted and confined to the boundaries/limits of the state in which the unit was located and would not operate beyond the limits of the state boundary. It was observed that any trade and movement of goods between the two states henceforth would be inter-state trade and not intra-state trade and the provisions of the Reorganisation Act had not removed and eclipsed this legal position but had a limited effect to treat the laws in operation in the State of Madhya Pradesh as equally applicable to the State of Chhattisgarh.

4. The other set of appeals arising from Special Leave Petition (Civil) Nos. 10520 of 2013, 1334, 10165, 23297 of 2014, 6729 and 16550 of 2016 have been preferred by the State of Madhya

Pradesh and the State of Chhattisgarh impugning decisions of the High Court of Madhya Pradesh, which have in view of the pronouncement of this Court in ***Commissioner of Commercial Taxes, Ranchi and Another v. Swarn Rekha Cokes and Coals Pvt. Ltd. and Others***[1] taken a contrary view and held that notwithstanding the creation of the two states, exemption or deferment of tax notifications issued before the bifurcation would continue to apply in the new state and that for the purpose of sales tax, the two states were deemed to be one because of the legal fiction envisaged vide Sections 78 and 79 of the Reorganisation Act.

5. At this stage, it would be appropriate to mention that a Division Bench of this Court (Ashok Bhan and V.S. Sirpurkar, JJ.) vide order dated 12th September, 2007 had observed that certain facts and provisions of law which were not taken note of in ***Swarn Rekha's case*** (supra), had come to light and therefore they had thought it appropriate to refer the appeals to a larger Bench for consideration.

6. Before we deal with the rival contentions, it would be appropriate to notice and take on record the undisputed position. State of

[1] (2004) 6 SCC 689

Madhya Pradesh in exercise of powers conferred under Section 12 of the Madhya Pradesh General Sales Tax Act, 1958 and Section 8(5) of the Central Sales Tax Act, 1956 (for convenience we would refer to the two enactments as the "Sales Tax Act" for short), with a view to attract investors and increase industrial output in the State, had vide notification dated 19th February, 1991 formulated a policy for grant of sales tax exemption to industrial units having fixed assets above Rs. 100 crores. Quantum of exemption from tax was to be equal to the capital investment in the fixed assets and the duration or period was 11 years from the date of commencement of commercial production or the date on which quantum of exempted tax reached the limit equivalent to the value of capital investment in the fixed assets. It is an undisputed position that private parties/assessee to the present appeals being entitled to the benefit/exemption were issued a certificate of eligibility for exemption from tax by the Directorate of Industries in the unified State of Madhya Pradesh.

7. The industrial units belonging to the private parties/assessee situated in the unified State of Madhya Pradesh after the bifurcation in terms of the Reorganisation Act would necessarily fall in the area/boundary forming a part either of the reorganised State of Madhya Pradesh or the new State of Chhattisgarh. As

noticed above, the precise issue before us is whether these industrial units, which were granted exemption and were after the bifurcation located in the reorganised State of Madhya Pradesh or the new State of Chhattisgarh, would continue to enjoy the benefit of exemption/deferment of tax in the other state while conducting inter-state transaction(s) from the state they are located to the new State of Chhattisgarh or the reorganised State of Madhya Pradesh, as the case may be.

8. Before we dwell into the respective contentions and elaborate our reasons, it would be appropriate to reproduce relevant provisions of the Reorganisation Act, viz. Sections 2(e), (f), (j) and (k), Sections 3, 4 and 5 and Sections 78, 79, 80, 85 and 86(1) which are as under:

> "**Section 2 (e), (f), (j) and (k) of the Reorganisation Act**
>
> Part I
> PRELIMINARY
>
> 2. Definitions. —In this Act, unless the context otherwise requires, —
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> xx xx xx
>
> (e) "existing State of Madhya Pradesh" means the State of Madhya Pradesh as existing immediately before the appointed day;
>
> (f) "law" includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed

day, the force of law in the whole or in any part of the existing State of Madhya Pradesh;

xx xx xx

(j) "successor State", in relation to the existing State of Madhya Pradesh, means the State of Madhya Pradesh or Chhattisgarh;

(k) "transferred territory" means the territory which on the appointed day is transferred from the existing State of Madhya Pradesh to the State of Chhattisgarh;

Sections 3, 4 and 5 of the Reorganisation Act

Part II
REORGANISATION OF THE STATE OF MADHYA PRADESH

3. **Formation of Chhattisgarh State.—** On and from the appointed day, there shall be formed a new State to be known as the State of Chhattisgarh comprising the following territories of the existing State of Madhya Pradesh, namely:—

Bastar, Bilaspur, Dantewada, Dhamtari, Durg, Janjgir-Champa, Jashpur, Kanker, Kawardha, Korba, Koriya, Mahasamund, Raigarh, Raipur, Rajnandgaon and Surguja districts,
and thereupon the said territories shall cease to form part of the existing State of Madhya Pradesh.

4. **State of Madhya Pradesh and territorial divisions thereof.—** On and from the appointed day, the State of Madhya Pradesh shall comprise the territories of the existing State of Madhya Pradesh other than those specified in section 3.

