**SUPREME COURT OF INDIA**

TVS Motor Company Ltd.

Vs.

State of Tamil Nadu

C.A.No.10560-10564 of 2018

(A.K.Sikri and Ashok Bhushan,JJ.,)

12.10.2018

**JUDGMENT**

**A.K.Sikri,J.,**

SLP(C)No.9320-9324 of 2015

1. Leave granted.

2. This group of eleven appeals was heard together and is being disposed of by this common judgment as identical issues are involved in all these appeals.

3. At the outset, the issues involved in the present appeals are: whether Section 19(5)(c) of the Tamil Nadu Value Added Tax Act, 2006, Act No. 32/2006 (hereinafter referred to as "TNVAT Act") and Rule 10(9)(a) of the Tamil Nadu Value Added Tax Rules, 2007 (hereinafter referred to as "Rules") are ultra vires of Articles 14, 19(1)(g), 256 and 301 of the Constitution of India as also the Central Sales Tax Act (hereinafter referred to as "CST Act") and whether Notice dated August 16, 2018 of the Revenue is liable to be quashed?

4. The instant appeals have been preferred against the common impugned judgment of the High Court of Judicature at Madras dated October 29, 2014 (hereinafter referred to as "Impugned Judgment I") in the writ petitions which were filed by the appellants and the impugned judgment dated 17th November, 2017 of the High Court of Judicature at Madras (hereinafter referred to as "Impugned Judgment II") in W.P. No. 29393 of 2017.

5. The brief facts leading to the cases are as follows:

6. All the appellants herein are the Assessees under the TNVAT Act and are duly registered on the file of their respective Jurisdictional Commercial Officers.

7. On January 17, 2005, a White Paper was released by the Committee of Finance Ministers (hereinafter referred to as "White Paper"), making it clear that Input Tax Credit (hereinafter

"ITC") would be available to set-off against tax liability on all intra-state and inter-state sales. Paragraph 2.3 of the same states as follows:

> "Coverage of Set-Off / Input Tax Credit 2.3 This input tax credit will be given for both manufacturers and traders for purchase of inputs/supplies meant for both sale within the State as well as to other States, irrespective of when these will be utilised/sold. This also reduces immediate tax liability.
>
> Even for stock transfer/consignment sale of goods out of the State, input tax paid in excess of 4% will be eligible for tax credit."

8. Thereafter, on December 15, 2006, the TNVAT Act was enacted under List II, Entry 54 of the Constitution of India and notified in the Official Gazette after receiving assent of the Governor (on December 14, 2006), to consolidate and amend the law relating to the levy of tax on the sale or purchase of goods in the State of Tamil Nadu. Section 19(5)(c) of the same read as follows:

> "No input tax credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce falling under sub-section (2) of section 8 of the Central Sales Tax Act, 1956. (Central Act 74 of 1956)."

9. Thereafter, on January 01, 2007, the Government of Tamil Nadu, in exercise of its powers under Section 80(1) of the TNVAT Act, notified the Rules vide Notification No. SROA-(ai1)/2007 G.O.M.S.No. 1. Rule 10(9)(a) of the same states as follows:

> "Input tax credit on inter-state sales shall be allowed only if Form C prescribed in the Central Sales Tax (Registration and Turnover) Rules, 1957 is filed."

10. After the Assessment was completed for the appellants for Assessment Year 2007-08, they received Show Cause Notices from the Revenue in and around 2013, proposing to reverse the ITC claimed made by them on the ground that they had not filed the Declaration Form C for the purpose of availing the concessional rate of tax. The appellants paid the differential tax arising out of the Assessment order for 2007-08 as well as the amount relating to proportionate ITC under process.

11. Consequently, on 16th August, 2013, the Revenue issued Impugned Notice in TIN 33450460109/2007-08 proposing to deny the ITC credit availed against the transactions for which Form C were not filled, and reversing credit on inter-State sales without Forms C in terms of the impugned Section 19(1)(c).

