State of Madras

Vs

N. K. Nataraja Mudaliar

Civil Appeal No. 763 of 1967

(R. S. Bachawat, C. A. Vaidialingam, K. S. Hegde, J. C. Shah, G. K. Mitter JJ)

18.04.1968

JUDGMENT

SHAH, J. -

In a proceeding for assessment of tax for 1963-64 under the Central Sales Tax Act, 1956, the Deputy Commercial Tax Officer rejected the contention of the assessee that a part of the turnover of his business in matches arose out of intra-State sale transactions at the assessee's depot at Ongole (in the State of Andhra Pradesh) to which depot the goods were despatched by him from his place of business in the State of Madras. The Deputy Commercial Tax Officer held that the goods were moved from "the godown stock" of the assessee in execution of contracts of sale with merchants outside the State of Madras, and on that account the turnover from sales was liable to tax under the Central Sales Tax Act. The assessee moved the High Court of Madras under Art. 226 of the Constitution seeking a writ of certiorari quashing the order of assessment, on the grounds that the provisions of the Central Sales Tax Act which permitted levy of tax at varying rates in different States were invalid, and that the transactions brought to tax were not in truth inter-State transactions. The High Court did not determine the nature of the transactions but held that sub-s. (2), (2A) and (5) of s. 8 of the Central Sales Tax Act, 1956, in operation at the relevant time imposed or authorised the imposition of varying rates of tax in different States on similar inter-State transactions and the resultant inequality in the burden of tax affected and impeded inter-State trade, commerce and intercourse, and thereby offended Arts. 301 and 303(1) of the Constitution. The High Court rejected the plea of the assessee that s. 9(3) of the Act was ultra vires. The State has appealed to this Court with certificate granted by the High Court against the order declaring sub-ss. (2), (2A) and (5) of s. 8 of the Central Sales Tax Act, 1956, invalid.

A brief review of the developments in the law relating to imposition of tax on transactions of sale and its inter-relation with the constitutional provisions leading to the enactment of the Central Sales Tax Act, 1956, will facilitate appreciation of the competing views put forward before us at the Bar. The Government of India Act, 1935, by List II entry 48 of the Seventh Schedule conferred power exclusively upon the Provinces to legislate on the subject of "tax on the sale of goods and on advertisement". In exercise of that power the Provincial Legislatures enacted sales tax laws for their respective Provinces acting on the principle of "territorial nexus", and picked out one or more ingredients constituting a sale and made it or them the basis of imposing liability for tax. This exercise of taxing power by the Provinces led to multiple taxation of the same transaction by many provinces, the burden of tax falling ultimately on the consuming public.

In order to remove this burden imposed upon the consumers, Art. 286 was incorporated in the Constitution inter alia for the regulation of inter-State sales transactions. This Court in The State of

Bombay v. United Motors (India) Ltd. [[1953] S.C.R. 1069] held that under the Bombay Sales Tax Act 24 of 1952 sales effected in Bombay in respect of goods exported from the State were not taxable by the State of Bombay, but the importing State was competent to levy tax on transactions of sale in the course of inter-State trade or commerce on persons who were resident outside its territory, provided that the goods were delivered in the importing State for the purpose of consumption therein. This decision made the dealer carrying on business in the exporting State amenable to the sales tax law of the importing State. The question was reconsidered by this Court in Bengal Immunity Company Ltd. v. State of Bihar [[1955] 2 S.C.R. 603]. The Court held that the sales or purchases made by an assessee which actually took place in the course of inter-State trade or commerce could not be taxed by any State until by law it was otherwise provided by Parliament. The judgment in Bengal Immunity Co.'s case [[1955] 2 S.C.R. 603] removed, by making inter-State sales immune from taxation, the difficulties till then experienced by the trading community but the importing States which had imposed tax on inter-State sales by non-residents dealers, relying on the principle of the judgment in United Motors case [[1953] S.C.R. 1069] were faced with innumerable claims for restitution of the tax realized. The President then promulgated Ordinance No. III of 1956 which was later replaced by the "Sales Tax Laws validation Act VII of 1956" with the object of restoring for the period specified in the Act the decision in United Motors case [[1953] S.C.R. 1069].

The problem of tax on inter-State sales was, in the meanwhile examined by the Taxation Enquiry Commission. The report of the commission led to the enactment of the Constitution (Sixth Amendment) Act, 1956. By that amendment entry 92A was added in Union List in the Seventh Schedule to the Constitution conferring power upon the Union to legislate in respect of "taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce"; and for entry 54 in the State List, the following entry was substituted :

> "Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I."

Explanation to cl. (1) of Art. 286 was omitted, and cls. (2) & (3) were substituted by fresh clauses : by the newly enacted cl. (2) the Parliament was authorised by law to formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in cl. (1), and by cl. (3) it was enacted that any law of a State shall, in so far as it imposes or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify. In Art. 269(1) clause (g) was added authorising the Government of India to collect tax on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce and making it obligatory upon the Government of India to assign the tax to the States in the manner provided in cl. (2). By cl. (3) it was enacted that:

> "Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce".