5. **Amendment of the First Schedule to the Constitution.—** On and from the appointed day, in the First Schedule to the Constitution, under the heading "I. THE STATES", —

(a) in the paragraph relating to the territories of the State of Madhya Pradesh, after the words, brackets and figures, "the Rajasthan and Madhya Pradesh

(Transfer of Territories) Act, 1959 (47 of 1959)", the following shall be added, namely: —

"but excluding the territories specified in section 3 of the Madhya Pradesh Reorganisation Act, 2000.";

(b) after entry 25, the following entry shall be inserted, namely: —

"26. Chhattisgarh: The territories specified in section 3 of the Madhya Pradesh Reorganisation Act, 2000."

Sections 78, 79, 80, 85 & 86 of the Reorganisation Act

PART X
LEGAL AND MISCALLANEOUS PROVISIONS

78. **Territorial extent of laws.—** The provisions of Part II of this Act shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Madhya Pradesh shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Madhya Pradesh before the appointed day.

79. **Power to adapt laws.—** For the purpose of facilitating the application in relation to the State of Madhya Pradesh or Chhattisgarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature or other competent authority.

Explanation. — In this Section, the expression "appropriate Government" means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government.

> 80. **Power to construe laws.—** Notwithstanding that no provision or insufficient provision has been made under section 79 for the adaptation of a law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Madhya Pradesh or Chhattisgarh, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority.
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> 85. **Effect of provisions of the Act inconsistent with other laws**.— The provision of this Act shall have effect notwithstanding anything in consistent therewith contained in any other law.
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> 86. **Power to remove difficulties.—** (1) If any difficulty arises in giving effect to the provisions of this Act, the President may, by order, do anything not in consistent with such provisions which appears to him to be necessary or expedient for the purpose of removing the difficulty:
> Provided that no such order shall be made after the expiry of a period of three years from the appointed day."

9. The Reorganisation Act, which was to commence from the appointed day, was notified by the Central Government vide Notification No. S.O. 827(E), dated 14th September, 2000 published in the Gazette of India, Extraordinary Part II sec.3(ii) with 1st November, 2000 as the appointed date. Accordingly, on 1st November, 2000 the erstwhile State of Madhya Pradesh was bifurcated and divided into the reorganised State of Madhya Pradesh and the new State of Chhattisgarh. The political map of the country underwent a change. The reorganised State of

Madhya Pradesh and the new State of Chhattisgarh were described as "successor State" vide clause (j) to Section 2 of the Reorganisation Act. The transferred territories, which were to form part of the State of Chhattisgarh, were demarcated and specified in Section 3 of the Reorganisation Act. As per Section 4, the reorganised State of Madhya Pradesh was to comprise of the existing territories other than those specified in Section 3 i.e., the territories which shall now form part of the State of Chhattisgarh. The expression "law" as defined in clause (f) to Section 2 of the Reorganisation Act included any enactment, ordinance, regulation, order, notification, etc., in force immediately before the appointed day in the whole or any part of the erstwhile or unified State of Madhya Pradesh. The law by definition would include delegated legislation and also the exemption notification issued under the Sales Tax Act, and the certificate of eligibility for exemption from tax issued under the Sales Tax Act.

10. Section 5 of the Reorganisation Act states that on and from the appointed day, in the First Schedule to the Constitution under the heading "THE STATES" after entry 25, entry 26 shall be inserted by mentioning the State of Chhattisgarh which shall comprise of the territories specified in Section 3 of the Reorganisation Act.

Similarly, in relation to and in the case of Madhya Pradesh, necessary changes will be made in the territories forming part of the State by excluding the territories specified in Section 3 of the Reorganisation Act.

11. Before interpreting Sections 78 and 79 of the Reorganisation Act which are in *pari materia* to Sections 84 and 85 of the Bihar Reorganisation Act, 2000, we would like to reproduce paragraphs 26, 27, 28, 29 and 30 of ***Swarn Rekha*** (supra), which read as under:

> "**26.** The question then arises, as to what is the true meaning and import of Sections 84 and 85 of the Act?
>
> **27.** We have earlier reproduced Sections 84 and 85 of the Act. As earlier noticed, Sections 3 to 6 which form part of Part II of the Act provide for the formation of new States to be known as the State of Jharkhand and the State of Bihar. The territories specified in Section 3 constitute the new State of Jharkhand and the remaining territories fall within the territory of the State of Bihar. However, Section 84 in express terms, provides that the provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extended or applied and the territorial references in any such law to the State of Bihar shall, until otherwise provided by a competent legislature or other competent authority, be construed as meaning the territories within the existing State of Bihar before the appointed day. Section 85 provides that for the purpose of facilitating the application in relation to the State of Bihar or Jharkhand of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may

be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature or other competent authority. The language in these sections is clear and unambiguous. These sections provide that the laws which were applicable to the undivided State of Bihar would continue to apply to the new States created by the Act. The laws that operated continue to operate notwithstanding the bifurcation of the erstwhile State of Bihar and creation of the new State of Jharkhand. They continue in force until and unless altered, repealed or amended. It is not disputed before us and indeed it cannot be disputed in view of the wide definition given to "law" in Section 2(*f*) of the Act that the notification issued under Section 7(3)(*b*) of the Bihar Finance Act, 1981 is law within the meaning of Sections 84 and 85 of the Act. Thus, the notification published in the Bihar Gazette on 22-12-1995 bearing SO No. 478 continues to operate in the State of Jharkhand till such time as it is altered, repealed or amended. By virtue of Section 84, the territorial references in any such law (which includes the notification in question), to the State of Bihar shall be construed as meaning the territories within the existing State of Bihar before the appointed day, until otherwise provided by a competent legislature or other competent authority. A conjoint reading of both these provisions makes it abundantly clear that the territorial references in any law in force immediately before the appointed day must be construed as meaning the territories within the existing State of Bihar before the appointed day. To facilitate their application in respect of the State of Bihar or Jharkhand, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law as it may consider necessary or expedient by way of repeal or amendment. Till such law is so repealed or amended in accordance with law, it shall have effect. After their amendment or alteration, they shall have effect subject to the adaptations and modifications made. We, therefore, find no difficulty in holding that the notification of the Government of Bihar issued under Section 7(3)(*b*) of the Bihar Finance Act, 1981 and published in the gazette on 22-12-1995 being SO No. 478 is law as defined by Section 2(*f*) of the Act.