12. Aggrieved by the same, the appellants, who were Assessees under the TNVAT Act, preferred writ petitions challenging the constitutional vires of 19(5)(c) of the TNVAT Act and Rule 10(9)(a) of the Rules contending that the same had been enacted in violation of Articles 14, 19(1)(g), 246 and 301 of the Constitution of India. It was urged by the appellants

that Respondent No. 1 — State had enacted the Act under Entry 54 of List II of the Constitution of India in terms of consensus amongst States to bring about a nation-wide uniform taxation structure/scheme for VAT and for the promotion of inter-State trade, commerce and industrialization, with its primary object to reduce the cascading effect of tax imposed at successive stages, either at the stage of usage as raw material or at the time of reselling of the article so produced. They further urged that while the White Paper provided for set-off of the ITC even against inter-State sales, Section 19(5)(c) of the Tamil Nadu Act sought to negate the object of promoting inter-State trade and commerce.

13. It was urged by the appellants that Respondent No. 1 — State, having committed and consented before the Empowered Committee of State Finance Ministers, vide the aforementioned White Paper, towards administration of VAT allowing ITC set-off against tax liability on intra-State sales or inter-State sales, sought to deviate on the issue in terms of Section 19(5)(c) of the TNVAT Act, by not entitling a dealer who effected inter-state sales under Section 8(2) of the Central Sales Tax Act to ITC of the tax paid by him on local purchases.

14. The Respondents/Revenue, on the other hand, contended that the Taxation Laws (Amendment) Act, 2007 (Act No. 16/2007) has amended the Central Sales Tax Act with effect from 01.04.2008 and prior to that, in cases of inter-State sales falling under Section 8(2) of the same in cases of declared goods, the rate of tax was to be calculated at twice the rate applicable to the sale or purchase of such goods inside the appropriate State and in case of non-declared goods, the rate of tax applicable was to be calculated at 10% or at the rate applicable to the purchase of goods inside the appropriate State, whichever was higher.

15. The appellants had also urged that the impugned Section and Rule were ‘colourable legislation’, as they seek to override the supremacy of Entry 92A of List I of the Seventh Schedule of the Constitution of India.

16. The Respondents had refuted this argument by contending that as per the impugned provision, ITC was permissible if the inter-State sales were made under Section 8(1) of the CST Act after duly filing the Form C declaration. The same was not permissible in accordance with Rule 10(9)(a) if the inter-State sales were made under Section 8(2) of the CST Act.

17. It was also the case of the respondents that the impugned provisions were in tune with the recommendations of the Empowered Committee of State Finance Ministers. They further threw light upon the fact that the CST Act provided for multiple rates of tax, being different for sales made to registered dealers and sales made to non-registered dealers.

18. The High Court of Judicature, vide the Impugned Judgment-I dated October 29, 2014, has dismissed the writ petitions thereby upholding the constitutional vires of Section 19(5)(c) of the TNVAT Act and Rule 10(9)(a) of the Rules. At the same time, it has allowed the assessees/appellants to submit their responses to the Show Cause Notices and/or challenge

the orders passed negativing their request for ITC, in accordance with the TNVAT Act and Rules framed thereunder.

19. The Impugned Judgment-II dated November 17, 2017 arose out of Writ Petition No. 29393 of 2017, challenging the constitutional vires of Section 19(5)(c) of the TNVAT Act and Rule 10(9)(a) of the Rules, where the High Court of Judicature at Madras, while relying on its previous decision dated 29.10.2014 in Impugned Judgment-I, observed that the same issue had arisen in the Impugned Judgment-I and the vires of the TNVAT Act and the Rules had been upheld therein and accordingly, dismissed the Writ Petition No. 29393/2017.