In exercise of authority conferred by the Constitution (Sixth Amendment) Act, 1956, the Parliament enacted on December 21, 1956, the Central Sales Tax Act, 1956, with a view to formulate principles (a) 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; (b) providing for

the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce; (c) declaring certain goods to be of special importance in inter-State trade or commerce and specifying the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject. By s. 3 of the Act a definition of sale of purchase of goods said to take place in the course of inter-State trade or commerce was devised. By s. 4 conditions in which a sale or purchase of goods was to be deemed to have taken place outside a State were specified. By s. 5 the conditions in which a sale or purchase of goods taking place in the course of import or export were specified. By Ch. III (ss. 6 to 13) provisions were enacted for declaring a charge of tax on inter-State sales and for setting up machinery for levy of tax and incidental matters. Section 6 imposed a charge on all sales effected by a dealer in the course of inter-State trade or commerce during any year. By s. 7 provision was made for registration of dealers. Section 8, insofar as it is material, and as amended by Act 31 of 1958, read as follows :

> "(1) Every dealer, who in the course of inter-State trade or commerce -
>
> (a) sells to the Government any goods; or
>
> (b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3) :
>
> shall be liable to pay tax under this Act, which shall be two per cent. of his turnover.
>
> (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 at the rate applicable to the sale or purchase of such goods inside the appropriate State; and
>
> (b) in the case of goods other than declared goods, shall be calculated at the rate of seven per cent., or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher;
>
> and for the purpose of making any such calculation 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.
>
> (2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than two per cent. (whether called a tax or fee or by any other name), the tax payable under this Act on his turnover in so far as the turnover or any part thereof relates to the sale of such goods shall be nil, or, as the case may be, shall be calculated at the lower rate.
>
> Explanation. - For the purpose of this sub-section a sale or purchase of goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law it is exempt only in specified circumstances or under specified conditions or in relation to which the tax is levied at specified stages or otherwise than with reference to the turnover of the goods.

#(3) . . . .(4) . . . .##

(5) Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, direct that in respect of such goods or classes of goods as may be mentioned in the notification and subject to such conditions as it may think fit to impose, no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sale by him from any such place of business of any such goods in the course of inter-State trade or commerce 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."

By s. 9 machinery was set up for levy and collection of tax and penalties. Insofar as it is material, it provided :

"(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 clause (a) or clause (b) of section 3 shall be levied and collected by the Government of India in the manner provided in the sub-section (3) in the State from which the movement of the goods commenced :

#Provided . . . .(2) . . . . .##

(3) The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax, including any penalty, payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected; 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, appeals, reviews, revisions, references, penalties and compounding of offences, shall apply accordingly :

#Provided . . . . .##

(4) The proceeds in any financial year of any tax, including any 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."

By Ch. IV (ss. 14 & 15) provision was made for levy of tax at specially low rates on goods of special importance in inter-State trade or commerce. By s. 14 certain goods were declared to be of special importance in inter-State trade or commerce, and by s. 15, as amended by Act 31 of 1958, it was provided :

"Every sales tax law of a State shall, in so far as it imposes or authorises 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 two per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;
>
> (b) where a tax has been levied under that law in respect of the sale of purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall not exceed two per cent of the sale or purchase subject to such conditions as may be provided in any law in force in that State."

The scheme of the Act was first to devise definitions of 'inter-State sales' and 'sales outside the State', and then to declare inter-State sales subject to tax, and to set up machinery for levying and collecting tax on those sales. Transactions in goods which were made subject to tax in the course of inter-State trade or commerce were classified into three broad categories - (1) transactions falling within s. 8(1) i.e. all sales to Government, and sales to a registered dealer other than the Government of goods referred to in sub-s. 3 of s. 8; (2) transactions falling within s. 8(2)(a) i.e., sales in respect of declared goods; and (3) transactions falling within s. 8(2)(b) i.e. sales [not falling within (1)] in respect of goods other than declared goods. Sales of goods in category (1) were declared liable at the relevant time to pay a tax of two per cent. on the turnover. On sales of declared goods tax was to be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State. But by s. 15 the tax payable under a State law in respect of any sale or purchase of declared goods inside the State was not to exceed two per cent. of the sale or purchase price thereof, and was not leviable at more than one stage. On turnover from sale of goods not falling within categories (1) & (2) the rate was seven per cent. or the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever was higher. But by sub-s. (2A) of s. 2 it was provided that notwithstanding anything contained in sub-s. (1) or sub-s. (2), if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than two per cent. the tax payable under the Act on the turnover insofar as the turnover or any part thereof relates to the sale of such goods shall be nil, or as the case may be shall be calculated at the lower rate. There is a slight inconsistency between s. 8(2) and s. 8(2A). If the rate of tax under the State law is less than two per cent. by virtue of s. 8(2A), even in respect of turnover falling within s. 8(2)(b), the rate of tax will not exceed the State rate : if the State rate exceeds two per cent, tax at the rate of seven per cent. or of the State, whichever is higher, shall prevail. But that has no bearing on the question under discussion.

Tax under the Act is payable by the seller. The State from which the movement of goods commences in the course of inter-State sale collects the tax as agent of the Central Government, and in the manner provided in sub-s. (3) of s. 9. By sub-s. (4) of s. 9 the proceeds in any financial year of any tax, including any penalty, levied and collected under the Act in any State (other than a Union territory) on behalf of the Government of India are to be assigned to that State and are to be retained by it, and the proceeds attributable to Union territories are to form part of the Consolidated Fund of India.

The Act and the constitutional provisions were intended to restrict the imposition of multiple taxation on a single inter-State transaction by different States, each State relying upon some teritorial nexus between the State and the sale. The tax though collected by the State under the Central Sales Tax Act was as an agent of the Central Government, it was, by sub-s. (4) of s. 9 enacted in implementation of the principle of assignment of tax set out in cl. (2) of Art. 269.

assigned to the State which collected it.

This somewhat tortuous scheme of levying tax on inter-State transactions and making it available to the State which levied it, in effect countenances levy of different rates of tax on inter-State transactions in similar goods. It is upon the prevalence of different rates of tax which, subject to adjustments, and incorporated in the Central Sales Tax Act, that the argument of the assessee is largely founded. He contends - and his contention has found favour with the High Court - that the liability to pay tax on inter-State transactions, depending upon the rate of tax prevailing in the exporting State, hampers trade and commerce, by giving or authorising the giving of preference to one State over another or by making or authorising the making of discrimination between one State and another, and thereby violates the guarantee of freedom of trade, commerce and intercourse declared by Part XIII of the Constitution. The assessee primarily relies upon Arts. 301 and 303(1) of the Constitution in support of his contention. Article 301 provides :

> "Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."

