

SUPPLEMENTARY AMENDMENT  
**CENTRAL SALES-TAX Act, 1956**

THE FINANCE ACT, 2005

(Act No 18 of 2005)<sup>1</sup>

[13th May, 2005]

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

**Short title and commencement.**—This Act may be called the Finance Act, 2005.

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**89. Amendment of Sec. 2.**—In Sec. 2 of the Central Sales-Tax Act, 1956, [74 of 1956] (hereinafter referred to as the Central Sales-Tax Act),—

- (a) in Cl. (h) the following proviso shall be inserted at the end, namely:—

"Provided that in the case of a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, the sale price of such goods shall be determined in the prescribed manner by making such deduction from the total consideration for the works contract as may be prescribed and such price shall be deemed to be the sale price for the purposes of this clause."

- (b) for Cl. (i), the following clause shall be substituted, namely:—

'(i) "sales-tax law" means any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf and includes value added tax law, and "general sales-tax law" means any law for the time being in force in any State or part thereof which provides for the levy of tax on the sale or purchase of goods generally and includes value added tax law;'

- (c) after Cl. (j), the following clause shall be inserted, namely:—

'(ja) "works contract" means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property;'

**90. Amendment of Sec. 5.**—In Sec. 5 of the Central Sales Tax Act, after sub-section (3), the following sub-sections shall be inserted, namely:—

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1. Assented by the President on 13th May, 2005.

'(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

(5) Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.

**Explanation.**—For the purposes of this sub-section, "designated Indian carrier" means any carrier which the Central Government may, by notification in the Official Gazette, specify in this behalf;'

**91. Amendment of Sec. 6.**—In Sec. 6 of the Central Sales Tax Act, for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-state trade or commerce, to any official, personnel, consular or diplomatic agent of —

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar international body,

entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be has purchased, such goods for himself or for the purposes of such mission, consulate, United Nations or other body.

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-state trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be".

**92. Amendment of Sec. 13.**—In Sec. 13 of the Central Sales Tax Act, in sub-section (1), Cl. (aa) shall be re-lettered as Cl. (ab) thereof, and before Cl. (ab) as so re-lettered, the following clause shall be inserted, namely:—

"(aa) the manner of determination of the sale price and the deductions from the total consideration for a works contract under the proviso to Cl. (h) of Sec. 2."

X

**SUPPLEMENTARY AMENDMENT**  
**CENTRAL SALES-TAX Act, 1956**

**THE FINANCE BILL, 2005**

(Bill No. 35 of 2005)<sup>1</sup>

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

**CHAPTER I**

**PRELIMINARY**

**Short title and commencement.**—This Act may be called the Finance Act, 2005.

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**89. Amendment of Sec. 2.**—In Sec. 2 of the Central Sales-Tax Act, 1956, (74 of 1956) (hereinafter referred to as the Central Sales-Tax Act),—

- (a) in Cl. (h) the following proviso shall be inserted at the end, namely:—

"Provided that in the case of a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, the sale price of such goods shall be determined in the prescribed manner by making such deduction from the total consideration for the works contract as may be prescribed and such price shall be deemed to be the sale price for the purposes of this clause."

- (b) for Cl. (i), the following clause shall be substituted, namely:—

'(i) "sales-tax law" means any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf and includes value added tax law, and "general sales-tax law" means any law for the time being in force in any State or part thereof which provides for the levy of tax on the sale or purchase of goods generally and includes value added tax law;'

- (c) after Cl. (j), the following clause shall be inserted, namely:—

'(ja) "works contract" means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property;'

**90. Amendment of Sec. 5.**—In Sec. 5 of the Central Sales Tax Act, after sub-section (3), the following sub-sections shall be inserted, namely:—

(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

(5) Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.

**Explanation.**—For the purposes of this sub-section, "designated Indian carrier" means any carrier which the Central Government may, by notification in the Official Gazette, specify in this behalf.

**91. Amendment of Sec. 6.**—In Sec. 6 of the Central Sales Tax Act, for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter- state trade or commerce, to any official, personnel, consular or diplomatic agent of —

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar international body,

entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be has purchased, such goods for himself or for the purposes of such mission, consulate, United Nations or other body.

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-state trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be".

**92. Amendment of Sec. 13.**—In Sec. 13 of the Central Sales Tax Act, in sub-section (1), Cl. (aa) shall be re-lettered as Cl. (ab) thereof, and before Cl. (ab) as so re-lettered, the following clause shall be inserted, namely:—

"(aa) the manner of determination of the sale price and the deductions from the total consideration for a works contract under the proviso to Cl. (h) of Sec. 2."

*Ministry*

SUPPLEMENTARY AMENDMENT  
THE CENTRAL SALES TAX ACT, 1956

(No. 23 of 2004)

Dated 10th September 2004

THE FINANCE (NO. 2) ACT, 2004<sup>1</sup>

CHAPTER I  
PRELIMINARY

**Short title and commencement.**—This Act may be called the Finance (No. 2) Act, 2004.

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**118. Amendment of Sec. 8.**—In Sec. 8 of the Central Sales Tax Act, 1956 (74 of 1956) (hereinafter referred to as the Central Sales Tax Act),—

(a) for sub-section (6), the following sub-section shall be substituted, namely:—

"(6) Notwithstanding anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter- State trade or commerce to a registered dealer for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing material or packing accessories in an unit located in any special economic zone or for development, operation and maintenance of special economic zone by the developer of the special economic zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf.";

(b) in sub-section (8), for the words, brackets and figures "authority referred to in sub-section (6) a declaration in the prescribed manner on the prescribed form obtained from the authority referred to in sub-section (5)", the following shall be substituted, namely:—

"prescribed authority referred to in sub-section (4) a declaration in the prescribed manner on the prescribed form obtained from the authority specified by the Central Government under sub-section (6)."

**119. Amendment of Chapter VI.**—In Chapter VI of the Central Sales Tax Act, as directed to be inserted by Sec. 3 of the Central Sales Tax (Amendment) Act, 2001 (41 of 2001), and as it stands amended by the Finance Act, 2003 (32 of 2003), with effect from the commencement of the Central Sales Tax (Amendment) Act, 2001,—

- (a) in Sec. 19, in sub section (1), for the words, figures and letter "Sec. 6-A or Sec. 9", the words, figures and letters "Sec. 6-A read with Sec. 9" shall be substituted;
- (b) in Sec. 20, in sub-section (1), for the words figures and letters "Sec. 6-A or Sec. 9", the words, figures and letters "Sec. 6-A read with Sec. 9" shall be substituted;
- (c) in Sec. 21, in sub-section (3), in the first proviso, for the words " also to the State Government", the words "also to each State Government" shall be substituted;
- (d) in Sec. 22, after, sub-section (1), the following sub-section shall be inserted, namely:—

"(1-A) The Authority may grant stay of the operation of the order of the assessing authority against which the appeal is filed before it or order the pre-deposit of the tax before entertaining the appeal and while granting such stay or making such order for the pre-deposit of the tax, the Authority shall have regard, if the assessee has already made pre-deposit of the tax under the general sales tax law of the State concerned, to such pre-deposit;"

- (e) in Sec. 25, for the words "every appeal", the words "any proceeding" shall be substituted;
  - (f) in Sec. 26, for the words "the assessing authorities", the words "each State Government concerned, the assessing authorities" shall be substituted.
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## SUPPLEMENTARY AMENDMENT

### CENTRAL SALES TAX (REGISTRATION AND TURNOVER) AMENDMENT RULES, 2003

G.S.R. 36 (E), dated 16th January, 2003<sup>1</sup>.—In exercise of the powers conferred by Cl. (aa) of sub-section (1) of Sec. 13 of the Central Sales Tax Act, 1956 (74 of 1956), the Central Government hereby makes the following rules further to amend the Central Sales Tax (Registration and Turnover) Rules, 1957, namely:—

1. **Short title and commencement.**—(1) These rules may be called the Central Sales Tax (Registration and Turnover) Amendment Rules, 2003.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Sales Tax (Registration and Turnover) Rules, 1957, the following proviso shall be inserted at the end of Cl. (a) of the sub-rule (10) of Rule 12, namely:—

"PROVIDED THAT where the claim of the dealer relates to sub-section (8) of Sec. 8, the dealer shall get the Form H duly countersigned and certified by the authority specified by the Central Government authorising the establishment of the unit in the Special Economic Zone [notified under Sec. 76-A of the Customs Act, 1962 (52 of 1962)], that the sale of goods is for the purpose of establishing a unit in such zone, and the in Form H prescribed under this rule shall, mutatis mutandis, apply to the declaration of the dealer and certificate to be obtained from the said authority notified under Sec. 76-A of the Customs Act, 1962.".

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1. Published in the *Gazette of India, Extraordinary*, Pt. II, Sec. 3 (i) dated 16th January, 2003).

# THE CENTRAL SALES-TAX ACT, 1956

(Act No. 74 of 1956)<sup>1</sup>

[21st December, 1956]

*An Act to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject.*

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:

## STATEMENT OF OBJECTS AND REASONS OF ACT 74 OF 1956

"In the interest of the national economy of India certain amendments were undertaken in the Constitution by the Constitution (Sixth Amendment) Act, 1956, whereby—

- (a) taxes on sales or purchases of goods in the course of inter-State trade or commerce were brought expressly within the purview of the legislative jurisdiction of Parliament;
- (b) restrictions could be imposed on the powers of State Legislatures with respect to the levy of taxes on the sale or purchase of goods within the State where the goods are of special importance in inter-State trade or commerce.

The amendments at the same time authorised Parliament to formulate principles for determining when a sale or purchase takes place in the course of inter-State trade or commerce or in the course of export or import or outside a State in order that the legislative spheres of Parliament and the State Legislatures become clearly demarcated. In the case of goods of special importance in inter-State trade or commerce, a law of Parliament is to lay down the restrictions and conditions subject to which any State law may regulate the tax on sales or purchases of such goods in the State.

2. This Bill seeks to provide for the legislation authorised by the Constitution as amended above with a view to enabling the State Governments to raise additional revenues by levying tax on inter-State transactions which are at present immune from tax under their respective sales tax laws. After taking into account the recommendations of the Taxation Enquiry Commission and in consultation with the States the Government of India were of the view that the following principles should

1. The Act has been extended to Goa, Daman and Diu (with modifications) by Reg. 12 of 1962, Sec. 3 and Schedule ; to Kohima and Mokokchung districts of Nagaland (as in force on 5th August, 1971) by Act 61 of 1972, Sec. 14(1) (w.e.f. 30th November, 1972). The amendments made to the Act by Act 61 of 1972 came into force in the said districts (w.e.f. 1st April, 1973) vide Sec. 14 (2); *ibid*.

govern the scheme of the detailed legislation on the three inter-related subjects:

(i) The Central Government should authorise the State Governments to impose on behalf of the Central Government tax on the sale or purchase of goods in the course of inter-States trade or commerce. The Central legislation should also delegate to the States the Central Government's power to levy and collect the tax and for this purpose prescribe the same system of registration, assessment, etc., as prevails in the States concerned under their own sales tax system.

(ii) An important aspect of the Central legislation will be concerned with the definition of the local sales, for the purpose of defining in detail the relative jurisdiction, *firstly* of the Union and the States, and *secondly* of the States *inter se*. It is therefore, necessary that the law should define clearly, with specific reference to sales tax the circumstances in which a sale or purchase becomes taxable by a particular State and no other. It should also define for the purpose of the constitutional restrictions on the State's power to impose a tax under Item 54 of the State list, when a sale or purchase of goods may be said to take place :

(a) in the course of export out of India,

(b) in the course of import into India, and

(c) in the course of inter-State trade or commerce.

(iii) The Central legislation should provide for the declaration of certain commodities which are in the nature of raw materials and of special importance in inter-State trade or commerce and lay down the restrictions and conditions as to the rate, system of levy and other incidents of tax subject to which the States may impose tax on the sale or purchase thereof.

3. Necessary provisions have, therefore, been made in the different Chapters of this Bill incorporating the principles stated above.

## CHAPTER I

### PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called the Central Sales-tax Act, 1956.

(2) It extends to the whole of India<sup>1</sup> [\*\*\*].

(3) It shall come into force on such date<sup>2</sup> as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

### COMMENTS

**Presumption against retrospective operation.**—The presumption against retrospective operation of a fiscal statute is not applicable to declaratory statutes.<sup>3</sup>

**Cardinal principle of construction.**—It is a cardinal principle of rule of construction of statute that when the language of statute is fairly and reasonably clear, then inconvenience or hardships are no considerations for refusing to give effect to that meaning.<sup>4</sup>

1. The words "except the State of Jammu and Kashmir" omitted by Act 5 of 1958, Sec.2.

2. Enforced from 5th January, 1957, all sections except Sec. 15, *vide* Notification No. S.R.O. 78, dated 4th January, 1957, *Gazette of India, Extraordinary*, 1957, Pt. II, Sec. 3, p. 57 and Sec. 15 (w.e.f. 1st October, 1958); *vide* Notification No. G.S.R. 897, dated 23rd September, 1958, *Gazette of India, Extraordinary*, 1958, Pt. II, Sec. 3 (i), p. 476.

3. *Lucas T.V.S. Ltd. v. C.I.T.*, 1996 (217) I.T.R. 382 at p. 403 (Mad.); *C.I.T. v. Achaldas Dhanraj*, 1996 (217) I.T.R. 799 at p. 805 (Raj.).

4. *State of Maharashtra v. Nand-Parbhani Z.L.B.M.V. Operator Sangh*, J.T. 2000 (1) S.C. 290 at p. 294; *Mohar Mal v. Kay Iron Works (P.) Ltd.*, A.I.R. 2000 S.C.C. 1261 at p. 1267; *T.M.A. Pai Foundation v. State of Karnataka*, A.I.R. 2003 S.C. 355 at p. 455.

**Shall.**—It is settled law that when used in a statute, the word "shall" sometime may be interpreted to mean "may" and sometime "may" is equivalent to "shall" depending upon the context.<sup>1</sup>

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(a) "appropriate State" means—

- (i) in relation to a dealer who has one or more places of business situated in the same State, that State;
- (ii) in relation to a dealer who has <sup>2</sup>[\*\*\*] places of business situated in the different States, every such State with respect to the place or places of business situated within its territory;

<sup>3</sup>[ \* \* \* \* ]

<sup>4</sup>(aa) "business" includes—

- (i) any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; and
- (ii) any transaction in connection with or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;

(ab) "crossing the customs frontiers of India" means crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

**Explanation.**—For the purposes of this clause, "customs station" and "customs authorities" shall have the same meanings as in the Customs Act, 1962 (52 of 1962);

<sup>5</sup>[(b) "dealer" means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes—

- (i) a local authority, a body corporate, a company, any co-operative society or other society, club, firm Hindu undivided family, or other association of persons which carries on such business;
- (ii) a factor, broker, commission agent, *del credere* agent, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying,

1. Anil Kumar Tekriwal v. Navin Chandra Singh, 1997 (1) B.L.J. 52 at p. 56 (Pat.); Dinkar Anna Patil v. State of Maharashtra, A.I.R. 1999 S.C. 152 at p. 159; Nand Prakash Vohra v. State of H.P., A.I.R. 2000 H.P. 65 at p. 72.

2. The words "one or more" omitted by Act 31 of 1958, Sec. 2 (w.e.f. 1st October, 1958).

3. Explanation omitted by Sec. 2, *ibid.*, (w.e.f. 1st October, 1958).

4. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 2.

5. Subs. by Central Sales-tax Act, 1976, Sec. 2.

**Shall.**—It is settled law that when used in a statute, the word "shall" sometime may be interpreted to mean "may" and sometime "may" is equivalent to "shall" depending upon the context.<sup>1</sup>

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(a) "appropriate State" means—

- (i) in relation to a dealer who has one or more places of business situated in the same State, that State;
- (ii) in relation to a dealer who has <sup>2</sup>[\*\*\*] places of business situated in the different States, every such State with respect to the place or places of business situated within its territory;

<sup>3</sup>[ \* \* \* ]

<sup>4</sup>(aa) "business" includes—

- (i) any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; and
- (ii) any transaction in connection with or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;

(ab) "crossing the customs frontiers of India" means crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

**Explanation.**—For the purposes of this clause, "customs station" and "customs authorities" shall have the same meanings as in the Customs Act, 1962 (52 of 1962);

<sup>5</sup>[(b) "dealer" means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes—

- (i) a local authority, a body corporate, a company, any co-operative society or other society, club, firm Hindu undivided family, or other association of persons which carries on such business;
- (ii) a factor, broker, commission agent, *del credere* agent, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying,

1. Anil Kumar Tekriwal v. Navin Chandra Singh, 1997 (1) B.L.J. 52 at p. 56 (Pat.); Dinkar Anna Patil v. State of Maharashtra, A.I.R. 1999 S.C. 152 at p. 159; Nand Prakash Vohra v. State of H.P., A.I.R. 2000 H.P. 65 at p. 72.

