Goodyear India Ltd. and Others

Vs

State of Haryana and Another

With

Goodyear India Ltd. and Another

Vs

State of Haryana and Another

With

Gedore (India) Pvt. Ltd.

Vs

State of Haryana and Another

With

State of Haryana and Another

Vs

Gedore Tools (P) Ltd.

With

State of Haryana and Another

Vs

Goodyear India Ltd.

With

Kelvinator of India Ltd. and Another

Vs

State of Haryana and Others

With

Food Corporation of India

Vs

State of Haryana and Another

With

Food Corporation of India, Karnal

Vs

State of Haryana and Others

With

State of Haryana

Vs

Goodyear India Ltd. and Others

With

Wipro Products Ltd.

Vs

State of Maharashtra and Another

With

Hindustan Lever Ltd. and Another

Vs

State of Maharashtra and Another

Special Leave Petition (C) Nos. 8397 to 8402 of 1983; Civil Appeal Nos. 1512 (NT), 1515 (NT) of 1984; 1166-72, 1173 to 1177 (NT), 1633 (NT), 2674 of 1985; 3033 (NT) of 1986; 4162 and 4163 of 1988; Writ Petition No. 3834 of 1985

(Sabyasachi, Mukharji, S. Ranganathan JJ)

19.10.1989

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. Except Civil Appeals Nos. 4162-63 of 1988, in these appeals along with the special leave petitions and the writ petition, we are concerned with Section 9(1) and 24(3) as well as the penalty proceedings initiated under Section 50 of the Haryana General Sales Tax Act, 1974 (hereinafter referred to as 'the Act'). So far as Civil Appeals Nos. 4162-63 of 1988 are concerned, these involve the scope, effect and validity of Section 13-AA of the Bombay Sales Tax Act, 1959 (hereinafter

referred to as 'the Bombay Act') as introduced by the Maharashtra Act 28 of 1982. It will, therefore, be desirable first to deal with the question of the Act, and then with the provisions of the Bombay Act as mentioned hereinbefore.

2. The appellant/petitioner - Goodyear India Ltd., was engaged at all relevant times, inter alia, in the manufacture and sale of automobile tyres and tubes. It manufactured the said tyres and tubes at its factory at Ballabhgarh in the district of Faridabad in the State of Haryana. For the said manufacturing activity the appellant had, from time to time, to purchase various kinds of raw materials both within the State and outside the State. It is stated that about 7 to 10 per cent of the total needs of raw material on an all India basis were locally procured by the appellant from Haryana itself. The raw materials purchased in Haryana were : (i) pigments (partly), (ii) chemicals (partly), (iii) wires (partly), (iv) carbon black (partly), (v) rubber (partly); and (vi) fabric (partly). The rest of the requirement were imported from other States of Haryana as well as in other States. After manufacturing the said tyres and tubes, about 10 to 12 per cent of the total manufactured products used to be sold in the State of Haryana either locally or in the course of inter-State trade and commerce or in the course of export outside the country and also sold locally against Declaration Form No ST-15. It was stated that at the relevant time the local sales including sales in the course of inter-State trade and commerce and in the course of export from the State of Haryana was about 30 to 35 per cent. The appellant was a registered dealer both under the Haryana Act and the Central Sales Tax Act, and had been submitting its quarterly returns and paying the sales tax in accordance with law, according to the appellant. In 1979, the assessing authority, Faridabad, imposed upon the appellant the purchase tax under Section 9 of the Act for the assessment year 1973-74 and subsequently for the years 1974-75 and 1975-76 as well on the despatches made by the appellant On the manufactured goods to its various depots outside the State. Subsequently, the relevant revenue authorities sought to impose purchase tax under Section 9 (1) of the Act and imposed purchase tax on dispatches of manufactured goods, namely, tyres and tubes, to its, various depots in other States. This led to the filing of various writ petitions in the Punjab and Haryana High Court by the appellant/petitioner.

3. In respect of the assessment years 1976-77 to 1979-80, these questions were considered by the Punjab and Haryana High Court, and the writ petitions were decided in favour of the appellant on December 4, 1982. The said decision being the decision in Goodyear India Ltd. v. State of Haryana (53 STC 163 (P&H). The Division Bench of the High Court in the said decision held that the both on principle and precedent, a mere despatch of goods out of the State by a dealer to his own branch while retaining both title and possession thereof, does not come within the ambit of the phrase "disposes of the manufactured goods in any manner otherwise than by way of sale", as employed in Section 9(1)(a)(ii) of the Act. The High Court further held that the decision of this Court in State of Tamil Nadu v. M. K. Kandaswami ((1975) 1 SCC 745 : 1975 SCC (Tax) 402 : AIR 1975 SC 1871 : (1975) 36 STC 191) was no warrant for the proposition that a mere despatch of goods was within the ambit of disposing them of. The High Court also distinguished the decision of this Court in Ganesh Prasad Dixit v. CST ((1969) 1 SCC 492 : (1969) 24 STC 343 : AIR 1969 SC 1276), and held that Notification No. S.O. 119/H.A. 20/73/Ss 9 and 15/74 dated July 19, 1974 issued under Section 9 (prior to its amendment by Act 11 of 1979) was ultra vires Section 9 of the Act. It was held that whereas the section provided only for the levy of purchase tax on the disposal of manufactured goods, the impugned notification by making a mere despatch of goods to the dealers themselves taxable, in essence, legislates and imposes a substantive tax which it obviously could not. It was held that this was contrary to and in conflict with the provisions of Section 9. The High Court referred to the relevant portion of unamended Section 9 of the Act with which it was confronted and the notification. In order to appreciate the said decision and the position, it will be

appropriate to set out the said provisions, namely, the unamended provisions of Section 9 as well as the notification :

> "9. Where a dealer liable to pay tax under this Act purchases goods other than those specified in Schedule B from any source in the State and -
>
> (a) uses them in the State in the manufacture of, -
>
> (i) goods specified in Schedule B
>
> (ii) any other goods

and disposes of the manufactured goods in any manner otherwise than by way of sale whether within the State or in the course of inter-State trade or commerce or within the meaning of sub-section (1) of Section 5 of the Central Sales Tax Act, 1956, in the course of export out of the territory of india,

(b) exports them,

in the circumstances in which no tax is payable under any other provision of this Act, there shall be levied, subject to the provisions of Section 17, a tax on the purchase of such goods at such rate as may be notified under Section 15."

4. The relevant notification was as follows :

"Notification No. S.O. 119/H.A. 20/73/Ss. 9 and 15/74 dated July 19, 1974.

In exercise of the powers conferred by Section 9 and sub-section (1) of Section 15 of the Haryana General Sales Tax Act, 1973, the Governor of Haryana hereby directs that the rate of tax payable by all dealers in respect of the purchases of goods other than goods specified in Schedules C and D or goods liable to tax at the first stage notified as such under Section 18 of the said Act, if used by them for purposes other than those for which such goods were sold to them, shall be the rate of tax leviable on the sale of such goods :

> Provided that where any such dealer, instead of using such goods for the purpose for which they were sold to him, despatches such goods or goods manufactured therefrom at any time for consumption or sale outside the State of Haryana to his branch or commission agent or any other person on his behalf in any other State and such branch, commission agent or other person is a registered dealer in that State and produces a certificate from the assessing authority of that State or produces his own affidavit of the consignee of such goods duly attested by a Magistrate or Oath Commissioner or Notary Public in the form appended to this notification to the effect that the goods in question have been so despatched and received and entered in the account books of the consignee, the rate of tax on such goods shall be three paise in a rupee on the purchase value of the goods so despatched."

5. The High Court, as stated before, referred to Section 9 and held that the expression 'disposes of' was not basically a term of legal art and, therefore, it was proper and necessary to first turn to its ordinary meaning in order to determine whether a mere despatch of goods by a dealer to himself would cannote 'disposal of' such goods by him. The High Court referred to the dictionary meaning

of 'disposes of' in Webster's Third New International Dictionary. Reference was also made to 27 Corpus Secundum, p. 345, and ultimately it came to the conclusion that the phrase 'disposes of' or 'disposal' cannot be possibly equated with the mere despatch of goods by a dealer to him self. After referring to the relevant provisions with which this Court was concerned in Kandaswami case ((1975) 4 SCC 745 : 1975 SCC (Tax) 402 : AIR 1975 SC 1871 : (1975) 36 STC 191), the High Court held that that case was no warrant for construing the expression 'dispatch' as synonymous with 'disposal'. On the other hand, the court held that the decision of this Court emphasises that the expression 'disposal' of goods is separate and distinct from despatch thereof. According to the High Court, the same position was applicable to Ganesh Prasad Dixit case ((1969) 1 SCC 492 : (1969) 24 STC 343 : AIR 1969 SC 1276), and in those circumstances held that the term 'disposes of' cannot be synonymous with 'disposal', and once that is held then the notification mentioned above travelled far beyond what is provided in Section 9 of the Act, while the said provision provided only for levy of purchase tax on disposal of manufactured goods

6. The High Court observed as follows :

> "Once it is held as above, the impugned Notification No. S.O. 119/H.A. 20/73/Ss. 9 and 15/74 dated July, 19, 1974 (Annexure P-2), plainly travels far beyond the parent Section 9 of the Act. Whereas the said provision provided only for the levy of a purchase tax on the disposal of manufactured goods, the notification by making a mere despatch of goods to the dealers themselves taxable in essence, legislates and imposes a substantive tax which it obviously cannot. Indeed, its terms run contrary to and are in direct conflict with the that the notification, which is composite one, is ultra vires of Section 9 of the Act and is hereby struck down."

7. The High Court also noted that though the challenged assessment orders were appealable, however, as the challenge was to the very validity of the notification which was obviously beyond the scope of the appellate authority, the writ petitions were entertainable as the assessment was based on the notification which was frontally challenged. As a result, the High Court quashed the notification and set aside the assessment orders. The said decision is under challenge in appeal to this Court.

8. It may be mentioned that sub-section (1) of Section 9 of the Act had been introduced by the Haryana Act, 55 of 1976 in the Act. After the aforesaid decision of the High Court, the Haryana legislature intervened and enacted the Haryana General Sales Tax (Amendment and Validation) Act, 1983 by which Section 9 of the principal Act was amended as follows :

"Amendment of Section 9 of Haryana Act 20 of 1973. - In Section 9 of the principal Act, -

(a) in sub-section (1), -

> (i) For clause (b), the following clause shall be substituted and shall be deemed to have been substituted for the period commencing from May 27, 1971, and ending with April 8, 1979, namely : "(b) purchases goods, other than those specified in Schedule B, from any source in the State and uses them in the State in the manufacture of any other goods and either disposes of the manufactured goods to a place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export outside the territory of India within the meaning of sub-section (1) of Section 5 of the Central Sales Tax Act,

1956; or".