This Article is couched in terms of the widest amplitude, trade, commerce and intercourse are thereby declared free and unhampered throughout the territory of India. The freedom of trade so declared is against the imposition of barriers or obstructions within the State as well as inter-State : all restrictions which directly and immediately affect the movement of trade are declared by Art. 301 to be ineffective. The extent to which Art. 301 operates to make trade and commerce free has been considered by this Court in several cases. In Atiabari Tea Co. Ltd. v. The State of Assam and others [[1961] 1 S.C.R. 809], Gajendragadkar, J., speaking for himself and Wanchoo & Das Gupta, JJ., observed at p. 860 :

> ".... We think it would be reasonable and proper to hold that restrictions, freedom from which is guaranteed by Art. 301, would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade."

In Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan and others [[1963] Supp. 2 S.C.R. 435], the view expressed by Gajendragadkar, J., in Atiabari Tea Co.'s case [[1961] 1 S.C.R. 809] was accepted by the majority. Subba Rao, J., who agreed with the majority observed that the freedom declared under Art. 301 of the Constitution of India referred to the right of free movement of trade without any obstructions by way of barriers, inter-State or intra-State, or other impediments operating as such barriers. The same view was expressed in Firm A. T. B. Mehtab Majid and Company v. State of Madras and Another [[1963] 1 S.C.R. 491] by a unanimous Court. It must be taken as settled law that the restrictions or impediments which directly and immediately impede or hamper the free flow of trade, commerce and intercourse fall within the prohibition imposed by Art. 301 and subject to the other provisions of the Constitution they may be regarded as void.

But it is said that by imposing tax on sales, no restriction hampering trade is imposed. In the Atiabari Tea Company's case [[1961] 1 S.C.R. 809], Gajendragadkar, J., observed :

> "Taxes may and do amount to restrictions; but it is only such taxes as directly and immediately restrict trade that would fall within the purview of Art. 301. The argument that all taxes should be governed by Art. 301 whether or not their impact on trade is immediate or mediate, direct or remote, adopts in our opinion, an extreme approach which cannot be upheld."

In a recent judgment of this Court in The Andhra Sugars Ltd. and Another v. The State of Andhra Pradesh and others [21 S.T.C. 212], Bachawat, J., speaking for the Court, after referring to the observations made by Gajendragadkar, J., in Atiabari Tea Company's case [[1961] 1 S.C.R. 809] observed :

> "This interpretation of Article 301 was not dissented from in Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan -[1963] 1 S.C.R. 491. Normally, a tax on sale of goods does not directly impede the free movement of transport of goods. Section 21 is no exception. It does not impede the free movement or transport of goods and is not violative of Article 301."

Section 21 of the Andhra Pradesh Sugar Cane (Regulation of Supply and Purchase) Act which was referred to in the judgment authorised the State Government to levy a tax at such rate not exceeding five rupees per metric tonne as may be prescribed on the purchase of cane required for use, consumption or sale in a factory. It must, therefore, be regarded as settled law that a tax may in certain cases directly and immediately restrict or hamper the flow of trade, but every imposition of tax does not do so.

Tax under the Central Sales Tax Act on inter-State sales, it must be noticed, is in its essence a tax which encumbers movement of trade or commerce, since by the definition in s. 3 of the Act a sale or purchase of goods is deemed to take place in the course of inter-State trade or commerce, if it - (a) occasions the movement of goods from one State to another; (b) is effected by a transfer of documents of title to the goods, during their movement from one State to another. The question which then falls to be determined is whether the tax imposed in the present case is saved by the operation of the other provisions of Part XIII. Article 302 of the Constitution provides that Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest. Thereby the Parliament is, notwithstanding the protection conferred by Art. 301, authorised to impose restrictions on the freedom of trade, commerce or intercourse in the public interest. The expression "between one State and another" does not imply that it is only intended to confer upon the Union Parliament the power to remove the fetter upon legislative authority only so as to keep trade, commerce or intercourse free between one State Government and another. It is intended to declare trade, commerce and intercourse free between residents in one State and residents in another State. That is clear because Art. 302 expressly provides that on the freedom of trade restrictions may be imposed not only as between one State and another, but also within any part of the territory of India. As we have already observed, Art. 301 does not merely protect inter-State trade or operate against inter-State barriers : all trade is protected whether it is intra-State or inter-State by the prohibition imposed by Art. 301, and there is nothing in the language or the context for restricting the power of the Parliament which it otherwise possesses in the public interest to impose restrictions on the freedom of trade, commerce or intercourse, operative only as between one State and another as two entities. There is also no doubt that exercise of the power to tax may normally be presumed to be in the public interest.

Article 303 provides, by the first clause :

> "Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State, shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another by virtue of an entry relating to trade

and commerce in any of the Lists in the Seventh Schedule."

Having conferred by Art. 302 power upon the Parliament to impose restrictions upon freedom of trade, commerce or intercourse, the Constitution proceeds to impose certain restrictions upon the power so conferred. Reference to the power of the State Legislatures in Art. 303(1) creates a complication which we are not called upon in the present case to resolve. It is expressly declared that the Parliament shall not have the power to make any law giving preference to one State over another, authorising the giving of any preference to one State over another, making any discrimination between one State and another, and authorising the making of any discrimination between one State and another, in exercise of or by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

It was contended on behalf of the State that the power under Art. 303 could only be exercised so as to restrict the authority of the Parliament which arises by virtue of an entry relating to trade and commerce in the legislative lists and it was urged that an entry with respect to the levy of tax on trade and commerce and is not an entry relating to trade and commerce and therefore there is no prohibition against the Parliament exercising power or authorising the giving of any preference to one State over another or making or authorising the making of any discrimination between one State and another by exercise of taxing power. Reliance in support of that contention was placed upon the judgment in Sundararamier and Company v. State of Andhra Pradesh [[1958] S.C.R. 1422] in which Venkatarama Aiyar, J., pointed out that under the scheme of entries in List I & II of the Seventh Schedule the power of taxation exercisable in respect of any matter is a power distinct from the power to legislate in respect of that matter. It was also urged that the expression "an entry relating to trade and commerce in any of the Lists in the Seventh Schedule" was restricted to the entries which expressly deal with the power to legislate in respect of trade and commerce i.e. entries 41 & 42 of List I, entries 26 & 27 of List II and entry 33 of List III in the Seventh Schedule, and extended to no others. On the other hand it was contended that all legislative entries which directly affect trade and commerce are also within the expression "entry relating to trade and commerce".