2. The words "one or more" omitted by Act 31 of 1958, Sec. 2 (w.e.f. 1st October, 1958).

3. Explanation omitted by Sec. 2, *ibid.*, (w.e.f. 1st October, 1958).

4. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 2.

5. Subs. by Central Sales-tax Act, 1976, Sec. 2.

<sup>1</sup>[(g) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes,—

- (i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
- (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (iii) a delivery of goods on hire-purchase or any system of payment by instalments;
- (iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
- (vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

but does not include a mortgage or hypothecation of or a charge or pledge on goods;.]

- (h) "sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged;
- (i) "sales-tax law" means any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf, and "general sales-tax law" means the law for the time being in force in any State or part thereof which provides for the levy of tax on the sale or purchase of goods generally;
- (j) "turnover" used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period <sup>2</sup>[and determined in accordance with the provisions of this Act and the rules made thereunder];

1. Subs. by the Finance Act, 2002 (20 of 2002), Sec. 150.

2. Subs. by Act 28 of 1969, Sec. 2 for "and determined in the prescribed manner" (retrospectively).

- (k) "year" in relation to a dealer, means the year applicable in relation to him under the general sales-tax law of the appropriate State, and where there is no such year applicable, the financial year.

### COMMENTS

**Central Sales Tax Act is a special sales tax law.**—There is a clear distinction between a general sales tax law that provides for levy of tax on the sale or purchase of goods generally and a special sales tax law that provides for the levy of tax on the sale or purchase of specified goods or in specified circumstances. Tax under the Central Sales Tax Act would clearly fall within the second category.<sup>1</sup>

**Dealer, meaning of.**—The Supreme Court in *Joint Director of Food v. State of Andhra Pradesh*,<sup>2</sup> held that the Joint Director of Food, Visakhapatnam—an officer of the Central Government—was proposed and to be treated and taxed as a "dealer". According to the definition of "dealer" in Sec. 2 (b) of the Central Sales Tax Act, 1956, a person will be a dealer only if he carries on business with a profit-motive, the requirements of profit-motive was absent under the Andhra Pradesh General Sales-tax Act. Evidently, the Court was referring to the definition of dealer in the Central Act before it was amended by Act 103 of 1976, doing away with the requirement of profit-motive. It was held that inasmuch as the Joint Director of Food, Visakhapatnam, had not profit-motive in undertaking the distribution of essential commodities, he cannot be treated as a dealer under the Central Act, though he would be a dealer for purposes of the State Act.<sup>3</sup>

**Applicability of the section.**—In *Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales-tax, Indore*,<sup>4</sup> it was held that the amount of freight formed part of the sale price within the meaning of this first part of the definition of that term in Sec. 2 (o) of the Madhya Pradesh General Sales-tax Act, 1958, and Sec. 2 (h) of the Central Sales-tax Act, 1956, and was rightly included in the taxable turnover of the assessee.

**"Sale" meaning of.**—The transfer of stock from Mathura to Hodel Office<sup>5</sup> can be recorded as a sale. In this connection it is made clear that the partnership firm is not a separate legal entity like limited liability company. Even before the dissolution, the partnership firm was not separated and distinct from its partners. Hence, the dissolution of the firm will not mean that some legal entity came to an end as in the case of winding-up of a limited liability company. Hence, the transfer of stock from Mathura to Hodel cannot be said to be a transfer of some other legal entity. Moreover, the transfer of stock cannot be said to be sale. Hence, the finding of the Tribunal to this extent is arbitrary and illegal and is hereby set aside.<sup>5</sup>

**Sale price—Meaning of.**—By reason of the provisions of the Cement Control Order which governed the transactions of sale of cement entered into by assessee with the purchasers, the amount of freight formed part of the "sale-price" within the meaning of the first part of the definition of that term in Sec.2(h) of the Central Sales-tax Act, 1956, and was includible in the turnover of assessee.<sup>6</sup>

1. *Birla Corporation Ltd. v. State of Rajasthan*, A.I.R. 1999 S.C. 2211 at p. 2212. : 1999 (3) S.C.C. 138 at p. 140.
2. 1976 (38) S.T.C. 329 (S.C.).
3. *Rashtriya Chemical and Fertilizers Ltd. v. State of Andhra Pradesh*, 1990 (76) S.T.C. 360 at p. 366 (A.P.); *Beekay Engg. Corpn. v. State of Bihar*, 1993 S.T.J. 217 (Pat.).
4. A.I.R. 1980 S.C. 346 at p. 347; *Arvind Industries v. State of Gujarat*, A.I.R. 1995 S.C. 2477 at p. 2479.
5. *Mathura Tractors v. C.S.T., S.T.I.*, 1992 All. 348 at p. 349; *Dhariwal Bottle Trading Co. v. State of Maharashtra*, 1995 (99) S.T.C. 326 at p. 328 (Bom.).
6. *Cement Marketing Co. of India Ltd. v. Commissioner of Commercial Taxes, Karnataka*, A.I.R. 1980 S.C. 952 at p. 953; *T.V.L. Ramco Cement Distribution Co. P. Ltd. v. State of Tamil Nadu*, A.I.R. 1993 S.C. 123.

Thus the Tribunal was in error in concluding that there was sale involved in these transactions.<sup>1</sup>

## CHAPTER II

### FORMULATION OF PRINCIPLES FOR DETERMINING WHEN A SALE OR PURCHASE OF GOODS TAKES PLACE IN THE COURSE OF INTER-STATE TRADE OR COMMERCE OR OUTSIDE A STATE OR IN THE COURSE OF IMPORT OR EXPORT

3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.—A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase—

- (a) occasions the movement of goods from one State to another; or
- (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

*Explanation I.*—Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of Cl.(b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

*Explanation II.*—Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

### COMMENTS

**Deemed—Meaning of.**—The word "deemed" always means to be treated "as if it were".<sup>2</sup>

**Scope.**—It is well settled that a sale shall be an inter-State sale under Sec.3(a) of the Central Sales-tax Act if there is a contract of sale preceding the movement of goods from one State to another and the movement is the result of a covenant in the contract of sale or is an incident of that contract; in order that a sale may be regarded as an inter-State sale it is immaterial whether the property in the goods passes in one State or another.<sup>3</sup>

It is not disputed in the instant case that the bamboos in respect of which the sales-tax paid by the respondent were, in fact, taken to Raniganj in West Bengal for the use in the respondent's mills. In these circumstances, it is clear that the movement of bamboos from the State of Madhya Pradesh to the State of West Bengal was under a covenant of the contract of sale and that the said movement was a necessary incident of sale. There was a direct nexus between the movement of goods from one State to another and the sale. The sales of bamboos under the contract therefore constituted inter-State sales under Sec. 3(a) of the Central Sales-tax Act.<sup>4</sup>

**Scope of Sec. 3 (b).**—From a perusal of the provision of Sec.3(b) it is clear that until and unless it is proved that the goods sold was transferred to the assessee during the movement from one State to another and the assessee endorsed the documents of title, the transfer of such property shall not be taxable in the hands of the assessee. Counsel for the assessee invited the attention of the Court to the

1. Hindustan Aeronautics Ltd. v. State of Orissa, A.I.R. 1984 S.C. 753 at pp. 757, 758: 1984 Tax.L.R. 2831.

2. Kalika Kaur *alias* Kalika Singh v. State of Bihar, 1990(38) 1 B.L.J.R. 51 at p. 73. (Pat.)

3. Indian Oil Corporation Ltd. v. Union of India, A.I.R. 1981 S.C. 446 at p. 449.

4. State of Madhya Pradesh v. Bengal Paper Mills Company Ltd., (1979) M.P.L.J. 478 at p. 480.

decision of the Supreme Court in *Tata Iron and Steel Co. v. Sarkar*.<sup>1</sup> On the strength of the said decision of the Supreme Court counsel for the assessee contended that the Tribunal committed an error in imposing the tax under Sec.3(b) of the Central Sales-tax Act. The Court held that since no tax could be imposed under Sec.3(b) of the Central Sales-tax Act on the facts of the case, the order passed by the Tribunal cannot be sustained.<sup>2</sup>

**Contract of sale—Requirement of.**—It is true that the contracts of sales does not require or provide that goods shall be moved from one place to another. But it is not true to say that for the purposes Sec. 3 (a) of the Central Sales-tax Act, it is necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale.<sup>3</sup>

**Sales in the course of inter-State sales.**—The findings of the Tribunal are that the assessee who is a commission agent, placed an order of despatch of the goods to ex-U.P. principal with the selling dealer. The selling dealer booked the goods with the railways and got the railway receipt prepared in the name of the selling dealer. The selling dealer then endorsed the railway receipt in the name of the assessee who in its turn endorsed the same to ex-U.P. principal. On these facts, Sec.3(b) of the Central Sales-tax Act would be clearly applicable and the sales would be sales in the course of inter-State sales. The findings recorded by the Tribunal are that the assessee placed the orders on the selling dealer in Uttar Pradesh and asked them to despatch the goods to ex-U.P. principal. The railway receipts were prepared by the selling dealer in their own name and then endorsed in the name of the assessee who in its turn endorsed them in favour of the ex-U.P. principal. On these facts, there can be no manner of doubt that the sales in question were sales in the course of inter-State sales.<sup>4</sup>

**Transfers effected by the assessee when could not be said to be inter-State sale.**—The assessee in the present case was a manufacturer of pencils and has a factory at Ghaziabad and a head office at Delhi. The assessee's case was that he made pencils which were not completely finished at Ghaziabad and then transported them to Delhi where they were finished and sold to various customers. The authorities levied Central Sales-tax on the assessee. It is well known that before a sale can be said to be an inter-State sale, (i) there must be an agreement to sell which contains a stipulation express or implied, regarding the movement of the goods from one State to another; (ii) that in pursuance of the said contract the goods in fact moved from one State to another and (iii) that ultimately a concluded sale takes place in the State where the goods are sent which must be different from the State from which the goods move. There is no evidence in this case to show that there was any completed contract between the assessee's factory at Ghaziabad with any specific customers for the sales of goods with ex-U.P. buyer. In the absence of any such findings, the movement of goods from Ghaziabad to the head office in Delhi can only be treated as stock transfers. The order of the Tribunal was set aside and it was held that the transfer effected by the assessee was not inter-State sales.<sup>5</sup>

For the purpose of Sec.3 of the Central Sales Tax Act, 1956, it has to be examined whether the movement of goods had taken place from inside the State to outside State in pursuance of prior contact of sales or not. Unless it is established that the movement of goods had taken place outside the State in pursuance of prior contract of sale, it cannot be taxed and classified as inter-State sale.<sup>6</sup>

1. 1960 (11) S.T.C. 655 (S.C.).

2. *Hirason Enterprises v. Commissioner of Sales-tax, U.P., Lucknow*, 1990 (76) S.T.C. 365 at pp. 359, 360 (All.).

3. *Union of India v. K.G. Khosla & Co. Ltd.*, A.I.R. 1979 S.C. 1160 at p. 1163.

4. *Commissioner of Sales tax, U.P. v. Rati Lal Ranchor Das and Bros.*, Kanpur, 1983 U.P.T.C. 1270 at p. 1271.

5. *Neelam Pencil Factory, Ghaziabad v. Commissioner of Sales-tax, U.P.*, 1984 U.P.T.C. 146 at pp. 147, 148.

6. *Indo-Bulgar Foods v. C.S.T.*, A.I.R. 1993 All 164 at p. 165.

**Inter-State sales—Estimation of.**—The Revenue has not shown that the goods had moved from Uttar Pradesh to Calcutta in course of inter-State sales. Simply because the goods were sent to Calcutta and there they were sold, no inference for suppressing inter-State sales could be drawn. The Tribunal was, therefore, right in accepting the book version, so far as the disclosure of inter-State sales is concerned, simply because the books were rejected, the assessing officer was not justified in estimating the inter-State sales. To estimate the inter-State sales, he should have pointed out some instance of suppression of inter-State sales or a cogent material leading to suppression of the turnover of inter-State sales.<sup>1</sup>

**Inter-State sales—What amounts to.**—Once it is found that the movement of the goods was not occasioned by the placing of specific orders on the assessee, the movement could not be treated in the course of inter-State sales. In the present case, unless the revenue proves that the movement of the goods from Shikohabad to Delhi was occasioned by the placing of a particular order, it cannot amount to an inter-State sale. The Tribunal was of the view that on the facts of the case it was not established that the movement of the goods from Shikohabad to Delhi was connected with any order placed on the assessee and consequently it held that there was no inter-State sales when the goods moved from Shikohabad to Delhi by the assessee.<sup>2</sup>

Where the electricity as goods comes into existence and is consumed simultaneously, the event of sale in the sense of transferring property in the goods merely intervenes as a step between generation and consumption. In such a case when the generation takes place in one State wherefrom it is supplied and it is received in another State where it is consumed, the entire transaction is one and can be nothing else excepting an inter-State sale on account of instantaneous movement of goods from one to another occasioned by the sale or purchase of goods, squarely covered by Sec. 3 of the Central Sales-tax Act, 1956.<sup>3</sup>

**Inter-State sales and Intra-State sale.**—A perusal of the judgment of the first Appellate Authority shows that it treated the transactions as inter-State sales whereas on the same material the Sales Tax Tribunal held them to be inter-State sales. No additional evidence was adduced before the Sales Tax Tribunal by either party to indicate whether they were inter-State sales or intra-State sales. It appears from the orders passed by the three authorities below that they proceeded on the assumption that those very goods which were supplied by the applicant to M/s. Metal Box India Limited, Faridabad were sold by the latter to the said three parties. However, there seems to be no evidence to prove positively that the delivery of the goods was taken by M/s. Metal Box India Limited, Faridabad and those very goods were sold or sent by M/s. Metal Box India Limited to the three parties. It appears necessary that there should be a finding of fact on these points before the matter is decided finally. Thus there seems to be no option but to send back the case to the Assessing Authority.<sup>4</sup>

**Inter-State sale or local sale.**—In the instant case, all the subsequent sales effected by the appellant during the course of inter-State movement of the subject goods are exempt in terms of Secs. 3(b) and 6(2) of the Central Sales-tax Act. The subject sales is governed by the Act and, therefore, beyond the scope of Rajasthan Sales Tax Act. The proceedings initiated by the authorities under the Rajasthan Act

1. Commissioner of Sales-tax, U.P. v. Mohammed Sabir Riyasat Ali and Company, 1986 A.T.J. 472 at p. 473.
2. Commissioner of Sales tax v. Hind Lamps Ltd., Mainpuri, 1983 U.P.T.C. 1056 at pp. 1058, 1059, 1060; Commissioner of Sales Tax, U.P. v. Basdeo Mishra Vijai Kumar, S.T.I. 1993 All. 62; C.S.T. v. Bakhtawar Lal Kailash Chand Arthi, S.T.I. 1992 S.C. 74; Ashok Kumar Sudhir Kumar v. C.S.T., S.T.I. 1992 All. 382 : 1993 S.T.J. 232 (S.C.).
3. State of A.P. v. N.T.P.C. Ltd., A.I.R. 2002 S.C. 1895 at p. 1911.
4. Metal and Board Containers v. C.S.T., S.T.I. 1992 All. 333 at pp. 334, 335; A.S. Chinnaswamy v. State of T.N., 1998 (8) S.C.C. 681 at p. 681; Hindustan Paper Corporation Ltd. v. Commissioner of Taxes, (2002) 3 Gau. L.R. 564 at p. 568.

are wholly without jurisdiction and without authority of law.<sup>1</sup>

When a transaction is not a stock transfer but is of sale.—In *Union of India, v. K.C. Khosla and Company Ltd.*,<sup>2</sup> the Supreme Court held that it is not true to say that for the purposes of Sec.3(a) of the Central Sales-tax Act, 1956, it is necessary that the contract of sale must itself provide for and cause the movement of the goods or that the movements of the goods must be occasioned specially and in accordance with the terms of contract of sale. Affirming its earlier decision in *Tata Iron and Steel Company Ltd., Bombay v. S.R. Sarkar*,<sup>3</sup> the Supreme Court further added that Sec.3 (a) covers sale, in which the movement of the goods from one State to another is the result of a covenant or incident of the contract or sale. In *Indian Oil Company Ltd. v. Superintendent of Taxes*,<sup>4</sup> the Supreme Court observed that:

- (i) a sale which occasions movement of goods from one State to another is a sale in the course of inter-State trade, no matter in which State the property in goods passes;
- (ii) it is not necessary that the sale must precede the inter-State movement; and
- (iii) it is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade with the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of an incidental to the contract of sale.

