SUPREME COURT OF INDIA

Satnam Overseas (Export)

Vs.

State of Haryana

C.A.No.11174 of 1995

(S. S. M. Quadri and Ruma Pal JJ.)

24.10.2002

JUDGEMENT

Syed Shah Mohammed Quadri, J.

1. Leave is granted in the special leave petitions.

2. The solution to the questions raised in this batch of cases turns on a true interpretation of the provisions of the *Haryana General Sales Tax Act, 1973* (for short, "the Haryana Act")/the *Punjab General Sales Tax Act, 1948* (for short, "the Punjab Act") in the light of the provisions of Art. 286 of the Constitution and the *Central Sales Tax Act, 1956* (for short, "the CST Act"").

3. For the sake of convenience, these cases can be divided into two groups. (A) The first consists of two categories of cases arising under the Haryana Act in respect of assessments for the period : (i) ending with October 14, 1990 and (ii) between October 15, 1990 and September 28, 1996; and (B) The second takes in cases arising under the Punjab Act.

4. Mr. P. Chidambaram, the learned senior counsel appearing for the appellants, has piloted the arguments in the batch, which were adopted by other learned counsel appearing for the appellants in different appeals/writ petitions. The contentions of the learned counsel are two-fold. The first being, S. 9 of the Haryana Act imposes charge of purchase tax on paddy and Cl. (b) of sub-section (1) of the said section exempts the same as the rice procured therefrom is exported. The second is that the High Court committed error in holding that with omission of S. 9 from the Statute, amendment of S. 6 and inclusion of S. 15-A with retrospective effect from 27-5-1971, the liability to pay purchase tax is regulated by S. 6 read with S. 15 and adjustments, if any, could be made under S. 15-A of the Haryana Act. The case of the State of Haryana, as projected by the learned senior counsel, Mr. Mahendra Anand, is that the Haryana Act contains more charging sections than one, viz., Ss. 6, 9 and 17; as S. 9 has been omitted and Ss. 2(p), 6, 15 and 15-A have been amended retrospectively, the assessee is liable to pay tax on purchase of raw material.

5. For appreciating the contentions, we shall take up the cases falling under Groups (A)(i) and (B), which go together. It would suffice to refer to the facts giving rise to Civil Appeal Nos. 1117-511178 of 1995. The assessee is a miller-exporter who purchases paddy in the State of Haryana, mills the same and exports the rice procured therefrom to places outside the territory of India. For the Assessment Years 1982-83, 1983-84, 19880-89 and 1989-90, on the ground that the transactions of purchase of paddy by the assessee were for export of rice procured therefrom, the assessing authority granted benefit of S. 9(1)(b) of the Haryana Act and completed assessments raising `Nil' demand. However, the Deputy Excise and Taxation Commissioner (Inspection)-cum-Revisional Authority, Karnal, for short, "Dy. Commissioner") issued show cause notice under S. 40 of the Haryana Act and, after giving due opportunity of being heard to the assessee, revised the assessment for the said years in view of the retrospective amendment of Ss. 6, 15, 15-A and 17 and omission of S. 9 thereof holding that the assessee was liable to pay the purchase tax on the paddy. The assessees challenged amendments of Ss. 6, 9, 15, 15-A and 17 of the Haryana Act which were given retrospective effect by filing writ petitions before the High Court of Punjab and Haryana. A Full Bench of the High Court upheld the validity of the impugned provisions of the Haryana Act and the orders of the Dy. Commissioner revising the assessments and, thus, dismissed the writ petitions. The appellants are in appeal, by special leave, before this Court challenging the legality of the judgment and order of the Full Bench of the High Court.

6. It needs to be noticed, at the outset, that in view of the provisions of sub-section (3) of Art. 246 read with Entry 54 of List II of the Seventh Schedule to the Constitution, a State is competent to legislate authorising imposition of taxes on the sale or purchase of goods (other than newspaper), subject to the provisions of Entry 92-A of List I. Under the said Entry (92-A of List I), the parliament is competent to legislate authorising imposition of taxes on the sale or purchase of goods (other than newspaper), where such sale or purchase takes place in the course of inter-State trade or commerce. In other words, any Act passed by a State Legislature authorising imposition of taxes on sale or purchase of goods will be subject to the legislation made by the Parliament under Entry 92-A of List I of the Seventh Schedule to the Constitution.

7. A reference to Art. 286 of the Constitution of India would also be apposite. It prescribes restriction as to the imposition of tax on the sale or purchase of goods and is in the following terms :

> "286. Restrictions as to imposition of tax on the sale or purchase of goods. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place
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> (a) outside the State; or
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> (b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Cl. (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, or

(b) a tax on the sale or purchase of goods, being a tax of the nature preferred to in sub-clause (b), sub-clause (c) or sub-clause (d) of Cl. (29A) of Art. 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

8. A plain reading of Cl. (1) of the Article, noted above, shows that it lays down restrictions on a State law as to the imposition or authorising the imposition of a tax on sale or purchase of goods where such sale or purchase takes place (a) outside the State or (b) in the course of import of goods into or export of goods out of the territory of India. Clause (2) thereof empowers the Parliament to formulate principles for determining as to when a sale or purchase of goods takes place in any of the ways aforementioned. The directive embodied in Cl. (3) is that any law of a State shall, insofar as it imposes or authorises the imposition of tax, specified in sub-clause (a) and (b) thereof, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidence of tax, as the Parliament may by law specify. The said sub-clause are as follows : (a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce (the declared goods); or (b) a tax on the sale or purchase of goods being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of Cl. 29-A of Art. 366.

9. In exercise of the power conferred under Cl. (2) of Art. 286, the Parliament enacted the CST Act formulating principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import or export. Section 5 of the CST Act embodies the principles as to when a sale or purchase of goods is said to take place in the course of import or export. Sub-section (1) of S. 5 says that a sale or purchase of goods shall be deemed to take place in the course of export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India. Sub-section (2) provides that a sale or purchase of goods shall be deemed to take place in the course of import of goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India. Sub-section (3), which commences with a non obstante clause, provides that despite sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India, shall also be deemed to be in the course of such export if such last sale or purchase took place after and was for the purpose of complying with the agreement or order for or in relation to such export. In other words, the penultimate sale or purchase before the sale or purchase occasioning the export of those goods shall be treated as

a sale or purchase in the course of export of the goods. This is incorporated to get over the judgment of this Court in *Md. Serajuddin and others v. State of Orissa*[1].