We need express no opinion on the two questions argued before us. The question whether entries relating to trade and commerce in the Lists in the Seventh Schedule are restricted to entries 41 & 42 of List I, entries 26 & 27 of List II and entry 33 of List III, or relate to all general entries which affect trade and commerce, is academic in the present case. Nor do we think it necessary to decide whether for the purpose of Art. 303 entries relating to tax on sale or purchase of goods i.e., entry 92A of List I, and entry 54 of List II are entries relating to trade and commerce, for, in our opinion, an Act which is merely enacted for the purpose of imposing tax which is to be collected and to be retained by the State does not amount to law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, merely because of varying rates of tax prevail in different States.

It was urged that the High Court was right in holding that rates of tax on the sale of the same or similar commodity by different States by itself was discriminatory, since it authorised placing of an unequal burden on inter-State trade and commerce affecting its free flow between the States. The rates of tax prevailing in different States on transactions of sale in the diverse commodities are undoubtedly not uniform. According to the High Court such a scheme was "obviously quite discriminatory and considerably affected the freedom of trade, commerce and inter-course", the differential rates or exemptions in various States imposing an unequal burden on the same or similar goods which affected their free movement or flow in inter-State trade and commerce, and that a higher rate of tax in a State worked as a barrier to the free movement of similar goods to another

State where there was no tax or a lower rate of tax, and for trade in particular goods declared or undeclared to be free throughout the territory of India, the rate of tax or exemption as the case may be must be uniform. We are unable to accept the view propounded by the High Court. The flow of trade does not necessarily depend upon the rates of sales tax : it depends upon a variety of factors, such as the source of supply, place of consumption, existence of trade channels, the rates of freight, trading facilities, availability of efficient transport and other facilities for carrying on trade. Instances can easily be imagined of cases in which notwithstanding the lower rate of tax in a particular part of the country goods may be purchased from another part, where a higher rate of tax prevails. Supposing in a particular State in respect of a particular commodity, the rate of tax is 2 % but if the benefit of that low rate is offset by the freight which a merchant in another State may have to pay for carrying that commodity over a long distance, the merchant would be willing to purchase the goods from a nearer State, even though the rate of tax in that State may be higher. Existence of long-standing business relations, availability of communications, credit facilities and a host of other factors - natural and business - enter into the maintenance of trade relations and the free flow of trade cannot necessarily be deemed to have been obstructed merely because in a particular State the rate of tax on sales is higher than the rates prevailing in other States.

In The King v. Barger [[1908] 6 C.L.R. 41] the Australian High Court was called upon to deal with the meaning of the expression "discrimination between States or parts of States" used in s. 51 of the Australian Constitution, Isaacs, J., observed at p. 108 :

> "... the pervading idea is the preference of locality merely because it is locality, and because it is a particular part of a particular State. It does not include a differentiation based on other considerations, which are dependent on natural or business circumstances, and may operate with more or less force in different localities; and there is nothing, in my opinion, to prevent the Australian Parliament, charged with the welfare of the people as a whole, from doing what every State in the Commonwealth has power to do for its own citizens, that is to say, from basing its taxation measures on considerations of fairness and justice, always observing the constitutional injunction not to prefer States or parts of States."

In W. R. Moran Proprietary Ltd. v. The Deputy Federal Commissioner of Taxation (N.S.W.) and others [[1940] 63 C.L.R. 338], the Judicial Committee of the Privy Council recorded its approval to that exposition. It is true that the Judicial Committee was interpreting s. 51(ii) of the Australian Constitution. It also appears from the provisions of the Australian Constitution that by virtue of s. 96 of the Constitution there is to be a uniform imposition of customs duties. But the observations made by Isaacs, J., in King v. Barger [[1908] 6 C.L.R. 41] and approved by the Judicial Committee are useful in the determination of the true principle applicable in the present case, that, it is where differentiation is based on consideration not dependent upon natural or business factors which operate with more or less force in different localities that the Parliament is prohibited from making a discrimination.

The rates of tax in force at the date when the Central Sales Tax Act was enacted have again not become crystallised. The rate which the State Legislature determines, subject to the maximum prescribed for goods referred to in s. 8(1) and (2) are the operative rates for those transactions : in respect of transactions falling within s. 8(2)(b) the rate is determined by the State rate except where the State rate is between the range of two and seven per cent. The rate which a State Legislature imposes in respect of inter-State transactions in a particular commodity must depend upon a variety of factors. A State may be led to impose a high rate of tax on a commodity either when it is not

consumed at all within the State, or if it feels that the burden which is falling on consumers within the State will be more than offset by the gain in revenue ultimately derived from outside consumers. The imposition of rates of sales tax is normally influenced by factors political and economic. If the rate is so high as to drive away prospective traders from purchasing a commodity and to resort to other sources of supply, in its own interest the State will adjust the rate to attract purchasers.... Again, in a democratic constitution political forces would operate against the levy of an unduly high rate of tax. The rate of tax on sales of a commodity may not ordinarily be based on arbitrary considerations but in the light of the facility of trade in a particular commodity, the market conditions - internal and external - and the likelihood of consumers not being scared away by the price which includes a high rate of tax. Attention must also be directed to sub-s. (5) of s. 8 which authorises the State Government, notwithstanding anything contained in s. 8, in the public interest to waive tax or impose tax on sales at a lower rate on inter-State trade or commerce. It is clear that the legislature has contemplated that elasticity of rates consistent with economic forces may be maintained.