Applying the principles enunciated by the Supreme Court to the facts of the instant case, it must be held that the movement of the goods from factory to Delhi office was occasioned by the sale or that the movement was incidental to the contract of sale.<sup>5</sup>

**4. When is a sale or purchase of goods said to take place outside a State.**—(1) Subject to the provisions contained in Sec.3, when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States.

(2) A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State—

- (a) in the case of specific or ascertained goods, at the time the contract of sale is made; and
- (b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

*Explanation.*—Where there is a single contract of sale or purchase of goods situated at more place than one, the provisions of this sub-section shall apply as if there were separate contracts in respects of the goods at each of such places.

#### COMMENT

**Sale of goods and question of place.**—Sale took place by appropriation of goods, such appropriation took place in the bonded warehouse. Such bonded warehouses were within the territory of State of Tamil Nadu. Therefore, under sub-section (2), sub-clauses (a) and (b) of Sec.4 of the Central Sales-tax Act, 1956,

1. *Guljag Industries Ltd. v. State of Rajasthan*, (2003) 129 S.T.C. 3 at p. 24 (Raj.).

2. 1979 (49) S.T.C. 457.

3. 11 S.T.C. 655 (S.C.).

4. 1975 (35) S.T.C. 445.

5. *Commissioner of Sales tax, U.P. v. Housing and General Finance Co. Ltd.*, 1990 S.T.J. 105 at p. 108 (All.); *C.S.T. v. Cooperative Textiles Mills Ltd.*, S.T.I. 1991 All. 52.

the sale of goods in question shall be deemed to have taken place inside the State because the contract of sale of ascertained goods was made within the territory of Tamil Nadu and furthermore in case of unascertained goods appropriation had taken place in that State in terms of Cl.(b) of sub-section (2) of Sec.4 of the Central Sales-tax Act, 1956. There is no question of sale taking place in course of export or import under Sec.5 in this case.<sup>1</sup>

**5. When is sale or purchase of goods said to take place in the course of import or export.**—(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

<sup>2</sup>[(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of, complying with the agreement or order for or in relation to such export.]

#### COMMENTS

**Scope of Sec. 5(1).**—Under Sec. 5(1) of the Act there are two limbs and the first limb provides for a circumstance in which the sale itself occasions the export while the second limb contemplates a sale which arises as a result of transfer of documents of title after the goods crossed the customs frontiers. In the opinion of the Court the second limb of Sec. 5(1) is not at all attracted to the present case. It is clear that in finding the course of export the principles of Sec. 5(1) of the Act should be complied with. If any one of the tests fail, there will be no export sale or a sale in the course of export attracting Sec. 5(1) of the Act so as to be exempted from taxation under Art. 286 of the Constitution.

**The word "deemed"**—Meaning of.—When sub-section (3) of Sec.5 of the Central Sales-tax Act uses the word "deemed" and says that the penultimate sale "shall also be deemed to be in the course of export" what is intended to be conveyed is that the penultimate sale shall also be regarded as being in the course of such export. In other words, no legal fiction is created.<sup>4</sup>

**Sale and agreement to sell**—Meaning of.—The definitions of "sale" and "agreement to sell in the Sale of Goods Act, 1930, would not apply to the expression "sale" occurring in the Central Sales-tax Act, 1956, wherein the expression "sale" has been defined in Sec.2(g) for the purpose of that Act and under Sec.2(g) of the Central Sales-tax Act, "sale" means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of goods on the hire-purchase or other system of payment by instalments, but does not include a mortgage or hypothecation of or a charge or pledge on goods". In other words, wherever the word "sale" occurs in the Central Sales-tax Act, 1956, it is this definition given in Sec.2(g) that will be applicable and therefore the word "sale" in Sec.5(3) must mean transfer of the goods by one person to another for cash or for any other valuable considerations, it cannot mean agreement to sell.<sup>5</sup>

1. Madras Marine and Company v. State of Madras, A.I.R. 1986 S.C. 1760 at pp. 1768, 1769.
2. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 3 (w.e.f. 1st April, 1976).
3. Coffee Board v. State of Karnataka, 1990 (76) S.T.C. 337 at pp. 342, 343 (Knt.).
4. Consolidated Coffee Ltd. v. Coffee Board, Bangalore, A.I.R. 1980 S.C. 1468 at p. 1479.
5. *Ibid.*, at p. 1487s

**Raw material paddy—Purchase tax on.**—When the order to fulfil an export obligation some goods are purchased and processed which resulted in change of the identity and character of the goods like processing of paddy into rice, which is exported, then it would not be an export of the same goods. Therefore, in the present case, the assessee will not be entitled to exemption under Sec. 5(3) of the Central Sales Tax Act.<sup>1</sup>

**Sale in the course of import.**—It is well settled in the commercial world that a bill of lading represents the goods and the transfer of it operates as the transfer of goods. The delivery of the bill of lading while the goods are a float is equivalent to the delivery of the goods themselves. The facts of the case is based upon documents, show that the bill of lading had been endorsed in favour of SAIL while the consignment of the coils was still upon the high seas. The sale, therefore was a sale in the course of the import of the coils to the territory of India; it was effected by transfer of the documents to the said coils before they had crossed the limits of the customs station of Paradeep Port. The aforesaid sales being covered by the provisions of the latter part of Sec. 5 (2) read with Sec. 2 (ab) of Central Sales-tax Act, they are sales in the course of import and not liable to tax.<sup>2</sup>

**Applicability of Sec. 5(3).**—Section 5(3) would be applicable where the goods which are sold or purchased have not undergone any transformation. In the instant case what is purchased by the appellant are raw hides and skins and it is not the same goods which are exported. Those raw hides and skins are then processed and it is the dressed hides and skins which are exported. Therefore, Sec. 5(3) would have no application.<sup>3</sup>

### CHAPTER III

#### INTER-STATE SALES TAX

**6. Liability to tax on inter-State sales.**—<sup>4</sup>[(1)] Subject to the other provisions contained in this Act, every dealer shall, with effect from such <sup>5</sup>[date] as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales <sup>6</sup>[of goods other than electrical energy] effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

<sup>7</sup>[PROVIDED THAT a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of Sec.5, is a sale in the course of export of those goods out of the territory of India.]

<sup>8</sup>[(1-A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sale-tax law of the appropriate State if that sale had taken place inside that State.]

1. *Satnam Overseas (Export) v. State of Haryana*, A.I.R. 2003 S.C. 66 at p. 80.

2. *Minerals and Metals Trading Corporation of India v. Sales Tax Officers*, A.I.R. 1999 S.C. 121 at pp. 123, 124.

3. *Shafeeq Shameel & Co. v. Assistant Commissioner, Commercial Taxes*, (2003) 129 S.T.C. 1 at p. 2 (S.C.).

4. Section 6 re-numbered as sub-section (1) of that section by Act 31 of 1958, Sec.3 (w.e.f. 1st October, 1958).

5. Enforced from 1st July, 1957, *vide* Notification No. S.R.O. 940-A, dated 26th March, 1967, *vide* *Gazette of India, Extraordinary*, 1957, Pt. II Sec. 3, p. 1233/1.

6. Ins. by Act 61 of 1972, Sec.2 (w.e.f. 1st April, 1973).

7. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec.4 (w.e.f. 1st April, 1976).

8. Ins. by Act 28 of 1969, Sec.3 (retrospectively).

<sup>1</sup>[(2) Notwithstanding anything contained in sub-section (1) or sub-section (1-A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from the State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods,—

(A) to the Government, or

(B) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of Sec. 8,

shall be exempt from tax under this Act:

PROVIDED THAT no such subsequent sale shall exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,—

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made—

(i) to a registered dealer, a declaration referred to in Cl. (a) of sub-section (4) of Sec. 8, or

(ii) to the Government, not being a registered dealer, a certificate referred to in Cl. (b) of sub-section (4) of Sec. 8:

PROVIDED FURTHER THAT it shall not be necessary to furnish the declaration or the certificate referred to in Cl. (b) of the preceding proviso in respect of a subsequent sale of goods if—

(a) the sale or purchase of such goods is, under the sales-tax law of the appropriate State, exempt from tax generally or is subject to tax generally at a rate which is lower than <sup>2</sup>[four per cent.](whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in Cl. (A) or Cl. (B) of this sub-section.]

<sup>3</sup>[(3) Notwithstanding anything contained in this Act, if—

(a) any official or personnel of—

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar International body,

entitled to privileges under any Convention to which India is a party or under any law for the time being in force; or

(b) any consular or diplomatic agent of any mission, the United Nations or other body referred to in sub-clause (i) or sub-clause (ii) of Cl. (a),

purchases any goods for himself or for the purposes of such mission, United Nations or other body, then, the Central Government may, by notification in the Official Gazette, exempt, subject to such conditions as may be specified in the notification, the tax payable on the sale of such goods under this Act.]

1. Subs. by Act 61 of 1972, Sec. 2, for sub-section (2) (w.e.f. 1st April, 1973).

2. Subs. by Act 25 of 1975, Sec. 38, for "three per cent." (w.e.f. 1st July, 1975).

3. Ins. by Finance Act, 2003 (32 of 2003), Sec. 161, dated 14th May, 2003.

## COMMENTS

**Benefit of exemption not available to Commission.**—The exemptions apply to sales of specified goods effected by the certified institutions and persons. The Commission is not a certified person or institution. Therefore, the benefit of notification in question is not available to Commission.<sup>1</sup>

**Inter-State and Inter-State Sales tax—Liability to.**—Any transaction which is taxed as inter-State sale is not to be taxed again as inter-State sale, which appears to be the view from the impugned order of High Court. Accordingly that part of the High Court's order being incorrect has to be set aside.<sup>2</sup>

<sup>3</sup>[6-A. Burden of proof, etc. in case of transfer of goods claimed otherwise than by way of sale.—(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, alongwith the evidence of despatch of such goods <sup>4</sup>[and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.]

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purposes of this Act to have been occasioned otherwise than as a result of sale.

**Explanation.**—In this section, "assessing authority", in relation to a dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act.]

## COMMENTS

**Provisions of Sec. 6-A—When could not be attracted.**—It is clear that till the year 1971-72 the burden was on the revenue and not on the assessee. Moreover, in the instant case, the Assistant Commissioner (Judicial) has recorded a finding that no material was furnished by the department to establish that the sales made by the respondent assessee were inter-State sales. In view of the said fact it is clear that the order passed by the Tribunal does not suffer from any error of law and is liable to be maintained.<sup>5</sup>

**Burden of proof.**—In *Commissioner of Sales-tax, U.P. v. Iron Traders*,<sup>6</sup> the Tribunal has clearly mentioned in its order that the department did not produce any evidence to show that the sale made by the assessee was inter-State sales. A careful reading of the order of the Tribunal indicates that it has proceeded on the assumption that the burden was on the department to prove that the goods despatched from Ghaziabad by the assessee to Surmala in Punjab was inter-State sale. In fact, it was for the assessee to have furnished sufficient material and evidence to prove that the said sale was inter-State sale. Since the Tribunal has wrongly applied the law in deciding the appeal, the order passed by it cannot be sustained.

1. Khadi & Village Industries Commission, Sattur v. State of T.N., 1998 (8) S.C.C. 546 at p. 547.

2. A.S. Chinnaswamy v. State of T.N., 1998 (8) S.C.C. 681 at p. 681.

3. Ins. by Act 61 of 1972, Sec.3 (w.e.f. 1st April, 1973).

4. Ins. by Finance Act, 2002 (20 of 2002), Sec. 151.

5. Commissioner of Sales-tax, Uttar Pradesh v. Jawahar Niwar Factory, 1986 A.T.J. 535 at p. 535.

6. 1986 A.T.J. 319 at p. 320.

**How a dealer can discharge the burden.**—Sub-section (1) of Sec. 6-A of the Act exempts consignment sales from Central Sales-tax but places the burden on the dealer to prove that the movement of the goods was made in that manner and it was not an inter-State sale. This sub-section also provides that the dealer may furnish to the assessing authority a declaration in the prescribed form and within the prescribed time. Rule 12(5) prescribes that form, which is in Form "F". The Form shows that the declaration is to be furnished by the transferee to the transferor and thereafter it has to be submitted to the assessing authority. There is nothing either in Sec. 6-A or in Rule 12 of the Central Sales-tax Rules, 1957, to indicate that Form "F" is intended by the Legislature to be the only method of discharging the burden that lies on the dealer. No other provision of law has been brought to notice that lies on the dealer. No other provision of law has been brought to notice which may indicate that declaration in Form "F" is the only method which had to be adopted by the dealer to discharge the burden which lies on him. The provision for furnishing a declaration in Form "F" is only an enabling provision and it does not exclude other modes of discharging the burden. In this connection reference may also be made to a circular letter, dated 22nd January, 1974, issued by the Deputy Secretary to the Government of India to all the Finance Revenue Secretaries of all State Governments and the Union Territories. Thus, the legal position is that the dealer can discharge the burden which lies upon him under sub-section (1) of Sec. 6-A by other modes, as well, apart from submitting a declaration in Form "F" to the assessing authority.

**Scope of Sec. 6-A.**—The scope of Sec. 6-A of the Central Sales-tax Act came up for consideration before the Court in *Vijayamohini Mills v. State of Kerala*.<sup>2</sup> It was held that under Sec. 6-A(1) of the Central Sales-tax Act, the burden of proof is on the dealer to prove that the movement of the goods was occasioned not by reason of sale, but was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal. The burden so cast on the dealer may be discharged by furnishing the declaration as prescribed (F Forms), along with the evidence of despatch of such goods. Furnishing of the declaration (F Forms) is not compulsive or mandatory. It is only permissive. It is open to the dealer to discharge the burden of proof cast on him, in any other manner, by adducing other evidence. In other words, it is open to the dealer to discharge the burden of proof cast on him either by furnishing the declaration (F Forms), as enjoined by Sec. 6-A (1) of the Central Sales-tax Act, or by adducing necessary proof in accordance with law and show that the movement of the goods was occasioned not by reason of sale, but was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal. In other words, production of the declaration (F Forms), as enjoined by Sec. 6-A of the Central Sales-tax Act is not compulsive. It is permissive. It is optional.<sup>3</sup>

**7. Registration of dealers.**—(1) Every dealer liable to pay tax under this Act shall, within such time as may be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify and every such application shall contain such particulars as may be prescribed.

<sup>4</sup>[(2) Any dealer liable to pay tax under the sales-tax law of the appropriate State, or where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in that State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under this Act, apply for registration under this Act to the authority referred to in sub-section (1), and every such application shall contain such particulars as may be prescribed.]

**Explanation.**—For the purpose of this sub-section, a dealer shall be deemed to be liable to pay tax under the sales-tax law of the appropriate

1. Commissioner of Sales-tax, Uttar Pradesh v. Agra Food Production Pvt. Ltd., 1984 U.P.T.C. 362 at pp. 364, 365.
2. 1989 (75) S.T.C. 63; (1989) 1 Ker.L.T. 515.
3. C.P.K. Trading Company v. Additional Sales Tax Officer, II Circle, Mattancherry, 1990 (76) S.T.C. 211 at pp. 217, 218 (Ker.); R.H. Enterprises v. C.S.T., S.T.L., 1991 Delhi 1; C.S.T. v. Snehhar Tubes Pvt. Ltd. 1994 U.P.T.C. 104 at p. 105.
4. Subs. by Act 31 of 1958, Sec. 4 for sub-section (2) (w.e.f. 1st October, 1958).

State notwithstanding that under such law a sale or purchase made by him is exempt from tax or a refund or rebate of tax is admissible in respect thereof.]