The said notification holds the field and applies to all the territories which comprised the undivided State of Bihar. The States of Bihar and Jharkhand have been vested with power to make such adaptations and modifications of the law as they may consider necessary or expedient. This they can do by issuance of order before the expiration of two years from the appointed day. After the adaptations and modifications of the law, the law shall have effect as so modified or adapted till such time as a competent legislature or other competent authority further alters, repeals or amends such law.

28. This is not the first time that a provision such as Section 84 of the Act has come up for interpretation by this Court. Section 88 of the Punjab Reorganisation Act, 1966 is also identically worded as Section 84 of the Act. That provision came up for consideration before this Court in at least three decisions which have been brought to our notice, namely, *State of Punjab* v. *Balbir Singh*, *Sher Singh* v. *Financial Commr. of Planning* and *Dhayanand* v. *Union of India*. In the first of these cases i.e. in *State of Punjab* v. *Balbir Singh* this Court was concerned with an administrative order and not a law with which we are concerned in the instant case. Section 88 of the Punjab Reorganisation Act was noticed as also the definition of law under Section 2(g) of that Act. Section 2(g) of that Act did not define law as widely as it has been defined under Section 2(f) of the Act. This Court agreed with the High Court that the impugned administrative orders in question were not law within the meaning of Section 2(g) of that Act and hence, were not saved by Section 88. However, this Court held that when there is no change of sovereignty and it is merely an adjustment of territories by reorganisation of a particular State, the administrative orders made by the Government of the erstwhile State continue to be in force and effective and binding on the successor States until and unless they are modified, changed or repudiated by the Governments of the successor States. This Court observed that no other view is possible to be taken as that will merely bring about chaos in the administration of the new States. Their Lordships found no principle in support of the stand that administrative orders made by the Government of the erstwhile State automatically

lapsed and were rendered ineffective on the coming into existence of the new successor States. Their Lordships further distinguished a case where there was no change of sovereignty and there was merely an adjustment of territories by the reorganisation of a particular State, from a case of absorption of one State in another by accession, conquest, merger or integration. The same view was taken by this Court in the other two judgments referred to earlier. We are of the view that the principles laid down in *Balbir Singh case* fully apply to the facts of this case having regard to the identical legislative provision and, particularly so when the notification in question is by definition law and not a mere administrative order.

29. The next question which arises is whether the aforesaid notification has been altered or modified by the State of Jharkhand. It was sought to be argued before us that the State of Jharkhand has announced its own industrial policy on 25-8-2001 and, therefore, the industrial policy of 1995 and the notification bearing SO No. 478 dated 22-12-1995 issued under Section 7(3)(b) of the Act will have no legal force in the State of Jharkhand. The High Court in *Swarn Rekha case* has considered this aspect of the matter and we find ourselves in complete agreement with the view taken by the High Court. There is nothing in the industrial policy of 2001 which alters, amends or repudiates the notification dated 22-12-1995. It deals with new industrial units set up after 15-11-2000 and, therefore, whatever benefits or incentives are provided for in the said policy are applicable to new industrial units set up after 15-11-2000. In the instant case, we are concerned with industrial units set up before 15-11-2000 and which were found eligible for grant of exemption certificate under the industrial policy of the State of Bihar of the year 1995. Moreover, the industrial policy of the State of Jharkhand will not apply to the units already existing before that date. In these circumstances in the absence of anything in the Industrial Policy, 2001 of the Government of Jharkhand or in the notification or order issued by the Government of Jharkhand, Notification No. SO No. 478 dated 22-12-1995 must continue to operate in the State of Jharkhand and the appellants or respondents concerned, as the case may be, must be held entitled

to the benefits and incentives envisaged by the said notification.

The submission which found favour with the High Court of Jharkhand at Ranchi in Civil Appeal No. 3765 of 2003 is that the statutory notification issued by the erstwhile State of Bihar envisaged only intra-State sale transactions and not inter-State sale transactions. With the coming into existence of two States, incentive by way of exemption from payment of sales tax cannot be claimed in respect of transactions which can now be categorised as inter-State sale transactions. The submission overlooks the provisions of Sections 84 and 85 of the Act, which create a legal fiction. It is well settled that in interpreting a provision creating a legal fiction, the court must ascertain the purpose for which the fiction is created and having done so, to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. When the law requires that an imaginary state of affairs should be treated as real, then unless prohibited from doing so, one must also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. As Lord Asquith in *East End Dwellings Co. Ltd.* v. *Finsbury Borough Council,* All ER at p. 589 observed that having done so, you must not cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs. Section 84 bids us to imagine that despite the division of the erstwhile State of Bihar into two States, any law in force immediately before the appointed day, notwithstanding territorial references in them, shall, until otherwise provided by the competent legislature or other competent authority, be construed as meaning the territories within the existing State of Bihar before the appointed day. In simple words, though the law may refer to the State of Bihar, and though the State of Bihar has been bifurcated into two by creating the State of Jharkhand, the laws in force before the appointed day must continue to operate in the territories which formed the erstwhile State of Bihar. This, of course, is subject to amendment, alteration or repudiation by a legislature or other competent authority. The statutory notification relied upon, therefore, continues to operate throughout the