Prevalence of differential rates of tax on sales of the same commodity cannot be regarded in isolation as determinative of the object to discriminate between one State and another. Under the Constitution as originally framed, revenue from sales-tax was reserved to the States. But since the power of taxation could be exercised in a manner prejudicial to the larger public interests by the States it was found necessary to restrict the power of taxation in respect of transactions which had an inter-State content. Amendment of Art. 286 and the enactment of the Sales Tax Validation Act 1956, and the Central Sales Tax Act, 1956, were all intended to serve a dual purpose : to maintain the source of revenue from sales-tax to the States and at the same time to prevent the States from subjecting transactions in the course of inter-State trade so as to obstruct the free flow of trade by making commodities unduly expensive. The effect of the Constitutional provisions achieved in a somewhat devious manner is still clear, viz. to reserve sales-tax as a source of revenue for the States. The Central Sales Tax Act is enacted under the authority of the Union Parliament, but the tax is collected through the agency of the State and is levied ultimately for the benefit of the States and is statutorily assigned to the States. That is clear from the amendments made by the Constitution (Sixth Amendment) Act, 1956, in Art. 269, and the enactment of cls. (1) & (4) of s. 9 of the Central Sales Tax Act. The Central sales-tax though levied for and collected in the name of the Central Government is a part of the sales-tax levy imposed for the benefit of the States. By leaving it to the States to levy sales-tax in respect of a commodity on intra-State transactions no discrimination is practised : and by authorising the State from which the movement of goods commences to levy on transactions of sale Central sales-tax, at rates prevailing in the State, subject to the limitation already set out, in our judgment, no discrimination can be deemed to be practiced.

The view taken by the High Court was largely influenced by two cases decided by this Court on the interpretation of Art. 304(a). In Firm A.T.B. Mehtab Majid & Co.'s case [[1963] Supp. 2 S.C.R. 435] this Court stuck down the levy of tax on sales of tanned hides and skins imported from outside the State of Madras at a rate higher than the rate of tax on sales of hides and skins tanned and sold within the State of Madras as infringing Art. 304(a). By r. 16 framed under s. 19 of the Madras General Sales Tax Act, it was provided that in the case of untanned hides and skins the tax under s. 3(1) of the Madras General Sales Tax Act shall be levied from the dealer who is the last purchaser in the State not exempt from tax under s. 3(3) on the amount for which they are brought by him. By r. 16(2) it was provided that - (i) in the case of hides or skins which had been tanned outside the State the tax under s. 3(1) shall be levied from the dealer who in the State is the first dealer in such hides or skins not exempt from tax under s. 3(3) on the amount for which they are sold by him; and (ii) in the case of tanned hides or skins which had been tanned within the State, the tax under s. 3(1) shall

be levied from a person who is the first dealer in such hides or skins not exempt from tax under s. 3(3) on the amount for which they are sold by him. The taxpayer contended in Firm A.T.B. Mehtab Majid's case [[1963] Supp. 2 S.C.R. 435] that the tanned hides and skins imported from outside and sold inside the State were under r. 16 of the Madras General Sales Tax Rules subjected to a higher rate of tax than the rate imposed on hides and skins tanned and sold within the State and this discriminatory system of taxation offended Art. 304(a) of the Constitution : This Court accepted the contention and held that r. 16(2) discriminated against imported hides or skins which had been purchased or tanned outside and therefore it contravened Art. 304(a) of the Constitution.

Similarly in A. Hajee Abdul Shakoor and Co. v. State of Madras [[1964] 8 S.C.R. 217] the assesses who were dealers in skins in the State of Madras, purchased raw skins from places both within and outside the State of Madras. They were assessed to sales-tax in accordance with the provisions of the Madras General Sales Tax (Turnover and Assessment) Rules, on the turnover of hides and skins purchased in the untanned condition outside the State and tanned within the State with respect to the assessment years 1955-56, 1956-57 and 1957-58. The tax was assessed at 3 pies per rupee on the price of tanned hides and skins for the years 1955-56 and 1956-57 and at the rate of 2 per cent on the turnover for the year 1957-58. In petitions filed by the assesses in this Court under Art. 32 of the Constitution it was held that s. 2(1) of the Madras General Sales Tax (Special Provisions) Act, 1963, discriminated against imported hides and skins which were sold upto August 1, 1957, upto which date the tax on sale of raw hides and skins was at the rate of 3 pies per rupee and was therefore void.

In the two cases the differential treatment violated Art. 304(a) of the Constitution, which authorises the Legislature of a State notwithstanding anything in Arts. 301 and 303 by law to "impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so however, as not to discriminate between goods so imported and goods so manufactured or produced; ". Imposition of differential rates of tax by the same State on goods manufactured or produced in the State and similar goods imported in the State is prohibited by that clause. But where the taxing State in not imposing rates of tax on imported goods different from rates of tax on goods manufactured or produced, Art. 304(a) has no application. Article 303 prohibits the making of law which gives, or authorises the giving of, any preference to one State over another, or makes, or authorises the making of, and discrimination between one State and another. Prevalence of different rates of sales-tax in the State which have been adopted by the Central Sales Tax Act for the purpose of levy of tax under that Act is, as already mentioned, not determinative of the giving of preference or making a discrimination. The view expressed by the High Court that s. 8(2), 8(2A) and 8(5) infringe Art. 301 and Art. 303(1) cannot be sustained.