<sup>1</sup>[(2-A) Where it appears necessary to the authority to whom an application is made under sub-section (1) or sub-section (2) so to do for the proper realization of the tax payable under this Act or for the proper custody and use of the forms referred to in Cl. (a) of the first proviso to sub-section (2) of Sec. 6 or sub-section (1) of Sec. 6-A or Cl. (a) of sub-section (4) of Sec. 8 he may, by an order in writing and for reasons to be recorded therein, impose as a condition for the issue of a certificate of registration a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security as may be so specified, for all or any of the aforesaid purposes.]

(3) If the authority to whom an application under sub-section (1) or sub-section (2) is made is satisfied that the application is in conformity with the provisions of this Act and the rules made thereunder <sup>1</sup>[and the condition, if any, imposed under sub-section (2-A), has been complied with], he shall register the applicant and grant to him a certificate of registration in the prescribed form which shall specify the class or classes of goods for the purpose of sub-section (1) of Sec. 8.

<sup>1</sup>[(3-A) Where it appears necessary to the authority granting a certificate of registration under this section so to do for the proper realisation of tax payable under this Act or for the proper custody and use of the forms referred to in sub-section (2-A), he may, at any time while such certificate is in force, by an order in writing and for reasons to be recorded therein, require the dealer, to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner such security, or, if the dealer has already furnished any security in pursuance of an order under this sub-section or sub-section (2-A), such additional security, as may be specified in the order, for all or any of the aforesaid purposes.]

<sup>2</sup>[(3-B) No dealer shall be required to furnish any security under sub-section (2-A) or any security or additional security under sub-section (3-A) unless he has been given an opportunity of being heard.

(3-BB) The amount of security which a dealer may be required to furnish under sub-section (2-A) or sub-section (3-A) or the aggregate of the amount of such security and the amount of additional security which he may be required to furnish under sub-section (3-A) by the authority referred to therein, shall not exceed—

(a) in the case of a dealer other than the dealer who has made an application or who has been registered in pursuance of an application, under sub-section (2), a sum equal to the tax payable under this Act, in accordance with the estimate of such authority, on the turnover of such dealer for the year in which such security or, as the case may be, additional security is required to be furnished, and

(b) in the case of dealer who has made an application, or who has been registered in pursuance of an application, under sub-section (2), a sum equal to the tax leviable under this Act,

1. Ins. by Act 61 of 1972, Sec. 4 (w.e.f. 1st April, 1973).

2. Ins. by Act 61 of 1972, Sec. 4 (w.e.f. 1st April, 1973) and subs. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 5 (w.e.f. 7th September, 1976).

in accordance with the estimate of such authority on the sales to such dealer, in the course of inter-State trade or commerce in the year in which such security or, as the case may be, additional security is required to be furnished, had such dealer been not registered under this Act.]

<sup>1</sup>[(3-C) Where the security furnished by a dealer under sub-section (2-A) or sub-section (3-A) is in the form of a surety bond and the surety becomes insolvent or dies, the dealer shall, within thirty days of the occurrence of any of the aforesaid events, inform the authority granting the certificate of registration and shall within ninety days of such occurrence furnish a fresh surety bond or furnish in the prescribed manner other security for the amount of the bond.

(3-D) The authority granting the certificate of registration may by order and for good and sufficient cause forfeit the whole or any part of the security furnished by a dealer,—

(a) for realizing any amount of tax or penalty payable by the dealer;

(b) if the dealer is found to have misused any of the forms referred to in sub-section (2-A) or to have failed to keep them in proper custody:

PROVIDED THAT no order shall be passed under this sub-section without giving the dealer an opportunity of being heard.

(3-E) Where by reason of an order under sub-section (3-D) the security furnished by any dealer is rendered insufficient, he shall make up the deficiency in such manner and within such time as may be prescribed.

(3-F) The authority issuing the forms referred to in sub-section (2-A) may refuse to issue such forms to a dealer who has failed to comply with an order under that sub-section or sub-section (3-A), or with the provisions of sub-section (3-C) or sub-section (3-E), until the dealer has complied with such order or such provisions, as the case may be.

(3-G) The authority granting a certificate of registration may, on application by the dealer to whom it has been granted, order the refund of any amount or part thereof deposited by the dealer by way of security under this section, if it is not required for the purposes of this Act.

(3-H) Any person aggrieved by an order passed under sub-section (2-A), sub-section (3-A), sub-section (3-D) or sub-section (3-G) may, within thirty days of the service of the order on him, but after furnishing the security, prefer, in such form and manner as may be prescribed, an appeal against such order to such authority (herein after in this section referred to as the "appellate authority") as may be prescribed:

PROVIDED THAT the appellate authority may, for sufficient cause, permit such person to present the appeal,—

(a) after the expiry of the said period of thirty days; or

(b) without furnishing the whole or any part of such security.

(3-I) The procedure to be followed in hearing any appeal under sub-section (3-H), and the fees payable in respect of such appeals shall be such as may be prescribed.

(3-J) The order passed by the appellate authority in any appeal under sub-section (3-H) shall be final.]

<sup>2</sup>[(4) A certificate of registration granted under this section may—

1. Ins. by Act 61 of 1972, Sec.4 (w.e.f. 1st April, 1973).

2. Subs. by Act 31 of 1958, Sec. 4, for sub-section (4) (w.e.f. 1st October, 1958).

- (a) either on the application of the dealer to whom it has been granted or, where no such application has been made, after due notice to the dealer, be amended by the authority granting it if he is satisfied that by reason of the registered dealer having changed the name, place or nature of his business or the class or classes of goods in which he carries on business or for any other reason the certificate of registration granted to him requires to be amended; or
- (b) be cancelled by the authority granting it where he is satisfied, after due notice to the dealer to whom it has been granted, that he has ceased to carry on business<sup>1</sup> [or has ceased to exist or has failed without sufficient cause, to comply with an order under sub-section (3-A) or with the provisions of sub-section (3-C) or sub-section (3-E) or has failed to pay any tax or penalty payable under this Act], or in the case of a dealer registered under sub-section (2) has ceased to be liable to pay tax under the sales-tax law of the appropriate State or for any other sufficient reason.]

(5) A registered dealer may apply in the prescribed manner not later than six months before the end of a year to the authority which granted his certificate of registration for the cancellation of such registration, and the authority shall, unless the dealer is liable to pay tax under this Act, cancel the registration accordingly, and where he does so, the cancellation shall take effect from the end of the year.

#### ORDER

G.S.R. 583 (E), dated 1st October, 1982<sup>2</sup>.—In exercise of the powers conferred by sub-section (1) of Sec. 7 of the Central Sales-tax Act, 1956 (74 of 1956), the Central Government hereby specifies the persons mentioned in column (3) of the Schedule hereto annexed as the authorities to whom the dealers in the State of Sikkim described in column (2) of the said Schedule shall make application under the said section:

#### SCHEDULE

Sl.No.	Description of dealer	Description of authority
1	2	3
1.	Dealers having a single place of business, more than one place of business, or no fixed place of business, in the State of Sikkim.	<sup>3</sup> [Deputy Commissioner of Commercial Taxes and Assistant Commissioner of Commercial Taxes, Government of Sikkim].

#### COMMENT

Scope of Sec. 7.—The Sales Tax Appellate Tribunal seems to have misunderstood the scope of the power of the assessing authority under Sec. 14(7) of the Kerala General Sales-tax Act and under Sec. 7 of the Central Sales-tax Act as also the Bench decision of the Kerala High Court in *Natarajan Chettiar's case*.<sup>4</sup> The words "good and sufficient reasons" in the context of Sec. 14(7) of the Act only mean "appropriate" or "suitable" or "satisfactory" or "fit" and enough or adequate reasons for cancelling the registration. The Sales Tax Appellate Tribunal was in

1. Subs. by Act 61 of 1972, Sec. 4, for "or has ceased to exist" (w.e.f. 1st April, 1973).

2. Published in the *Gazette of India, Extraordinary*, Pt. II, Sec. 3 (i), dated 1st October, 1982.

3. Subs. by G.S.R. 661 (E), dated 22nd August, 1983, published in the *Gazette of India, Extraordinary*, Pt. II, Sec. 3 (i), dated 22nd August, 1983.

4. 1988 (69) S.T.C. 153.

error in distinguishing the judgment of the High Court in *Natarajan Chettiar's case*,<sup>1</sup> by referring to a few isolated passages out of context and even without endeavouring to understand the ratio of the decision. This is also a clear legal error. This error has led to a wrong approach to the entire question and the resultant conclusion. The Court set aside the common order of the Appellate Tribunal and remitted the matter to the Sales Tax Appellate Tribunal for a fresh consideration in accordance with law and in the light of the observations contained hereinabove.<sup>2</sup>

**8. Rates of tax on sales in the course of inter-State trade or commerce.**—<sup>3</sup>[(1) Every dealer, who in the course of inter-State trade or commerce—

- (a) sells to a Government any goods; or
- (b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3);

<sup>4</sup>[shall be liable to pay tax under this Act, with effect from such date as may be notified by the Central Government in the Official Gazette for this purpose, which shall be two per cent. of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, or, as the case may be, under any enactment of that State imposing value added tax, whichever is lower:

PROVIDED THAT the rate of tax payable under this sub-section by a dealer shall continue to be four per cent. of his turnover, until the rate of two per cent. takes effect under this subsection.]

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1)—

- (a) in the case of declared goods shall be calculated <sup>5</sup>[at twice the rate] applicable to the sale or purchase of goods inside the appropriate State; <sup>6</sup>[\* \* \*]
- (b) in the case of goods other than declared goods, shall be calculated at the rate of <sup>7</sup>[ten per cent.] or at the rate applicable to the sale or purchase of such goods inside the appropriate State, <sup>8</sup>[whichever is higher; and]

—<sup>9</sup>[(c) in the case of goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally shall be *nil*, and for the purpose of making any such calculation under Cl. (a) or Cl. (b), any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

*Explanation.*—For the purposes of this sub-section, a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale

1. 1988 (69) S.T.C. 153.

2. Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), *Ernakulam v. Imperial Trading Company*, 1990 (76) S.T.C. 183 at pp. 191, 192 (Ker.); *Instant, Auto Colour Lab. v. S.T.O.*, S.T.I. 1991 All. 15.

3. Subs. by Act 31 of 1958, Sec.5, for sub-sections (1) to (4) (w.e.f. 1st October, 1958).

4. Subs. by the Finance Act, 2003 (32 of 2003), Sec. 162, dated 14th May, 2003.

5. Subs. by Act 25 of 1975, Sec. 38, for "at the rate" (w.e.f. 1st July, 1975).

6. The word "and" omitted by Finance Act, 2002, (20 of 2002), Sec. 152 (ii) (a).

7. Subs. by Act 8 of 1963, Sec.2, for "seven per cent." (w.e.f. 1st April, 1963).

8. Subs. for words "whichever is higher" by Finance Act, 2002 (20 of 2002), Sec. 152 (ii)(b).

9. Subs. for certain words by Finance Act, 2002 (20 of 2002), Sec. 152(ii)(c).

or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods;]

<sup>1</sup>[(2-A)[\* \* \* \* \*]]

<sup>2</sup>[(3) The goods referred to in Cl. (b) of sub-section (1)—

<sup>3</sup>[(a) \* \* \* \* \*]]

(b) <sup>4</sup>[\* \* \*] are goods of the class specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or <sup>5</sup>[in the tele-communications network or] in mining or in the generation or distribution of electricity or any other form of power;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in <sup>6</sup>[\* \* \*] Cl.(b) or for the packing of any containers or other materials specified in the certificate of registration referred to in Cl. (c).

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner—

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority: or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government:]

<sup>7</sup>[PROVIDED THAT the declaration referred to in Cl.(a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.]

<sup>8</sup>[(5) Notwithstanding anything contained in this section, the State Government may, <sup>9</sup>[on the fulfilment of the requirements laid down in sub-section(4) by the dealer] if it is satisfied that it is necessary so to do in the public interest, by notification in the official Gazette, and subject to such conditions as may be specified therein, direct,—

1. Sub-section (2-A) omitted by Finance Act, 2002 (20 of 2002), Sec. 152(iii)

2. Subs. by Act 31 of 1958, Sec.5, for sub-sections (1) to (4) (w.e.f. 1st October, 1958).

3. Clause (a) omitted by Act 8 of 1963, Sec.2 (w.e.f 1st April, 1963).

4. Certain words omitted by Sec.2, *ibid.*

5. Ins. by Finance Act, 2002 (20 of 2002), Sec. 152(iv).

6. The words, brackets and letter "Cl. (a) or" omitted by Act 8 of 1963, Sec.2 (w.e.f. 1st April, 1963).

7. Ins. by Act 61 of 1972, Sec.5 (w.e.f. 1st April, 1973).

8. Subs. by *ibid.*, for sub-section (5).

9. Ins. by Finance Act, 2002 (20 of 2002), Sec. 152 (v)(a).

- (a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, <sup>1</sup>[to a registered dealer or the Government] from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification;
- (b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce <sup>2</sup>[to a registered dealer or the Government] by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification.]

<sup>3</sup>[(6) Notwithstanding anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to a registered dealer for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, re-conditioning, re-engineering, packaging or for use as packing material or packing accessories in an unit located in any special economic zone, or for development, operation and maintenance of special economic zone by the developer of the special economic zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf;]

(7) The goods referred in sub-section (6) shall be the goods of such class or classes of goods as specified in the certificate of registration of the registered dealer referred to in that sub-section.

(8) The provisions of sub-sections (6) and (7) shall not apply to any sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the <sup>4</sup>[prescribed authority referred to in sub-section (4)] a declaration in the prescribed manner on the prescribed form obtained from the authority specified by the Central Government under sub-section (6)], duly filled in and signed by the registered dealer to whom such goods are sold.

*Explanation.*—For the purposes of sub-section (6), the expression "special economic zone" has the meaning assigned to it in Cl. (iii) of *Explanation 2* to the proviso to Sec. 3 of the Central Excise Act, 1944 (1 of 1944).

#### COMMENTS

**Certificate of registration.**—The blending of ore in the course of loading through the mechanical ore handling plant amounted to "processing of ore within the meaning of Sec. 8 (3) (b) and Rule 13 of the Central Sales-tax Act and the mechanical ore handling plant fell within the description of "machinery, plant, equipment" used in the processing of ore for sale. It must, therefore, follow as a

1. Ins. by Finance Act, 2002 (20 of 2002), Sec. 152 (v)(b).

2. Ins. by *ibid.*

3. Subs. by Finance (No. 2) Act, 2004, (23 of 2004), Sec. 118, dated 10th September, 2004.

4. Subs. for the words, brackets and figures "authority referred to in sub-section (6)] a declaration in the prescribed manner on the prescribed form obtained from the authority referred to in sub-section (5)", by Finance (No. 2) Act, 2004 (23 of 2004), Sec. 118, dated 10th September, 2004.

necessary corollary that if any items of goods were purchased by the assessee as being intended for use as "machinery, plant, equipment, tools, spare parts, stores, accessories, fuel or lubricants" for the mechanical ore handling plant, they would be eligible for inclusion in the certificate of registration of the assessee.