10. Next, we shall advert to S. 15 of the CST Act which runs thus:

> "15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. Every sales tax law of a State shall, insofar as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:
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> (a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent. of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;
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> (b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State;
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> (c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in sub-clause (i) of Cl. (i) of S. 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy;
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> (ca) where a tax on sale or purchase of paddy referred to in sub-clause (i) of Cl. (i) of S. 14 is leviable under the law and rice procured out of such paddy is exported out of India, then, for purposes of sub-section (3) of S. 5, the paddy and rice shall be treated as a single commodity;
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> (d) each of the pulses referred to in Cl. (via) of S. 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law."

11. The provisions, quoted above, enumerate the restrictions and conditions in regard to tax on sale or purchase of declared goods within a State, which is defined in Cl. (c) of S. 2 of the CST Act to mean the goods declared under S. 14 to be of special importance in inter-State trade or commerce. It may be pointed out here that paddy and rice are enumerated in sub-clauses (i) and (ii) respectively of Cl. (i) of S. 14 and they are, therefore, `declared goods.'

12. Reverting to S. 15, Cl. (a) imposes two restrictions on the tax to be imposed on sale or purchase of declared goods inside the State : (i) an upper ceiling of four per cent. on sale or purchase price of such goods and (2) such tax shall not be levied at more than one stage.*

Clause (b) provides relief of reimbursement of tax paid under the CST Act in case of double taxation of declared goods, that is, where tax has been levied under the State Act on sale or purchase of such goods and is again levied under the CST Act in respect of sale of such goods in the course of inter-State trade or commerce. The edict of Cl. (c) makes it clear that a State law which imposes of authorises the imposition of tax on sale or purchase of rice or paddy inside the State has to be treated in the following manner: where a tax has been levied in respect of sale or purchase inside the State on paddy, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on it (such paddy); for example, assuming that in a State the rate of tax on the sale or purchase price of paddy is one per cent. and of rice is four per cent., then the tax leviable on the sale of rice will be reduced by one per cent.; consequently, the tax payable on the sale of rice would be only three per cent.

* This second restriction has been deleted by the Finance Act No. 20 of 2002 w.e.f. 1-4-2002.

13. Clause (ca) is inserted by the Finance (No. 2) Act, 1996 (33 of 1996) w.e.f. September 28, 1996. It directs that where a tax on sale or purchase of paddy is leviable under a State law and the rice procured out of such paddy is exported out of India then for purposes of penultimate sale (under S. 5(3)), the paddy and rice shall be treated as a single commodity. In the circumstances mentioned in Cl. (ca), it brings paddy on par with pulses dealt with in Cl. (d). The mandate embodied in Cl. (d) is that pulses enumerated in Cl. (via) of S. 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under any State law.

14. In the light of the discussion of the aforementioned provisions of the Constitution of India and of the CST Act, we proceed to interpret the relevant provisions of the Haryana Act and the Punjab Act. The provisions of the Haryana Act have undergone series of amendments and we deem it appropriate to observe with concern that in the mass of amendments now it is by no means an easy task for any legal practitioner or even a court, and more so for a trader or an ordinary citizen, to cull out the correct position in regard to one's liability on the sales and purchases of the goods in a given assessment year before 1996. Be that as it may, we shall now deal with the contentions of the learned senior counsel for the appellants/petitioners.

15. It may be mentioned that after formation of the State of Haryana on November 1, 1966, it adopted the Punjab Act which was in force in the then composite State of Punjab. The Haryana Act was passed in the year 1973. Between 1982 and April, 1991, S. 6 was amended as many as eight times. The last amendment of S. 6 was by Ordinance No. 2 of 1990, which was promulgated on October 15, 1990 and later replaced by Haryana Act 4 of 1991 on April 16, 1991. By the said Act, the amended S. 6 was given retrospective effect from May 27, 1971. It is unnecessary to refer to all the earlier amendments as they have no bearing on the issue under determination. Section 6, insofar as it is relevant for our purpose, as it stood after the last mentioned amendment, read thus:

"Section 6. Incidence of Taxation. (1) Subject to other provisions of this Act, every dealer whose gross turnover during the year immediately preceding the 27th day of May, 1971, exceeded the taxable quantum, shall from the 27th day of May, 1971 and every other dealer shall, on the expiry of thirty days after the date on which his gross turnover first exceeds the taxable quantum, be liable to pay tax under this Act on the sale or purchase of goods by him in the State at the stage hereinafter provided.

(a) on declared goods at the stage specified under S. 17;

(b) and (c) xxx xxx xxx xxx xxx xxx xxx xxx

Provided that this sub-section shall not apply to a dealer who deals exclusively in goods specified in Schedule B or who executes a sub-contract with a contractor who is liable to pay tax in respect of the works contract of which the sub-contract is a part :

Provided further that in the case of a dealer,

(a) xxx xxx xxx xxx xxx xxx xxx xxx

(b) who manufactures or processes any goods for sale, the liability to pay tax shall commence, from the date on which his gross turnover, during any year, first exceeds the taxable quantum;

(c) xxx xxx xxx xxx xxx xxx xxx xxx

(d) who deals in declared goods, the liability to pay tax shall commence from the date on which his gross turnover of such goods exceeds the taxable quantum;

(e) to (h) xxx xxx xxx xxx xxx xxx xxx xxx

(3) to (5) xxx xxx xxx xxx xxx xxx xxx xxx"

16. A perusal of the above provision would show that it is a charging section. It opens with the phrase "subject to the other provisions of this Act," having been given retrospective effect from May 27, 1971, it would apply in regard to the assessment years in question, the last of them being 1989-90. The impost under S. 6 is : (1) subject to the other provisions of the Act; (2) on every dealer whose gross turn over during the relevant period, exceeds the taxable quantum; (3) on the taxable event of sale or purchase of goods; and (4) in respect of declared goods (say paddy) tax is payable at the stage of last purchase. What is subjected to tax is the difference between the `gross turn over' and the `taxable quantum,' which are defined in Cls. (gg) and (b), respectively, of S. 2. To comprehend the scope of the charge under S. 6, which is subject to other provisions of the Act, it has to be read with S. 2(p), S. 15, S. 17 and S. 27. A combined reading of these provisions would disclose that tax is

leviable on the taxable turn over or sales or purchases of goods at the rate mentioned in S. 15 at specified stages in the case of declared goods at the stage specified in S. 17.

17. The first proviso to sub-section (1) of S. 6 exempts : (a) a dealer who deals exclusively in goods specified in Schedule `B'; and (b) a dealer who executes a sub-contract with a contractor. These are the only exemptions that S. 6 speaks of, though S. 13 confers power on the Government to grant exemption in specified cases.