It was contended before the High Court that whereas excise duty was not liable to be included in the turnover of goods under the Madras General Sales Tax Act, it was liable to be included in the turnover for the purpose of Central Sales Tax Act. The High Court in making a general discussion on this question observed, following the judgment of this Court in State of Mysore v. Lakshminarasimhiah Setty & Sons [16 S.T.C. 231] that by "levied" in s. 9(1) of the Central Act, what was meant was "levied as under the State Act", that would include also the State Rules enabling deductions in the computation of the turnover. The Court rejected the contention that "to the extent the excise duty is not deductible from taxable turnover under the Central Act unlike under the Madras General Sales Tax Act, there is discrimination..... between one State and another". They observed that :

> "In the matter of non-deductibility of excise duty from the turnover of inter-State

> sales, the Central Act has equal application and makes no discrimination. The Central Act does not say that excise duty will be deductible in one State and not in another. It is not deductible from the turnover of the inter-State sales and this rule is uniformly applied to all inter-State sales. There is, therefore, no question of inequality or discrimination forbidden by Art. 303(1) and there is no question of contravention of Art. 301 either."

But in dealing with the case of the assessee in the last paragraph of the judgment, the High Court observed that since no provision had been made for deduction of the excise duty from the turnover of inter-state sales or purchases under the Central Act with the result that unequal burden will fall on differences in the quantum of turnover because of allowance in the one case and disallowance in another, of deduction of excise duty. This in the view of the High Court would impede the freedom of inter-State trade, commerce and intercourse within the meaning of Art. 301 of the Constitution and was not saved by Art. 303. The observations so made, somewhat blur the earlier discussion. If under the Madras General Sales Tax Act in computing the turnover the excise duty is not liable to be included and by virtue of s. 9(1) of the Central Sales Tax Act has to be levied in the same manner as the Madras General Sales Tax Act, the excise duty will not be liable to be included in the turnover, and the observations made in the last paragraph of the judgment under appeal that because no express provision was made for exclusion of the excise duty in the computation of turnover from inter-State sales or purchases there was discrimination cannot be accepted as correct. We are of the view that in the matter of determining the taxable turnover the same rules will apply by virtue of s. 9(1) of the Central Sales Tax Act, whether the tax is to be levied under the Central Sales Tax Act or the General Sales Tax Act.

The High Court proceeded to determine the case before them only on the plea that the impugned provisions of the Act were ultra vires. They did not consider whether the transactions in dispute were inter-State transactions and liable to tax in the hands of the assessee in the Madras State. It is the case of the assessee that he has been taxed in the Andhra Pradesh State by the appropriate authority in respect of the transactions of sale of goods which are sought to be taxed, on the footing that the transactions were intra-State transactions. The question whether the transactions were intra-State and were liable to be taxed under the Madras General Sales Tax Act has not been determined. The case must therefore be remanded to the High Court. The High Court will proceed to decide the question. Since the assessee moved the High Court by a writ petition against the order of the sales-tax authorities without filing an appeal before the authority competent to deal with the questions of fact, it will be open to the High Court to require the assessee to have those questions determined by the competent departmental authority.

The appeal will be allowed and the order passed by the High Court declaring the provisions of ss. 8(2), 8(2A), and 8(5) ultra vires must be set aside.

The petition out of which this appeal arises was one of a group of petitions filed before the High Court. Against orders passed in favour of the other assessees the State has not preferred appeals. The amount involved in the claim in small. The State apparently has approached this Court with a view to obtain a final determination of the important question which was raised in the petitions filed before the High Court. We therefore direct that there will be no order as to costs in this Court and in the High Court.

BACHAWAT, J.

I have read the draft judgment prepared by our learned brother Justice Shah. He has said that tax under the Central Sales Tax Act on inter-State sales is in its essence a tax hampering movement of trade or commerce, since by the definition in sec. 3 of the Act a sale or purchase of goods is deemed to take place in the course of inter-State trade or commerce, if it (a) occasions the movement of goods from one State to another; or (b) is affected by a transfer of documents of title to the goods during their movement from one State to another. He is of the view that the tax falls within the prohibition imposed under Art. 301 of the Constitution.

In Atiabari Tea Co. Ltd. v. The State of Assam [[1961] 1 S.C.R. 809, 860-861] Gajendragadkar, J. speaking for the majority of the Court said :-

> "We are, therefore, satisfied that in determining the limits of the width and amplitude of the freedom guaranteed by Article 301 a rational and workable test to apply would be : Does the impugned restriction operate directly or immediately on trade or its movement.... It is the free movement of the transport of goods from one part of the country to the other that is intended to be saved, and if any Act imposes any direct restrictions on the very movement of such goods it attracts the provisions of Article 301, and its validity can be sustained only if it satisfies the requirements of Art. 302 or Article 304 of Part XIII."

This interpretation of Article 301 was not dissented from in Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan [[1963] (1) S.C.R. 491, 533]. In The Andhra Sugars Ltd. v. The State of Andhra Pradesh & Ors. [21 S.T.C. 212] this Court rejected the contention that sec. 21 of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961 (Andhra Pradesh Act No. 45 of 1961) did not offend Article 301. The Court held :

> "Normally, a tax on sale of goods does not directly impede the free movement or transport of goods. Section 21 is no exception. It does not impede the free movement or transport of goods and is not violative of Article 301."

This Court distinguished the case of Firm A. T. Mehtab Majid v. State of Madras [[1963] Supp. 2 S.C.R. 435] which decided that a sales tax which discriminated against goods imported from other States might affect the free flow of trade and would then be invalid unless protected by Article 304(a). It is implied in Art. 304(a) that discriminatory tax might affect freedom of trade.

On principle I see no distinction between a tax on intra-State and a tax on inter-State sales. An intra-State sale may occasion the movement of goods from one part of the State to another part of the same State. Indeed, normally, an intra-State sale would occasion such movement, because the purchaser has to move the goods from the seller's place to some other place. An intra-State sale may also be affected by a transfer of documents of title to the goods during their movement from one part of the State to another part of the same State. But, there can be no doubt that a tax on such sales would not normally offend Article 301. That Article makes no distinction between movement from one part of the State to another part of the same State and movement from one State to another. Now, if a tax on intra-State sale does not offend Article 301, logically, I do not see how a tax on inter-State sale can do so. Neither tax operate directly or immediately on the free flow of trade or the free movement of the transport of goods from one part of the country to the other. The tax is on the sale. The movement is incidental to and a consequence of the sale.