20. Correctness of these judgments is the subject matter of instant appeals.

21. Before adverting to the respective submissions which were made by the counsel for the appellants as well as learned Advocate General who appeared on behalf of the respondents, it would be apposite to scan through the impugned judgment dated October 29, 2014 to understand the rationale and reasoning which is given by the High Court in arriving at its conclusions on the issues raised.

22. The High Court formulated following two questions which arose for consideration "(1) Whether Section 19(5)(c) of TNVAT Act, 2006 and Rule 10(9)(a) of TNVAT Rules, 2007 are ultra vires the provision of CST Act, 1956?

(2) Whether the impugned provisions are violation of Articles 14, 19(1)(9) and 301 of the Constitution of India?"

23. Thereafter, it took note of the relevant provisions of the CST Act, TNVAT Act as well as Rules and also Article 301 of the Constitution. We deem it proper to reproduce the relevant portions of these Acts and Rules at this stage itself.

> "Central Sales Tax Act, 1956
> S. 3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.¬- A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-
> (a) occasions the movement of goods from one State to another; or
> (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.
> Explanation 1.- Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to
> commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.
> Explanation 2.- Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

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

[Provided that a deal shall not be liable to pay tax under this Act on any sale of good which, in accordance with the provisions of sub-section (3) of Section 5 is a sale in the course of export of those goods out of the territory of India]

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

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

(a) to the Government or (b) to a registered dealer other than the Government if the goods are of the description referred to in sub-section (3) of section or shall be exempt from tax under this Act: Provided that no such subsequent sale shall be exempt from tax under this subsection unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit:--

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

(b) if the subsequent sale is made to a registered dealer, a declaration referred to in clause (a) sub-section (4) of section 8: Provided further that it shall not be necessary to furnish the declaration referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,--

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent, or such reduced rate as may be notified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 8 (whether called a tax or fee or by any other name); and

S. 8. Rates of tax on sales in the course of inter-State trade or commerce— (1) Every dealer, who in the course of inter-State trade or commence, sells to a registered dealer other than the Government goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be three per cent, of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the Sales Tax law of that State whichever is lower:

Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or service not falling within sub-section (1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State;

Explanation.--For the purposes of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.
S.9. Levy and collection of tax and penalties.—

(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess re-assess, collect and enforce payment of 3 tax, including any [interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm of Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references,refunds, rebated, 5 penalties,] [charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:—

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, be rules made in this behalf make necessary provision for all or any of the matter specified in this sub-section.

S. 2 - Definitions:

(23) "input" means any goods including capital goods purchased by a dealer in the course of his business;

(32) "reversal of tax credit" means reversal of input tax credit already claimed and availed under this Act;

S.19. Input tax credit.— (1) There shall be input tax credit of the amount of [tax paid] under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule :
(2) Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of —

(i) re-sale by him within the State; or

(ii) use as input in manufacturing or processing of goods in the State; or

(iii) use as containers, labels and other materials for packing of goods in the State; or

(iv) use as capital goods in the manufacture of taxable goods.

(v) sale in the course of inter-State trade or commerce falling under sub-sections (1) and (2) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).

(vi) Agency transactions by the principal within the State in the manner as may be prescribed.
(5)

(c) No input tax credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other good and sold in the course of inter-State trade or commerce failing under sub-section (2) of Section 3 of the Central Rules Act, 1956 (Central Act 74 of 1956).

10. Input tax credit.—(1) The input tax credit that can be deducted from the input tax payable month or year shall be calculated by using the formula (A + B) - (C + D) Where,

A = Input tax credit carried forward from the previous month or year

B = Input tax credit accrued during the month or year

C = Input tax credit reversed during the month or year

D = Input tax credit refunded during the month or year

(2) Every registered dealer who claims input tax credit under sub-section (1) of section 19 shall, produce the original tax invoice, in support of his claim of the input tax credit, containing the following details, namely:
(a) A consecutive serial number;

(b) The date on which the invoice is issued;

(c) The name, address and the Taxpayer Identification Number of the seller;

(d) The name, address and the Taxpayer Identification Number of the buyer;

(e) The description of the goods;

(f) The quantity or volume of the goods;

(g) The value of the goods;

(h) The rate and amount of tax charged; and

(i) The total value of the goods.