(ii) after clause (b), the following clause shall be deemed to have been inserted with effect from April 9, 1979, namely :

(bb) purchases goods, other than those specified in Schedule B except milk, from any source in the State and uses them in the State in the manufacture of any other goods and either disposes of the manufactured goods in any manner otherwise than by way of sale in the State or despatches the manufactured goods to a place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export outside the territory of India within the meaning of sub-section (1) of Section 5 of the Central Sales Tax Act, 1956; or";

(iii) the following proviso shall be added, namely :

"Provided that no tax shall be leviable under this section on scientific goods and guar gum, manufactured in the State and sold by him in the course of export outside the territory of India within the meaning of sub-section (3) in Section 5 of the Central Sales Tax Act, 1956."; and

(b) in sub-section (3), the words "other than railway premises" shall be omitted."

After the aforesaid amendment the writ petitions were filed in the High Court by Bata India Ltd. In the meantime, the petitioner company also filed writ petitions for the assessment years 1973-74 to 1975-76 and 1980-81 in the High Court challenging the assessments. The High Court decided these matters on August 2, 1983 (Bata India Ltd. v. State of Haryana, (1983) 54 STC 226 (P&H)). The High Court held that "mere dispatch of goods to a place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce" is synonymous with or is in any case included within the ambit of the consignment of goods either to the person making it or to any other person in the course of inter-State trade or commerce as specified in Article 269(1)(h) and entry 92-B of List I of the Seventh Schedule to the Constitution. Hence, the levy of sales or purchase tax on such a dispatch or consignment of goods and matters ancillary or subsidiary thereto, will be within the exclusive legislative competence of Parliament to the total exclusion of the State legislature. Therefore, Section 9(1)(b) of the Haryana General Sales Tax Act, 1973, as amended by the Haryana General Sales Tax (Amendment and Validation) Act, 1983, insofar as it levies a purchase tax on the consignment of goods outside the State in the course of inter-State trade or commerce is beyond the legislative competence of the State of Haryana and is void and inoperative. It was held that the retrospective validation of the notification of July 19, 1974 referred to hereinbefore, and the consequential validation of all actions taken thereunder were liable to be quashed. The High Court further held that mere manufacture and consignment of goods outside the State to himself by a manufacture is not sale or disposal thereof with the result that it will not be within the ambit of entry 54 of List II of the Seventh Schedule to the Constitution. Consequently, it was held that irrespective of the Forty-sixth Amendment, an attempt to tax the mere consignment or dispatch of manufacture goods outside the State in the course of inter-State trade or commerce will not come within the ambit of entry 54 of List II of the Seventh Schedule, and consequently of the competence of the respective State legislatures. Even before the Forty sixth Amendment, the mere consignment of goods in the course of inter-State trade or commerce was beyond the scope of the said entry and thus not within the legislative competence of the States and was entirely within the parliamentary field of legislation by virtue of Article 248 and the residuary entry 97 of List I.

9. The High Court was of the view that neither the original purchase of goods nor the manufacture thereof into the end-product by itself attracts purchase tax and consequently are not even remotely the taxable events. What directly and pristinely attracts the tax and can be truly labeled as the taxing event under Section 9(1)(b) of the Act is the threefold exigency of : (i) disposal of the manufactured goods in any manner otherwise than by way of sale in the State; or (ii) dispatch of the manufactured goods to a place outside the State in any manner other wise than by way of sale in the course of inter-State trade or commerce, or (iii) disposal or dispatch of the manufactured goods in the course of export outside the territory of India. It was these three agencies only which were the taxable events in the amended Section 9(1)(b) of the Act. Consequently, in a statute where the taxable event is the dispatch or consignment of goods outside the State, the same would come squarely within the wide sweep of entry 92-B of List I of the Seventh Schedule of the Constitution, and thus excludes taxation by the States.

10. The High Court was of the view that Section 9 of the Act must be strictly construed as it was a charging section. If the charging section travels beyond the legislative entry and thereby transgresses the legislative field, then the same cannot possibly be sustained. The constitutional changes brought by the Forty-sixth Amendment in Article 269 of the Constitution read with the insertion of entry 92-B in the Union List, leave no doubt that the legislative arena of tax on the consignment of goods (whether to one's own self or to any other person) in the course of inter-State trade or commerce and all ancillary or complementary or consequential matters, are now declared to be exclusively reserved for parliamentary legislation and any intrusion into this field by the State legislatures would be barred.

11. In my opinion, the High Court correctly noted in the said decision that the provisions of constitutional change have to be construed, and such problems should not be viewed in narrow isolationism but on a much wider spectrum and the principles laid down in Heydon case ((1584) 3 Co Rap 7a) are instructive. Hence, in a situation of this nature, it was just and proper to see what was the position before the Forty-sixth Amendment of the Constitution, and find out what was the mischief that was sought to be remedied and then discover the true rationale for such a remedy. In Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg Ag. ((1975) 1 All ER 810 : 1975 AC 591 : (1975) 2 WLR 513 (HL), Lord Reid observed as follows : (All ER p. 814)

> "One must first read the words in the context of the Act as a whole, but one is entitled to go beyond that. The general rule in construing any document is that one should put oneself 'in the shoes'of the maker or makers and taken into account relevant facts known to them when the document was made. The same must apply to Acts of Parliament subject to one qualification. An Act is addressed to all the lieges and it would seem wrong to take into account anything that was not public knowledge at the time. That may be common knowledge at the time or it may be some published information which Parliament can be presumed to have had in mind.
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> It has always been said to be important to consider the 'mischief' which the Act was apparently intended to remedy. The word 'mischief' is traditional. I would expand it in this way. In addition to reading the Act you look at the facts presumed to be known to Parliament when the Bill which became the Act in question was before it, and you consider whether there is disclosed some unsatisfactory state of affairs which Parliament can properly be supposed to have intended to remedy by the Act."

12. The state of affairs that the Parliament has sought to remedy by the Forty-sixth Amendment of

the Constitution, was that prior to the promulgation each State attempted to subject the same transaction to tax on the nexus doctrine under its sales tax laws. Consequently, on the basis of one or the other element of the territorial nexus, the same transaction had to suffer tax in different States with the inevitable hardship to trade and consumers in the same or different States. The farmers of the Constitution being fully aware of the problems sought to check the same by a somewhat complex constitutional scheme and by imposing restrictions on the States' power with regard to levy tax on the sale or purchase of goods under Article 286. The High Court in the judgment referred to herein-before, mentioned these factors. It is in this background that Article 269 was amended and clause (3) was added to it. The effect, inter alia, is that the power to levy tax on the sale or purchase of goods is now referable to the legislative power vested in the States by virtue of entry 54 in List II of the Seventh Schedule. However, this legislative authority of the States is restricted by three limitations contained in Articles 286(1)(a), 286(1)(b) and 286(3) of the Constitution. It may be mentioned that Parliament by the Sixth Amendment to the Constitution, enacted the Central Sales Tax Act, 1956, with the object 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 takes on sales of goods in the course of inter-State trade or commerce and to declared certain goods to be of special importance and specially the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods shall be subject. In this connection, the High Court referred to the various propositions as mentioned by the Law commission in its 61st Report rendered in May 1974. It is not necessary to set out the same in detail. It was in the aforesaid historical background that the High Court entrusted the provisions in question and came to the conclusion that a plain reading of these would leave little manner of doubt that the legislative power to tax consignment transfers of goods from one branch of an institution to another branch thereof outside the State and all matters incidental, ancillary or complementary thereto were then declared to be vested in the Union of India to the total exclusion of the States. The High Court referred to the observations of this Court in Khyerbari Tea Co. Ltd. v. State of Assam (AIR 1964 SC 925), Navinchandra Mafatlal v. CIT ((1955) SCR 829 : AIR 1955 SC 58 : (1954) 26 ITR 758) and Waverly Jute Mills Co. Ltd. v. Raymon & Co. (I) Pvt. Ltd. ((1963) 3 SCR 209 : AIR 1963 SC 90) and concluded that Entry 92-B enabled the Union of India not only to tax the consignment off goods in the strict sense but also embraced all ancillary and complementary areas as well to the exclusion of the State legislature therefrom. In the aforesaid light the High Court construed Section 9(1)(b) of the Haryana Act, 1983. Analyzing the provisions in detail it observed that Section 9 of the Act was a charging section for the levy of purchase tax. It imposed liability for payment of purchase tax, therefore, it should be distinguished from the machinery section. The High Court examined the real nature of the business outside the State and found that there was merely a change in the physical situs of the goods without any change in the basic incidents of ownership and control. Therefore, in its true nature a mere despatch of goods outside the State to another branch of the original institution is not and never can be the equivalent of a sale either as a term of art in the existing sales tax legislation and not remotely so in common parlance, and construing Section 9(1)(b) of the Act, the High Court was of the view that real taxing event is the despatch of the manufactured goods to a place outside the State in any manner otherwise than by way of sale in the course of inter State trade or commerce.

13. The High Court found that there was no distinction between the despatch as defined in the said amended section and the consignment of goods by the manufacturer to himself or to any other person in the course of inter-State trade or commerce, and referred to the meanings of the expressions 'despatch' and 'consign', which are similar and almost interchangeable when used in specific commercial sense. The High Court referred to Webster's New International Dictionary,

Shorter Oxford English Dictionary and also to Random House Dictionary for their meanings. On construction, the High Court came to the conclusion that the amended provisions of Section 9(1)(b) of the Act attempt to levy an identical tax in the garb of a levy on the despatch of manufactured goods to places outside the State of Haryana, and therefore intruded and trespassed into an arena exclusively meant for taxation by the Union of India. The High Court also viewed from another point view, namely, who was liable as it was the consignment of goods which attracted the liability of purchase tax and in pristine essence was the "taxable event" under Section 9(1)(b) of the Act. The High Court also analysed it from the point of view that under Section 9(1)(b), where a dealer purchases goods for the express purpose of manufacturing other goods within State, then in strict sense such purchase by itself did not attract any tax under the provisions. Hence, the High tax on the consignment of goods outside the State in the course of inter-State trade or commerce, consequently it also set aside the retrospective validation of the notification and the consequential validation of all actions taken thereunder. Special leave petitions were filed in this Court against the said decision of High Court. These are Special Leave Petitions Nos. 8397 to 8402, 1983. During the pendency of the special leave petitions, show case notices were issued by the assessing authority in respect of the assessment years 1973-74 to 1980-81 (except for 1978-79 and 1979-80) and also for 1982-83 asking the petitioner to show case why in addition to purchase tax, it should not be liable to penalty as well. The petitioner company again filed writ petitions in Punjab and Haryana High Court lenging the validity of those notices. It appears that in the meantime, a Full Bench of the High Court decided the question again in the case of Des Raj Pushap Kumar Gulati v. State of Punjab (58 STC 393 (P&H)). This decision rendered on January 24, 1985. The assessment years involved in all these appeals are 1973-74 to 1982-83. According to the Full Bench, the taxing event is the act of purchase and not the act of despatch or consignment as held in Bata India Ltd. (Bata India Ltd. v. State of Haryana, (1983) 54 STC 226 (P&H)) In the premises, it was had that Section 9(1)(b) as amended, was neither invalid nor ultra vires and overruled the decision of Bata India Ltd. (Bata India Ltd. v. State of Haryana, (1983) 54 STC 226 (P&H)) The writ petitions filed were also dismissed.