18. Here, it would be relevant to note that the said Haryana Act 4 of 1991, omitted S. 9 of the principal Act, which, be it noted, is not retrospective. Consequently, in respect of the assessment years in question, S. 6, as amended by Haryana Act 4 of 1991 as well as S. 9 of the Haryana Act were on the Statute Book and this fact should be borne in mind while considering leviability of the purchase tax on the raw material (paddy) during the period ending with Assessment Year 1989-90.

19. It is pertinent to read S. 9 of the Haryana Act. Though S. 9 was also amended on ten occasions between 1976 and 1991, for the present discussion, all those amendments are inconsequential. Section 9(1)(b) as on October 15, 1990, insofar as it is relevant, is extracted here :

> "Section 9.
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> (1) Where a dealer liable to pay tax under this Act,
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> (a) xxx xxx xxx xxx xxx xxx xxx
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> (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 in any manner otherwise than by way of sale in the State or despatches the manufactured goods to the 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 S. 5 of the Central Sales Tax Act, 1956; or
>
> (c) xxx xxx xxx xxx xxx xxx xxx
> 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 S. 17, a tax on the purchase of such goods at such rate as may be notified under S. 15."

20. This provision has had a chequered history. In *Goodyear India Limited and others v. State of Haryana and another*[2], it was declared ultra vires the power of the State Legislature. However, in *Murli Manohar and Co. and another v. State of Haryana and another*[3], it was explained that the unconstitu-tionality was confined to assignment sales. Ultimately, in *Hotel Balaji and others v. State of Andhra Pradesh and others*[4], it was declared that judgment of this Court in Goodyear's case (supra) was not a good law. Consequently, S. 9(1)(b) was a

valid provision. We shall examine its ingredients and impact vis-a-vis other provisions till it was omitted with effect from April 1, 1991.

21. A careful reading of S. 9(1)(b) discloses that : it postulates existence of circumstances in which no tax is payable under any other provisions of the Act by a dealer who : (i) is liable to pay tax under the Act; (ii) purchases goods (referred to, `raw material') (other than those specified in Schedule B) from any source in the State; (iii) uses them in the State in the manufacture of any other goods (referred to as, `manufactured goods'); (iv) disposes of the manufactured goods in any manner otherwise than by way of sale or (v) despatches the manufactured goods to a place outside the State in any manner and provides that in such a case there shall be levied, a tax, subject to the provisions of S. 17, on the purchase of raw material at such rate as may be notified under S. 15. This in substance is the charge under S. 9(1)(b). It is important to note that the aforementioned levy of purchase tax on the raw material would have no application when the manufactured goods are : (a) disposed of by way of sale in the State; (b) despatched to a place outside the State : (1) in the course of inter-State trade or commerce; or (2) in the course of export outside the territory of India within the meaning of S. 5 of the CST Act. In other words, levy of purchase tax thereunder on the raw material is exempted if the manufactured goods are dealt with in the manner outlined in Cls. (a) and (b) hereinabove.

22. The exemptions contained in S. 9(1)(b) are confined to cases of impost levied thereunder and not otherwise. In other words, where purchase tax is leviable on goods under S. 6, and not under S. 9(1)(b), a dealer cannot claim benefit of the exemptions mentioned in latter section.

23. The rationale for the exemption of purchase tax on the raw material from the purchase tax in the aforementioned cases, is succinctly elucidated by Jeevan Reddy, J. speaking for a Bench of three learned Judges of this Court in Hotel Balaji's case (supra) as follows :

> "The levy created by the said provision is a levy on the purchase of raw material purchased within the State which is consumed in the manufacture of other goods within the State. If, however, the manufactured goods are sold within the State, no purchase tax is collected on the raw material, evidently because the State gets larger revenue by taxing the sale of such goods. (The value of manufactured goods is bound to be higher than the value of the raw material.) The State legislature does not wish to in the interest of trade and general public tax both the raw material and the finished (manufactured) product. This is a well-known policy in the field of taxation. But where the manufactured goods are not sold within the State but are yet disposed of or where the manufactured goods are sent outside the State (otherwise than by any of inter-State sale or export sale) the tax has to be paid on the purchase value of the raw material. The reason is simple : if the manufactured goods are disposed of otherwise than by sale within the State or are sent out of State (i.e., consigned to dealers own depots or agents), the State does not get any revenue because no sale of manufactured goods has taken place within Haryana. In such a situation, the State says, it would retain the levy and collect it since there is no reason for waiving the purchase tax in

these two situations. Now coming to inter-State sale, and export sale, it may be noticed that in the case of inter-State sale, the State of Haryana does get the tax revenue may be not to the full extent. Though the Central Sales Tax is levied and collected by the Government of India, Article 269 of the Constitution provides for making over the tax collected to the States in accordance with certain principles. Where, of course, the sale is an export sale within the meaning of Section 5(1) of the Central Sales Tax Act (export sales) the State may not get any revenue but larger national interest is served thereby. It is for these reasons that tax on the purchase of raw material is waived in these two situations. Thus, there is a very sound and consistent policy underlying the provision."

24. We are in respectful agreement with the above passage.

25. The same principle is reiterated in *Jagatjit Sugar Mills and others v. State of Punjab and another*[5] and applied in *K. B. Handicrafts Emporium and others v. State of Haryana and others*[6].

26. In these cases, in the light of the above discussion, we conclude that specific charging provision of S. 9(1)(b) will be attracted as the assessee purchased paddy (which is not one of the goods specified in Schedule B), procured rice (manufactured goods) from the said paddy and exported rice outside the territory of India, on which no purchase tax was payable under the general charging provision of Section 6 which is, inter alia, subject to the provisions of Section 9. We have already held above that the assessees will not be liable to pay tax on the purchase of such paddy in view of the provisions of clause (b) of sub-section (1) of Section 9 in the assessment years in question, or, for that matter, any assessment year ending before April 1, 1991. To the same effect is the view expressed by this Court in the cases of Murli Manohar (supra), Hotel Balaji (supra) and K. B. Handicrafts Emporium (supra). The High Court was, therefore, clearly in error in not following the ratio of these judgments on untenable grounds.

27. The next contention of Mr. P. Chidambaram that the High Court erred in holding that omission of Section 9 from the statute had no effect in view of amendment of Section 6 and inclusion of Section 15-A and that the liability to pay purchase tax was regulated by Section 6 read with Section 15 and adjustments, if any, could be made under Section 15-A of the Haryana Act. Mr. Mahendra Anand supported the conclusion of the High Court on the basis of retrospective amendment of Sections 2(p), 6, 15 and 15-A of the Haryana Act. We shall take up these contentions.