territories which earlier constituted the State of Bihar. Under Section 85, they shall continue to operate until repealed or amended in the manner provided. As a natural consequence, the entrepreneurs are entitled to the benefits and incentives provided in the said notification. Having regard to the overriding provisions of this Act, as envisaged under Section 91, the statutory notifications must prevail and the benefits flowing therefrom must accrue to the beneficiaries. We must not permit our mind to boggle by imagining that what was one State earlier has now become two and consequently what were intra-State sale transactions earlier are now inter-State sale transactions. If any law in force before the appointed day must have effect in the absence of its modification or repeal, the benefit under that law must flow notwithstanding the fact that in reality intra-State sale transactions may have become inter-State sale transactions. Law gives authority to the State concerned to bring about a change in the state of affairs, if it so considers necessary or expedient by modifying or amending the law or by altering, repealing or amending it by legislation. We have, therefore, no doubt that the High Court of Jharkhand at Ranchi was wrong in dismissing the writ petition on the ground that the notification of 22-12-1995 could not apply to inter-State sale transactions.

30. We have carefully considered the decisions relied upon by Shri Rakesh Dwivedi in *Rattan Lal & Co. v. Assessing Authority, State of Mysore v. P.B. Hussain Kunhi & Co.* and *CST v. Minerva Minerals* and we find that none of those decisions in any manner advances the case of the State. The decisions in those cases depended on the interpretation of the provisions of the Acts concerned which were not at all similar to the provisions with which we are concerned in the instant appeals. In Civil Appeal No. 2450 of 2003, the High Court of Patna on a similar ground has rejected the claim of the appellants. It noticed the earlier decision of the High Court, but distinguished the same on the ground that in the case in hand, the industrial unit was situated in the State of Jharkhand while the benefit was being claimed in the State of Bihar. In view of our earlier findings, this would not be a relevant consideration for rejecting the writ petition. Moreover, if

> this principle were to be upheld, it would result in arbitrary results inasmuch as the entrepreneurs whose industrial units operate in the State of Bihar will get the benefit of exemption from payment of sales tax on purchase of raw materials in the State of Jharkhand, but their counterparts in the State of Jharkhand would not be entitled to such benefit. We must not lose sight of the fact that an unforeseen event may give rise to unusual situations. Faced with such situations, the legislature has to find appropriate methods and solutions to deal with them. When the State of Bihar announced its industrial policy in the year 1995, it could not foresee that the State will be divided five years later. But when the division of the State became a reality, Parliament had to make appropriate provisions to carry on the administration in the two States. If the laws in force were to lapse on the day the division was effected, a chaotic situation would have emerged inasmuch as the newly created State would be rendered a State without laws. It is, therefore, that provisions like Sections 84 and 85 of the Act are enacted to maintain continuity, and at the same time authorise the States to make such modifications and adaptations as are considered necessary by mere issuance of orders within two years, and thereafter by legislation or exercise of power by the competent authority. Such provisions have necessarily to be incorporated in legislations relating to reorganisation of States. It is, therefore, appropriate that such legislations must be construed in the light of the unusual situation created by the creation of a new State and the object sought to be achieved."

12. Relying upon the aforesaid ratio and interpretation of Sections 78 to 80, 85 and 86 of the Reorganisation Act, learned counsel for the private parties/assessee have submitted that the Reorganisation Act did not withdraw and negate the benefit of exemption which was already granted in respect of the entire area forming part of unified State of Madhya Pradesh. Provisions of the Reorganisation

Act protect and enforce the "law" which included the exemption notification in force in the unified State of Madhya Pradesh on the appointed day. Reliance was placed on the Adaptation of Laws Order, 2000 Notification No. F1/17/-2000/C.Tax/V dated 30th November, 2002 with effect from 1st November, 2000, the relevant portion of which reads as under:

> "2. The laws, as amended from time to time, specified in the Schedule to this order, which are in force in the State of Madhya Pradesh immediately before the formation of the State of Chhattisgarh, are hereby extended to and shall be in force in the State of Chhattisgarh until repealed or amended. Subject to the modifications that in all the laws for the words "Madhya Pradesh" wherever they occur the word "Chhattisgarh" shall be substituted.
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> 3. Anything done or any action taken (including any appointment, notification, notice, order, rule, form, regulation, certificate or licence) in exercise of the powers conferred by order under the laws specified in the Schedule shall continue to be in force in the State of Chhattisgarh."