(9)(a) Input tax credit on inter-state sales shall be allowed only if lots 'C' prescribed in the Central Sales Tax (Registration and turnover) Rules, 1957 is filed."

24. After taking note of the aforesaid provisions, the High Court proceeded to discuss question no. (1). It pointed out that the definition of "dealer" under Section 2(b) of the CST Act means the assessee under the said Act and he is solely liable to pay tax under the CST Act whether or not he is allowed by the law or contract to pass on or actually passes on the liability of his customers. The onus of proof that a person sought to be treated as a dealer is one who comes within the said definition is on the assessing authority.

25. The definition of "sale" under Section 2(g) of the CST Act means that a sale inside a State as well as an inter-State sale arising in that State, has situs in that State in case of sale inside a State, it is taxable under the State law (TNVAT Act) and inter-State sale is liable to tax in the same State under the CST Act. Section 3 of the CST Act speaks about when a sale or purchase of goods said to have taken place in the course of inter-State trade or commerce. Section 6 of the CST Act speaks about liability to tax on inter-State sales and it is a charging Section. Section 8 of the CST Act speaks about rates of tax on sales in the course of inter-State trade or commerce and as per sub-section(1) of Section 8 if sale is effected by a dealer to a registered dealer goods of the description referred to in sub-section(3), it shall be liable to pay tax under this Act which shall be 3% of the turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the Sales Tax law of that State, whichever is lower. Section 8(2) says that if the sale of goods is in the course of inter-State trade or commerce not falling within sub-section) the tax payable shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales

tax law of that State and as per explanation to Section 8(2), for the purpose of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

26. The High Court also noticed that the vires of the aforesaid provisions was tested by the Constitution Bench of this Court in *State of Madras vs. N.K. Nataraja Mudaliar*[1]. The Constitution Bench upheld the provisions of Section 2(b) of the CST Act and repelled the challenge predicated on Articles 301 and 303(1) of the Constitution of India. This position is reiterated in *State of Tamil Nadu and Another vs. Sitalakshi Mills Ltd. and Others*[2].

27. Discussing the provisions of Section 8(1) and (2) of the CST Act, the High Court pointed out that Section 8(1) gives preferential treatment to sale by a dealer to a registered dealer. Vires of this provision has also been upheld in *Gwalior Rayon Silk Manufacturing (Wvg.) Co., Ltd. vs. Assistant Commissioner of Sales Tax and others*[3].

28. Discussing ratio of the aforesaid judgments, the High Court pointed out that this Court noted the proposition that the aforesaid provision was to check the evasion of tax on inter-State sales and to prevent discrimination between the rates in one State and those in other States, the Parliament thought fit to enact Section 8(2)(b) of the CST Act and further held that the object of the law apparently is to deter inter-State sales to unregistered dealers as such inter-State sales would facilitate evasion of tax and the fixation of the rate of local sales tax is essentially a matter for the State legislatures and the Parliament does not have any control in the matter. It has been further held in the said decision that it is in public interest to see that in the guise of freedom of trade, they do not evade the payment of tax and it is an effective safeguard against the evasion of tax.

29. Based on the aforesaid discussion, the High Court has answered question No. 1 against the appellants in the following manner:

> "It is the specific stand of the official respondents/State Government in para 14 of the counter affidavit that where sales are made to registered dealers on filing of Form 'C' declaration the entire transaction goes into the mainstream and thereby automatically comes into the net of taxation in the purchasing State wherever applicable and if sales are made to other than registered dealers, it is option of the purchasing dealer concerned to disclose it or not and there is, therefore, possibility of such transactions being wrapped up and disappearing into oblivion without even surfacing again for the purpose of levy of tax otherwise legally due on such transactions. Therefore, the contention put forward by the respective learned counsel appearing for the writ petitioners that such provision aggravate the Central Sales Tax rate or liability under Section 8(2) of CST Act by TNVAT is unsustainable and therefore, question no. 1 is answered in negative against the writ petitioners."