14. The petitioner company filed special leave petitions against aforesaid judgment off the Punjab and Haryana High Court which admitted in Civil Appeals Nos. 1166-72 of 1985. Goodyear India a filed Writ Petition No. 3834 of 1985 in respect of the assessment year 1981-82, as the notices for assessment and penalty were received after decision of Punjab and Haryana High Court in Des Raj Pushap Kumar case (58 STC 393 (P&H)). The said decision was passed in appeal against the decision of the said court in Goodyear India (53 STC 163 (P&H). All these questions are the subject matters of these appeals.

15. It is well settled that what is the taxable event or what nice satieties taxation in an appropriate statute, must be found out by constructing the provisions. The essential task is to find out what is the taxable event. In what is considered to be indirect tax, there is marked destination between the consequence of manufacture and the consequence sale.

16. It is well to remember that in construing the expressions of the Constitution to judge whether the provisions like Section 9(1)(b) of the Act, are within the competence of the State legislature, one must bear mind that the Constitution is to be construed not in a narrow or pedantic sense. Constitution is not to be construed as mere law but as machinery by which laws are to be made. It was observed by Lord Wright in James v. Commonwealth of Australia (1936 AC 578, 614 : (1936) 2 All ER 1449 (PC), that the rules which application the interpretation of other statutes, however, apply equally to the into preparation of a constitutional enactment. In this context, Lord Wright referred to the observations of the Australian High Court in Attorney General for the State of New South Wales v. Brewery Employees Union ((1908) 6 CLR 469), where it was observed that the

words of the Constitution must be interpreted on the same principles as any ordinary law, and these principles sample us to consider the nature and scope of the Act, and to remember at the Constitution is a mechanism under which laws are to be made, and not a mere Act which declares what the law is to be. Hence, such mechanism should be interpreted broadly, bearing in mind in appropriate cases, that a Supreme Court like ours is a nice balance of jurisdictions. A institutional Court, one must bear in mind, will not strengthen, but only derogate from its position if it seeks to do anything but declare the how; but it may rightly reflect that a Constitution is a living and organic thing, which of all instruments has the greatest claim to be construed broadly and liberally. See the observations of Gwyer, C.J. in Re Central provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 (AIR 1939 FC 1, 4 : 1939 FCR 18 : 180 IC 161). Mr. Justice Sulaiman in his judgment at p. 22 of the report observed that the power to tax the sale of goods is quite distinct from any right to impose taxes on use or consumption. It cannot be exercised at the earlier stage of production nor at the later stage of use or consumption, but only at the state of sale. The essence of a tax on goods manufactured or produced is that the right to levy it accrues by virtue of their manufacture. On the other hand, a duty on the sale of goods cannot be levied merely because goods have been manufactured or produced. Nor can it be levied merely because the goods have been consumed or used or even destroyed. The right to levy the duty would not at all come into existence before the time of the sale In this connection, reference may be made to the observations of Chief Justice Gwyer in Province of Madras v. Boddu Paidanna and Sons (AIR 1942 FC 33 : 200 IC 551 : (1942) 2 MLJ 327).

17. Mr. Raja Ram Agarwala, learned counsel for the appellant/assessees, contended before us that it is necessary to find out or identify the taxable event. If on a true and proper construction of the amended provisions of Section 9(1)(b) it is despatch or consignment of the goods that is the taxable event as contended by the petitioners and appellants, then the power is beyond the State's competence. If, on the other hand, it is the purchase of the goods that is the taxable event as held by the Full Bench of the High Court, then it will be within its competence. The Full Bench in Des Raj Pushap Kumar case (58 STC 393 (P&H)) has relied on the background of the facts and the circumstances which necessitated the introduction of the amendment.

18. Mr. Tewatia, learned counsel appearing for the State canvassed before us the historical perspective and stated that Haryana State came into being as a result of the Punjab State Reorganization Act, 1966; therefore, part of the legislative history of the taxing statute like any other statute is shared by the Haryana State with the Punjab State, and as such it is proper to notice the concept of purchase tax as it evolved in the State of Punjab. Purchase tax was introduced in the State of Punjab for the first time by the East Punjab General Sales Tax (Amendment) Act, 1958. Section 2(ff) was introduced for the first time to define the expression 'purchase'. The definition of the term 'dealer' was changed to include therein a purchaser of goods also. The definition of the term 'taxable turnover' was also altered. Some dealers who crushed oil seeds, were called upon to pay purchase tax on the raw material purchased by them on the round that the raw material had not been subjected to a manufacturing process as the process of crushing oil seeds did not involve a process of manufacturing. He referred to the fact that Punjab had originally exempted purchase tax on the purchase of raw material by the dealers if such raw material was to be used for the manufacture of goods for sale in Punjab and thus generate more true to the State as a result of the sales tax on such manufactured goods. But when the dealers started avoiding this condition for sale in Punjab by various ingenious devices after having escaped the payment of purchase tax on the raw material purchased by them, the legislature amended the Act and Punjab Act 18 of 1960 was bought on the statute book w.e.f. April 1, 1960. Section 2 (ff) of the Act was amended and it provided that all the goods mentioned in Schedule C when purchased shall be eligible to purchase tax and thus the

concession given to the manufacturers was with drawn. Explaining this background, Mr. Tewatia contended that Section 9, sub-section (1) of the Act envisages payment of tax at such rate as may be notified under Section 15 on the purchase of goods from any source within the State by a dealer liable to pay tax under the Act when such goods, not being Schedule 'B' goods, were consumed either in producing Schedule 'B' goods or when the manufactured goods were other than Schedule 'B' goods, the same not being sold within the State or in the course of inter state trade or commerce, or in the course of export out side the territory of India, or the purchased goods were exported outside the State.

19. After referring to the relevant provisions and the provisions of Section 9(1)(b), Mr. Tewatia emphasised that the contingency contemplated by "or dispatches the manufactured goods to place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export outside the territory of India within the meaning of section 5(1) of the Central Sales Tax Act, 1956; or" as well as clause (c) of Section 9(1) which encompasses "purchases goods, other than those specified in Schedule B, from any source in the State and exports them, in the circumstances in which no tax is payable under any other provision of this Act, there shall be levied, subject to the provisions of Section 17, a tax on the purchase of such goods at such rate as may be notified under Section 15", have to be judged for determining their validity in the true historical perspective as well as bearing in mind the remedial aspect of the provisions for the purpose of which these were enacted. Therefore, the main question is whether the tax envisaged by Section 9(1) is a tax on purchase/sale of given goods or is a tax on the despatch/consignment of such goods and that depends on, as to whether the taxable event is a purchase/sale of goods or despatch/consignment of such goods. As mentioned hereinbefore, Mr. Tewatia laid great deal of emphasis on the background of the provisions of Section 9(1). He urged that the said section is both a taxing as well as a remedial provision, as would be evident from the scheme of the Act. The legislative policy was to see that all goods except nontaxble goods i.e. Schedule 'B' goods, must yield tax/revenue to the State in the hands of a dealer, at one stage or the other, according to Mr. Tewatia. He analysed the scheme and referred us to Section 6 along with section 27 of the Act, and then submitted that the provision of Section 9(1) along with sub-section (3) of section 24 of the Act are both composite provisions, i.e. they are both charging provisions as also remedial provisions. According to him, such composite provisions of a fiscal statute deserve to be interpreted properly and in such a manner as to further remedy and thus effectuate the legislative intent and suppress the mischief intended to be curbed.

20. Reliance was placed by the High Court as well as Mr. Tewatia before us on the observations of this Court in state of Tamil Nadu v. Kandaswami ((1975) 4 SCC 745 : 1975 SCC (Tax) 402 : AIR 1975 SC 1871 : (1975) 36 STC 191), where at p. 198 of the reports (STC) [SCC p. 750, para 21], this Court while dealing with Section 7-A of the Tamil Nadu (Amendment) Act, observed that it was at once a charging as well as a remedial provision. Its main object was to plug leakage and prevent evasion of tax. In interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book, should be eschewed. If more than one construction is possible, that which preserves its workability and efficacy is to be preferred to the one which would render it otiose or sterile, observed this Court in that case While bearing the aforesaid principle in mind, it has to be examined as to how far the application of this provision can be construed with the well settled principle of fiscal legislation and the terms and conditions of the present legislation. It has been said and said on numerous occasions that fiscal laws must be strictly construed, words must say what these mean, nothing should be presumed or implied, these must say so. The true test must always be the language used.

21. On behalf of the assessee, Mr. Rajaram Agarwala, however, further contended that the ratio of Kandaswami case ((1975) 4 SCC 745 : 1975 SCC (Tax) 402 : AIR 1975 SC 1871 : (1975) 36 STC 191) to which Mr. Tewatia referred, must be understood in the light of the question involved in that case. The said decision of this Court was concerned with the limited point as to whether the Madras High Court was right in observing "whether one could say that the sale which is exempted is liable to tax and then assume that because of exemption, the tax is not payable". This Court held that the language of Section 7-A of the said Act was far from clear as to its intention and did not concern with the identification of the taxing event. Furthermore, it has to be borne in mind, as emphasised by Mr. Agarwala, that if at all the taxing event was spelt out, it was on the assumption that the goods in question were generally taxable and these were to be put to tax under Section 7-A of the Tamil Nadu Act, if these came to be purchased without payment of tax and then sought to be dealt with in any manner as to escape payment of State sales/purchase tax within the State.