28. We have already referred to Sections 6 and 9 of the Haryana Act. To recapitulate, Section 6, which is a general charging section, provides that every dealer shall be liable to pay tax under the Act on the sale or purchase of, inter alia, declared goods by him in the State at the stage specified under Section 17. It says that at the stage of sale or purchase of the declared goods, the tax shall be levied and paid as specified against such goods in Schedule `D'. It also provides that where the goods have not been subjected to tax at any of the stages of sale or purchase specified in Schedule `D', the tax shall be levied and paid by a dealer liable to pay

tax under the Act at the stage of the last purchase of such goods by him, after providing deductions admissible under Section 27. It is not possible to read that the section by itself creates an independent charge on the declared goods. It merely indicates the stage at which the tax shall be leviable and payable. Indeed, clause (a) of sub-section (1) of Section 6 itself mentions that in respect of the declared goods tax shall be levied at the stage specified in Section 17. It is, therefore, futile to contend that under Section 17 levy of tax on declared goods is not dependent on the use and disposal of such goods whether as such or in the manufactured form. It has already been pointed out above that when paddy, declared goods, is manufactured into rice which is exported outside India, as postulated in clause (b) of sub-section (1) of Section 9 of the Haryana Act, the liability for payment of purchase tax on such paddy would be `nil'. The legislature enacted a specific provision (Section 9(1)(b)) with regard to levy and payment of purchase tax on paddy when rice is procured therefrom and exported outside India. We find it difficult to sustain the argument that in view of Section 17 of the Haryana Act, levy of purchase tax on paddy would be valid notwithstanding the fact that the same is exempted under Section 9(1)(b). Though in Murli Manohar's case (supra), the raw material was not one of the declared goods; it makes no difference so far as the ratio of that decision is concerned.

29. For the purpose of Section 6 read with Section 15 of the Haryana Act, a dealer is liable to pay tax on the taxable turnover of his sales and purchases. The expression `taxable turnover' is defined in clause (p) of Section 2 to mean that part of a dealer's gross turnover which remains after allowing deductions under Section 27 of the Haryana Act. Explanation (2) to the said clause provides that the proceeds of sale of any goods on the purchase of which tax is leviable under the Act or the purchase value of any goods on the sale of which tax is leviable under the Act shall not be included in the turnover. Inasmuch as the sale of paddy is taxable under the Act, the purchase value of such paddy cannot be included in the turnover; it is evident that no purchase tax can be imposed under Section 6 of the Haryana Act. This explains the reason as to why Section 9 specifically provides that the charge thereunder shall be levied in the circumstances in which no tax is payable under any other provision of the Act. In other words, it is only because no tax can be levied and collected on the purchase of paddy either under Section 6 or under any other provision of the Haryana Act, that Section 9 imposes the tax, except in the circumstances provided in clause (b) of sub-section (1) of Section 9. This is the view taken by a Bench of three learned Judges of this Court in Murli Manohar's case (supra) where the liability under Section 9 was directly in question. This view was reiterated by two more Benches of this Court in Hotel Balaji's case (supra) and K. B. Handicraft Emporium (supra). The Full Bench of the High Court, in our view, was not right in declining to act upon the ratio of the judgments in the aforementioned cases. In the result, we hold that the amendment to the definition of `turnover' in clause (p) of Section 2 and of Section 6 does not affect the position when Section 9 is part of the statute.

30. Connected with the topic under discussion are the cases arising under the Punjab Act Group (B). It is urged that Section 4-B of the Punjab Act is analogous to Section 9(1)(b) of the Haryana Act and as the former provision (Section 4-B) exists till date the judgment of this Court in Murli Manohar's case (supra) applies, therefore, there can be no demand of purchase tax on paddy.

31. We have indicated above that cases arising under the Punjab Act (Group (B)) go with cases in Group (A)(i) and relate to the period when Section 9(1)(b) of the Haryana Act was in force i.e. before October 14, 1990. The facts giving rise to the appeal (Civil Appeal No. 3666 of 1996) may briefly be noted as representative of the facts of cases falling in this group. The appeal relates to Assessment Years 1990-91 and 1991-92. The assessee purchased paddy in the State of Punjab, milled the same and exported rice procured therefrom to places outside the territory of India. No tax was paid on the purchase of paddy. However, show-cause notices were issued to demand purchase tax on the paddy converted into rice in those years. The demand was confirmed and that was unsuccessfully assailed in the High Court.

32. Mr. R. P. Gupta, learned counsel appearing for the assessee, placed reliance on the observations of this Court in *Mukerian Paper Limited v. State of Punjab*[7] and argued that Section 4-B of the Punjab Act was similar to Section 9 of the Haryana Act, so the ratio of the judgments of this Court in Murli Manohar's case (supra) and Jagatjit Sugar Mill's case (supra) would apply and as such the demand of purchase tax would be wholly illegal. Mr. V. C. Mahajan, learned senior counsel appearing for the State of Punjab, urged a feeble contention that neither the assessee was the exporter nor the rice procured from paddy was exported so the assessee would be liable to pay purchase tax on paddy.

33. In view of the fact that the case proceeded on the basis that the assessee was exporter of rice as this fact is also evident from the judgment under appeal, it is difficult to accept the contention of the learned senior counsel.

34. We shall now examine the contentions of Mr. Gupta.

35. Section 4-B was inserted in the Punjab Act by the Punjab Act 3 of 1973 with effect from November 15, 1972. It reads as follows:

> "4-B. Levy of purchase tax on certain goods. Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule B, from any source and
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> (i) uses them within the State in the manufacture of goods specified in Schedule B, or
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> (ii) uses them within the State in the manufacture of any goods, other than those specified in Schedule B, and sends the goods so manufactured outside the State in any manner other 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, or
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> (iii) uses such goods for a purpose other than that of resale within the State or sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or

(iv) sends them outside the State other 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, and no tax is payable on the purchase of such goods under any other provisions of this Act, there shall be levied a tax on the purchase of such goods at such rate not exceeding the rate specified under sub-section (1) of Section 5 as the State Government may direct."