30. While entertaining question no. (2), namely, whether the impugned provisions are violative of Articles 14, 19(1)(g) and 301 of the Constitution, the High Court pointed out that on this aspect, argument of the assessees was that the words 'rate applicable' employed in

Section 8(2) of the CST Act has to necessarily take into account the effective rate after considering the deductions made under Section 3(3) of the TNVAT Act. It was argued that Section 19(5)(c) of the TNVAT Act, which denied ITC on purchase of goods sold or used in the manufacture of other goods and falls within Section 8(2) of the CST is per se discriminatory. The High Court took note of the scheme of TNVAT Act and found that though Section 3(2) stipulated many taxable transactions, only few such transactions are carved out to give benefit of ITC. After discussing certain judgments of this Court and other High Courts, the High Court has observed that the legal position was that right to claim ITC is not a vested right or an indefeasible right. It is a benefit conferred under the Act in certain contingencies and subject to conditions prescribed in the statutory scheme. Therefore, it is open to the State Legislature to provide for conditions and restrictions while extending the concession. Likewise, it was also necessary for any assessee to claim input credit to fulfill those conditions. Thus, the provision made in the statute that unregistered dealers in other States would not be entitled to ITC was justified. The High Court noted that specific stand of the State Government was that in respect of such unregistered dealers in other states, the State of Tamil Nadu had no mechanism to prevent evasion of tax and loss of revenue caused by trade with such unregistered dealers in the State of Tamil Nadu. This kind of evasion, in the opinion of the High Court, was not violative of the constitutional provisions contained in Articles 14, 19(1)(g) and 301.

31. Mr. Giri, learned senior counsel appearing in some of these appeals pressed into service the same arguments which were advanced before the High Court and attempted to find fault with the approach of the High Court. His submission was that once the tax was paid at an intermediary stage, the dealers could not be denied benefit of claiming credit thereof and Section 19(5)(c) of TNVAT Act went contrary to the visions of CST Act and, therefore, was ultra vires. He referred to the following judgments of this Court in support and, in particular, following portions in those judgments.

(i) *Messrs Govind Saran Ganga Saran vs. Commissioner of Sales Tax and Others*[4]:

"6. The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity.

(ii) Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.:

"70. We think that Parliament fixed the rate of tax on inter-State sales of the description specified in Section 8(2)(b) of the Act at the rate fixed by the appropriate State Legislature in respect of intra-State sales with a purpose, namely, to check

evasion of tax on inter-State sales and to prevent discrimination between residents in one State and those in other States. Parliament thought that unless the rate fixed by the States from time to time is adopted as the rate of tax for inter-State sales of the kind specified in the sub-clause, there will be evasion of tax in inter-State sales as well as discrimination. We have already pointed out in our judgment in Civil Appeals No. 2547-2549 of 1969 and 105-106 of 1970 the objectives which Parliament wanted to achieve by adopting the rate of tax in the appropriate State for taxing the local sales. And for attaining these objectives Parliament could not have fixed the rate otherwise than by incorporating the rate to be fixed from time to time by the appropriate State Legislature in respect of local sales. It may be noted that in so far as inter-State sales are concerned, the Central Sales Tax Act, by Section 9(2) has adopted the law of the appropriate State as regards the procedure for levy and collection of the tax as also for imposition of penalties.