22. Mr. Tewatia drew our attention to the observations of this Court in Kandaswami case ((1975) 4 SCC 745 : 1975 SCC (Tax) 402 : AIR 1975 SC 1871 : (1975) 36 STC 191) to prove that the observations in Malabar Fruit Products Co. v. STO (30 STC 537 (Ker)), where these questions were decided by Justice Poti of the Kerala High Court, who spelt out that the taxing event was not the event of despatch but the event of purchase/sale of goods. It has, however, to be borne in mind that the questions involved in Malabar Fruit Products case (30 STC 537 (Ker)) and Kandaswami case ((1975) 4 SCC 745 : 1975 SCC (Tax) 402 : AIR 1975 SC 1871 : (1975) 36 STC 191) were not concerned with the actual argument with which we are concerned in the instant matter. It is well settled that a precedent is an authority only for what it actually decides and not for what may remotely or even logically follow from it. See Quinn v. Leathem (1901 AC 495 : (1900-3) All ER Rep 1 : 70 LJPC 76 : 17 TLR 749) and State of Orissa v. Sudhansu Sekhar Misra ((1968) 2 SCR 154 : AIR 1968 SC 647 : (1970) 1 LLJ 662). Therefore, the ratio of the said decision cannot be properly applied in construing the provisions of Section 9(1)(b) in this case to determine what is the taxable event.

23. It was contended by Mr. Rajaram Agarwala that clause (b) of Section 9(1) dealt with non-exempted goods purchased in the State, used in the manufacture of any goods whether exempted or not, but when dispatched outside the State of Haryana i.e. by way of stock transfer consignment will attract the tax liability under this section, hence, the event of despatch or consignment is the immediate cause which attracts the tax liability under Section 9. The quality or the character of goods which should be liable to tax under Section 9 in clause (1)(a) is the non exempted goods purchased in the State; while under the first part of clause (b) the quality of goods liable to tax is the non-exempted goods purchased in the State and under the second part of clause (b), the quality of goods must be non-exempted goods purchased and manufactured in the state, whether exempted or not in the State which is liable to tax on despatch outside Haryana; and under clause (c) the goods purchased in Haryana without undergoing any further change or use is the chased in Haryana without undergoing any further change or use is the quality of goods liable to tax when exported.

24. The submission of the State is that the taxable event is the purchase of goods in Haryana while the obligation to pay is postponed on the fulfillment of certain conditions. The further argument is that there is a general liability to purchase tax which the dealer avoids on furnishing a declaration in S. T. From 15 as provided by Section 24 at the time of purchase, wherein certain conditions are mentioned and when those conditions are not fulfilled, those revive. It was further argued that the conditions are incorporated in Section 9 of the Act. For testing which of the contentions are nearer to find out the exact taxable event, certain indiciate and illustrations may be seen. Their analysis will indicate that there is no liability to pay sales tax under the Haryana Act on the purchaser. It is

admitted that on such sales the selling dealer is liable to pay sales tax. On such purchases, the sale and purchase being the two sides of the same coin, no purchase tax is imposed under the Act. This has been the accepted position by the state also for, while replying to the question of double taxation, counsel for the State admitted that sales as well as purchase tax is to be impossible under the scheme of the act which are of two sides. Hence, it was rightly urged by Mr. Rajaram Agarwala that the first condition for attracting the applicability of Section 9(1), "whether a dealer is liable to pay tax under this Act purchases goods", is missing. When Section 9(1) talks of a dealer liable to pay tax under the Act, obviously it is with reference to his purchasing activity and if on that activity no purchase tax is payable, Section 9 (1) would not be applicable.

25. To accept the submissions advanced by Mr. Tewatia, assumptions and presumptions are to be made. It is not permissible to do so in a fiscal provision. See in this connection the observations of this Court in CST v. Modi Sugar Mills Ltd. ((1961) 2 SCR 189 : AIR 1961 SC 1047 : (1961) 12 STC 182) and Baidyanath Ayurved Bhawan (P) Ltd., Jhansi v. Excise Commissioner ((1971) 1 SCC 4, 7 : (1971) 2 SCR 590, 592 : AIR 1971 SC 378). In that background it must be noted that Section 9 of the act nowhere makes a reference to Section 24 or any declaration furnished by the purchasing dealer on the basis of which he was granted temporary exemption and thereby revival of the original purchase tax on the breach of declaration as such. Section 9 of the Act opens with the expression. "Where a dealer liable to pay tax under this Act" and not "Whether a dealer has paid tax or has not paid tax". The phrase 'liable to pay tax' under the Act must relate to liability to pay sales tax on such purchases.

26. It is well settled that the main test for determining the taxable event is that on the happening of which the charge is affixed. The realization often is postponed to further date. The quantification of the levy and the recovery of tax are also postponed in some cases. It is well settled that there are three stages in the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment been fixed. But assessment particularizes the exact sum which a person is liable to pay. Lastly comes the method of recovery if the person taxed does not voluntarily pay. Reference may be made to the observations of Lord Dunedin in Whitney v. IRC (1926 AC 37, 52 : 95 LJKB 165 : 42 TLR 58) and of the Federal Court in chatturam v. CIT (15 ITR 302, 308 (FC)).

27. Taxable event is that which on its occurrence creates or attracts the liability to tax. Such liability does not exist or accrue at any earlier or later point of time. The identification of the subject-matter of a tax is to be found in the charging section. In this connection, one has to analyse the provision of Section 9(2)(b) as well as Sections 9(1)(b) and 9 (1)(c). Analysing the section, it appears to us that the two conditions specified, before the event of despatch outside the State as mentioned in Section 9(1)(b), namely, (i) purchase of goods in the State and (ii) using them for the manufacture of any other goods in the State, are only descriptive of the goods liable to tax under Section 9(1)(b) in the event of despatch outside the State. If the goods do not answer both the descriptions cumulatively, even though these are despatched outside the State of Haryana, the purchase of those goods would not be put to tax under Section 9(1)(b). The focal point in the expression "goods, the sale or purchase of which is liable too tax under the Act", is the character and class of goods in relation to exigibility. In this connection, reference may be made to the observations of this Court in Andhra Sugars Ltd. v. State if Andhra Pradesh ((1968) 1 SCR 705 : AIR 1968 SC 599 : 21 STC 212). On a clear analysis of the said section, it appears that Section 9(1)(b) has to be judged as and when liability accrues under that section. The liability to pay tax under this section does not accrue on purchasing the goods simpliciter, but only when these are despatched or consigned out of the State of Haryana. In all these cases, it is necessary to find out the true nature of the tax. Analysing the

section, if one looks to the purchase tax under Section 9, one gets the conclusion that the section itself does not provide for imposition of the purchase tax on the transaction of purchase of the taxable goods but when further the said taxable goods are used up and turned into independent taxable goods, losing its original identity, and thereafter when the manufactured goods are despatched outside the State of Haryana and only then tax is levied and liability to pay tax is created. It is the cumulative effect of that event which occasions or causes the tax to be imposed; to draw a familiar analogy it is the last straw on the camel's back.

28. In this connection, reference may be made to the observations of Justice Vivian Bose in Tata Iron and Steel Co. Ltd. v. State of Bihar (1958 SCR 1355, 1381-82 : AIR 1958 SC 452 : (1958) 9 STC 267), where he observed as follows :

> "I would therefore reject the nexus theory insofar as it means that any one sale can have existence and entity simultaneously in many different places. The States may tax the sale but may not disintegrate it, and, under the guise of taxing the sale in truth and in fact, tax its various elements, one its head and one its tail, one its entrails and one its limbs by a legislative fiction that deems that the whole is within its claws simply because, after tearing it apart, it finds a hand or a food or a liver still quivering in its grasp. Nexus, of course, there must be but nexus of the entire entity that is called a sale, wherever it is deemed to be situate. Fiction again. Of course, it is fiction, but it is a fiction as to situs imposed by the Constitution Act a and by the Supreme Court that speaks for it in these matters and only one fiction, not a dozen little ones."

29. It is, therefore, necessary in all cases to find out what is the essence of the duty which is attracted. A taxable event is that which is closely related to imposition. In the instant section, there is such close relationship only with despatch. Therefore, the goods purchased are used in manufacture of new independent commodity and thereafter the said manufactured goods are despatched outside the State of Haryana. In this series of transactions the original transaction is completely eclipsed or ceases to exist when the levy is imposed at the third stage of despatch of manufacture. In the instant case the levy has no direct connection with the transaction of purchase of raw materials, it has only a remote connection of lineage. It may be indirectly and very remotely connected with the transaction of the purchase of raw material wherein the present levy would lose its character of purchase tax on the said transaction.

30. Mr. Rajaram Agarwala submitted that the measure of tax is with reference to the value of purchased goods in the State of Haryana. As mentioned before, reference has been made to the decision of Kandaswami case ((1975) 4 SCC 745 : 1975 SCC (Tax) 402 : AIR 1975 SC 1871 : (1975) 36 STC 191), where this Court dealt with Section 7-A of the Tamil Nadu Act, which was not identical but similar to Section 9 of the Act. There at P. 196 of the report, this Court observed as follows : (SCC p. 749, para 16)

> "Difficulty in interpretation has been experienced only with regard to that part of the sub-section which relates to ingredients (4) and (5). The High Court has taken the view that the expression 'goods the sale or purchase of which is liable to tax under this Act', and the phrase 'purchase ... in circumstances in which no tax is payable under Sections 3, 4 or 5' are a 'contradiction in terms'."

31. Ingredients Nos. 4 and 5 are as follows :

"4. The goods purchased are 'goods, the sale or purchase of which is liable to tax under this Act';

5. Such purchase is, 'in circumstances in which no tax is payable under Sections 3, 4 or 5, as the case may be';"

32. The relevant ingredient involved, as mentioned at page 196, was as under, (SCC p. 749, para 14)

"6. The dealer either. -

(a) consumes such goods in the manufacture of other goods for sale or otherwise, or

(b) dispatches all such goods in any manner other than by way of sale in the State, or

(c) dispatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce."