**Scope.**—The requirement of Sec. 8 (3)(b) and Rule 15 is that the goods must be purchased for use "in mining" and not used "in the business of mining". It is only the item of goods purchased by the assessee for the use in the actual mining operation which are eligible for inclusion in the certificate of registration under this head and these would not include goods purchased by the assessee for use in the operation subsequent to the stacking of the ore at the mining site. Where a dealer is engaged both in mining operation as also in processing the mine ore for sale, the two processes being inter-dependent, it would be essential for carrying on the operation of processing that the ore should be carried from the mining site meant for sale, the two processes being inter-dependent, it would be essential for carrying on the operation of processing that the ore should be carried from the mining site where the mining operation comes to end to the place where the processing is carried on and that would clearly be an integral part of the operation of processing, and if any machinery, vehicles, barges and other items of goods are used for carrying the ore from the mining site to the place of processing, they would clearly be goods used in processing ore for sale.<sup>2</sup>

**Estoppel—Applicability of.**—It appears that a circular was issued by the Additional Sales Tax Commissioner, U.P., dated 26th August, 1992 in which it was mentioned that while calculating the Central Sales-tax the additional sales-tax will not be taken into consideration. Since the department itself had decided that the additional sales tax under the U.P., Sales-tax Act will not be taken into consideration for calculating the Central Sales-tax, it is not open to the department, as long as this circular is in force, to urge that additional sales-tax has also to be added while calculating the Central Sales-tax. The department having taken a particular stand through the aforesaid circular cannot be permitted to turn around and deny the benefit to the applicant so long as this circular is in force. However, once the circular is withdrawn the additional tax has to be added from the date of such withdrawal.<sup>3</sup>

**Rate of tax payable under Sec. 8 (2) (b).**—The rate of tax under Sec. 8 (2) of the Central Sales-tax Act cannot be confined to the rate contemplated under Sec. 15 alone. The tax under Sec. 8 of the Central Sales-tax Act has to be paid at a rate determined on the combined reading of Secs. 15 and 16 of the Haryana Sales-tax Act.<sup>4</sup>

**Public interest—Explained.**—The public interest, as referred to in sub-section (5) of Sec. 8 of the Act, will certainly include the public interest of the State concerned. If the reduction of the rate of tax results in increase of revenue and of industrial activities, providing employment in the industry as well as in the mining of limestone, it cannot be said that the notification was not issued in the public interest.<sup>5</sup>

**No public interest in withholding the benefit for short period—Notification quashed.**—The notification of 7th May, 1990 issued under the Central Sales-tax Act was withdrawn on 26th July, 1991. In the light of this fact, the Apex Court said that there was no public interest in withholding the benefit of the Incentive Scheme granting exemption from Central Sales-tax from oil industries for the short period of 7th May, 1990 to 26th July, 1991. In the case of the notification of 7th May, 1990

1. *Chowgule & Co. (P) Ltd. v. Union of India*, 1981 (47) S.T.C. 124 at p. 132 : A.I.R. 1981 S.C. 1014; *Hira Sugar Industries v. C.S.T.*, 1993 S.T.J. 209 (All.).
2. *Ibid.* at p. 132 : A.I.R. 1981 S.C. 1014; *Hira Sugar Industries v. C.S.T.*, 1993 S.T.J. 209 (All.); *Bahubali Plastic (P) Ltd. v. State of U.P.*, 1993 S.T.J. 8 (All.); *N.J. Devani Builders Pvt. Ltd. v. S.T.O.*, 1995 (99) S.T.C. 506 (Guj.).
3. *U.P. Ceramics & Potteries Ltd. v. C.S.T.*, S.T.I. 1992 All. 443 at pp. 444, 445.
4. *Sidwal Refrigeration Ind. (P) Ltd. v. State of Punjab*, 1993 (89) S.T.C. 97 at pp. 99, 100, 101 (P. & H.); *Tamil Nadu Small Scale Industries, Co-operative Society Ltd. v. State of Tamil Nadu*, 1994 (19) S.T.J. 99 at p. 100.
5. *Shree Digvijay Cement Co. Ltd. v. State of Rajasthan*, A.I.R. 2000 S.C. 680 at p. 690.

necessary corollary that if any items of goods were purchased by the assessee as being intended for use as "machinery, plant, equipment, tools, spare parts, stores, accessories, fuel or lubricants" for the mechanical ore handling plant, they would be eligible for inclusion in the certificate of registration of the assessee.

**Scope.**—The requirement of Sec. 8 (3)(b) and Rule 15 is that the goods must be purchased for use "in mining" and not used "in the business of mining". It is only the item of goods purchased by the assessee for the use in the actual mining operation which are eligible for inclusion in the certificate of registration under this head and these would not include goods purchased by the assessee for use in the operation subsequent to the stacking of the ore at the mining site. Where a dealer is engaged both in mining operation as also in processing the mine ore for sale, the two processes being inter-dependent, it would be essential for carrying on the operation of processing that the ore should be carried from the mining site meant for sale, the two processes being inter-dependent, it would be essential for carrying on the operation of processing that the ore should be carried from the mining site where the mining operation comes to end to the place where the processing is carried on and that would clearly be an integral part of the operation of processing, and if any machinery, vehicles, barges and other items of goods are used for carrying the ore from the mining site to the place of processing, they would clearly be goods used in processing ore for sale.<sup>2</sup>

**Estoppel—Applicability of.**—It appears that a circular was issued by the Additional Sales Tax Commissioner, U.P., dated 26th August, 1992 in which it was mentioned that while calculating the Central Sales-tax the additional sales-tax will not be taken into consideration. Since the department itself had decided that the additional sales tax under the U.P., Sales-tax Act will not be taken into consideration for calculating the Central Sales-tax, it is not open to the department, as long as this circular is in force, to urge that additional sales-tax has also to be added while calculating the Central Sales-tax. The department having taken a particular stand through the aforesaid circular cannot be permitted to turn around and deny the benefit to the applicant so long as this circular is in force. However, once the circular is withdrawn the additional tax has to be added from the date of such withdrawal.<sup>3</sup>

**Rate of tax payable under Sec. 8 (2) (b).**—The rate of tax under Sec. 8 (2) of the Central Sales-tax Act cannot be confined to the rate contemplated under Sec. 15 alone. The tax under Sec. 8 of the Central Sales-tax Act has to be paid at a rate determined on the combined reading of Secs. 15 and 16 of the Haryana Sales-tax Act.<sup>4</sup>

**Public interest—Explained.**—The public interest, as referred to in sub-section (5) of Sec. 8 of the Act, will certainly include the public interest of the State concerned. If the reduction of the rate of tax results in increase of revenue and of industrial activities, providing employment in the industry as well as in the mining of limestone, it cannot be said that the notification was not issued in the public interest.<sup>5</sup>

**No public interest in withholding the benefit for short period—Notification quashed.**—The notification of 7th May, 1990 issued under the Central Sales-tax Act was withdrawn on 26th July, 1991. In the light of this fact, the Apex Court said that there was no public interest in withholding the benefit of the Incentive Scheme granting exemption from Central Sales-tax from oil industries for the short period of 7th May, 1990 to 26th July, 1991. In the case of the notification of 7th May, 1990

1. *Chowgule & Co. (P) Ltd. v. Union of India*, 1981 (47) S.T.C. 124 at p. 132 : A.I.R. 1981 S.C. 1014; *Hira Sugar Industries v. C.S.T.*, 1993 S.T.J. 209 (All.).
2. *Ibid.* at p. 132 : A.I.R. 1981 S.C. 1014; *Hira Sugar Industries v. C.S.T.*, 1993 S.T.J. 209 (All.); *Bahubali Plastic (P) Ltd. v. State of U.P.*, 1993 S.T.J. 8 (All.); *N.J. Devani Builders Pvt. Ltd. v. S.T.O.*, 1995 (99) S.T.C. 506 (Guj.).
3. *U.P. Ceramics & Potteries Ltd. v. C.S.T.*, S.T.I. 1992 All. 443 at pp. 444, 445.
4. *Sidwal Refrigeration Ind. (P.) Ltd. v. State of Punjab*, 1993 (89) S.T.C. 97 at pp. 99, 100, 101 (P. & H.); *Tamil Nadu Small Scale Industries, Co-operative Society Ltd. v. State of Tamil Nadu*, 1994 (19) S.T.J. 99 at p. 100.
5. *Shree Digvijay Cement Co. Ltd. v. State of Rajasthan*, A.I.R. 2000 S.C. 680 at p. 690.

under the Rajasthan Sales Tax Act, no subsequent notification has been issued to restore the benefit of the scheme to oil extraction industries. The rationale, therefore, on the basis of which the notification of 7th May, 1990 under the Central Sales Tax Act was set aside, is not available while considering the notification of 7th May, 1990 under the Rajasthan Sales Tax Act.<sup>1</sup>

**Under notification case of exemption clearly made out.**—Liability to pay tax arose on commencement of production and business on 10th January, 1984 whereafter exemption from payment of sales tax was claimed under the notification. Without regard to the fact whether the assessing authority was entitled to go behind the certificate of eligibility issued by the Directorate of Industries, the entitlement of the respondent for exemption from payment of tax under the notification was clearly made out.<sup>2</sup>

**[8-A. Determination of turnover.**—(1) In determining the turnover of a dealer for the purpose of this Act, the following deductions shall be made from the aggregate of the sale prices, namely:

(a) the amount arrived at by applying the following formula:

$$\frac{\text{rate of tax} \times \text{aggregate of sale prices}}{100 + \text{rate of tax}};$$

PROVIDED THAT no deduction on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer, in accordance with the provisions of this Act, has been otherwise deducted from the aggregate of sale prices.

*Explanation.*—Where the turnover of a dealer is taxable at different rates, the aforesaid formula shall be applied separately in respect of each part of the turnover liable to a different rate of tax;

(b) the sale price of all goods returned to the dealer by the purchasers of such goods—

- (i) within a period of three months from the date of delivery of the goods, in the case of goods returned before the 14th day of May, 1966,
- (ii) within a period of six months from the date of delivery of the goods, in the case of goods returned on or after the 14th day of May, 1966:

PROVIDED THAT satisfactory evidence of such return of goods and of refund or adjustment in accounts of the sale price thereof is produced before the authority competent to assess or, as the case may be, re-assess the tax payable by the dealer under this Act: and

(c) such other deductions as the Central Government may, having regard to the prevalent market conditions, facility of trade and interests of consumers, prescribe.

(2) Save as otherwise provided in sub-section (1), in determining the turnover of a dealer for the purposes of this Act, no deduction shall be made from the aggregate of the sale price.]

1. State of Rajasthan v. Mahaveer Oil Industries, A.I.R. 1999 S.C. 2302 at p. 2305: 1999 (4) S.C.C. 357; Digvijay Cement Co. Ltd. v. State of Rajasthan, 1999 (4) S.C.C. 330 at p. 330.
2. Commissioner of Sales Tax, M.P. v. Madhya Bharat Papers Ltd., A.I.R. 2000 S.C. 667 at pp. 670, 671: J.T. 2000 (1) S.C. 174.
3. Ins. by Act 28 of 1969, Sec.5 (retrospectively).

## COMMENT

**Trade discount.**—The amount allowed as trade discount could not be included in the taxable turnover.<sup>1</sup>

<sup>2</sup>[**9.]. Levy and collection of tax and penalties.**—(1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within Cl. (a) or Cl. (b) of Sec. 3 shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced:

<sup>4</sup>[**PROVIDED THAT**, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods and being also a sale which does not fall within sub-section (2) of Sec. 6, the tax shall be levied and collected—

(a) where such subsequent sale has also effected by a registered dealer, in the State from which the registered dealer obtained, or, as the case may be, could have obtained, the form prescribed for the purposes of Cl. (a) of sub-section (4) of Sec. 8 in connection with the purchase of such goods, and

(b) where such subsequent sale has been effected by an unregistered dealer in the State from which such subsequent sale has been effected.]

(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales-tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any <sup>5</sup>[interest or penalty], payable by a dealer under this Act as if the tax or <sup>4</sup>[interest or penalty] payable by such a dealer under this Act is a tax or <sup>4</sup>[interest or penalty] payable under the general sales-tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, <sup>6</sup>[refunds, re-assess, penalties] <sup>7</sup>[charging or payment of interest], compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

**PROVIDED THAT** if in any State or part thereof there is no general sales-tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section.

1. Deputy Commissioner of Agricultural Income-tax, and Sales-tax (Law) Board of Revenue (Taxes), Ernakulam v. Aluminium Industries Ltd., Kundara, A.I.R. 1980 S.C. 839 at p. 839.

2. Subs. by Act 31 of 1958, Sec. 6, for the original Sec. 9 (w.e.f. 1st October, 1958).

3. Subs. by Act 28 of 1969, Sec. 6, for Sec. 9 (retrospectively).

4. Subs. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 6 (w.e.f. 7th September, 1976).

5. Subs. by Finance Act, 2000 (No. 10 of 2000), Sec. 119 for "penalty" (w.e.f. 12th May, 2000).

6. Subs. by Act 61 of 1972, Sec. 6, for "refunds, penalties" (w.e.f. 1st April, 1973).

7. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 6 (w.e.f. 7th September, 1976).

<sup>1</sup>[(2-A) All the <sup>2</sup>[provisions relating to offences, interest and penalties] including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions relating to matter provided for in Sees. 10 and 10-A of the general sales-tax law of each State shall, with necessary modifications, apply in relation to the assessment, re-assessment, collection and the enforcement of payment of any tax required to be collected under this Act in such State or in relation to any process connected with such assessment, re-assessment, collection or enforcement of payment as if the tax under this Act were a tax under such sales-tax law.]

<sup>3</sup>[(2-B) If the tax payable by any dealer under this Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax and all the provisions for delayed payment of such tax and all the provisions relating to due date for payment of tax, rate of interest for delayed payment of tax of the general sales tax law of each State, shall apply in relation to due date for payment of tax, rate of interest for delayed payment of tax, and assessment and collection of interest for delayed payment of tax under this Act in such States as if the tax and the interest payable under this Act were a tax and an interest under such sales tax law.]

(3) The proceeds in any financial year of any tax, <sup>4</sup>[including any interest or penalty], levied and collected under this Act in any State (other than a Union territory) on behalf of the Government of India shall be assigned to that State and shall be retained by it; and the proceeds attributable to Union territories shall form part of the Consolidated Fund of India.]

#### COMMENTS

**Imposition of penalty.**—It is possible that even where the incorrectness of the return is claimed to be due to want of care on the part of the assessee and there is no reasonable explanation forthcoming from the assessee for such want of care, the Court may, infer deliberations and the return may be liable to be branded as a false return. But where the assessee does not include a particular item in the taxable turnover under a *bona fide* belief that he is not liable so to include it, it would not be right to condemn the return as a "false" return inviting imposition of penalty. Therefore, in the instant case, it was held that the assessee could not be said to have filed "false" returns when it did not include the amount of freight in the taxable turnover shown in the returns and the Assistant Commissioner of Sales-tax was not justified in imposing penalty on the assessee under Sec. 43 of the Madhya Pradesh General Sales-tax Act, 1958 and Sec. 9, sub-section (2) of the Central Sales-tax Act, 1956.<sup>5</sup>

**Refund of tax not allowed.**—In spite of the order of the Apex Court, the appellant has not produced any material to indicate that the burden of the tax was not passed on to the consumers, so that the appellant could claim refund of the tax which was paid under protest. This alone is sufficient to disentitle the appellant to claim the refund after the decision in *Mafatlal Industries Ltd. v. Union of India*.<sup>6</sup>

1. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 6 (w.e.f. 7th September, 1976).
2. Subs. by Finance Act, 2000 (No. 10 of 2000), Sec. 119, for the words "provisions relating to offences and penalties" (w.e.f. 12th May, 2000).
3. Ins. by Finance Act, 2000 (No. 10 of 2000), Sec. 119.
4. Subs. by *ibid*, for "including any penalty".
5. Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales-tax, Indore, A.I.R. 1980 S.C. 346 at p. 348.
6. J.T. 1999 (4) S.C. 283; Bombay Tyres International Ltd. v. Collector of Central Excise, Indore, J.T. 1998 (4) S.C. 437 at p. 437.