71. There can be no doubt that Parliament can repeal the provisions of Section 8(2)(b) adopting the higher rate of tax fixed by the appropriate State Legislature in respect of intra-State sales. If Parliament can repeal the provision, there can be no objection on the score that Parliament has abdicated its legislative function. It retains its control over the fixation of the rate intact. In other words, so long as Parliament can repeal the provisions of Section 8(2)(b) adopting the higher rate of tax fixed by the State Legislatures, it has not abdicated its legislative function. As already stated, this point has been expressly decided by the *Privy Council in Cobb & Co. Ltd. v.Kropp*[5].”

32. Mr. S.K. Bagaria, learned senior counsel appearing in the Civil Appeal arising out of SLP(Civil) No. 9326 of 2015, submitted that the appellant/dealer in this case was making supplies only to the Government and, therefore, there was no reason to nurture any apprehension that there would be evasion of tax. He also submitted that this dealer had sales in Tamil Nadu and Karnataka wherein it was stated that the appellant had effected sales to Karnataka State Government covered under Section 8(2) of the CST Act. However, the appellant was not entitled to ITC as per Section 18(5)(c) of the TNVAT Act but had not declared reversal of ITC. Hence, the reversal of ITC was proposed and the appellant was called upon to file objections, if any, thereto. In its reply to the said show cause notice the appellant pointed out that the VAT laws were introduced by different states from the year 2005. Tamil Nadu enacted TNVAT Act from January 01, 2007. While so, by the Taxation Laws (Amendment) Act, 2007, the sales to Government departments against ‘D’ form was abolished and such sales to Government departments fell under Section 8(2) of the CST Act. Therefore, when VAT Act was introduced, sales to Government departments fell under Section 8(1) of the CST Act and only sales to unregistered dealers or non-dealers fell under Section 8(2) of the Act. Therefore, the effect was that sales to Government departments outside the State would fall under Section 8(2) of the CST Act. It was also submitted that retention of provision such as Section 19(5)(c) of the VAT Act to completely deny the ITC in respect of sales to Central and State Government departments outside the State was causing unintended hardship. Mr. Bagaria also submitted that the two reasons which were given by the respondents before the High Court to deny ITC were:

(i) Where sales are made to a registered dealer on filing of Form 'C' declaration, the entire transaction goes into the mainstream and thereby automatically comes to the net of the transaction in the purchasing State, where applicable. On the other hand, if sales are made to other than the registered dealers, it is the option of the purchasing dealer concerned to disclose it or not to disclose it. Therefore, there was a possibility of such transaction being wrapped up and disappearing into oblivion without even surfacing again for the purpose of levy of tax otherwise legally due.

(ii) As regards unregistered dealers in other States, the State of Tamil Nadu has no mechanism to prevent evasion of tax and loss of revenue caused by trade with such unregistered dealers outside its territory.

33. Submission of Mr. Bagaria was that both these reasons were inapplicable in the case of the appellant where the sales were to the Government of Karnataka. Referring to Section 19(4) of TNVAT Act, Mr. Bagaria argued that situations mentioned therein were those where the Tamil Nadu Government was not getting any tax. Likewise, as per Section 4 of the CST Act situs of such sales would be Tamil Nadu, even when goods go out of the State. In such an eventuality, State gets its share of tax by virtue of Article 269 of the Constitution.

34. He also referred to the insertion of sub-clause (v) to sub-section (2) of Section 19 which provision now enables getting of ITC in those cases also where sale in the course of inter-State trade or commerce falls under Section 8(1) and (2) of the CST Act. In this scenario, according to him, Section 19(5)(c) would apply when there were inter-State sales at the time of incorporation. In support of this submission, he referred to the following two judgments:

(i) *Bolani Ores Ltd. vs. State of Orissa*[5]