33. This ingredient was neither argued nor was considered, so the passing reference based on the phraseology of the section is not the dictum of Kandaswami case ((1975) 4 SCC 745 : 1975 SCC (Tax) 402 : AIR 1975 SC 1871 : (1975) 36 STC 191). Secondly, in Section 9, in the instant case, the raw materials were purchased or used in the manufacture of new goods and thereafter those new goods were despatched outside the State of Haryana whereupon the tax was levied. This important factor is wholly missing in Section 7-A of the Tamil Nadu Act, which was considered in Kandaswami case ((1975) 4 SCC 745 : 1975 SCC (Tax) 402 : AIR 1975 SC 1871 : (1975) 36 STC 191). In that decision, this Court approved the Kerala High Court's decision in Malabar Fruit Products (30 STC 537 (Ker)), which was confined to the interpretation of the words 'goods, the sale or purchase under the Act. A decision on a question which has not been argued cannot be treated as a precedent. See the observations of this Court in Rajput Ruda Meha v. State of Gujarat ((1980) 1 SCC 677 : 1980 SCC (Cri) 317 : (1980) 2 SCR 353, 356). The decision of the Division Bench of the Kerala High Court in Yusuf Shabeer v. State of Kerala (32 STC 359 (Ker)) is clearly distinguishable. In Ganesh Prasad Dixit case ((1969) 1 SCC 492 : (1969) 24 STC 343 : AIR 1969 SC 1276) the question of constitutional validity was not argued. A reference was made by Mr. Tewatia to the decision of the High Court in Coffee Board v. CCT (60 STC 142 (Kant)) and the decision of this Court in Coffee Board, Karnataka v. CCT ((1988) 3 SCC 263 : 1988 SCC (Tax) 308 : 70 STC 162). In these case the question involved was the acquisition of coffee by the Coffee Board under compulsory acquisition or purchase or sale of goods. That question is entirely different from the question with which we are concerned in these appeals.

34. Prior to Forty-six Amendment, entry 54 of List II of the Seventh Schedule of the Constitution of India demarcated the exclusive field of State legislation, read with Article 246 (3) of the Constitution conferred power on the State legislature to impose tax on the transactions of sale or purchase of goods. The said entry read as follows :

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

35. Entry 92-A of List I, which is in the exclusive domain of the Union, was to the following extent :

"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."

36. The mere consignment of goods by a manufacturer to his own branches outside the State does not in any way amount to sale or disposal of the goods as such. The consignment or despatch of goods is neither a sale nor a purchase. The first judgment in case of Goodyear India (53 STC 163 (P&H)) was on December 4, 1982 when it was held that the notification was beyond the Act, as the word 'disposal' did not include the word 'mere despatch' as mentioned in the notification. The Constitution (Forty Sixth Amendment) Act, 1982 came into force on February 2, 1983, whereby Section 9 was amended. This amendment was after Forty Sixth Constitutional Amendment Act, 1982. The Forty Sixth Constitution Amendment Act in the Statement of Objects and Reasons, inter alia, stated as follows :

> "There were reports from State Governments to whom revenues from sales tax have been assigned, as to the large scale avoidance of central sales tax leviable on inter-State sales of goods through the device of consignment of goods from one State to another and as to the leakage of local sales tax in words contracts, hire purchase transactions, lease of films etc. Though, Parliament could levy a tax on these transactions, as tax on sales has all along been treated as an item of revenue to be assigned to the States, in regard to these transactions which resemble sales also, it is considered that the same policy should be adopted."

37. The Law Commission of India in its 61st Report made, as indicated before, certain recommendations, and noticed that the provisions of existing Central Sales Tax Act were insufficient to tax the consignment transfers from (sic one) branch to another, as it was beyond the concept of sale, and its recommendations are contained in paragraph 2.23 of Chapter II (at page 66). It recommended that the definition of sale in the Central Sales Tax Act, after carrying out the requisite Constitution amendment be amended somewhat on the lines indicated by them in their report. The Union of India, in part, accepted the recommendations but instead of amending the definition of sales in Central Sales Sales Tax Act, inserted a new entry in the Union List in the shape of entry 92-B and also inserted a new sub-clause (4) after sub-clause (g) in Article 269 (1) of the Constitution. The Parliament also amended clause (3) of Article 269.

38. It appears to us that the effect of the aforesaid amendment is that the field of taxation on the consignment/despatch of goods in the course of inter-State trade or commerce expressly come within the purview of the legislative competence of the Parliament. It is well settled that the nomenclature of the Act is not conclusive and for determining the true character and nature of a particular tax, with reference to the legislative competence of a particular legislature, the court will look into its pith and substance. See the observations of Governor General in Council v. Province of Madras ((1945) 72 IA 91). There, Lord Simonds observed as follows :

> "..... For in a Federal Constitution, in which there is a division of legislative powers between central and provincial legislatures it appears to be inevitable that controversy should arise; Whether one or other legislature is not exceeding its own, and encroaching on the others Constitutional Legislative Power, and in such a controversy it is a principle, which their Lordships do not hesitate to apply in the present case, that it is not the name of the tax, but its real nature, 'its pith and substance', as it has sometimes been said which must determine into what a category it falls."

39. We must, therefore, look not to the form but to the substance of the levy. See the observations of the Federal Court in Ralla Ram v. Province of East Punjab (AIR 1949 FC 81 : 1948 FCR 207 : (1949) 1 MJL 213).

40. Therefore, the nomenclature given by the Haryana legislature is not decisive. One has to find out whether in pith and substance, a consignment tax is sought to be imposed, a tax on despatch in the course of inter-State trade or commerce. I have no hesitation in holding that it is a tax on despatch. Inter-State trade or commerce, it has been emphasised, is of great national importance and is vital to the federal structure of our country. As the imposition of consignment tax requires very deep consideration of all its aspects and certain amount of consensus among the States concerned, especially with regard to the rates, grant of exemption, and ratio relating to distribution of proceeds amongst the States inter se, the actual imposition of tax is bound to take some time till an agreeable solution is found, but that would not make the consignment tax to be in suspended animation in the State, and make us hold that a tax which is in essence a tax on consignment should be taxed by the States by the plea either that otherwise there is ample scope of evasion and further States are without much resources in these days when there is such a tremendous demand on the revenue of the States.

41. It is well settled that the entries in the Constitution only demarcate the legislative fields of the respective legislatures and do not confer legislative powers as such. The tax on despatch of good outside the territory of the State certainly is in the cause of inter-State trade or commerce, and in other words, amounts to imposition of consignment tax, and hence the latter part of Section 9(1)(b) is ultra vires and void.

42. In these cases, we are concerned with the validity of the latter part of Section 9(1)(b) of the Haryana Act which imposes a tax on despatch of manufactured goods outside the territories of Haryana. If it is accepted that Section 9(1)(b) is ultra vires, the penalty proceedings would automatically go as they are in substance, based on the violation of Section 9(1) (b) of the Act and the consequent proceedings flowing therefrom. It is in that context that in Writ Petition No. 3834 of 1985, Mr. Soli Sorabajee urged that the attempt and action of the State in imposing tax and attempt to penalise are bad.

43. In this connection, it may be mentioned that before the Full Bench of the Punjab and Haryana High Court on behalf of the State, a statement was made, which has been recorded in Des Raj Pushap Kumar Gulati v. State of Punjab (58 STC 393 (P&H)) at P. 408, as follows :

> "Counsel appearing for the State of Haryana made a statement that if the Full Bench held that Bata India Ltd. Case (Bata India Ltd. v. State of Haryana, (1983) 54 STC 226 (P&H)) did not lay down the correct law and the amendment effected by Act 11 of 1984 to Section 9 was intra vires, then the provision of sub-section (3) of Section 24 regarding the rate of tax shall not be enforced and only the old rate will be leviable."

44. In view of the aforesaid statement, no higher rate except the old rate admissible factually would be applicable.

45. Section 24(3) was introduced by the Haryana Act with retrospective effect from May 27, 1971, which is as follows :

> "Notwithstanding any other provisions of this Act or any judgment, decree or order of any court or other authority to the contrary if a dealer who purchases goods, without payment of tax under sub-section (1) and fails to use the goods so purchased for the purpose specified therein he shall be liable to pay tax on the purchase value of such goods, at the rates notified under Section 15 without prejudice to the provisions of Section 50 provided that the tax shall not be levied where tax is payable on such goods under any other provision of this Act."

46. This provision without making any change in the substantive provision purports to give a direction to ignore the judgment, in other words, purports to overrule the judgments, namely, Goodyear (53 STC 163 (P&H)) and Bata India, which is beyond the legislative competence of the State legislature and this provision is void in view of the decision of this Court. See Prithvi Cotton Mills Ltd. v. Broach Borough Municipality ((1969) 2 SCC 283, 286). For the same reason, applying the man section instead of Section 9(1), Section 24 should also fail as amended. Civil Appeal No. 1515 of 1984 is also liable to be dismissed in view of the judgment of this Court in Dy. CST v. Thomas Stephen and Co. Ltd., Quilon ((1988) 2 SCC 264 : 1988 SCC (Tax) 190), where this Court observed that "disposal means transfer of title in the goods to any other person", and therefore it would not include mere despatch to own self or to its agents or to its branch offices or depots. In the premises, the decision of the Punjab and Haryana High Court in Goodyear India Ltd. (53 STC 163 (P&H)) is correct on merits as well.

47. In the aforesaid view of the matter, it cannot be held that Section 9(1) and sub-section (3) of Section 24 are constitutionally valid.

48. In Civil Appeal Nos. 1633 (NT) of 1985 and 3033 of 1986 which are the appeals by the Food Corporation of India, Mr. Sen submitted that the FCI is a service agency of the Government of India and is discharging the statutory functions of distribution of foodgrains by procuring/purchasing from the surplus States and despatching the same to the deficit States in accordance with the policy of the Government of India. He further submitted that the Corporation procures foodgrains from the farmers through commission agents in the Mandis of Haryana and dispatches them to its own branches in the deficit States of the country.

The Corporation branches in the recipient States supply these stocks to the State agencies/fair price shops and also pay tax as per the provisions of the sales tax law of respective States. Some of the stocks are distributed within Haryana for the Public Distribution System (PDS) for which sales tax is charged and deposited with the sales tax depot as per the provisions of the Haryana General Sales Tax Act. In case the stocks are also sold in the course of inter-State trade or commerce, central sales tax is levied and deposited with the Haryana Sales Tax authorities. Some of the grains are also exported out of India on which there is exemption on payment of any tax.

49. In fact, the points at which the tax is to be levied have been indicated in Schedule 'D' to the Act. It is clear from the perusal of the Schedule that in case of paddy, the taxable event is the last purchase. Similarly, in case of rice the taxable event is the first sale point in the State. In case of wheat and other cereals the point of taxation is the last sale to the consumer by a dealer liable to pay tax under the Act.