The Schedule to the said Notification, it was highlighted, included the Sales Tax Act and the rules framed thereunder. Accordingly, the Adaptation of Laws Order states that subject to the modification in the form of substitution of the word "Madhya Pradesh" with the word "Chhattisgarh", "the law" would continue to apply and had remained in force and would be effective for the balance period of 11 years or till the quantum of exemption was

reached. Further, Section 80 of the Reorganisation Act empowers the court, tribunal or authority to enforce "the law" for the purpose of facilitating its application to the reorganised State of Madhya Pradesh and the new State of Chhattisgarh in a manner, without affecting its substance, as would be necessary or proper in regard to the matter before the court, tribunal or authority. This prime objective must keep in mind by the Court while interpreting the provisions. Section 85 in the nature of a *non-obstante* or overriding clause mandates that the provisions of the Act would have effect notwithstanding anything inconsistent contained in any other law. Therefore, the exemption notification must be interpreted as in force in both the States i.e. the reorganised State of Madhya Pradesh and the new State of Chhattisgarh as if the unified State of Madhya Pradesh had not been bifurcated. This would be the only way to reconcile Part X of the Reorganisation Act and give effect to the legal fiction created by Sections 78 and 79 of the Reorganisation Act. Section 78 by incorporating a deeming fiction enures to the benefit given to the private parties/assessee was not denied and fully given effect to.

13. The two States, on the other hand, submit that with effect from the appointed day the new State of Chhattisgarh had come into

existence and hence the trade inter-se or between the territories now forming part of the State of Chhattisgarh and the reorganised State of Madhya Pradesh would be in the nature of inter-state sales and not intra-state sales. The Sales Tax Act as earlier applicable to the unified State of Madhya Pradesh would be applicable in the reorganised State of Madhya Pradesh and the new State of Chhattisgarh but within the territorial confines and limits of the two States. Therefore, the units situated within the territorial limits/boundaries of the reorganised State of Madhya Pradesh and the new State of Chhattisgarh would continue to enjoy benefit of exemption in respect of intra-state trade within the particular state and not in respect of inter-state trade between the two states. This is the exact purport and meaning behind Section 78 and 79 of the Reorganisation Act. Reliance was placed on the judgment of the Division Bench of the Andhra Pradesh High Court in ***Sri Peera Mohammad Mahamood Saheb v. The State of Andhra Pradesh***[2], which we would advert to at the appropriate stage.

14. Having considered the contention of the parties and in the context of Sections 78, 79, 80, 85 and 86 of the Reorganisation Act, we feel that the stand taken by the State of Madhya Pradesh and the

[2] 1960 (11) STC 456

State of Chhattisgarh is correct and merits acceptance. We have already reproduced the aforesaid provisions and partly interpreted them in paragraphs 9 and 10 and would now proceed to interpret Sections 78 and 79 of the Reorganisation Act. Section 78 of the Reorganisation Act consist of two parts. The first part states that the provisions of the Reorganisation Act shall not be deemed to have affected any change in the territories to which any law in force immediately before the appointed date extends or applies. In other words, the law in force before the appointed date, which in the present case is 1st November, 2000, would continue to apply to the successor or reorganised State of Madhya Pradesh as it existed before bifurcation. This is natural and normal as the laws enacted by the legislature and the executive of the State of Madhya Pradesh would obviously apply to the territories forming part of it after its reorganisation/division. As a result of bifurcation some areas that were earlier part of the State of Madhya Pradesh would now form part of the new State of Chhattisgarh, *albeit* this would not matter and affect application of the laws as they applied prior to the appointed date to the territories that required a part of the reorganised State of Madhya Pradesh. Section 78, no doubt uses the word 'deemed' but in fact, the first part does not incorporate/create any deeming fiction and rather postulates and

states the obvious. However, the second part of Section 78 incorporates a deeming fiction when it states that territorial references to such law in the State of Madhya Pradesh, i.e. the laws enacted by the legislature and executive of the State of Madhya Pradesh before bifurcation, shall until otherwise provided by the competent legislature or other competent authority be construed as meaning the territories within the existing state of Madhya Pradesh before the appointed day. The effect, thereof, is that the laws enacted by the State of Madhya Pradesh before the reorganisation would continue to apply to the areas forming part of the new State of Chhattisgarh and also the reorganised State of Madhya Pradesh, but within their territorial confines. The enactments or the laws in force in the unified State of Madhya Pradesh would continue to apply to the two states, not as one or the same enactment or law, but as two separate enactments or laws as applicable to two different states.

15. The deeming fiction incorporated for the purpose of second part of Section 78 does not postulate and state that the territories which were earlier part of the State of Madhya Pradesh but now form part of the State of Chhattisgarh would continue to remain part of the reorganised State of Madhya Pradesh or should be

treated as part and parcel of the other state. This is not what is postulated in Section 78. Deeming fiction in terms of Section 78 does not extend and include any such stipulation, either expressly or by necessary implication. Indeed, this is not even remotely visualised. This Court in ***B. S. Goraya vs. U.T. of Chandigarh***[3], in paragraphs 6 to 8 had observed that a deeming provision is operative for the purposes for which it is created and the Court should be careful not to extend this fiction beyond the legitimate field and the purposes for which the legislature had adopted the fiction. The purpose and objective for creating fiction must be kept in mind. In the present enactment, the object and purpose of the deeming provision envisaged in Section 78 of the Reorganisation Act is limited and restricted to the enforcement of enactment/laws as they existed in the unified State of Madhya Pradesh to the new State of Chhattisgarh, and nothing more and beyond.