**Applicability.**—According to the Central Sales-tax Act, 1956, a dealer was to be assessed in respect of his transactions in the State from which the movement of goods of the assessee commenced. But the authorities who are empowered to assess such tax while making the said assessment on behalf of the Government of India would be determined in accordance with the Central Sales-tax law of the appropriate State where such movement takes place. As in the instant case, the movement of the assessee's goods took place from the State of Bihar the relevant provision applicable to this case is rule 12 of the Central Sales-tax Rules, 1957. In view of the said rule the provisions of Bihar Sales-tax Act, 1959, and the rules framed thereunder would govern the field in the instant case. Therefore, in the instant case, as the movement of the goods took place in the State of Bihar for the purpose of making assessment under Central Sales-tax Act, the provisions of Bihar Sales-tax Act, 1959, would apply.<sup>1</sup>

**Constitutional validity of sub-section (2-A) of Sec. 9 as amended by the Central Sales-tax (Amendment) Act, 1976.**—There is no dispute in this case about the validity of the tax payable under the Act during the period between 1st January, 1957 and the date of commencement of the Amending Act. It has to be presumed that all the tax has been collected by the dealers from their customers. There is also no dispute that the law required the dealers to pay the tax within the specified time. The dealers had also the knowledge of the provisions relating to penalties in the general Sales-tax laws of their respective States. It was only owing to the deficiency in the Act pointed out by the Supreme Court in *Khemka & Co. v. State of Maharashtra*,<sup>2</sup> the penalties became not payable. In this situation, where the dealers have utilized the money which should have been paid to the Government and have committed default performing their duties, if Parliament calls upon them to pay penalties in accordance with the law as amended with retrospective effect it cannot be said that there has been any unreasonable restriction imposed on the rights guaranteed under Art. 19 (1) (f) and (g) of the Constitution even though the period of retrospectivity is nearly nineteen years. Sub-section (3) of Sec. 9 of the Amending Act which provides that the provisions contained in sub-section (2) thereof would not prevent a person from questioning the imposition or collection of any penalty or any proceeding, act or thing in connection therewith or for claiming any refund in accordance with the Act as amended by the Amending Act read with sub-section (1) of Sec. 9 of the Amending Act. Explanation to sub-section (3) of Sec. 9 of the Amending Act also provides for exclusion of the period between 27th February, 1975, i.e. the date on which the judgment in *Khemka & Co. v. State of Maharashtra*<sup>3</sup> was delivered up to the date of the commencement of the Amending Act in computing the period of limitation for questioning any order levying penalty. In those proceedings the authorities concerned are sure to consider all aspects of the case before passing orders levying penalties. The contention that the impugned provision is violative of Art. 19 (1) (f) and (g) of the Constitution, has, therefore, to be rejected.<sup>4</sup>

Once a sale is *prima facie* found to be an inter-State sale, the tax shall be collected in the State from which the movement of the goods commenced in view of Sec. 9 (1) of the Central Sales Tax Act, 1956. Thus, in the case of inter-State sale, any act to realise tax from citizen under the State Sales-tax Act, will be *ultra vires* being in violation of the fundamental rights guaranteed under Art. 19(1)(g) of the Constitution. A citizen who is aggrieved will have a right to seek relief by a petition under Art. 226 of the Constitution of India.<sup>5</sup>

1. Assistant Superintendent of Sales-tax v. Sunil Kumar Roy, 1978 Tax.L.R. 2146 at p. 2148; Selected Brick Co. v. C.S.T., U.P., S.T.I., 1993 All. 126; Krishna Nand Garg v. C.S.T., S.T.I., 1992 All. 299; C.S.T. v. Neelam Pencil Factory, S.T.I. 1991 All. 164.

2. 1975 U.P.T.C. 378: 1975 (35) S.T.I. 571 (S.C.): 1975 (3) S.C.R. 753.

3. 1975 (35) S.T.C. 571 (S.C.): 1975 (3) S.C.R. 753.

4. Shiv Dutt Rai Fateh Chand v. Union of India, 1983 U.P.T.C. 920 at pp. 943, 944; Birendra Singh and Co. v. C.S.T., 1994 U.P.T.C. 177 at p. 179; Chhote Lal Jai Prakash v. C.S.T., 1994 U.P.T.C. 85 at p. 87.

5. Guljag Industries Ltd. v. State of Rajasthan, (2003) 129 S.T.C. 3 at p. 12 (Raj.).

**Jurisdiction to tax turnover.**—The assessee was a dealer in coal. The dispute in the case relates to sales effected by transfer or documents of title to the goods during their movement from the colliery outside U.P. The assessee's contention was that since he was not a dealer registered under the Central Sales tax Act, the assessing officer had no jurisdiction to tax the assessee. The assessing officer relying on the amendment made in Sec. 9 of the Central Sales-tax Act by Amending Act No. 103 of 1976 rejected this contention of the assessee. Assistant Commissioner (Judicial) as well as the Additional Judge (Revision) following the decision in the case of *Commissioner of Sales-tax v. Sadanand Arya Coal Depot*,<sup>1</sup> held that the amendment was not of retrospective nature and did not confer jurisdiction on the assessing officer to tax the turnover. In view of the decision of the High Court in the case of *Commissioner of Sales-tax v. Sadanand Arya Coal Depot*,<sup>2</sup> the judgment of the Additional Judge (Revision) suffers from no defect.<sup>3</sup>

**Exempted unit—Deposit of tax.**—In the instant case, the memorandum of appeal was accompanied by an application under Sec. 20(5) of the Punjab General Sales Tax Act, 1948, requesting the appellate authority to entertain the appeal without prior payment of the tax. A similar application was filed under Sec. 9(2) of Central Sales Tax Act, 1956. The appellate authority without considering the fact that the petitioner was an exempted unit disallowed the request of the petitioner and required it to deposit different sums of money. *Held*, it is more than clear that the petitioner is an exempted unit and the period of exemption was not yet over nor had the amount been exhausted and, therefore, the High Court held that the authorities below were not justified in requiring the petitioner to deposit the assessed amount before entertaining its appeals.<sup>4</sup>

**Rejection of Account Books as it was not maintained in accordance with Sec. 12 (2) of the U.P. Sales Tax Act—Not proper.**—Merely because the account books were not accepted for purpose of U.P. Sales tax Act as up-to-date stock Register was not maintained as required under Sec. 12 (2) of the U.P. Sales tax Act. The account books under the Central Sales tax cannot be rejected, there was no material indicated in the order of the Tribunal for rejection of account books. Unless there was a suppression made by the assessee in the inter-State sale, the account books rejected under the U.P. Sales Tax Act cannot be a ground for rejecting the books of account under the Central Sales Tax Act.<sup>5</sup>

**[9-A. Collection of tax, to be only by registered dealers.**—No person who is not a registered dealer shall collect in respect of any sale by him of goods in the course of inter-State trade or commerce any amount by way of tax under this Act and no registered dealer shall make any such collection except in accordance with this Act and the rules made thereunder.]

**[9-B. Rounding off of tax, etc.**—The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise, it shall be ignored :

PROVIDED THAT nothing in this section shall apply for the purpose of collection by a dealer of any amount by way of tax under this Act in respect of any sale by him of goods in the course of inter-State trade or commerce.]

1. 1976 U.P.T.C. 816.

2. *Ibid.*

3. *Commissioner of Sales-tax v. Atma Ram and Sons*, 1983 U.P.T.C. 1027 at p. 1028.

4. *Samra Steel Products (P.) Ltd. v. Excise & Taxation Officer-Cum-Assessing Authority*, (2003) 129 S.T.C. 25 at p. 26-27 (P. & H.).

5. *Anand Bartan Udyog v. C.S.T., S.T.I.*, 1993 S.T.J. 132 at p. 138.

6. Subs. by Act 31 of 1958, Sec. 6, for the original section.

7. Ins. by Act 61 of 1972, Sec. 7 (w.e.f. 1st April, 1973).

### 10. Penalties.—If any person—

- (a) furnishes a certificate or declaration under sub-section (2) of Sec. 6 or sub-section (1) of Sec. 6-A or sub-section (4) <sup>1</sup>[or sub-section (8)] of Sec. 8. which he knows, or has reason to believe, to be false; or <sup>1</sup>
- (aa) fails to get himself registered as required by Sec. 7 or fails to comply with an order under sub-section (3-A) or with the requirements of sub-section (3-C) or sub-section (3-E) of that section;
- (b) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration; or
- (c) not being a registered dealer, falsely represents when purchasing goods in the course of inter-State trade or commerce that he is a registered dealer; or
- (d) after purchasing any goods for any of the purposes specified in <sup>2</sup>[Cl. (b) or Cl. (c) or Cl. (d)] of sub-section (3) <sup>3</sup>[or sub-section (6)] of Sec. 8 fails, without reasonable excuse, to make use of the goods for any such purpose;
- (e) has in his possession any form prescribed for the purpose of sub-section (4) <sup>4</sup>[or sub-section (8)] of Sec. 8 which has not been obtained by him or by his principal or by his agent in accordance with the provisions of this Act or any rules made thereunder;
- <sup>5</sup>[(f) collects any amount by way of tax in contravention of the provisions contained in Sec. 9-A; ]

he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with both; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

### COMMENTS

**Penalty imposed by the Sales-tax Officer—Whether could be set aside.**—In the instant case it is admitted to the parties that none appeared before the Tribunal at the time of hearing of the appeal. It was submitted that the Tribunal while reversing the order of the Assistant Commissioner (Judicial) has not taken into account three facts which were taken into account by the Assistant Commissioner (Judicial); *Firstly*, that the assessee had shown the sale of photographic goods in the first-three quarterly returns submitted by it; *secondly* the fact that the registration certificate issued to the applicant was not cancelled for which a notice was issued, which was modified by order, dated 17th February, 1981 and not earlier; and *thirdly*, the assessee never claimed that it was doing service work and not job work. Since the assessee was not represented before the Tribunal, the said facts could not be brought to the notice of the Tribunal, but since the Tribunal was reversing the findings of the Assistant Commissioner (Judicial), it was expected to have adverted to all the materials on record and that having not been done by the Tribunal, it appears that the appeal has not been properly disposed of. The order passed by the Tribunal was set aside and it was directed to decide the appeal afresh in the light

1. Ins. by Finance Act, 2002 (20 of 2002), Sec. 153 (i).

2. Subs. by Act 61 of 1972, Sec. 8, for "Cl. (b)" (w.e.f. 1st April, 1973).

3. Ins. by Finance Act, 2002 (20 of 2002), Sec. 153 (ii).

4. Ins. by Finance Act, 2002 (20 of 2002), Sec. 153 (iii).

5. Ins. by Act 31 of 1958, Sec. 7 (w.e.f. 1st October, 1958).

of the observation made and also after affording an opportunity of hearing to the assessee.<sup>1</sup>

**Imposition of penalty—Sustainability of.**—The assessee in the instant case, purchased certain goods ex U.P. and furnished Form C in pursuance of certain works contract. It delivered these goods to others and did not utilise them itself. The law as such at the relevant time was that when an assessee entered into works contract in pursuance of the said contract and delivered goods to others, it amounted to contract of sale. The High Court has so decided in the case of *Commissioner of Sales tax v. Ram Singh and Sons*,<sup>2</sup> decided on 29th January, 1975. So at the time when the assessee entered into the transactions in question it could reasonably think that it entered into the sales in Uttar Pradesh. The law laid down by the High Court has been differently interpreted by the Supreme Court in *Ram Singh and Sons v. Commissioner of Sales-tax*<sup>3</sup> decided on 7th December, 1978. The Supreme Court held that on a works contract entered into there is no sale. On the basis of this declaration of law a penalty has been imposed on the assessee. At the time when the assessee furnished Form C it was not guilty as the law was unsettled. Thus, the order imposing the penalty was set aside.<sup>4</sup>

<sup>5</sup>[10-A. Imposition of penalty in lieu of prosecution.—<sup>6</sup>[(1)] If any person purchasing goods is guilty of an offence under Cl. (b) or Cl. (c) or Cl. (d) of Sec. 10, the authority who granted to him or, as the case may be, is competent to grant to him a certificate of registration under this Act may, after giving him a reasonable opportunity of being heard, by order to writing, impose upon him by way of penalty a sum not exceeding one-and-a-half times <sup>7</sup>[the tax which would have been levied under sub-section (2) of Sec. 8 in respect of the sale to him of the goods, if the sale had been a sale falling within that sub-section :]

PROVIDED THAT no prosecution for an offence under Sec. 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this section.]

<sup>8</sup>[(2) The penalty imposed upon any dealer under sub-section (1) shall be collected by the Government of India in the manner provided in sub-section (2) of Sec. 9—

(a) in the case of an offence falling under Cl. (b) or Cl. (d) of Sec. 10, in the State in which the person purchasing the goods obtained the form prescribed for the purposes of Cl. (a) of sub-section (4) of Sec. 8 in connection with the purchase of such goods;

(b) in the case of an offence falling under Cl. (c) of Sec. 10, in the State in which the person purchasing the goods should have registered himself if the offence had not been committed.].

**11. Cognizance of offences.**—(1) No Court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with previous sanction of the Government within the local limits of whose jurisdiction the offence has been committed or of such officer of that Government as it may, by general or special order, specify in this behalf;

1. *Sahdev v. Commissioner of Sales tax*, U.P., 1986 A.T.J. 148 at p. 150.

2. 1975 U.P.T.C. 133.

3. 1979 U.P.T.C. 548.

4. *Ram Singh and Sons v. Commissioner of Sales-tax*, U.P. 1983 U.P.T.C. 964 at pp. 964, 965.

5. Ins. by Act 31 of 1958, Sec. 8 (w.e.f. 1st October, 1958).

6. Section 10-A re-numbered as sub-section(1) of that section by Act 28 of 1969, Sec. 7 (w.e.f. 1st October, 1958).

7. Subs. by Act 61 of 1972, Sec. 9, for certain words (w.e.f. 1st April, 1973).

8. Ins. by Act 28 of 1969, Sec. 7 (w.e.f. 1st October, 1958).

and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

(2) All offences punishable under this Act shall be cognizable and bailable.

**12. Indemnity.**—No suit, prosecution or other legal proceeding shall lie against any officer of Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

**13. Power to make rules.**—(1) The Central Government may, by notification in the official Gazette, make rules providing for—

(a) the manner in which applications for registration may be made under this Act, the particulars to be contained therein, the procedure for the grant of such registration, the circumstances in which registration may be refused and the form in which the certificate of registration may be given;

<sup>1</sup>[(aa) the form and the manner for furnishing declaration under sub-section (8) of Sec. 8;]

(b) the period of turnover, the manner in which the turnover in relation to the sale of any goods under this Act shall be determined, and the deductions which may be made <sup>2</sup>[under Cl. (c) of sub-section (1) of Sec. 8-A] in the process of such determination;

(c) the cases and circumstances in which, and the conditions subject to which, any registration granted under this Act may be cancelled;

<sup>3</sup>[(d) the form in which and the particulars to be contained in any declaration or certificate to be given under this Act <sup>2</sup>[the State of origin of such form or certificate and the time within which any such certificate or declaration shall be produced or furnished;]

(e) the enumeration of goods or class of goods used in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power;

(f) the matters in respect of which provisions may be made under the proviso to <sup>4</sup>[sub-section (2)] of Sec. 9;

(g) the fees payable in respect of applications under this Act.]

<sup>5</sup>[(h) the proper functioning of the Authority constituted under Sec. 19;

(i) the salaries and allowances payable to, and the term and conditions of service of, the Chairman and Members under sub-section (3) of Sec. 19;

(j) any other matter as may be prescribed.]

<sup>6</sup>[(2) Every rule made by the Central Government under sub-section

1. Ins. by Finance Act, 2002 (20 of 2002), Sec. 154 (aa).

2. Ins. by Act 61 of 1972, Sec. 10 (w.e.f. 1st April, 1973).

3. Subs. by Act 31 of 1958, Sec. 9, for "Cl. (d)" (w.e.f. 1st October, 1958).

4. Subs. by Act 28 of 1969, Sec. 8 for "sub-section (3)" (retrospectively).

5. Ins. by (Amendment) Act 2001, (41 of 2001), Sec. 2.

6. Subs. by Act 61 of 1972, Sec. 10, for "sub-section (2)" (w.e.f. 1st April, 1973).

(1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

(3) The State Government may make rules, not inconsistent with the provisions of this Act and the rules made under sub-section (1), to carry out the purposes of this Act.

(4) In particular and without prejudice to the powers conferred by sub-section (3), the State Government may make rules for all or any of the following purposes, namely:

(a) the publication of lists of registered dealers, of the amendments made in such lists from time to time, and the particulars to be contained in such lists;

<sup>1</sup>[(aa) the manner in which security may be furnished under sub-section (2-A) or sub-section (3-A) or sub-section (3-C) of Sec. 7 and the manner in which and the time within which any deficiency may be made up under sub-section (3-E) of that section;]

(b) the form and manner in which accounts relating to sales in the course of inter-State trade or commerce shall be kept by registered dealers;

(c) the furnishing of any information relating to the stocks of goods, of purchases, sales and deliveries of goods by, any dealer or any other information relating to his business as may be necessary for the purposes of this Act;

(d) the inspection of any books, accounts or documents required to be kept under this Act, the entry into any premises at all reasonable times for the purposes of searching for any such books, accounts or documents kept or suspected to be kept in such premises and the seizure of such books, accounts or documents;

<sup>2</sup>[(e) the authority from whom, the conditions subject to which and the fees subject to payment of which, any form of certificate prescribed under Cl.(a) of the first proviso to sub-section (2) of Sec. 6 or of declaration prescribed under sub-section (1) of Sec. 6-A or sub-section (4) of Sec. 8 may be obtained, the manner in which such forms shall be kept in custody and records relating thereto maintained and the manner in which any such form may be used and any such certificate or declaration may be furnished ;

(ee) the form and manner in which, and the authority to whom, an appeal may be preferred under sub-section (3-H) of Sec. 7, the

1. Ins. by Act 61 of 1972, Sec. 10 (w.e.f. 1st April, 1973).

2. Subs. by *ibid*, Sec. 10, for Cl. (e) (w.e.f. 1st April, 1973).

procedure to be followed in hearing such appeals and the fees payable in respect of such appeals;]

(f) in the case of an undivided Hindu family, association, club, society, firm or company, or in the case of a person who carries on business as a guardian or trustee or otherwise on behalf of another person, the furnishing of a declaration stating the name of the person who shall be deemed to be the manager in relation to the business of the dealer in the State and the form in which such declaration may be given;

(g) the time within which, the manner in which and <sup>1</sup>[the authorities to whom] any change in the ownership of any business or in <sup>2</sup>[the name, place or nature] of any business carried on by any dealer shall be furnished.