50. In respect of inter-State despatch of wheat and other foodgrains by FCI to its own branches, tax is attracted at the time of despatch under Section 9(1)(c) of the Haryana Act. Section 9 is, therefore, the charging section for taxation in case where the goods are purchased for export. There is no other

provision for levy of purchase or sales tax in such cases of export. Incidentally, "export" has been defined in Section 2(e) of the Act which reads as follows :

> "2(e) "export" means the taking out of goods from the State to any place outside it otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India;"

51. No tax is payable under the Haryana Act when exports outside the State take place either in the course of inter-State sale or export out of the territory of India. No tax is therefore payable in regard to export outside India but the tax is payable for sale in the course of inter-State trade and commerce i.e. under the Central Sales Tax Act. It is only when the goods are despatched/consigned to the depots of the FCI in other States that tax is levied under Section 9 of the Haryana Act. This is in addition to the sales tax paid by the FCI on the sale of grains in the recipient States. On perusal of Sections 14 and 15 of the Central Sales Tax Act, it becomes clear that wheat is one of the commodities specified as 'declared goods' and in respect of which the intention is clear that the tax is payable only once on the declared goods. In the case of inter-State sale if any tax has been paid earlier on declared goods inside the State the same is to be refunded to the dealer who is paying tax on such inter-State sales. On these transactions no tax is liable in the recipient State, while in case of inter-State despatches, the tax is leviable twice. The appeals of the FCI are confined to Section 9(1)(c), which insofar as it purports to tax export, is beyond the legislative competence of the State of Haryana.

52. On behalf of the State in Bata Co. Ltd. v. State of Haryana (Bata India Ltd. v. State of Haryana, (1983) 54 STC 226 (P&H)), the submission of the State was on the basis that it had power to tax consignment or despatches of goods. But after the Forty-sixth Amendment, the State legislature is incompetent to legislate about consignments/despatches otherwise than by way of sale under which no purchase/sales tax is leviable under the Haryana Act. It is the Parliament alone which is legislative competent to enact a legislation on consignment.

53. Now, it is necessary to deal with Civil Appeals Nos. 4162-63 of 1985 which deal with the validity of Section 13-AA of the Bombay Sales Tax Act.

54. These appeals are by Hindustan Lever Ltd. and Wipro Products - the appellants herein. The appellants, at all material times, manufacture, make and deal in vanaspati, soaps, etc., chemicals and agrochemicals, and they used to purchase various types of VNE oils for their manufacture of vanaspati, soaps and other products. Since the appellants had a wide net of distribution of their products all over India, they appointed 40 and more clearing and forwarding agents in the country. The appellant used to despatch the goods so manufactured from their factory to the clearing and forwarding agents. They also used to purchase VNE oils and other raw material and paid 4 per cent tax by way of purchase tax under Section 3 of the Bombay Sales Tax Act, 1959 (hereinafter called 'the Bombay act'). The raw materials are used in the manufacture of said goods and as the said manufactured goods are despatched outside the State to the several distributing agencies, the appellant companies were held to be liable to pay, under Section 13-AA of the Act, an additional tax @ 2 per cent on purchase of the said goods.

55. The question, therefore, that arises, is : whether the levy of additional tax at 2 per cent under Section 13-AA of the Act is a tax on purchases falling under Entry 54 of List II of the Seventh Schedule or it is a tax on the despatch of consignment of the manufactured goods outside the State. In case of latter, the State legislature will have no power to impose any tax on such consignment or

despatch of goods outside the State. If it is the former, then it will be valid. The question is that under the true constructions of Section 13-AA of the Act, on which the imposition of tax is made, or in other words, what is the incidence of that taxation or taxable event ? In both these appeals, namely, Civil Appeals No. 4162 of 1988 and 4163 of 1988, the appellants M/s. Wipro Products Ltd. and Hindustan Lever Ltd. are contending that the levy is bad. The issue involved in both the appeals is the constitutional validity and legality of the provisions of Section 13-AA of the Act, which was introduced into the Act by the Maharashtra Act 28 of 1982. The appellant had factory at Amalnar in Jalgaon district in the State of Maharashtra wherein it uses non-essential oil purchased by it for the manufacture and transport. The finished products, namely, vanaspati manufactured by the appellant used to be despatched to their various marketing depots in the State of Maharashtra, Madhya Pradesh, Karnataka, Andhra Pradesh, U.P., Tamil Nadu and Kerala etc. On July 1, 1981 the rate of purchase tax payable on VNE oils (falling under Schedule C, Part I at Entry 35) purchased within the State of Maharashtra from non registered dealers increased from 3 per cent to 4 per cent, by the Maharashtra Act 32 of 1981.

56. Section 13-AA was introduced into the Act providing for levy of 2 per cent additional purchase tax on the purchase of goods, input goods, specified in Part I of the Schedule from a non-registered dealer if such goods were used in the manufacture of taxable goods within Maharashtra and thereafter the manufactured goods were transferred outside Maharashtra in the manner indicated in the said section.

57. The appellants filed writ petitions. An order was passed by the Bombay High Court on July 19, 1988 in respect of these two writ petitions by the Wipro Products as well as Hindustan Lever Ltd. The decision of the High Court is reported in Wipro Products Ltd. v. State of Maharashtra ((1989) 72 STC 69 (Bom).

58. Dismissing the petitions of the appellants the High Court held that (i) three different phases are contemplated in Section 13-AA of the Act, namely, the initial purchase of the raw material, the consumption thereof on the manufacture of taxable goods, and the despatch of the manufactured goods outside the State. If the goods, outside the State. If the goods purchased remain in the some from within the State, the question of levying additional tax would not arise. The High Court came to the conclusion that there was no ground to hold that the additional tax was levied on the despatch of goods and was unconnected with the initial transaction of purchase, as it was required to be paid in addition to the sales or purchase tax paid or payable in respect of the same goods which had been so purchased before the conditions specified in Section 13-AA are fulfilled, (ii) in the context of the other provisions of the Act, a sort of concession is given at the time of purchase on the quantum of tax payable on the purchase of goods which fall under Part I of Schedule C. However, there is a clear mandate of law, which is clearly understood between seller and buyer, that though tax at the concessional rate is paid, the obligation to pay the additional tax on the happening of certain events, namely, use of such goods in manufacture of finished goods, and despatch of finished goods low rates of tax prescribed on raw material attributable to goods in Part I of Schedule C is the condition precedent that to avail of this concession the goods in question are required to be sold in the State after being used in the manufacture of other taxable goods. The High Court, further, was of the opinion that a manufacturer who purchases raw material at a concessional rate on the strength of declaration in Form 15 cannot transfer the goods manufactured out of such raw material outside the State. The High Court held that if he does so, he is liable to pay purchase tax at the full rate on the raw material under Section 14. According to the High Court, similarly, a manufacturer who purchases goods covered in Part III of Schedule C, uses them in the manufacture of other taxable goods which he despatches outside the State, is liable to pay tax at rates ranging from 6 per cent to

15 per cent. Section 13-AA, therefore, far from being discriminatory, serves to wipe out any discrimination between the two categories of manufacturers mentioned above and manufacturers purchasing raw material covered by Part I of Schedule C, according to the revenue. The High Court was of the opinion that the additional purchase tax leviable under Section 13-AA of the Bombay Act, is on the purchase value of VNE oil used in the manufacture of goods transferred outside the State and not on the value of the manufactured goods so transferred. It further held that the tax levied under Section 13-AA of the Bombay Act, falls squarely and exclusively under Entry 54 of the State List in the Seventh Schedule to the Constitution of India and the State legislature was competent to levy it. It does not even remotely fall under Entry 92-B of the Union List, according to the High Court.

59. The High Court was also of the view that the goods taxed under Section 13-AA of the Bombay Act, are consumed in the State as raw material in the process of producing other commodities. Hence, there was no question of any hindrance to a free flow of trade bringing into the petitioners had not brought forth any material to show how the free flow of trade has been affected by this additional rate of tax; and held the section 13-AA is not violative of Article 14 of the Constitution; and that Section 13-AA of the Bombay Act and the orders requiring the appellants to pay additional tax @ 2 per cent purchase of VNE oil used by them as raw material in the manufacture of goods despatched outside the State, were valid.

60. The High Court in the judgment under appeal has set out the relevant provisions of the Act, which was enacted to consolidate and amend the law relating to levy of tax on the sale or purchase of certain goods in the State of Bombay. Section 2 contains some of the definitions. Section 24 deals with authorisations of turnover etc. Section 13-AA of the Bombay Act with which the High Court and these appeals are concerned, is in the following terms :

> "13-AA Purchase tax payable on goods in Schedule C, Part I, when manufactured goods are transferred to outside branches. - Where a dealer, who is liable to pay tax under this Act, purchases any goods specified in Part I of Schedule C, directly or through commission agent, from a person who is or is not a registered dealer and uses such goods in the manufacture of taxable goods and despatches the goods, so manufactured, to his own place of business or to his agent's place of business situated outside the State within India, then such dealer shall be liable to an, in addition to the sales tax paid or payable, or as the case may be, the purchase tax levied or leviable under the other provisions of this Act in respect of purchases of such goods, a purchase tax at the rate of two paise in the rupee on the purchase price of the goods so used in the manufacture, and accordingly the dealer shall include purchase price of such goods in this turnover of purchases in his return under Section 32, which he is to furnish next thereafter."

61. The questions involved in these appeals are : whether Section 13-AA of the Bombay Act is beyond the legislative competence of the State legislature; and it is violative of article 14 of the Constitution; and thirdly, whether the said provision is violative of Article 301 of the Constitution. It was contended on behalf of the appellant that Section 13-AA of the act is a charging section and imposes a charge of an additional rate of 2 per cent in rupee if the following conditions laid down therein are satisfied : (i) the charge is levied upon a dealer who is liable to pay tax under the Act; (ii) such a dealer purchases any goods specified in Part I of Schedule C, directly or through commission agent, from a person who is or is not a registered dealer; (iii) the goods so purchases are used in the manufacture of taxable goods; and (iv) the goods which are so manufactured (and not the goods on

which purchase tax had been paid) are dispatched to the dealer's own place of business or to his agent's place of business situated outside the State.

62. According to the appellant, the said section lays down the person who is liable to pay tax, the goods on which the same is leviable and the taxable event which would attract the liability of additional tax of two paise in the rupee, namely the dispatch or consignment of goods by the dealer/manufacturer outside the State.