"29. The question then remains as to whether these vehicles though registrable under the Act are motor vehicles for the purpose of the Taxation Act. It has already been pointed out that before the amendment vehicles used solely upon the premises of the owner, though they may be mechanically propelled vehicles adapted for use upon roads were excluded from the definition of 'motor vehicle'. If this definition which excludes them is the one which is incorporated by reference under Section 2(c) of the Taxation Act, then no tax is leviable on these vehicles under the Taxation Act. Shri Tarkunde for the State of Orissa contends that the definition of 'motor vehicle' in Section 2(c) of the Taxation Act is not a definition by incorporation but only a definition by reference, and as such the meaning of 'motor vehicle' for the purpose of Section 2(c) of the Taxation Act would be the same as defined from time to time under Section 2(18) of the Act. In ascertaining the intention of the legislature in adopting the method of merely referring to the definition of 'motor vehicle' under the Act for the purpose of the Taxation Act, we have to keep in mind its purpose and intendment as also that of the Motor Vehicles Act. We have already stated what these purposes are and having regard to them the registration of a motor vehicle does not automatically make it liable for taxation under the Taxation Act. The Taxation Act is a regulatory measure imposing compensatory taxes for the purpose of raising revenue

to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. The validity of the taxing power under Entry 57 List II of the Seventh Schedule read with Article 301 of the Constitution depends upon the regulatory and compensatory nature of the taxes. It is not the purpose of the Taxation Act to levy taxes on vehicles which do not use the roads or in any way form part of flow of traffic on the roads which is required to be regulated. The regulations under the Motor Vehicles Act for registration and prohibition of certain categories of vehicles being driven by persons who have no driving licence, even though those vehicles are not plying on the roads, are designed to ensure the safety of passengers and goods etc. etc. and for that purpose it is enacted to keep control and check on the vehicles. Legislative power under Entry 35 of List III (Concurrent List) does not bar such a provision. But Entry 57 of List II is subject to the limitations referred to above, namely, that the power of taxation thereunder cannot exceed the compensatory nature which must have some nexus with the vehicles using the roads viz. public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed. This very concept is embodied in the provisions of Section 7 of the Taxation Act as also the relevant sections in the Taxation Acts of other States, namely, that where a motor vehicle is not using the roads and it is declared that it will not use the roads for any quarter or quarters of a year or for any particular year or years, no tax is leviable thereon and if any tax has been paid for any quarter during which it is not proposed to use the motor vehicle on the road, the tax for that quarter is refundable. If this be the purpose and object of the Taxation Act, when the motor vehicle is defined under Section 2(c) of the Taxation Act as having the same meaning as in the Motor Vehicles Act, 1939, then the intention of the Legislature could not have been anything but to incorporate only the definition in the Motor Vehicles Act as then existing, namely, in 1943, as if that definition was bodily written into Section 2(c) of the Taxation Act. If the subsequent Orissa Motor Vehicles Taxation (Amendment) Act, 1943, incorporating the definition of ‘motor vehicle’ referred to the definition of ‘motor vehicle’ under the Act as then existing, the effect of this legislative method would, in our view, amount to an incorporation by reference of the provisions of Section 2(18) of the Act in Section 2(c) of the Taxation Act. Any subsequent amendment in the Act or a total repeal of the Act under a fresh legislation on that topic would not affect the definition of ‘motor vehicle’ in Section 2(c) of the Taxation Act. This is a well-accepted interpretation both in this country as well as in England which has to a large extent influenced our law. This view is further reinforced by the use of the word ‘has’ in the expression "has the same meaning as in the Motor Vehicles Act, 1939” in Section 2(c) of the Taxation Act, which would perhaps further justify the assumption that the Legislature had intended to incorporate the definition under the Act as it then existed and not as it may exist from time to time. This method of drafting which adopts incorporation by reference to another Act whatever may have been its historical justification in England in this country does not exhibit an activists draftsmanship which would have adopted the method of providing its own definition. Where two Acts are complimentary or interconnected, legislation by reference may be an easier method because a definition given in the one Act may be made to do as the definition in the other Act both of which being enacted by the

same Legislature. At any rate, Lord Esher, M.R. dealing with legislation by incorporation, in In re. Wood's Estate [(1886) 31 Ch D 607] said at p. 615:

"If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have these clauses in the later Act, you have no occasion to refer to the former Act at all."