(5) In making any rule under this section <sup>3</sup>[the Central Government or, as the case may be, the State Government] may direct that a breach thereof shall be punishable with fine which may extend to five hundred rupees and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

#### CHAPTER IV

#### GOODS OF SPECIAL IMPORTANCE IN INTER-STATE TRADE OR COMMERCE

**14. Certain goods to be of special importance in inter-State trade or commerce.**—It is hereby declared that the following goods are of special importance in inter-State trade or commerce:

<sup>4</sup>[(i) Cereals, that is to say,—

- (i) paddy (*Oryza sativa* L);
- (ii) rice (*Oryza sativa* L);
- (iii) wheat (*Triticum vulgare*, *T. Compactum*, *T. Sphaerococcum*, *T. Durum*, *T. Aestivum*, *L.T. Discococcum*);
- (iv) jowar or milo (*Sorghum vulgare pers*);
- (v) bajra (*Pennisetum typhoideum* L);
- (vi) maize (*Zea mays* D);
- (vii) ragi (*Elusine coracana gaertn*);
- (viii) kodon (*Paspalum scrobiculatum* L);
- (ix) kutki (*Panicum miliare* L);
- (x) barley (*Hordeum vulgare* L);

<sup>5</sup>[<sup>6</sup>[(i-a)] coal, including coke in all its forms, but excluding charcoal:

PROVIDED THAT during the period commencing on 23rd day of February, 1967 and ending with the date of commencement of Sec. 11 of the Central Sales-tax (Amendment) Act, 1972 (61 of

1. Subs. by Act 31 of 1958, Sec. 9 for "the authorities to which" (w.e.f. 1st October, 1958).

2. Subs. by *ibid.*, Sec. 9 for "the nature" (w.e.f. 1st October, 1958).

3. Subs. by Act 61 of 1972, Sec. 10, for "the State Government" (w.e.f. 10th April, 1973).

4. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 7.

5. Subs. by Act 61 of 1972, Sec. 11, for Cl. (i) (retrospectively).

6. Re-numbered by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 7.

1972), this clause shall have effect subject to the modification that the words "but excluding charcoal" shall be omitted;]

(ii) cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste;

<sup>1</sup>[(ii-a) cotton fabrics covered under heading Nos. 52.05, 52.06, 52.07, 52.08, 52.09, 52.10, 52.11, 52.12, 58.01, 58.02, 58.03, 58.04, 58.05, <sup>2</sup>[58.06], 59.01, 59.03, 59.06 and 60.01 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).

(ii-b) cotton yarn, but not including cotton yarn waste;]

<sup>3</sup>[(ii-c) crude oil, that is to say, crude petroleum oils and crude oils obtained from bituminous minerals (such as, shale, calcareous rock, sand) whatever their composition, whether obtained from normal or condensation oil-deposits or by the destructive distillation of bituminous minerals and whether or not subjected to all or any of the following processes:

- (1) Decantation;
- (2) de-salting;
- (3) dehydration;
- (4) stabilization in order to normalize the vapour pressure;
- (5) elimination of very light fraction with a view of returning them to the oil-deposits in order to improve the drainage and maintain the pressure;
- (6) the addition of only those hydrocarbons previously recovered by physical methods during the course of the above-mentioned processes;
- (7) any other minor process (including addition of pour point depressants or flow improvers) which does not change the essential character of the substance];

<sup>4</sup>[(ii-d) Aviation Turbine Fuel sold to a Turbo-Prop Aircraft.

*Explanation.*—For the purpose of this clause, "Turbo- Prop Aircraft" means an aircraft deriving thrust, mainly from propeller, which may be driven by either turbine engine or piston engine].

(iii) hides and skins, whether in a raw or dressed state;

<sup>5</sup>[(iv) iron and steel, that is to say,—

- (i) <sup>6</sup>[pig iron, sponge iron and] cast iron including <sup>7</sup>[ingot moulds, bottom plates,] iron scrap, cast iron scrap, runner scrap and iron skull scrap;
- (ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);

1. Subs. by Finance Act, 1988 (26 of 1988), Sec. 85 (a), for item (ii-a) as amended by Act 14 of 1961, Sec. 14.

2. Ins. by Finance Act, 1989 (13 of 1989), Sec. 50 (a).

3. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976).

4. Ins. by Finance Act, 2001 (14 of 2001, Sec. 139 (a).

5. Subs. by Act 61 of 1972, Sec. 11, for Cl. (iv) (w.e.f. 1st April, 1973).

6. Subs. for words "pig iron and" by Finance Act, 2001 (14 of 2001), Sec. 139 (b).

7. Subs. by Act 38 of 1978, Sec. 3 and Second Schedule.

- (iii) skelp bars, tin bars, sheet bars, hoe-bars and sleeper bars;
- (iv) steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths);
- (v) steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections);
- (vi) sheets, hoops, strips and skelp, both black and galvanized, hot, and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in rivetted condition;
- (vii) plates both plain and chequered in all qualities;
- (viii) discs, rings, forgings, and steel castings;
- (ix) tool, alloy and special steels of any of the above categories;
- (x) steel melting scrap in all forms including steel skull, turnings and borings;
- (xi) steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings;
- (xii) tin-plates, both hot dipped and electrolytic and tinfree plates;
- (xiii) fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, heavy and light crane rails;
- (xiv) wheels, tyres, axles and wheel sets;
- (xv) wire rods and wires—rolled, drawn, galvanised, aluminised, tinned or coated such as by copper;
- (xvi) defectives, rejects, cuttings or end pieces of any of the above categories;]

<sup>1</sup>[(v) jute that is to say, the fibre extracted from plants belonging to the species *Corchoaus capsularies* and *Corchorus olitorious* and the fibre known as mesta or bimli extracted from plants of the species *Hibiscus cannabinus* and *Hibiscus sabdariffa*—*Varaltissima* and the fibre known as Sunn or Sunn-hemp extracted from plants of the species *Crotalaria juncea* whether baled or otherwise;]

<sup>2</sup>[(vi) oilseeds, that is to say,—

- (i) groundnut or peanut (*Arachis hypogaea*);
- (ii) sesamum or til (*Sesamum orientale*);
- (iii) cotton seed (*Gossypium Spp.*);
- (iv) soyabean (*Glycine seja*);
- (v) rapeseed and mustard—
  - (1) torta (*Brassica campestris var toria*);
  - (2) rai (*Brassica juncea*);
  - (3) jamba—Taramira (*Eruca Sativa*);

1. Subs. by Act 61 of 1972, Sec. 11, for Cl. (v) (w.e.f. 1st April, 1973).

2. Subs. by Sec. 11, *ibid.*, for Cl. (vi).

- (4) sarson, yellow and brown (*Brassica campestris varsarson*);
- (5) banarsi rai or true mustard (*Brassica nigra*);
  - (vi) linseed (*Linum usitatissimum*);
  - (vii) castor (*Ricinus communis*);
  - (viii) coconut (i.e. copra excluding tender coconuts) (*Cocos mucifera*);
  - (ix) sunflower (*Helianthus annuus*);
  - (x) nigar seed (*Guizotia abyssinica*);
  - (xi) Neem, vepa (*Azadirachta indica*);
  - (xii) mahua illupai, Ippe (*Madhuca indica* M. *Latifolia*, *Bassia*, *latifolia* and *Madhuca longifolia* syn. *M. Longifolia*);
  - (xiii) karanja, pongam, hongra (*Pongamia pinnata* syn. *P. Glabra*);
  - (xiv) kusum (*Schleichera oleosa*, syn. *S. Triujuga*);
  - (xv) punna, undi (*Calophyllum inophyllum*);
  - (xvi) kokum (*Carcinia indica*);
  - (xvii) sal (*Shorea roubusta*);
  - (xviii) tung (*Aleurites fordii* and *A. Montana*);
  - (xix) red palm (*Elaeis guinensis*);
  - (xx) safflower (*Carthamus tinctorius*);
- <sup>1</sup>[(vi-a) pulses, that is to say,—
  - (i) gram or gulab gram (*Cicerarietinum* L);
  - (ii) tur or arhar (*Cajanus cajan*);
  - (iii) moong or green gram (*Phaseolus aureus*);
  - (iv) masur or lentil (*Lens esculenta* Moench, *Lens culinaris* Medic);
  - (v) urad or black gram (*Phaseolus Mungo*);
  - (vi) moth (*Phaseolus aconitifolius* Jacq);
  - (vii) lakh or khesari (*Lathyrus sativus* L.)]
  - <sup>2</sup>[(viii) man-made fabrics covered under heading Nos. 54.08, 54.09, 54.10, 54.11, 54.12, 55.07, 55.08, 55.09, 55.10, 55.11, 55.12, 58.01, 58.02, 58.03, 58.04, 58.05, <sup>3</sup>[58.06], 59.01, 59.02, 59.03, 59.05, 59.06, and 60.01 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
  - (viii) sugar covered under sub-heading Nos. 1701.20, 1701.31, 1701.39 and 1702.11 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
  - (ix) unmanufactured tobacco and tobacco refuse covered under sub-heading No. 2401.00, cigars and cheroots of tobacco covered under heading No. 24.02, cigarettes

1. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 7.

2. Subs. by Finance Act, 1988 (26 of 1988), Sec. 85 (b), for item (vii), (viii), (ix) and (x).

3. Ins. by Finance Act, 1989 (13 of 1989), Sec. 50 (a).

and cigarillos of tobacco covered under sub-heading Nos. 2403.11 and 2403.21 and other manufactured tobacco covered under sub-heading Nos. 2404.11, 2404.12, 2404.13, 2404.19, 2404.21, 2404.29, 2404.31, 2404.39, 2404.41 <sup>1</sup>[2404.50 and 2404.60] of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(x) woven fabrics of wool covered under heading Nos. 51.06, 51.07, 58.01, 58.02, 58.03 and 58.05 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)].

(xi) <sup>2</sup>[\* \* \*]

### COMMENTS

**Whether copra powder is declared commodity.**—The dispute in the present case was regarding rate of tax. According to respondent copra powder was taxable at 5 per cent. and according to the department it was taxable at 8 per cent. since it was an undeclared commodity. In first appeal filed by the respondent assessee Assistant Commissioner (Judicial), accepted the copra powder as declared commodity. The revenue feeling aggrieved filed second appeal. The Tribunal rightly in second appeal held that copra powder is a declared commodity under Sec. 14 (iv) of the Central Sales-tax Act.<sup>3</sup>

**"That is to say".**—The expression "that is to say" employed in the definition in the statute with reference to oil seeds is exhaustive and is not illustrative.<sup>4</sup>

**Whether mattar is declared goods under Sec. 14 of the Central Sales-tax Act.**—All the authorities in the present case have held that *mattar* was not a declared commodity and, therefore, imposed tax on the turnover of *mattar*. The short question involved in the instant revision is as to whether *mattar* is declared goods under Sec. 14 of the Central Sales-tax Act and therefore, it was not liable to additional tax of 1 per cent. It is impossible to point out any illegality or error which may warrant interference by High Court in the present revision and the view taken by the Tribunal that *mattar* was not a declared commodity under Sec. 14 of the Sales-tax is wholly correct.<sup>5</sup>

**Declared goods taxed at a single point.**—The goods being declared goods, they can only be taxed at a single point, that is, only one sale in the State can be subjected to tax.<sup>6</sup>

**Cast iron.**—If molten metal is poured into a mould, what comes out may be regarded as a casting. Even then such iron casting in its solid form must be treated as "cast iron" in Sec. 14 (iv) of the Central Sales-tax Act. To repeat, the test is whether the goods in question are being bought and sold, i.e. dealt with an understood, in commercial parlance as cast iron or as different goods, e.g. manhole covers, pipes, motor parts etc.<sup>7</sup>

1. Subs. by Finance Act, 1989 (13 of 1989) Sec. 50 (b), for the word and figures "and 2404.50".

2. Item (xi) omitted by Act 19 of 1968, Sec. 43.

3. Commissioner of Sale tax, Uttar Pradesh v. Suraj Narain Suresh Chandra, 1986 A.T.J. 478 at p. 479.

4. Sait Rikhaji Furtarnal v. State of A.P., A.I.R. 1991 S.C. 354; 1991 Supp. (1) S.C.C. 202; State of Bihar v. Universal Hydrocarbons Co. Ltd., A.I.R. 1995 S.C. 991 at p. 995; Gopuram Gram Min Co. v. State of A.P., 1998 (8) S.C.C. 668 at p. 670.

5. Nav Bharat Dal Mill v. Commissioner of Sales-tax, Uttar Pradesh, 1986 A.T.J. 360 at p. 380; State of Bihar v. Universal Hydrocarbons Co. Ltd., A.I.R. 1995 S.C. 991 at p. 994.

6. Shanmuga Traders v. State of Tamil Nadu, 1998 (5) S.C.C. 349 at p. 354.

7. Vasantham Foundry v. Union of India, A.I.R. 1995 S.C. 2400 at p. 2405.

**Calcined petroleum coke.**—Once the entry is "coke in all its forms" irrespective of the fact raw petroleum coke loses its original identity or in the process of manufacture "Calcined Petroleum Coke" out of the purview of this entry. In more or less identical situation it was held that petroleum coke is one form of coal governed by the expression "coal" within Sec. 14 (i-a) of the Act.<sup>1</sup>

**Watery coconuts are declared goods.**—Schedule III consists of declared goods under the provisions of Sec. 14 of the Central Sales-tax Act, 1956, and are common throughout India and more than 4 per cent. tax could not be levied.

It is, thus, clear, that the water coconuts are within the original entry No. 5 of the Third Schedule. Once the goods were covered by entry No. 5 of the Third Schedule they automatically excluded by the definition of entry No. 10 of the Second Schedule. Therefore the goods are not liable to tax additionally, as they are covered by entry No. 5 of the Third Schedule they automatically excluded by the definition of entry No. 5 of the Third Schedule.<sup>2</sup>

**Hides and skins separate commercial commodity.**—Merely because different goods or commodities are listed together in the same sub-heading or sub-item in Sec. 14 cannot mean that they are regarded as one and the same item. Whenever the Legislature wanted different goods placed in the same entry to be regarded as a single commodity it expressly provided for the same. Dressed hides and skins is a separate commercial commodity which emerges after raw hides and skins has been subjected to manufacturing process and, therefore, Sec. 14 (iii) deals with two different types of goods which unlike the case of pulses referred to in Sec. 15 (d), is not regarded by the Act as one and the same commodity.<sup>3</sup>

**[15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.**—Every sales-tax law of a State shall, in so far as it imposes or authorizes the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed <sup>5</sup>[four per cent.] of the sale or purchase price thereof, <sup>6</sup>[\* \* \*];

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, <sup>7</sup>[and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law <sup>8</sup>[shall be reimbursed to person making such sale in the course of inter-State trade or commerce] in such manner and subject to such conditions as may be provided in any law in force in that State;]

<sup>9</sup>[(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in sub-clause (i) of Cl. (i) of Sec. 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy;

1. State of Bihar v. Universal Hydrocarbons Co. Ltd., A.I.R. 1995 S.C. 991 at pp. 993, 994.

2. State of A.P. v. Kavali Venkata Ramanaiah & Sons., 1993 (89) S.T.C. 175 at pp. 175, 176 (A.P.).

3. TVL K.A.K. Anwar & Co. v. State of Tamil Nadu, 1998 (1) S.C.C. 437 at p. 448.

4. Subs. by Act 31 of 1958, Sec. 11, for the former Sec. 15 (w.e.f. 1st October, 1958).

5. Subs. by Act 25 of 1975, Sec. 38, for "three per cent." (w.e.f. 1st July, 1975).

6. The words "and such tax shall not be levied at more than one stage" omitted by Finance Act, 2002 (20 of 2002), Sec. 155.