16. Section 79 of the Reorganisation Act states that the appropriate Government of the reorganised State of Madhya Pradesh and the new State of Chhattisgarh may, before the expiration of two years from the appointed date, by an order, as may be necessary or expedient, make such adaptations or modifications in the earlier laws enacted in the unified State of Madhya Pradesh by way of

[3] (2007) 6 SCC 397

repeal or amendment. Thereupon, every law shall have effect subject to the adaptations or modifications made, until further repealed, modified or amended by the competent legislature or other competent authority. Explanation to the said section states that 'appropriate Government' in respect of any law means the Central Government in respect of matters enumerated in the Union List and in respect of any law in its application to a state, the State Government.

17. Section 80 relates to the construction or interpretation of the laws made by the State of Madhya Pradesh before the appointed date. It states that notwithstanding that no provision or insufficient provision has been made in terms of Section 79, the court, tribunal or authority interpreting such laws made by the unified State of Madhya Pradesh would construe the law in such a manner as to facilitate its application to the successor States of Madhya Pradesh and Chhattisgarh without effecting the substance. In other words, the court, tribunal or authority while interpreting the laws would go by the substance and with the objective and purpose of facilitating the application of laws in relation to the successor States of Madhya Pradesh and Chhattisgarh, notwithstanding the fact that the legislature or the competent

authority in relation to the laws applicable to the States of Madhya Pradesh and Chhattisgarh have not passed any law before or within the expiration period of two years from the appointed date.

18. Section 85 of the Reorganisation Act states that the provisions of the said enactment shall have effect notwithstanding anything inconsistent contained in any other law. Therefore, the provisions of the Reorganisation Act have been given primacy over any other law. However, this primacy is not meant to denude and over-ride the legal effect envisaged by the Constitution consequent to the creation of the successor State of Madhya Pradesh and the State of Chhattisgarh which would henceforth have separate government(s) comprising of different legislature and executive. On and from the appointed date of 1st November,2000 any trade between the State of Chhattisgarh and the State of Madhya Pradesh and vice-versa would be inter-state trade and not intra-state trade. The deeming fiction and the provisions of the Reorganisation Act nowhere postulate that the trade would continue to remain intra-state trade and not inter-state trade between the two States. In fact, any deeming fiction to the said effect would have fallen afoul and would be contrary to Article 286,

as it stood before amendment on 16th September, 2016 and reads as under:

> "286. **Restrictions as to imposition of tax on the sale or purchase of goods: -**
>
> No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place
>
> (a) outside the State; or
>
> (b) in the course of the import of the goods into, or export of the goods out of, the territory of India.
>
> (2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).
>
> (3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,
>
> (a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or
>
> (b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29-A) of Article 366,
> be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

As per the said Article, states are not competent to enact any legislation relating to the taxation of 'inter-state sales', an expression which, in the context of the Constitution, has been subject matter of several decisions explaining the difference between 'intra-state' and 'inter-state' sales. The expression 'inter-

state' trade has specific legal connotation and meaning. It refers to transfer or movement of goods from one state to another. Such transactions, notwithstanding that the situs of sale would necessarily be at a fixed location, are inter-state sale or trade and not intra-state sale or trade. Thus, when there is a movement of goods between the two states without there being a transfer of title to the consignor or consignee, compliance would have to be made with the relevant laws applicable to such inter-state transactions. This position will hold good and equally apply in respect of the inter-state sales between the new State of Chhattisgarh and the reorganised State of Madhya Pradesh and vice-versa. The movement of goods from one state to another is in the nature of inter-state sales. The fact that two separate states are formed after the bifurcation, which were once a single entity for the purpose of levying sales tax, would be of no consequence so as to disturb the legal and constitutional impact by which two separate States were created and the legal effect of Article 286 as regards the inter-state character of inter-state transactions.

19. Section 86 of the Reorganisation Act states that in case any difficulty arises in giving effect to the provisions of the said Act, the President may, by an order, do anything as may be necessary and

expedient for removing the difficulties. However, such order cannot be inconsistent with the provisions of the Reorganisation Act. Proviso states that no order shall be made after the expiry of three years from the appointed date.

20. In ***Ranjan Sinha and Another v. Ajay Kumar Vishwakarma and Others***[4], three Judges' Bench of this Court have elucidated that the Parliament, under Article 3 of the Constitution, is empowered to form a new State by separation of territory from any State or by uniting two or more States. Article 4 of the Constitution states that the law made by the Parliament with reference to Article 3 may contain supplemental, consequential and incidental provisions. When the territory of the existing State is reorganised by the Parliament under Article 3, there is no change of sovereignty and it is only a case of adjustment of territories as some portion of the territories forming part of the existing state would now form part of the newly formed state or get merged in a new state. In the latter case, the laws which were applicable to the territories of the reorganised state would continue to apply to the territories of the new state until the newly created state adapts or subject to its

[4] (2017) 14 SCC 774

competency amends or repeals the existing and applicable laws. It was held:

> "36. At the cost of repetition, we may mention that under Article 3 of the Constitution, Parliament can alter, amend, amalgamate, form new States, diminish or increase area of a State. The principle of "clean slate" as applicable in international law is not applicable when reorganisation takes place under Article 3 of the Constitution. The reorganised States do not usually start as *tabula rasa*, rather they are successors of a pre-existing erstwhile States. Under BROA, Jharkhand was carved out of Bihar and the other separate States came into existence on 15-11-2000. If the laws in force were to lapse on the date the division was effected, a chaotic situation would have emerged inasmuch as the newly created State would be rendered a State without laws. To avoid such situation, provisions like Sections 84 and 85 of BROA have been enacted to maintain continuity, and at the same time authorising the States to make such modifications and adaptations as are considered necessary by mere issuance of orders within two years, and thereafter by legislation."