36. The aforequoted section makes it clear that it can be invoked when a dealer who is liable to pay tax under the Act : (a) purchases any goods (referred to as raw material) other than those specified in Schedule B; (b) uses the raw material within the State in the manufacture of goods specified in Schedule B; or (c) uses them within the State in the manufacture of any goods other than those specified in Schedule B and sends the goods so manufactured out of the State in any manner; (d) uses the raw material for a purpose other than that of resale within the State or; (e) sends the raw material outside the State; and (f) no tax is payable under any other provision of the Punjab Act on such raw material. On fulfilment of these requirements, Section 4-B imposes a tax on the purchase of the raw material at such rates not exceeding the rate specified under sub-section (1) of Section 5, as the State Government may direct. The analysis of the section would remain incomplete without recording that the raw material is exempt from the levy of purchase tax when the manufactured goods are sent outside the State 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.

37. A comparison of Section 4-B of the Punjab Act with Section 9(1)(b) of the Haryana Act shows that to a large extent there is similarity in both these provisions. To the same effect is the observation of a Bench of three learned Judges of this Court in Mukerian's case (supra), which reads thus:

". . . . . even though the language of Section 4-B of the Act is not identical with the relevant part of Section 9(1) of the Haryana Act, it is in substance similar in certain respects, particularly in respect of the point of time when the liability to pay tax arises. Under that provision, as here, the liability to pay purchase tax on the raw material purchased in the State which was consumed in the manufacture of any other taxable goods arose only on the despatch of the goods outside the State."

38. In *Devi Dass Gopal Krishan Pvt. Ltd. and others v. State of Punjab and others*[8] while sustaining the legislative competence of the State of Punjab to enact Section 4-B and upholding its validity, this Court after analysing the said section observed that Section 4-B of the Punjab Act was in substance similar to Section 9(1)(b) of the Haryana Act.

39. In Jagatjit Sugar Mills case (supra), a Bench of three learned Judges opined thus:

"In our opinion, the purpose of Section 4-B is altogether different. It is designed really to identify and affirm in a broad sense, create the levy of purchase tax in some cases and to provide for exemption from purchase tax in certain other specified situations. This is done in the interest of manufacturers-dealers, consuming public and

other dealers a common feature in almost all the sales tax enactments . . . . . ."

40. Though Section 4-B of the Punjab Act is not in iisdem terminis with Section 9(1)(b) of the Haryana Act, however, they are in pari materia. It is not the similarity of the said provisions alone that would determine the liability of a dealer to pay purchase tax on paddy under the said Acts. It is the ambit of charging sections in those Acts, which will be determinative. Section 6 of the Haryana Act, as pointed out above, did not charge purchase tax on paddy before October 14, 1990 and in the circumstances mentioned in Section 9(1)(b) imposed purchase tax but provided for its exemption in specified situations.

40-A. We must now examine the scope of charge under Section 4 of the Punjab Act which, insofar as it is relevant for our purpose, is extracted hereunder :

"4. Incident of taxation. (1) Subject to the provisions of Sections 5 and 6 every dealer except one dealing exclusively in goods declared tax-free under Section 6 whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales affected after the coming into force of this Act and purchases made after the commencement of the *East Punjab General Sales Tax (Amendment) Act, 1958*:

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the assessing authority to have been entered into before the commencement of this Act."

41. A plain reading of this provision shows that it is subject to the provisions of Sections 5 and 6. It says that every dealer shall be liable to pay tax under this Act (i) on all sales affected after the coming into force of this Act if his gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum; and (ii) on all purchases made by him after the commencement of the East Punjab General Sales Tax (Amendment) Act, 1958. Section 5 provides for levy of tax on taxable turnover. Section 5 exempts tax on sale of goods enumerated in Schedule B. As defined in Section 5(2), `taxable turnover' would mean that part of a dealer's gross turnover which remains after deducting therefrom, "(a) his turnover during the period on (1) * * * * * * * * * (ii) . . . . . sale in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India, or of goods specified in his certificate of registration for use by him in the manufacture in Punjab or any goods, other than goods declared tax free under Section 6, or sale in the course of inter-State trade or commerce, or sale in the course of export of goods out of the territory of India . . . . . ." The value of purchase of goods (paddy) does not figure in the amounts which can be deducted for purposes of determining taxable turnover. The definition of `purchase' in clause (ff) is an inclusive definition. It means, inter alia, acquisition of goods specified in Schedule `C' for cash or deferred payment.

42. In Jagatjit Sugar Mills' case (supra), this Court held that Section 4 levies tax not only upon `all sales affected' but also on `all purchases made' and negatived the contention that no purchase tax was payable under Section 4 of the Act on goods other than those mentioned in Schedule `C' (contains paddy and rice). It was held, Para 17

> "Firstly, clause (ff) in Section 2 is not a charging section. It only defines "purchase". Secondly, the definition not only includes the purchase of Schedule C goods but purchase of other goods which are subject to purchase tax under any other provisions of the Act. The fact that the words "or of goods on the purchase whereof tax is payable under any provisions of this Act" were inserted in this definition by the same Amendment which introduced Section 4-B into the Act does not mean that the said words are confined to Section 4-B. If that were the intention, the legislature would have used appropriate words to that effect. Moreover, Section 4-B is designed for a different purpose. The said definition cannot, therefore, be read in derogation of Section 4(1) nor can the levy created by Section 4(1) be curtailed or cut down in any manner by the said definition."
>
> Section 29, which provides exemption in certain cases, is also of no avail to the assessee. It reads as under :
>
> "29. Provisions in case of inter-State trade, etc.
>
> (1) Notwithstanding anything contained in this Act
>
> (a) a tax on the sale or purchase of goods shall not be imposed under this Act
>
> (i) where such sale or purchase takes place outside the State of Punjab; or
>
> (ii) where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territory of India;
>
> Provided that the last sale or purchase of any goods preceding the sale or purchase occasioning the export of such goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase takes place after making an agreement or order for such export;
>
> Provided further . . . . . ."
>
> Sub-clause (ii) of clause (a) of sub-section (1), which is relevant here, read with the first proviso, applies where such sale or purchase is a penultimate sale or purchase and takes place in the course of import of the goods into or export of the goods out of the territory of India. This clause is also of no consequence; firstly, because paddy and rice being two different commodities and secondly, the proviso was inserted only with effect from February 5, 1999 by Act 4 of 1999.

43. In the light of the above discussion, it cannot but be held that the assessee are liable to pay tax on the purchase of paddy under Section 4 of the Punjab Act and the similarity between Section 4-B of the Punjab Act and Section 6 of the Haryana Act and the ratio of the judgments in Murli Manohar's case and other cases, referred to above, are of no assistance to them.