7. Subs. by Act 61 for 1972, Sec. 12, for "the tax so levied" (w.e.f. 1st April, 1973).

8. *Ibid.*, for "shall be refunded to such persons."

9. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 8.

<sup>1</sup>[(ca) where a tax on sale or purchase of paddy referred to in sub-clause (i) of Cl. (i) of Sec. 14 is leviable under the law and the rice procured out of such paddy is exported out of India, then, for the purposes of sub-section (3) of Sec. 5, the paddy and rice shall be treated as a single commodity;]

(d) each of the pulses referred to in Cl. (vi-a) of Sec. 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law.]

### COMMENTS

**Assessment order—When could be quashed.**—Bright-bars are declared goods within the meaning of the provisions of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi. They were assessed to sales-tax under the said Act for the assessment years 1973-74 and 1974-75. The petitions were filed to quash the assessment orders for the two years on the ground that the assessment made under Sec. 5(2) (a) (ii) of the State Act is bad since it is inconsistent with the provisions of Sec. 15 (a) of the Central Sales-tax Act, 1956 and violative of Art. 286 (3) of the Constitution of India. An identical challenge fell for consideration before the Supreme Court in *Govind Saran Ganga Saran v. Commissioner, Sales-tax*.<sup>2</sup> The challenge was upheld and assessment order in that case was set aside. Section 15 (a) of the Central Act provides that every sales-tax law of State shall be subject to the restriction and condition that the tax payable under that law, on any declared goods, shall not exceed 3 per cent. of the sale or purchase price thereof and that such tax shall not be levied at more than one stage. Section 5 (a) (ii) of the Bengal Finance (Sales Tax) Act, 1941, does not contain any guideline as to the stage at which sales tax has to be levied upon a declared goods inside the State. It is the omission in this section of this important pre-requisite of Sec. 15 of the Central Act that persuaded the Supreme Court to set aside the assessment in the case referred above. The State Sales tax Act, as applied to the Union Territory of Delhi, was amended by Parliament in 1959 and Sec. 5 (A) was inserted empowering the Chief Commissioner to specify, by notification in the official Gazette, the point in the series of sales by successive dealers at which any goods or class of goods can be taxed. The Supreme Court observed that no notification was brought to its notice. In the absence of any notification, the assessment orders challenged in the petitions have to be quashed.<sup>3</sup>

**Benefit of adjustment of tax.**—Clause (i) of Art. 286 protects sale or purchase which take place (a) outside the State or (b) in the course of import of goods into or export of the goods out of the territory of India, from a State Law imposing or authorising imposition of a tax. Clause (c) of Sec. 15 of Central Sales tax Act directs that where in respect of sale or purchase of paddy, tax has been levied in a State, then the tax leviable on the rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy.<sup>4</sup>

### <sup>5</sup>[CHAPTER V

### LIABILITY IN SPECIAL CASES

16. Definitions.—In this chapter,—

(a) "appropriate authority", in relation to a company, means the authority competent to assess tax on the company;

1. Ins. by Act 33 of 1996, Sec. 87 (w.e.f. 28th September, 1996).

2. A.I.R. 1985 S.C. 1041; 1985 (Supp.) S.C. (205: 1985 S.C.C. (Tax) 447; *Larsen & Toubro Ltd. v. State of Tamil Nadu*, 1993 (88) S.T.O. 289 (Mad.).

3. *Rajasthan Commercial Corporation v. Sales-tax Commissioner*, 1986 (4) S.C.C. 350 at p. 351.

4. *Satnam Overseas (Export) v. State of Haryana*, A.I.R. 2003 S.C. 66 at p. 82.

5. Ins. by Act 61 of 1972, Sec. 13 (w.e.f. 1st April, 1973).

- (b) "company", and "private company" have the meanings respectively assigned to them by Cls. (i) and (iii) of sub-section (1) of Sec. 3 of the Companies Act, 1956 (1 of 1956).

**17. Company in liquidation.**—(1) Every person—

- (a) who is the liquidator of any company which is being wound up, whether under the orders of a Court or otherwise; or
- (b) who has been appointed the receiver of any assets of a company, (hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the appropriate authority.

(2) The appropriate authority shall, after making such inquiry or calling for such information as it may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the appropriate authority would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by company.

(3) The liquidator shall not part with any of the assets of the company or the properties in his hands until he has been notified by the appropriate authority under sub-section (2) and on being so notified, shall set aside an amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands:

PROVIDED THAT nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties in compliance with any order of a Court or for the purpose of the payment of the tax payable by the company under this Act or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding-up of the company as are in the opinion of the appropriate authority reasonable.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by, or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of sub-section (3), he shall be personally liable for the payment of the tax which the company would be liable to pay:

PROVIDED THAT if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

**18. Liability of directors of private company in liquidation.**—Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), when any private company is wound-up after the commencement of this Act, and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then, every person who was a director of the private company at any time during

the period for which the tax is due shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

1[CHAPTER VI  
AUTHORITY TO SETTLE DISPUTES IN COURSE OF INTER- STATE  
TRADE OR COMMERCE

**19. Central Sales Tax Appellate Authority.**—(1) The Central Government shall constitute, by notification in the Official Gazette, an Authority to settle inter-State disputes falling under <sup>2</sup>[Sec. 6-A read with Sec. 9] of this Act, to be known as "the Central Sales Tax Appellate Authority (hereinafter referred to as the Authority)".

(2) The Authority shall consist of the following Members appointed by the Central Government, namely:

- (a) a Chairman, who is a retired Judge of the Supreme Court, or a retired Chief Justice of a High Court;
- (b) an officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India; and
- (c) an officer of a State Government not below the rank of Secretary or, an officer of the Central Government not below the rank of Additional Secretary, who is an expert in sales-tax matters.

(3) The salaries and allowances payable to, and the terms and conditions of service of, the Chairman and Members shall be such as may be prescribed.

(4) The Central Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act.

**20. Appeals.**—(1) The provisions of this Chapter shall apply to appeals filed by the aggrieved dealer against any order of the assessing authority made under [Sec. 6-A read with Sec. 9] <sup>4</sup>[of this Act, which relates to any dispute concerning the sale of goods effected in the course of inter-State trade or commerce.]

(2) Notwithstanding anything contained in the general sales tax laws, the Authority shall adjudicate an appeal filed by a dealer <sup>5</sup>[under sub-section (1) within forty-five days from the date on which order referred to in that sub-section is served on him:

PROVIDED THAT the Authority may entertain any appeal after the expiry of the said period of forty-five days, but not later than sixty days from the date of such service, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.]

(4) The application shall be made in quadruplicate and be accompanied by a fee of five thousand rupees.

1. Ins. by Central Sales-tax (Amendment) Act, (41 of 2001), Sec. 3.

2. Subs for the words, figures and letter "Sec. 6-A or Sec. 9" by Finance (No. 2) Act, 2004 (23 of 2004), Sec. 119 (a), dated 10th September, 2004.

3. Subs. for the words, figures and letter " Sec. 6-A or Sec. 9" by Finance (No. 2) Act, 2004 (23 of 2004) Sec. 119 (b), dated 10th September, 2004 (w.e.f. 17th March, 2005).

4. Subs. for the words "Sec. 9 of this Act" by Finance Act, 2003 (32 of 2003), Sec. 163 (a), dated 14th May, 2003 (w.e.f. 17th March, 2005).

5. Subs. by the Finance Act, 2003 (32 of 2003), Sec. 163 (b), dated 14th May, 2003 (w.e.f. 17th March 2005).

6. Sub-section. (3) of Sec. 20 omitted by Finance Act, 2003 (32 of 2003), Sec. 163 (c), dated 14th May, 2003 (w.e.f. 17th March, 2005).

**21. Procedure on receipt of application.**—(1) On receipt of an appeal, the Authority shall cause a copy thereof to be forwarded to the<sup>1</sup> assessing authority concerned as well as to each State Government concerned with the appeal and to call upon them to furnish the relevant records:

PROVIDED THAT such records shall, as soon as possible, be returned to the assessing authority or such State Government concerned, as the case may be;]

(2) The Authority shall adjudicate and decide upon the appeal filed against an order of the assessing authority.

(3) The Authority, after examining the appeal and the records called for, by order, either allow or reject the appeal:

<sup>2</sup>[PROVIDED THAT no appeal shall be rejected unless an opportunity has been given to the appellant of being heard in person or through a duly authorised representative, and <sup>3</sup>[also to each State Government] concerned with the appeal of being heard.]

PROVIDED FURTHER THAT where an appeal is rejected or accepted, reasons for such rejection or acceptance shall be given in the order.

(4) The Authority shall make an endeavour to pronounce its order in writing within six months of the receipt of the appeal.

(5) A copy of every order made under sub-section (3) shall be sent to the appellant and to the assessing authority.

**22. Powers of the Authority.**—(1) The Authority shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908. (5 of 1908) while trying a suit in respect of the following matters, namely:

- (a) enforcing the attendance of any person, examining him on oath or affirmation;
- (b) compelling the production of accounts and documents;
- (c) issuing commission for the examination of witnesses;
- (d) the reception of evidence on affidavits;
- (e) any other matter which may be prescribed.

<sup>4</sup>[(1-A) The Authority may grant stay of the operation of the order of the assessing authority against which the appeal is filed before it or order the pre-deposit of the tax before entertaining the appeal and while granting such stay or making such order for the pre-deposit of the tax, the Authority shall have regard, if the assessee has already made pre-deposit of the tax under the general sales tax law of the State concerned, to such pre-deposit;]

(2) Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of Secs. 193 and 228 of the Indian Penal Code, 1860 (45 of 1860) and the Authority shall be deemed to be a Civil Court for the purposes of Sec. 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

**23. Procedure of Authority.**—The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure<sup>5</sup> [in all matters, including stay of recovery of any demand] arising out of the exercise of powers under this Act.

**24. Authority for Advance Rulings to function as Authority under this Act.**—(1) Notwithstanding anything contained in any other law for the time being in force and in Sec. 19 of this Act, the Authority for Advance Rulings constituted

1. Subs. by the Finance Act, 2003 (32 of 2003) Sec. 164 (a), dated 14th May, 2003 (w.e.f. 17th March, 2005).

2. Subs. by the Finance Act, 2003 (32 of 2003), Sec. 164 (b), dated 14th May, 2003 (w.e.f. 17th March, 2005).

3. Subs. for the words "also to the State Government" by Finance (No. 2) Act, 2004 (23 of 2004), Sec. 119 (c), dated 10th September, 2004.

4. Ins. by Finance (No. 2) Act, 2004 (23 of 2004), Sec. 119 (d), dated 10th September, 2004.

5. Subs. for the words "in all matters" by Finance Act, 2003 (32 of 2003), Sec. 165, dated 14th May, 2003.

under Sec. 245-O of the Income-tax Act, 1961 (43 of 1961) shall be notified by the Central Government in the Official Gazette, with such modifications as may be necessary, to make its composition in conformity with Sec. 19 of this Act, as the Authority under this Act fill such time an Authority is constituted under that section.

(2) On and from the date of the constitution of the Authority in accordance with the provisions of Sec. 19 of this Act, the proceedings pending with the Authority for Advance Rulings shall stand transferred to the Authority constituted under that section from the stage at which such proceedings stood before the date of constitution of the said Authority.

**25. Transfer of pending proceedings.**—On and from the date when the Authority is constituted under Sec. 19, <sup>1</sup>[any proceeding] arising out of the provisions contained in this Chapter—

- (i) which is pending immediately before the constitution of such Authority before the Appellate Authority constituted under the general Sales-tax law of a State or of the Union Territory, as the case may be; or
- (ii) which would have been required to be taken before such Appellate Authority,

shall stand transferred to such Authority on the date on which it is established.

**26. Applicability of order passed.**—An order passed by the Authority under this Chapter shall be binding on <sup>2</sup>[each State Government concerned, the assessing authorities] and other authorities created by or under any law relating to general sales-tax, in force for the time being in any State or Union territory.

#### Notification

**Notifn. No. TT-2-1712 / xi-9 (460) 94—V.P. Act 74- 56— Order - 9, dated 19th July, 1996<sup>3</sup>.**—Whereas the State Government is satisfied that it is necessary so to do in the public interest, to grant exemption from tax in the course of inter-State trade or commerce by a dealer having his place of business in the State of Uttar Pradesh in respect of sales of two-wheeler automobiles manufactured by new units having a fixed capital investment of fifty crore rupees or more as also by units which may make additional fixed capital investment of fifty crore rupees or more in expansion, diversification, modernisation of the existing unit engaged in the manufacture of two-wheeler automobiles in the State.

2. Now, therefore, in exercise of the powers under sub-section (5) of Sec. 8 of the Central Sales-tax Act, 1956 (Act No. LXXIV of 1956) hereinafter referred to as the Act, the Governor is pleased to declare that the sales of two-wheeler automobiles in the course of inter-State trade or commerce by a dealer having his place of business in the State of Uttar Pradesh shall, subject to the conditions specified hereinafter, be exempt from payment of tax.

3. No tax shall be payable in respect of sales of such two-wheeler automobiles as are—

- (1) manufactured by such a new unit as has fixed capital investment of fifty crore rupees or more and as fulfil the conditions specified in this notification;
- (2) produced in excess of base production by an existing unit under foreign collaboration approved by the Government of India or any authority designated by it and making additional fixed capital investment of at least twenty-five per cent. of the original fixed capital investment without providing for

1. Subs. for the words "every appeal" by Finance (No. 2) Act, 2004 (23 of 2004), Sec. 119 (e), dated 10th September, 2004.

2. Subs. for the words "the assessing authorities" by Finance (No. 2) Act, 2004 (23 of 2004), Sec. 119 (f), dated 10th September, 2004

3. Published in the U.P. Gazette, Extraordinary, Pt. 4, Sec. (kha.), dated 19th July, 1999.

depreciation or fifty crore rupees, whichever is higher during a period of three years starting on or after 1st December, 1994 and the production capacity whereof after such investment has increased by at least twenty-five per cent.

*Explanation.*—For the purposes of this sub-paragraph, the sales of two-wheeler automobiles produced in excess of base production with reference to any assessment year shall also include the sales of stock of such goods as was in excess of base production in previous assessment year and had been carried forward in that assessment year.

- (3) manufactured by a unit under new foreign collaboration approved by the Government of India or any authority designated by it for the purpose after 1st December, 1994 and such unit intends to make an additional fixed capital investment of at least fifty crore rupees during the period of four years starting on or after 1st December, 1994.

4. The facility of exemption from tax mentioned in paragraph 3 above shall be subject to the following conditions in addition to the conditions referred to in Sec. 4-A of the Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. 15 of 1948):

- (i) that the date of starting production of such goods by the unit falls on or after 1st December, 1994 and not later than 31st March, 2000;
- (ii) that the facility of exemption of tax under this notification shall not simultaneously be available to a unit availing any such tax facility under any other notification issued under this section;
- (iii) that the unit is licensed or in respect whereof a letter of intent has been issued or which is registered permanently or otherwise by the appropriate authority in accordance with any law for the time being in force relating to licensing or registration of such unit;
- (iv) that the new unit is established on land or building or both owned or taken on lease for a period of not less than fifteen years by such unit or allotted to such unit by the Central or the State Government or any government company or any corporation owned or controlled by the Central or the State Government;
- (v) that the sales of two-wheeler automobiles for the purposes of exemption under this notification shall also include the sales of such by-products and waste products of a unit as are mentioned in the eligibility certificate issued to such unit under Sec. 4-A of the U.P. Trade Tax Act, 1948;
- (vi) that the total amount of tax exemption under the Act as also under the Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. 15 of 1948) shall not exceed the amount of fixed capital investment of the unit made during the period referred to in paragraph 3 of this notification but the amount of tax exemption under both the aforesaid Acts up to the end of any assessment year shall not exceed the additional fixed capital investment made up to the end of that year.
- (vii) that the facility of exemption from tax shall be available only for a period of eight years to be reckoned—
  - (a) in the case of a unit falling under sub-paragraph (i) of paragraph 3 from the date of the first sale or the date following the expiration of six months from the date of starting production, whichever is earlier, and