In The Bengal Immunity Company Ltd. v. State of Bihar [[1955] 2 S.C.R. 603 at p. 754]

Jagannadhadas, J. after referring to Art. 301 said :-

> "Now it is not disputed that a tax on a purely internal sale which occurs as a result of the transportation of goods from a manufacturing center within the State to a purchasing market within the same State is clearly permissible and not hit by anything in the Constitution. If a sale in that kind of trade can bear the tax and is not a burden on the freedom of trade, it is difficult to see why a single point tax on the same kind of sale where a State boundary intervenes between the manufacturing center and the consuming centers need be treated as a burden, especially where that tax is ultimately to come out of the residents of the very State by which such sale is taxable. Freedom of trade and commerce applies as much within a State as outside it. It appears to me again, with great respect, that there is no warrant for treating such a tax as in any way contrary either to the letter or the spirit of the freedom of trade, commerce and intercourse provided under Article 301."

As at present advised, I am inclined to agree with these observations. I am, therefore, inclined to think that normally a law imposing a tax on intra-State sales does not offend Art. 301. It seems to me that the Central Sales Tax Act, 1956 is no exception to this rule. None of its provisions directly impede the movement of goods or the free flow of trade.

I may add that even assuming that the Central Sales Tax Act, 1956 is within the mischief of Art. 301, it is certainly a law made by Parliament in the public interest and is saved by Art. 302. I find nothing in the Act which offends Art. 303(1).

The decision of the High Court that sections 8(2), 8(2A), and 8(5) of the Central Sales Tax Act, 1956 are ultra vires the Constitution must therefore be set aside. I agree to the order proposed by Shah J.

HEGDE, J.

Though I agree with the conclusions reached by my learned brother Shah, J., namely, sections 8(2), 8(2-A) and 8(5) of the Central Sales Tax Act, 1956 (No. 74 of 1956) - hereinafter referred to as the Act - are ultra vires the Constitution, my reasons for coming to that conclusion are not the same as his. Hence this note.

The facts of the case as well as the history of the legislation are fully set out in the majority judgment. It is settled by the decisions of this Court in Attabari Tea Co. Ltd. v. The State of Assam [[1961] 1 S.C.R. 809] and the Automobile Transport (Rajasthan) Limited v. The State of Rajasthan [[1963] 1 S.C.R. 491] that a taxing statute is not outside the scope of Art. 301 of the Constitution. But before a taxing statute is held to be violative of that Article, it must be shown that it has a direct or immediate impact on the freedom of trade, commerce and intercourse within the country. In other words, a mere remote or incidental impact is insufficient to hold that Art. 301 has been contravened. Article__ 302 empowers Parliament by law to impose such restrictions on the freedom of trade, commerce and intercourse between one State and another or within any part of the territory of India, as may be required in the public interest. The power conferred on Parliament is extremelyide and the only limitation placed on that power by Art. 302 is that the law in question must be required in the public interest. Primarily it is for Parliament to determine the requirements of public interest. The decision of Parliament in this regard is not easy to challenge. Parliament is presumed to know the needs of the people, the requirements of the time and the economic and political interests of the

country as a whole. By its very composition it is unlikely that Parliament would have regional bias or would adopt a parochial approach. In addition, there is the presumption of the constitutionality of a statute. Therefore the State undoubtedly starts with an advantage. But once it is shown that a measure prima facie gives preference to the residents of one State over another State or it makes discrimination between the residents of a State and that of another because of the adoption of different rates of tax in different States, then the matter assumes a different complexion in view of Art. 303(1). It should be within the knowledge of the Union Government why Parliament adopted different rates in different States. I agree that mere difference in rates is neither showing preference nor making discrimination. But other things being equal, the difference in rates would result in showing preference to some States and making discrimination against others. Hence, in my opinion, difference in rates is a prima facie proof of the preference or discrimination complained of. It is for the State to justify those differences. The real question for decision is whether the impugned provisions have given or authorised the giving of any preference to one State over another or made or authorised the making of any discrimination between one State and another. The word "State" in Art. 301 is used in the sense of people residing in that State. It is impossible for any ordinary person to establish positively the preference or the discrimination complained of, apart from showing the difference in the rates. Once he shows the difference in the rates, it is for the State to show that the same has not resulted in showing preferences to one or more States over others or making discrimination against one or more States over others in the matter of inter-State trade. I am not prepared to place an interpretation on Art. 303(1) which would render that provision purposeless. After all it is the State that had enacted the impugned provisions. It must have had good reasons for enacting those provisions. It must place before court those reasons and satisfy it that Art. 303(1) has not been contravened. But on the material placed before us, I am satisfied that the differences in the rates are in public interest and those differences do not materially affect the free flow of trade in the country.

From the history of the legislation, it is clear that the subject of taxing inter-State sales is a complicated process. It has various facets. Sales-tax is one of the most important sources of revenue for the States. It was so even under the Government of India Act, 1935. It was not the intention of Parliament either to dry up that source or to divert the same. It wanted to retain that source for the States; but at the same time guard against States levying sales tax on inter-State sales in a manner which is likely to be prejudicial to the free flow of trade and commerce in the country. Constitutional amendments referred to in the judgment of Shah J. have no important purpose behind them. Same is the case as regards the provisions in the Act. Before Articles 269 and 286 were amended and the Act enacted, a Committee known as Taxation Enquiry Committee, had gone into the various aspects of inter-State trade and commerce and made recommendations to the Union Government on that subject. It was largely on the basis of those recommendations that Articles 269 and 286 of the Constitution were amended and the Act enacted. Therefore it is clear that the Act is not a haphazard legislation; it is the product of deep thinking and clear analysis of the various aspects of the matter. This Court will be slow to hold such a measure as being either not in public interest or is violative of Art. 303(1). The question of giving preference or making discrimination depends on various facts and circumstances, the tax rate being only one of them. The views of an expert committee on a subject so complicated as tax on inter-State sales is entitled to great weight. In the very nature of things, it is difficult for courts to ascertain the various factors that impede the free flow of trade or to assess their importance. This is not the same thing as saying that this Court should abdicate its functions in favour of an expert committee or should unduly exaggerate the importance of the collective knowledge and wisdom of the members of Parliament. But the fact remains that in assessing the strength of economic forces in a given matter the views of persons who