44. We may now notice the contention of Mr. Chidambaram based on sub-section (3) of Section 5 of the CST Act. The learned senior counsel argued that as paddy purchased by the assessee was exported albeit in the rice form, therefore, the purchase of paddy itself would be deemed to be in the course of export. He pointed out that the latin name for paddy and rice was the same viz. Oryza Sativa L. and they fall in one and the same group. He suggested that the judgments of this Court in *Ganesh Trading Company, Karnal v. State of Haryana*[9] *and Babu Ram Jagdish Kumar and Co. v. State of Punjab*[10], holding that `paddy and rice are different commodities', were not rendered in the context of sub-section (3) of Section 5 of the CST Act and that they require reconsideration. On the other hand, Mr. Mahendra Anand strenuously urged that paddy and rice were two different `goods', therefore, on the export of rice the assessee could not claim exemption on the purchase of paddy either under Section 5(3) of the CST Act or under Article 286(1)(b) of the Constitution of India because penultimate sale was not that of rice but of paddy. He argued that only when paddy would undergo various processes, which tantamounts to manufacture, rice could be procured.

45. It may be noticed that the principle laid down by this Court in Ganesh Trading Co. (supra) and Babu Ram Jagdish Kumar case (supra) was accepted by the Parliament and Section 14 of the CST Act was amended to show that paddy and rice are two distinct goods. In *Vijay Laxmi Cashew Company v. Deputy Commercial Tax Officer*[11], this Court held that to claim the benefit under Section 5(3) of the CST Act, a dealer would have to establish the identity of the goods purchased and the goods exported out of the territory of India. When in order to fulfil an export obligation some goods are purchased and processed which resulted in change of the identity and character of the goods like processing of paddy into rice, which is exported, then it would not be an export of the same goods. Therefore, the assessee will not be entitled to exemption under Section 5(3) of the CST Act. We have already indicated above that sub-section (3) of Section 5 treats penultimate sale of the goods which are exported as the sale in the course of export. It is difficult to accept the contention of Mr. Chidambaram that paddy and rice are the same goods. The usual commercial parlance test that is applied is how such goods are known in the commercial circles. It is a common knowledge that paddy and rice are treated in the market as two different commodities. We are not persuaded to accept the submission that the case of Ganesh Trading Co. (supra) in which it is held that paddy and rice are different commodities and which was followed by a Bench of three learned Judges in Jagdish Kumar's case (supra) was decided even before the insertion of sub-section (3) of Section 5. With great respect to the learned Judges, we are in entire agreement with the view expressed in those cases that paddy and rice are two different commodities. It is unnecessary to delve into the process of procuring rice from paddy to ascertain whether a complicated process results in change of identity of goods (raw material) as was found in *State of Travancore-Cochin and others v. Shanmugha Vilas Cashew Nut Factory and others*[12] and in *Vijay Laxmi Cashew Company v. Deputy Commercial Tax*

Officer[13] or involves only a simple process as was the case in *Sterling Foods v. State of Karnataka*[14] *and Deputy Commissioner of Sales Tax v. Pio-Food Packers*[15] not affecting the identity of the goods (raw material). It is a common ground that the Parliament treated paddy and rice as two different goods as is evident from sub-clauses (i) and (ii) of clause (i) of Section 14 of the CST Act which was inserted by the Parliament by Act 103 of 1976 with effect from September 7, 1976. The argument of the learned senior counsel based on Section 5(3) of the CST Act must, therefore, fail. Mr. P. Chidam-baram has argued that the requirements of Articles 286 of the Constitution and Section 15(c) of the CST Act are mandatory and this accounts for clause (iii) of the proviso to sub-section (1) of Section 15 of the Haryana Act, therefore, Section 15-A of the Haryana Act, insofar as it denies the benefit of adjustment/refund of purchase tax in regard to paddy, is unconstitutional and ultra vires; in the alternative it was urged that the amendment of Section 15-A by Ordinance 1 of 1992 took away the benefit of adjustment/refund retrospectively from May 27, 1971, availed by the assessee for the last twenty one years which is unjust, arbitrary and unconstitutional.

46. Section 15-A was first inserted in the Haryana Act on January 25, 1990 and was given retrospective effect from May 27, 1971. Like its companion sections, it also underwent many changes. We are concerned with Section 15-A, as substituted by the Haryana Act 9 of 1993 on February 10, 1993 retrospectively from May 27, 1971. It was as under :

> * "15-A. Adjustment or refund of tax in certain cases
>
> * A new Section 15-A was substituted by Haryana Act No. 12 of 2000 dated 19-9-2000, however, it was not given retrospective effect.
>
> Subject to the provisions of clause (iii) of proviso to sub-section (1) of Section 15 and subject to the conditions and restrictions, as may be prescribed
>
> (i) the tax leviable under this Act or the Central Sales Tax Act, 1956, on the sale of goods by a dealer, manufactured by him, shall be reduced by the amount of tax paid in the State on the sale or purchase of goods, other than paddy, cotton and oilseeds, used in their manufacture, and
>
> (ii) when no tax is leviable on the sale of manufactured goods except those specified in Schedule B, subject to the conditions and exceptions specified therein, or when the tax leviable on the sale of manufactured goods is less than the tax paid in the State on the sale or purchase of goods, other than paddy, cotton and oil seeds, used in their manufacture, the full amount of tax paid or the excess amount of tax paid over the tax leviable on sale, as the case may be, shall be refundable if the manufactured goods are sold in the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India.
>
> Provided that in case the manufactured goods have been sold before the 1st day of January, 1988, the tax paid on goods, leviable to tax at the first stage of sale under Section 18, used in their manufacture, shall not be refunded."

This provision speaks of adjustment and refund of tax in certain cases. It operates subject to the provisions of clause (iii) of proviso to sub-section (1) of Section 15, we shall refer to it presently, and is also subject to the conditions and restrictions, as may be prescribed. Clause (i) of Section15A stipulates that the tax leviable under the Haryana Act or the CST Act on the sale of goods by a dealer manufactured by him shall be reduced by the amount of tax paid in the State on the sale or purchase of the raw material, other than the tax paid on the last purchase of paddy, cotton and oil seeds used in their manufacture. Clause (ii) speaks of a situation where no tax is leviable on the sale of manufactured goods (except those specified in Schedule `B'), subject to the conditions and exceptions specified therein; or when the tax leviable on the sale of manufactured goods is less than the tax paid in the State on the sale or purchase of raw material other than the tax paid on the last purchase of paddy, cotton and oil seeds used in their manufacture, the full amount of tax paid or the excess amount of tax paid over the tax leviable on the sale, as the case may be, shall be refundable if the manufactured goods are sold in the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India. It is plain that this clause provides for refund of tax paid on the last purchase of raw material, except on paddy, cotton and oil seeds. However, the proviso creates an exemption to the refund of tax when the manufactured goods have been sold before the 1st day of January, 1988. What is relevant to note is that the purchase tax paid on paddy, cotton and oil seeds (which are used as raw material) can neither be refunded nor adjusted. It is in view of this provision that show cause notices were issued to the assessee denying both the benefit of adjustment as well as refund of tax paid on the purchase of paddy.