63. According to Dr. Pal, counsel for the appellant, the taxable event is not the purchase of goods as such which is the raw material, but it is the dispatch of consignment of goods manufactured by the dealer/manufacturer to its own branch outside the state; and that thus manufactured goods are different from commercial commodity, distinct and separate from the raw materials on which purchase tax has already been paid. It is well settled, it was reiterated before us, that in case of excise duty, the taxable event is the manufacturer of goods and the duty is not directly on the goods but on the manufacture thereof. In case of sales tax, taxable event is the sale of goods. Hence, though both excise duty and sales tax are levied with reference to the goods, the two are different imposts, in one case the imposition is on the act of manufacture or production while in case of other the imposition is on the act of sale. But in neither case the impost is a tax directly on the goods. See in this connection, the observations of this Court in Re the Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944 ((1964) 3 SCR 787, 821 : AIR 1963 SC 1760) and Guruswamy and Co. v. State of Mysore ((1967) 1 SCR 548, 562 : AIR 1967 SC 1512).

64. The power to tax the sale or purchase of goods is different from the right to impose taxes on use or consumption. According to Dr. Pal, such power to levy sales tax cannot be exercised at the earlier stage of import or manufacture/production nor the said power can be exercised at the later stage of use or consumption but only at the stage of sale or purchase. In respect of sales tax, the right to levy duty would not at all come into being before the time of sale/purchase. Sales tax cannot be imposed unless the goods are actually sold and may not be leviable if there is a transfer in some other form. See in this connection the observations of the Federal Court in Mukunda Murari Chakravarti v. Pabritramoy Ghosh (AIR 1945 FC 1, 22 : (1944) 2 MLJ 367 : 218 IC 172). Therefore, in this case it is necessary to ascertain what is the taxable event under section 13-AA of the act which attracts duty. A taxing event is that event the occurrence of which immediately attracts the levy or the charge of tax.

65. In the fiscal legislations normally a charge is created. The mischief of taxation occurs on the happening of the taxable event. Different taxes have different taxable events. In the instant case, Dr. Pal canvassed before us that the incidence of the levy of additional tax of two paise in the rupee is not on the purchase of goods but such a levy is attracted only when - (a) the goods which so purchased on payment of purchase tax are used in the manufacture of taxable goods; and (b) the goods so manufactured are dispatched to his own place of business or to his agent's place of business outside the state. Therefore, the incidence of tax is attracted not merely on the purchase but only when the goods so purchased are used in the manufacture of taxable goods and are dispatched outside the State. In our opinion, it was rightly submitted that it is the effect of Section 13-AA of the Act. It was further highlighted by Dr. Pal on behalf of the assessee that additional tax is not levied on the goods purchased on payment of purchase tax and dispatched outside the state. The goods which are purchased on payment of purchase tax are used in the manufacture of taxable goods. What is dispatched is not the raw material which have been purchased on payment of purchase tax but a completely different commodity, namely, vanaspati and soap. If the raw materials as such

purchased on payment of purchase tax are dispatched outside the State, the additional tax under Section 13-AA of the act is not attracted. Hence, the incidence of additional tax has no nexus with the purchase of the raw materials, as was contended by Mr. S. K. Dholakia, appearing for the State and as held by the High Court.

66. Purchase tax under Section 3 of the Act is attracted when the taxable event i.e. the purchase of goods occurs, but the taxable event for the imposition of additional tax of two paise in the rupee occurs only when the goods so purchased are used in the manufacture of taxable goods and such taxable goods are dispatched outside the State by a dealer-manufacturer. Dr. Pal drew our attention to some of the observations of this Curt in Kedarnath Jute Mfg. Co. Ltd. v. CIT ((1972) 3 SCC 252 : 82 ITR 363 (SC) : (1971) 28 STC 672) and State of Madhya Pradesh v. Shyama Charan Shukla ((1972) 4 SCC 371 : 1974 SCC (Tax) 61 : 29 STC 215, 218-19 (SC)). On the other hand, Mr. Dholakia submitted that the submission of the appellant proceeded on the assumption that the liability to pay is the same as the obligation to pay but this was wrong. These two are different. It was submitted that the obligation to pay is not the same thing as liability to tax; and that it was wrong to proceed on the basis that because obligation to pay is a later event, the dispatch of goods is the taxable event. This is a fallacy, according to Mr. Dholakia. In this connection, relevance was placed on the observations of this Court in R. C. Jall v. Union of India (1962 Supp 3 SCR 436 : AIR 1962 SC 1281), where this Court reiterated that subject always to the legislative competence of the enacting authority, the tax can be levied at a convenient stage, so long as the character of the impost is not lost. The method of collection does not affect the essence of the machinery of collection for administrative convenience. Reliance was also placed on the observations of Union Of India v. Bombay Tyre International Ltd. ((1984) 1 SCC 467 : 1984 SCC (Tax) 17 : (1984) 1 SCR 347)

67. It was submitted by Mr. Dholakia that the correct approach is to first determine whether the state legislature, having regard to entry 54 of List II to the Seventh schedule to the constitution, can levy tax on purchase of a class of goods, which class is to be identified by reference to the condition of use of such goods into other taxable goods and dispatch of such taxable goods outside the state. He submitted that if it is accepted that the state could have the power to tax purchases of goods meant for use in the manufacture of other taxable goods and dispatch of such taxable goods outside the state. He submitted that if it is accepted that the state could have the power to tax purchases of goods meant for use in the manufacture of other taxable goods and dispatch outside thereafter, then next question is whether the state enactment (like Section 13-AA of the Bombay Act) is so formulated as to come within the framework described. He admitted that even if it did, it would still have to be subject to (a) the doctrine of pith and substance, (b) the fundamental rights, and (c) Article 301.

68. According to Mr. Dholakia, the act contains a charging section which is Section 3. It levies tax on turnover of sales and purchases within Section 2(36) and Section 2(35) respectively of the said Act. Section 13 of the act levies tax on purchases in accordance with rates prescribed in Schedule C if the goods are purchased from an unregistered dealer. Section 13-A levies a concessional tax on purchases if the goods are purchased from a registered dealer, provided a declaration in the prescribed form is given under Section 12(b) of the Act, if the purchaser buys directly, or one under Section 12(d) if the purchaser buys through a commission agent. In both the forms the relevant conditions are : (a) that the goods fall within Par II of schedule C; and (b) that the goods bought would be used for manufacture of other taxable goods within the State and sold within the State. Mr. Dholakia submitted that on giving the aforesaid declaration, the purchaser would have to pay only 4 per cent tax. The rate prescribed in Schedule C are as under :

Schedule 'C' Part Minimum Rate Maximum Rate I 2 per cent 4 per cent II 6 per cent 15 per cent##

69. The effect of Section 13-A without Section 13-AA, according to Mr. Dholakia, was that only those who bought goods which fell into part II, would have benefited by the declaration, since the rate mentioned in Section 13-A was 4 per cent. Hence, those buying goods falling within Part I of Schedule C had not to give any declaration under Section 12(b) or Section 12(d), as the case may be, and still manufacture the taxable goods and dispatch them outside the State. According to him as a result of this situation, two results emerged, i.e. (i) the state lost revenue because the goods manufactured with the help of the infrastructure provide by the state escaped further tax, by goods being resold outside the state; and (ii) the purchasers of raw materials used by the manufacturers for producing new taxable goods, were not being treated equitably because those whose purchases of goods which fell into Part II had to give a declaration to get the benefit of reduced rate. On the other hand, those whose purchases of goods fell In part I, need not give such a declaration. According to him, from the standpoint of the object of encouraging resale within the state, the classification in form of Parts I and II had no rational nexus. Therefore, that construction should be made which may make Section 13-AA of the act, to avoid this mischief.

70. According to Mr. Dholakia, section 13-AA speaks of the requirement of additional purchase tax from those who have paid purchase tax, if the object of the purchases is to use the goods falling in Part I of Schedule C for manufacture of taxable goods and the dispatch of such goods outside the State. He alleged it to be fair and reasonable construction and it will subserve the purpose of the amendment.

71. It is well settled that reasonable construction should be followed and literal construction may be avoided if that defeats the manifest object and purpose of the Act. See CWT v. Kripashankar Dayashanker Worah ((1971) 2 SCC 570 : 81 ITR 763, 768 : AIR 1971 SC 2463), and Income Tax Commissioners for City of London v. Gibbs (10 ITR Supp 121, 132 (HL) : (1940) 3 All ER 613) Mr. Dholakia further submitted that the statement of Objects and Reasons also helps this construction. In our opinion, he rightly submitted that because the accounts had to be maintained in a particular manner, is no criterion or evidence for determining when the liability arises. The law is that the liability to tax would be determined with reference to the interpretation of the statute which creates it. It cannot be determined by referring to another statute. As contended by both the sides, it is well settled that the doctrine of pith and substance means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid merely because it incidentally encroaches upon matters assigned to another legislature. See Kerala State Electricity Board v. Indian Aluminum Co. ((1976) 1 SCC 466 : (1976) 1 SCR 552 : AIR 1976 SC 1031) and Prafulla Kumar Mukherjee v. Bank of Commerce Ltd. (AIR 1947 PC 60, 65 : 1947 ALJ 305 : 230 IC 337)

72. Therefore the proper question which one should address to oneself is, whether section 13-AA is in pith and substance, not levying tax on purchase but one levying tax on consignment. Depending upon the answer to the question, the validity of the action can be judged. Mr. Dholakia submitted that the act is in the pith and substance an act levying tax on purchase and not one levying tax on consignment, and referred to the observations of this Court in State Of Karnataka v. Ranganatha Reddy ((1977) 4 SCC 471 : (1978) 1 SCR 641 : AIR 1978 SC 215). According to him, the consignment contemplated in Section 13-AA is only of manufactured goods and no tax is levied under Section 13-AA in respect of such manufactured goods. He emphasised as aforesaid. It is well settled that while determining nature of tax, though the standard or the measure on which the tax is

levied may be a relevant consideration, it is not the conclusive consideration. One must have regard to such other matters as decided by the Privy Council in Governor General in Council v. Province of Madras ((1945) 72 IA 91) not by the name of tax but to its real nature, its pith and substance which must determine into what category it falls. See the observations of R. R. Engineering Co. v. Zila Parishad, Bareilly ((1980) 3 SCC 330 : (1980) 3 SCR 1 : AIR 1980 SC 1088), In Re, a Reference under the Government of Ireland Act, 1920 (1936 AC 352, 358 : (1936) 2 All ER 111 (PC)) and Navnitlal C. Javeri v. K. K. Sen, Appellate Asstt. CIT ((1965) 1 SCR 909, 915 : AIR 1965 SC 1375 : (1965) 56 ITR 198).