This decision had referred to several earlier enactments by the Parliament under Article 3 beginning with the States Reorganisation Act, 1956 till the Bihar Reorganisation Act, 2000 which had similar provisions under the heading *'Territorial extent of laws'* and *'Power to adapt laws'* as in the present case. Referring to Section 84 of the Bihar Reorganisation Act, 2000, which is identically worded as Section 78 of the Reorganisation Act, this Court in ***Ranjan Sinha*** (supra) held as under:

> "29. Section 84 contains two legal fictions, first is that the reorganisation of Bihar would not affect the applicability of laws made by the State of Bihar to all

> territories included in it before reorganisation and after the reorganisation. In other words, a law made by Bihar shall be applicable to all the territories of the erstwhile State of Bihar including the territories of the State of Jharkhand even after reorganisation. The second fiction is that until Jharkhand provides for it by way of amendment or otherwise, territorial reference in any law to the State of Bihar shall mean all the territories in Bihar before reorganisation. For instance, if Bihar had made a law as applicable to entire Bihar, it shall apply to Bihar and Jharkhand until it is amended by the new State. The territories to which the said Act is made applicable would also include the territories which were included in Jharkhand. Section 85 is an enabling provision which empowers both the States to make adaptations and modification of the law by way of amendment to the law as applicable to the newly formed State."

While interpreting Section 84 and 85 of the Bihar Reorganisation Act, 2000 analogous to Section 78 and 79 of the Reorganisation Act, this Court in ***Ranjan Sinha*** (supra) had dealt with and affirmed the underlined theory of continuity of laws in the new state after or post the reorganisation observing that the principle of "clean state", as it exists in the international law in relation to the state succession, which means that the successor state generally does not inherit the prior treaty obligations or rights of a predecessor state, is different from the adjustment of territories which the Parliament undertakes and enforces under Article 3. The reorganised states do not usually start as *tabula rasa,* rather they are successors of the pre-existing erstwhile

States. Disorderly and chaotic situation would erupt if the new state was to be created without any laws as on the date of its creation. To overcome this interregnum and vacuum, the Reorganisation Act(s) uniformly contain provisions which create a legal fiction to the extent that the reorganisation of the State would not affect the applicability of laws to all the territories included within it before and even after the reorganisation. However, this is subject to another dictum/rule that the existing laws as earlier applicable to the territories would be applicable to the new state until the new state provides for adaptation or modification of the law by way of repeal or amendment. The time period provided for such adaptations and modifications is generally two years from the appointed day, i.e. the day by which the Central Government in the Official Gazette provides for the creation of the two states by transfer of territories from one state to another.

21. The Constitutional Bench judgment in ***M.P.V. Sundararamier & Co. v. State of Andhra Pradesh and Another***[5], had examined and rejected several contentions of the dealers carrying on business in the city of Madras for restraining the State of Andhra from imposing sales tax on sales effected in favour of merchants carrying on business in the State of Andhra. One of the

[5] AIR 1958 SC 468

contentions raised related to the true interpretation of Section 53 of the Andhra State Act, 1953, the argument being that though for political purposes the State of Andhra was a separate State, but for enforcement of laws as they stood on the date of division/bifurcation, the State of Andhra was deemed to be a part of the State of Madras. This contention was rejected holding that the States of Andhra and Madras were two separate States and were governed by two separate though identical Acts. Accordingly, when the sales tax enactment as applicable had provided for single levy on successive sales of yarn, it would have application to sales in the State of Madras or Andhra, as the case may be, and not in the other State or inter-state sales. Section 53 had provided that the laws in existence in the territories which were constituted and had become part of the State of Andhra would continue to be governed by the laws which were enacted by the State of Madras. In terms of Section 53, the laws enacted by the State of Madras would continue to operate as before. It had not stipulated that the States would continue to be one. For clarity and convenience, we would reproduce paragraph 60 of the said judgment, which reads as under:

> "60. (VI) Another contention urged by the petitioners is that the levy of tax proposed to be made by the Andhra State on the sale of yarn by them to dealers in the

> State of Andhra is illegal because under the Madras Act and the Rules made thereunder, where there are successive sales of yarn the tax can be imposed at only one point, and as the Government of Madras had already imposed a tax on the sale within that State, a second levy on the selfsame goods by the State of Andhra is unauthorised and that therefore the threatened proceedings for assessment are incompetent. This contention is clearly untenable. When the Madras Act provides for a single levy on successive sales of yarn, it can have only application to sales in the State of Madras, as it would be incompetent to the Legislature of Madras to enact a law to operate in another State. But it is argued that S.53 of the Andhra State Act, 1953 on its true interpretation enacts that though for political purposes Andhra is to be regarded as a separate State, for the enforcement of laws as they stood on that date it should be deemed to be a part of the State of Madras. We do not agree with this interpretation. In our opinion, S. 53 merely provides that the laws in existence in the territories which were constituted into the State of Andhra should continue to operate as before. In fact, by an Adaptation Order issued on November 12, 1953, even the name of Andhra was substituted for Madras in the Madras General Sales Tax Act. There is no substance in this contention."