47. The last mentioned amendment inserted in Section 15-A, the following words "subject to the provisions of clause (iii) of proviso to sub-section (1) of Section 15". Clause (iii) of proviso to sub-section (1) of Section 15 of the Haryana Act reads as under :

"15 (1). Subject to the provisions of this Act, there shall be levied on the taxable turnover of a dealer a tax, at such rates, not exceeding,

(a) and (b) xxx xxx xxx

Provided that

(i) and (ii) xxx xxx xxx

* (iii) in the case of rice procured out of paddy on the purchase of which a tax has been levied inside the State, tax leviable on such rice shall be reduced by the amount of tax levied on such paddy."

* Clause (iii) was inserted by Haryana Act 44 of 1976 w.e.f. 7-9-1976

48. It specifies different rates of tax leviable on the taxable turnover of a dealer depending on the nature of goods. Clause (iii) of the proviso to sub-section (1) says that the tax leviable on rice, which is procured from the purchase tax suffered paddy, shall be reduced by the amount of tax levied on such paddy.

49. Having referred to the provisions of Article 286 of the Constitution and Section 15(c) of the CST Act, we have pointed out that clause (1) of Article 286 protects sale or purchase which takes place (a) outside the State or (b) in the course of import of goods into or export of the goods out of the territory of India, from a State Law imposing or authorising imposition of a tax. We have also indicated that clause (c) of Section 15 of the CST Act directs that where in respect of sale or purchase of paddy, tax has been levied in a State, then the tax leviable on the rice procured out of such paddy shall be reduced by the amount of tax levied no such paddy. This is to ensure that paddy and rice, being declared goods, considered to be of special importance in the inter-State trade or commerce, be relieved of so much burden of tax on rice as has been on the paddy from which rise has been procured. It appears to us that clause (iii) of the proviso to sub-section (1) of Section 15 reflects the intendment of clause (c) of Section 15 of the CST Act. It is not possible to accept the Section 15-A denies adjustment in regard to the tax paid on the purchase of paddy, as it is clear that in view of the opening words of Section 15-A, inserted by the amendment referred to above, it is subject to clause (iii) of the proviso to sub-section (1) of Section 15. Consequently, applying the principle of harmonious construction Section 15-A cannot be so interpreted as to override the provisions of either Section 15(c) of the CST Act or clause (iii) of the proviso to sub-section (1) of Section 15 of the Haryana Act so as to deny the benefit of adjustment. It, therefore, follows that the assessees are entitled to adjustment of purchase tax paid on paddy when the rice procured therefrom is taxed.

50. It is true that Section 15-A does not permit refund of purchase tax paid on paddy, cotton and oilseeds by an assessee though such a relief is available in regard to other goods. In the light of the above discussion, the challenge to Section 15-A on the ground of discussion, the challenge to Section 15-A on the ground of violation of Section 15(c) of the CST Act or Article 286(1)(b) of the Constitution cannot be sustained because the only relief that is granted by Section 15(c) is reduction of tax leviable on the sale of rice procured from out of paddy, where tax has been levied on sale or purchase of such paddy inside the State. This relief is incorporated by the Haryana Act in clause (iii) of the proviso to sub-section (1) of Section 15. Even clause (b) of sub-article (1) of Article 286 does not provide for exemption of tax on the purchase of paddy. There is no other provision either in Article 286 or in the CST Act which bars a State from levying tax on the sale or purchase of paddy which is exported out of the territory of India. Section 15-A proceeds on the premise that purchase tax is payable, inter alia, on paddy. From the above discussion, it is clear that before the omission of Section 9 from the Haryana Act, no purchase tax was payable on paddy under Section 6 of the Act, therefore, during the aforesaid period, the assessee cannot complain of the denial of the benefit of adjustment and refund of purchase tax on the basis of Section 15-A of the Haryana Act. The position would, however, be different after April 1, 1991, when Section 9 was omitted from the Act.

51. In regard to the competence of a legislature to levy impost, it is well established that it can do so, it can as well legislate retrospectively.

52. In *Rai Ramkarishna and others v. The State of Bihar*[16], a Constitution Bench of this Court observed, where the legislature could make a valid law, it could provide not only for the prospective operation of the material provisions of the said law, but also for the retrospective operation of the said provisions. It was also observed that the legislative power included the subsidiary or the auxiliary power to validate law which was found to be invalid. Even if a law passed by the legislature was struck down by the Courts, it was competent for the appropriate legislature to pass a validating law so as to make the provisions of the earlier law effective from the date when it was passed. In that connection, it was held that the test of the length of time covered by the retrospective operation could not by itself be treated as a decisive test.

53. In *Jawaharmal v. State of Rajasthan and others*[17] a Constitution Bench of this Court laid down, para 18

> "What it (Section 2 of the Act of 1964) does is to amend retrospectively Section 3 of the principal Act by inserting a proviso . . . . . The power to legislate includes the power to legislate prospectively as well as retrospectively and in that behalf, tax legislation is no different from any other legislation. The power to tax can be competently exercised by the legislature either prospectively or retrospectively; and that is precisely what Section 2 has done in the present case. Therefore, there was no substance in the argument that Section 2 of the Act was invalid."

54. In that case Section 3 of the Rajasthan Passengers and Goods Taxation Act, 1959 (Act 18 of 1959) was amended by Rajasthan Finance Act Nos. 14 of 1961 and 11 of 1962 to raise the maximum rates leviable under the Act. The Acts did not, however, obtain the assent of the President, as required by Article 255 of the Constitution. The defect was cured by issuing Ordinance No. 4 of 1964 which was replaced by Act 22 of 1964 for which the assent of the President was duly obtained. Section 2 of the said Act of 1964 retrospectively re-enacted the amendments to Section 3 of the Principal Act by Acts of 1961 and 1962 and Section 4 of the Act validated all the collections and levies under the earlier Acts and also purported to cure the infirmity in the said earlier Act arising from non-compliance with Article 255. The petitioner therein challenged the validity of the said ordinance as well as the Act of 1964 under Article 32 of the Constitution, which failed.