73. On an analysis we find that the goods which are dispatched are different products from the goods on the purchase of which purchase tax was paid. The Maharashtra legislation has to be viewed in the context of Forty-sixth Amendment to the Constitution. The Forty sixth amendment introduced Article 269(1)(h) which lays down that the proceeds of the tax on consignment of goods (whether the consignment is to the person making it or to any other person) where such consignment takes place in the course of inter-state trade or commerce, will be assigned to the States. The said amendment also introduced Entry 92-B in List I of the Seventh Schedule. The said amendment was made on the consideration of the Sixty-first Report of the Law Commission. Entry 92-B in list I of the Seventh Schedule and Article 269(1)(h) of the constitution bring within its sweep the consignment of goods by a person either to himself or to any other person in the course of inter state trade or commerce. Article 269(3) gives the power to Parliament to formulate the principles for determining when a consignment of goods takes place in the course of inter state trade or commerce. If entry 92-B in List I is to be given the widest interpretation, as it should be, it would be clear that the constitutional changes introduced by the Forty sixth Amendment in Article 269 read with the entry, The tax on consignment of goods now comes within the exclusive legislative field of Parliament. The true test to find out what is the pith and substance of the legislation is to ascertain the true intent of the act which will determine the validity of the Act. If the Parliament in exercise of its plenary power under Entry 92-B of List I imposes any tax on the dispatch or consignment of goods, Parliament will be competent to do so. It is, therefore, not possible to accept the argument that the chargeable event was lying dormant and is activated only on the occurrence of the event of dispatch. The argument on the construction of the enactment is misconceived. The charging event is the event the occurrence of which immediately attracts the charge. Taxable event cannot be postponed to the occurrence of the subsequent condition. In that event, it would be the subsequent condition the occurrence of which would attract the charge which will be taxable event. If that is so, then it is a duty on despatch. In that view of the matter, this charge cannot be sustained.

74. As mentioned hereinbefore, the section has been challenged as being violative of article 14 of the Constitution. This attack is based on the discrimination between the two types of taxes but in the way we have construed the section, in out opinion, this question does not survive. It was further submitted by Dr. Pal that section 13-AA of the Act is violative of Article 301 of the constitution. It makes a discrimination between the dealer/manufacturer who dispatches the goods outside the state and the other dealer/manufacturer. Both the dealer/manufacturer purchase the good on payment of purchase tax and use them in the manufacture of taxable goods. The incidence of additional tax on the purchase of goods is attracted only when such manufactured goods are dispatched outside the state. If a dealer/manufacturer has to dispatch the goods outside the state, he has to pay a higher rate of tax and thus he is discriminated as compared to the other dealer/manufacture who purchases the raw material on payment of 4 per cent purchase tax, but dispatches the raw material staightway outside the State and uses them in the manufacture of goods outside the State. The High Court held that there was no violation of Article 301 of the Constitution. Reference was made to the decision of this Court of this Court in Atiabari Tea Co. Ltd. v. State of Assam ((1961) 1 SCR 809 : AIR 1961

SC 232), Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan ((1963) 1 SCR 491 : AIR 1962 SC 1406), Andhra Sugars Ltd. v. State of Andhra Pradesh ((1968) 1 SCR 705 : AIR 1968 SC 599 : 21 STC 212), State of Madras v. N. K. Nataraja Mudaliar ((1968) 3 SCR 829 : AIR 1969 SC 147 : (1968) 22 STC 376) and State of Kerala v. A. B. Abdul Khadir ((1969) 2 SCC 363 : (1970) 1 SCR 700 : AIR 1970 SC 1912).

75. One has to determine : does the impugned provision amount to restriction directly and immediately on the trade or commerce movement ? As was observed by this Court in Kalyani Stores v. State of Orissa ((1966) 1 SCR 865 : AIR 1966 SC 1686), imposition of a duty or tax in every case would not tantamount per se to any infringement of Article 301 of the Constitution. Only such restriction or impediments which directly or immediately impede free flow of trade, commerce and intercourse fall within the prohibition imposed by Article 301. A tax in certain cases may directly and immediately restrict or hamper the flow of trade, but every imposition of tax does not do so. Every case must be judged on its own facts and its won setting of time and circumstances. Unless the court first comes to the finding on the available material whether or not there is an infringement of the guarantee under Article 301 the further question as to whether the statute is saved under Article 304(b) does not arise. The goods taxed do not leave the state in the shape of raw material, which change their form in the state itself and there is no question of any direct, immediate or substantial hindrance to a free flow of trade. On the evidence adduced, we are in agreement with the High court that the challenge to the imposition in the background of Article 301 cannot be sustained and, therefore, no question whether such imposition is saved under article 304(b) of the Constitution arises.

76. In the aforesaid view of the matter and for the reasons mentioned hereinbefore, it must be held that so far as the appeals in respect of the Haryana Act are concerned, the High Court was right in the view it took in Goodyear India Ltd. case (53 STC 163 (P&H)) as well as the views expressed by the High Court in Bata India Ltd. v. State of Haryana (Bata India Ltd. v. State of Haryana, (1983) 54 STC 226 (P&H)) are correct and are affirmed. The views of the High court expressed in Des Raj Pushap Kumar Gulati case (58 STC 393 (P&H)) are incorrect for the reasons mentioned herein before. The last mentioned judgment and the judgment and orders following passed by the Punjab and Haryana High Court are, therefore, set aside. In the premises, Civil Appeals Nos. 1162-72 of 1985 (Goodyear India Ltd. v. State of Haryana), Civil Appeal No. 1173-77 (NT) of 1985 (Gedore (I) Pvt. Ltd. v. State of Haryana), Civil Appeal No. 2674 of 1986 (Kelvinator of India Ltd. v. State of Haryana), Civil Appeal No. 1633 (NT) of 1985 (F. C. I. Karnal v. State of Haryana) and Civil Appeal No. 3033 (NT) of 1986 (F. C. I., Karnal v. State of Haryana) are allowed and the judgment and order of the High Court are set aside.

77. Civil Appeals Nos. 1512 (NT) of 1984 (State of Haryana v. Gedore Tools (P) Ltd.) and 1515 of 1984 (State of Haryana v. Goodyear India Ltd.) are dismissed. Special Leave Petitions Nos. 8398-8402 of 1983 are dismissed, and for the reasons mentioned hereinbefore, Civil Appeals Nos. 4162 of 1988 (Wipro Products Ltd. v. State of Maharashtra) and 4163 of 1988 (Hindustan Lever Ltd. v. State of Maharashtra) are allowed and the judgment and order of the High Court passed therein, are hereby set aside.

78. In the facts and the circumstances of this case, the parties will pay and bear the respective costs. So far as the Civil Appeals Nos. 1633 of 1985 and 3033 of 1986 are concerned, wherein the appellants are the Food Corporation of India, I allow these appeals and setting aside the judgment of the High Court on the ground that tax on dispatch or consignment was not within the competence of the state legislature. I am, however, not dealing with or expressing any opinion on the other

contentions of the FCI that in view of the nature of its business it was not liable to tax in respect of the sales tax. This contention will be decided in the appropriate proceedings.

79. So far as the contention regarding penalty under the Haryana Act, these proceedings fail because the charging provisions fail. Insofar as the penalty proceedings are impugned on other grounds apart from the failure of the charging provisions, I am expressing no opinion on these aspects.

RANGANATHAN, J. (concurring) ◆

I agree but wish to add a few words.

81. The question raised in these appeals is a fairly ticklish one. Simply stated, Section 9 of the Haryana General Sales Tax Act, 1974 as well as Section 13-AA of the Bombay Sales Tax Act, 1955, purport only to levy a purchase tax. The tax, however, becomes eligible not on the occasion or event of purchase but only later. It materializes only if the purchaser (a) utilises the goods purchased in the manufacture of taxable goods and (b) dispatches the goods so manufactured (otherwise than by way of sale) to a place of business situated outside the state. The legislation, however, is careful to impose the tax only on the price at which the raw materials are purchased and not on the value of the manufactured goods consigned outside the State. The states describe the tax as one levied on the purchase of a class of goods viz. those purchased in the state and utilised as raw material in the manufacture of goods which are consigned outside the State otherwise than by way of sale. On the other hand, according to the respondents-assessees, this is nothing but a tax on consignment of goods manufactured in the State to Places outside the state, camouflaged as a purchase tax, by quantifying the levy of the tax with reference to the purchase price of the goods purchased in the State and utilised in the manufacture. TO me it appeared as plausible to describe the levy as a tax on purchase of goods inside the State (which attaches itself only in certain eventualities) as to describe it as a tax on goods consigned outside the State but limited to the value of the raw material purchased inside the state and utilised therein. I, therefore, had considerable doubts not only during the arguments but even some time thereafter as to whether so long as the tax purports to be a tax on purchases and has a nexus, though a little distant, with purchase of goods in the State, the State Government's competence to impose such a tax should not be upheld. But, on deeper thought, I am inclined to agree with the conclusion of my learned brother. It is one thing to levy a purchase tax where character and class of goods in respect of which the tax is levied is described in a particular manner (vide, Andhra Sugar Ltd. v. State ((1968) 1 SCR 705 : AIR 1968 SC 599 : 21 STC 212) and a case like the present where the tax, though described as purchase tax, actually becomes effective with reference to a totally different class of goods and, that too, only on the happening of an event which is unrelated to the act of purchase. The "taxable event", if one might to use the expression often used in this context, is the consignment of the manufactured goods and not the purchase. I also agree with my learned brother that the decision in State of Tamil Nadu v. Kandaswami ((1975) 4 SCC 745 : 1975 SCC (Tax) 402 : AIR 1975 SC 1871 : (1975) 36 STC 191), though rendered in the context of an analogous provision, does not touch the issues in the present case.

82. The above distinction becomes significant particularly in the background of the constitutional amendments referred to in the judgment of my learned brother. These indicate that there were efforts at sales tax avoidance by sending goods manufactured in a State out of raw materials purchased inside to other States by way of consignments rather than by way of sales attracting tax. This situation lends force to the contention of the assessees that the States, unable to tax the exodus directly, attempted to do so indirectly by linking the levy ostensibly to the "purchases" in the state.

83. Viewing the impugned statutory provisions from the perspectives indicated above, I agree with my learned brother that the appeals have to be allowed as held by him.

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