22. In the context of the above provisions of the Reorganisation Act, we would now reproduce relevant portion of the judgment of the Division Bench of High Court of Andhra Pradesh in ***Sri Peera Mohammad Mahamood Saheb v. The State of Andhra Pradesh*** (supra), which had also dealt with the situation pursuant to bifurcation of the State of Madras into the reorganised State of Madras and the new State of Andhra. Referring to identical provisions, it was held that Section 3 of the Andhra State Act,

1953 states that the territories enumerated would, from the appointed date i.e. 1st October, 1953, cease to be the territories of the State of Madras and would be the territories of the new State of Andhra. Further, the laws in force in the territories in the State of Andhra prior to its constitution shall continue to remain in force even after its creation. Accordingly, one of the Acts namely the Madras General Sales Tax Act, 1939, would continue to apply to the new State of Andhra and the word 'Madras' used in said Act would be replaced/substituted by the word 'Andhra'. To this extent, Section 53 of the Andhra State Act which is *pari materia* to Section 78 of the Reorganisation Act, 2000, declares that notwithstanding the emergence of the State of Andhra, there shall be no change in the laws in force. This provision was made for avoiding any hiatus and the same set of laws, therefore, would continue to be operative in the States of Madras and Andhra.

23. We have quoted the relevant portions of the judgment in the case of ***Swarn Rekha Cokes and Coals Pvt. Ltd.*** (supra) and have no difficulty in agreeing to the dictum as enunciated in paragraphs 26, 27 and 28, but find it difficult to agree with the ratio recorded in paragraph 29. The effect of Sections 84 and 85 of the Bihar Reorganisation Act, 2000 was to ensure continuity of laws enacted

by the unified State of Bihar in the new State of Jharkhand which had been created by transfer of territories which earlier formed part of the State of Bihar. These sections incorporating a deeming fiction were to ensure that the new State of Jharkhand would continue to be governed by the pre-existing laws as, otherwise, there would be a disorderly and chaotic situation where the new State would not be governed by any law. This is the true effect of the legal fiction created by Section 84 of the Bihar Reorganisation Act, 2000, i.e., the reorganisation of the state would not affect the applicability of the existing laws in the state to all territories included within it before and even after the reorganisation. The said fiction does not postulate and cannot be extended to imagine that for the purpose of sale transactions or even for other purposes, the new state did not have any political and constitutional existence as a separate state and that till a new law was enacted, the two States were to be treated as one political State as it was before the reorganisation. The sale transactions which were hitherto intra-state sales being within the unified State of Bihar, would become inter-state transactions once the two new States had come into existence. Provisions do not stipulate that such transactions would continue to be treated as intra-state transactions notwithstanding creation of the new State.

24. With respect to reasoning given in paragraph 30 in ***Swarn Rekha Cokes and Coals Pvt. Ltd.*** (supra), we would acknowledge that creation of a new State was an unforeseen event and could give rise to unusual situations, but this cannot be a ground and reason to treat inter-state sales between the two successor states as intra-state sales. This would be contrary to the Constitution and even the Statute i.e. the Reorganisation Act. Whenever a new State is created, there would be difficulties and, issues would arise but these have to be dealt within the parameters of the constitutional provisions and the law and not by negating the mandate of the Parliament which has created the new state in terms of Article 3 of the Constitution. Creation of the new political State must be given full legal effect. We would, therefore, respectfully overrule the contrary observations and ratio recorded in paragraphs 29 and 30 in ***Swarn Rekha Cokes and Coals Pvt. Ltd.*** (supra) in light of the legal position elucidated and explained above.

25. In the end, we must take note of one of the submissions made by the private parties/assessee that under the exemption clauses even the inter-state transactions were entitled to some benefits. This contention was not raised in the writ petition or even in the

pleadings before us and has been urged and argued for the first time. We would not like to comment and decide this contention in vacuum and leave it open to the private parties/assessee to raise this plea before the authorities in appropriate proceedings under the statute. In other words, the authorities would examine whether the inter-state transactions were entitled to any benefit and if so, whether the private parties/assessee herein fulfil and meet the requirements to claim such benefit. We have not expressed any opinion either way on this contention. It was pointed out that in several cases adjudication orders may have been passed and the private parties/assessee may not have preferred appeals in view of the writ petitions filed by them and the present proceedings. As recorded above, some of the private parties/assessee had succeeded before the High Court. We would observe that it will be open to the private parties/assessee to challenge the adjudication orders in accordance with law and if required, by filing application under Section 14 of the Limitation Act, 1963, or other applicable provisions of the state enactments for exclusion of time during which the proceedings have remained pending before the High Court and this Court. In such cases, it would be appropriate for the authorities to exclude such time period as we are overruling the

ratio laid down in paragraphs 29 and 30 in ***Swarn Rekha Cokes and Coals Pvt. Ltd.*** (supra).

26. Accordingly, the appeals arising from Special Leave Petition (Civil) Nos. 10520 of 2013, 1334, 10165, 23297 of 2014, 6729 and 16550 of 2016 preferred by the State of Madhya Pradesh and the State of Chhattisgarh are allowed and the Civil Appeal Nos. 460, 461, 7073 of 2005 and 2343 of 2007 preferred by the private parties/assessee are dismissed in terms of the aforesaid observations, findings and directions.

.....CJI
(RANJAN GOGOI)

.....J.
(S. ABDUL NAZEER)

.....J.
(SANJIV KHANNA)

NEW DELHI;
JULY 09, 2019.