55. In *M/s. J. K. Cotton Spinning and Weaving Mills Ltd. and Anr. v. Union of India and Ors.*[18] by Section 51 of Finance Act, 1982, Rules 9 and 49 of the Central Excise Rules, 1944 were amended retrospectively from the date of framing of the Rules in 1944. After referring to the cases of Rai Ramakrishna and Jawaharmal (supra), it was observed that the Court might have to consider the question as to whether excessive retrospective operation prescribed by a taxing statute amounted to contravention of the citizens' fundamental rights and in dealing with such a question the Court might have to take into account all the relevant

and surrounding facts and circumstances in relation to the taxation and in that connection the test of the length of time covered by the retrospective operation cannot, by itself, necessarily be a decisive test. By examination of the merits of the case it was held that the retrospective effect given to the said provisions was subject to Section 11-A of the Act and was, therefore, not excessive and arbitrary.

56. In *State of Tamil Nadu v. Arooran Sugars Ltd.*[19], the same principle is reiterated and it is added that in special situation this Court has held that such excessive retrospectivity was violative of Article 14 of the Constitution.

57. In the instant case, having regard to the provisions of Section 40 of the Haryana Act, the authorities cannot revise the assessment for period beyond five years. Further, even though Section 15-A was given retrospectivity with effect from May 27, 1971, it would hardly be effective between May 27, 1971 and April 1, 1991 when the benefit of exemption under Section 9(1)(b) ceased to exist, as such none of contentions that giving Section 15-A retrospectivity of 21 years could be harsh, arbitrary and illegal would be devoid of merit.

58. No relief was available in regard to penultimate purchase of paddy which was converted into rice and exported. This position obtained till clause (ca) of Section 15 of the CST Act was inserted by Act 33 of 1996 on September 28, 1996. The said clause (ca) provides, where a tax on sale or purchase of paddy is leviable under a State Law and the rice procured out of such paddy is exported out of India, then for the purposes of sub-section (3) of Section 5 of the CST Act, the paddy and rice have to be treated as a single commodity. What is, however, contended in clause (ca) is only declaratory and, therefore, retrospective. We do not so think. A declaratory Act is defined in `Craies on Statute Law' thus :

> "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective."*
>
> * Sixth Edition page 59.

59. It cannot be said to be clarificatory for, it neither supplies an obvious omission in the CST Act nor purport to explain any provision of that Act. It confers a new benefit hitherto not available. It is not given retrospective effect expressly. There is also nothing to imply that it has retrospective operation. However, had it been declaratory or curative, it would have been treated as retrospective. (See *Shri Chaman Singh and Anr. v. Srimathi Jaikaur*[20].

60. We do not also find any force in the contention of Mr. Chidambaram that in not granting refund of purchase tax only in regard to three goods paddy, cotton and oil seeds there is violation of Article 14 of the Constitution. It is a settled proposition of law that in the matter of taxation, the legislature has greater latitude to give effect to its policy of raising revenue and for that purpose selecting the goods for taxing. The classification of goods based on the policy of taxing some goods and leaving others outside the net of taxation cannot be assailed

as violative of Article 14 of the Constitution. (See : *M/s. Steelworth Ltd. v. State of Assam*[21] *and Gopal Narain v. State of Uttar Pradesh and Ans.*[22]).

61. The observations of Krishna Iyer, J. in *Murthy Match Works, etc. etc. v. The Asstt. Collector of Central Excise, etc.*[23] which are approved by a Constitution Bench in *Ganga Sugar Corporation Ltd. v. State of Uttar Pradesh and Ors.*[24] are worth quoting :

> "It is well established that the modern State, in exercising its sovereign powers of taxation, has to deal with complex factors relating to the objects to be taxed, the quantum to be levied, the conditions subject to which the levy has to be made, the social and economic policies which the tax is designed to subserve, and what not. In the famous words of Holmes, J., in *Bain Peanut Co. v. Finson*[25])
>
> We must remember that the machinery of government would not work if it were not allowed a little play in its joints."
>
> Granting relief, whether of refund or otherwise, stands on the same footing.

62. To sum up :

> "(1) In the specified circumstances in which charge of purchase tax on the raw material is imposed, clause (b) of sub-section (1) of Section 9 of the Haryana Act and the exemptions provided therein would apply; the law declared by this Court in Murli Manohar and Co., Hotel Balaji and K. B. Handicrafts (supra) holds the field;
>
> (2) While Section 9 remained on the Statute till April 1, 1991, retrospective amendments of Sections 2(p), 6, 15 and 15-A of the Haryana Act would make no difference in regard to levy of purchase tax on paddy.
>
> (3) adjustment of purchase tax paid on paddy (raw material) is permissible under Section 15-A of the Haryana Act during the relevant period;
>
> (4) by virtue of Section 15-A of the Haryana Act, denial of refund of purchase tax, if any, paid by a dealer is not illegal much less unconstitutional; and
>
> (5) mere similarity between Section 9(1)(b) of the Haryana Act and Section 4-B of the Punjab Act would not relieve a dealer of the liability to pay purchase tax on paddy as the scope of charging sections under the said Acts are different."

63. In view of the above discussion, the appeals filed by the assessees under the Haryana Act are allowed in part and the appeals filed by the assessees under the Punjab Act are dismissed. The writ petitions are disposed of accordingly.

64. No costs.

65. Insofar as the question of payment of interest, if any, is concerned, it is left open to be adjudicated in the connected cases.

Order accordingly.

[1]*(1975 (2) SCC 47)*
[2]*(1990 (2) SCC 71)*
[3]*(1991 (1) SCC 377)*
[4]*(1993 Suppl (4) SCC 536)*
[5]*(1995 (1) SCC 67)*
[6]*(1993 Suppl (4) SCC 589)*
[7]*(1991 (2) SCC 580)*
[8]*(1994 Suppl. (2) SCC 59)*
[9]*(1974 (3) SCC 620)*
[10]*(1979 (3) SCC 616)*
[11]*(1966 (1) SCC 468)*
[12]*(1954 SCR 53)*
[13]*(1996 (1) SCC 468)*
[14]*(1986 (3) SCC 469)*
[15]*(1980 Suppl SCC 174)*
[16]*(1964 (1) SCR 897)*
[17]*(1966 (1) SCR 890)*
[18]*(1987 (Supp) SCC 350)*
[19]*(1997 (1) SCC 326)*
[20]*(1969 (2) SCC 429)*
[21]*(1962 Suppl (2) SCR 589)*
[22]*(1964 (4) SCR 869)*
[23]*(1974 (3) SCR 121)*
[24]*(1980 (1) SCC 223)*
[25]*(1930) 282 US 499*