may be expected to be familiar with the subject is entitled to weight and in the absence of clear proof to the contrary or unless it is shown that their conclusions are obviously wrong, it will be proper for this Court to proceed on the basis that the conclusions reached by them on facts - not on questions of law - are correct. The Taxation Enquiry Committee has given good reasons in support of its recommendations.

We shall now examine the purposes behind s. 8 of the Act, which fixes rates of tax on sales in the course of inter-State trade, commerce and intercourse. The Act divides inter-State sales into four categories, namely - (i) sales to Government, (ii) sales of goods which are declared to be of special importance in the inter-State trade and commerce, (iii) sales to registered dealers, and (iv) sales to others. Good many sales in the course of inter-State sales are made to Governments. In a welfare State like ours, public sector is in-charge of various industries, which require raw material from various parts of the country. The Governments also require consumer goods of various types for its governmental functions as well as for its economic activities. A uniform rate is fixed for those sales under s. 8(1)(a). Hence in respect of an important segment of inter-State sales the rate is uniform, no doubt subject to s. 8(2-A), the scope of which I shall discuss a little later.

Section 14 declares that goods enumerated therein are goods of special importance in the inter-State trade and commerce. Section 15 prescribes the restrictions and conditions under which sales tax in respect of the turnover relating to those goods may be levied. One of the conditions prescribed at the relevant time was that tax should not be more than two percentum of the turnover. Further in respect of those goods only a single point taxation is permissible. The declared goods constitute a large portion of the goods sold in inter-State trade. The incidence of taxation on those goods in such that it could not have had any serious repercussion on inter-State trade.

Section 8(1)(b) regulates the sales tax leviable on sales to registered dealers in the course of inter-State sales. The maximum rate fixed at the relevant time was two percentum of the turnover. All that the registered dealer has to do is to get included in his certificate of registration goods of the class or classes which he proposes to purchase as being intended for resale by him or for use by him in the manufacture or processing goods for sale or in the mining or in the generation or distribution of electricity or any other form of power. Here again the incidence of taxation is so low as ordinarily not to affect the free flow of trade.

This takes us to the remaining sales in the course of inter-State trade or commerce, By and large these sales are made to unregistered dealers. Here again, so far as the declared goods are concerned, tax has to be levied at the rate applicable to local sales, as provided in s. 8(2)(a). Then we come to cl. (b) of s. 8(2), which deals with goods other than declared goods. Here the law at the relevant time was that the tax shall be calculated at the rate of seven percentum of the turnover or at the rate applicable to sale or purchase of such goods inside the appropriate State, whichever is higher. As could be seen from the report of the Taxation Enquiry Committee, the main reason for this provision was to prevent as far as possible the evasion of sales tax. The Parliament was anxious that inter-State trade should be canalised through registered dealers over whom the appropriate government has a great deal of control. It is not very easy for them to evade tax. A measure which is intended to check the evasion of tax is undoubtedly a valid measure. Further, inter-State trade carried on through dealers coming within s. 8(2), must be in the very nature of things very little. It is in public interest to see that in the guise of freedom of trade, they do not evade the payment of tax. If the sales tax they have to pay is as high or even higher than intra-State sales tax then they will be constrained to register themselves and pay the tax legitimately due. The impact of this provision on inter-State trade is bound to be negligible, but at the same time it is an effective safeguard against

evasion of tax.

Section 8(2-A) is incorporated with a view to see that the consumers in the States to which goods are imported are not placed at a disadvantage as compared to the consumers in the State from which the goods are imported. In fact this provision is bound to facilitate inter-State trade. The purpose behind the section is to see that the State Governments do not place the local consumers in a better position than the consumers outside.

Sub-section (5) of s. 8 provides for giving individual exemptions in public interest. Such a power is there in all taxation measures. It is to provide for unforeseen contingencies. Take for example, when there was famine in Bihar, if a dealer in Punjab had undertaken to sell goods to a charitable society in that State at a reasonable price for distribution to those who were starving, it would have been in public interest if the Punjab Government had exempted that dealer from paying sale tax. Such a power cannot immediately or directly affect the free flow of trade. The power in question cannot be said to be bad. If there is any misuse of that power, the same can be challenged.

It must be remembered that under the present conditions the power to tax is not merely used for the purpose of collecting revenue; it is a powerful social instrument, in particular an instrument which can be effectively used for correcting economic maladjustments. While the legislature must provide in the law for all reasonably foreseeable contingencies, still some discretionary power has to be given to the executive to meet unexpected situations.

If we bear in mind the fact that sales tax on inter-State sales is levied for the benefit of the States and the further fact that each one of the State Governments in its own interest is bound to create the best possible condition for the growth of industry and commerce in that State, it is reasonable to assume that they will not be blind to economic forces. All that one has to guard against is to see that they do not, by having recourse to their taxation power, obstruct the flow of trade into their State. In the normal course they will be interested in seeing that goods produced in their States are sold outside. Reasonably sufficient safeguards against the free flow of trade into a State have been provided by the provisions of the Act, firstly, by providing for the levy of sales tax in the State in which the goods are produced, and, secondly, by placing various restrictions on the power of the States in fixing the rates.

None of the impugned provisions, in my opinion, has direct or immediate impact on inter-State trade or commerce.

Appeal allowed and remanded.##

</html