The observations in Clarke v. Bradlaugh [(1881) 8 QBD 63 607] are also to the same effect. Brett, L.J. in that case had said at p. 69:

"... there is a rule of construction that, where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third statute does not affect the second."

30. In *Secretary of State for India in Council v. Hindusthan Cooperative Insurance Society Ltd*[6].:

132 IC 748 : LR 58 IA 259] the Privy Council was considering a case where the incorporation effected in the statute viz. the Calcutta Improvement Trust Act, 1911 — referred to by their Lordships as the "Local Act" — was in express terms and in the form illustrated by 54 and 55 Vict., Ch. 19. The "Local Act" in dealing with the acquisition of land for the purposes designated by it, made provision for the acquisition under the Land Acquisition Act, and the provisions of the Land Acquisition Act were subjected to numerous modifications which were set out in the Schedule, so that in effect the "Local Act" was held to be the enactment of a Special Law for the acquisition of land for the special purpose. It was in the context of these and several other provisions which pointed to the absorption of certain of the provisions of the Land Acquisition Act into the "Local Act" with vital modifications that Privy Council observed at p. 266:

"But Their Lordships think that there are other and perhaps more cogent objections to this contention of the Secretary of State, and their Lordships are not prepared to hold that the sub-section in question, which was not enacted till 1921, can be regarded as incorporated in the Local Act of 1911. It was not part of the Land Acquisition Act when the Local Act was passed, nor in adopting the provisions of the Land Acquisition Act is there anything to suggest that the Bengal Legislature intended to bind themselves to any future additions which might be made to that Act.

It is at least conceivable that new provisions might have been added to the Land Acquisition Act which would be wholly unsuitable to the local code. Nor again, does Act 19 of 1921 contain any provision that the amendments enacted by it are to be treated as in any way retrospective, or are to be regarded as affecting any other enactment than the Land Acquisition Act itself. Their Lordships regard the Local Act

as doing nothing more than incorporating certain provisions from an existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt."

It was further observed at p. 267:

> "In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second: see the cases collected in Craies on Statute Law, 3rd Edn. pp. 349-50. This doctrine finds expression in a common-form section which regularly appears in the amending and repealing Acts which are passed from time to time in India .... The independent existence of the two Acts is therefore recognized; despite the death of the parent Act, its off-spring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as applicable in India as it is in this country.
>
> It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition."

This Court in the Collector of Customs, Madras v. Nathella Sampathu Chetty [AIR 1962 SC 316 : (1962) 3 SCR 786, 830-833 : (1962) 1 Cr LJ 364] considered the Privy Council decision in the Hindustan Cooperative Insurance Society Ltd. and distinguished that case and held the principle inapplicable to the facts of that case.

31. In State of Bihar v. S.K. Roy [AIR 1966 SC 1995 : 1966 Supp SCR 259 : (1966) 2 LLJ 759] this Court was considering the definition of "employer" in Section 2(e) of the Coal Mines Provident Fund and Bonus Schemes Act, 1948, where that expression was defined to mean "the owner of a coal mine as defined in clause (g) of Section 3 of the Indian Mines Act, 1923". The Indian Mines Act, 1923, had been repealed and substituted by the Mines Act, 1952 (Act 35 of 1952). In the latter Act the word "owner" had been defined in clause (1) of Section 2. The question was whether by virtue of Section 8 of the General Clauses Act, the definition of the word "employer" in clause (e) of Section 2 of the Coal Mines Provident Fund and Bonus Schemes Act should be construed with reference to the definition of the word, "owner" in clause (1) of Section 2 of Act 35 of 1952, which repealed the earlier Act and re¬enacted it. It may be mentioned that according to Section 2(1) of Act 35 of 1952 the word "owner", when used in relation to a mine, means "any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver...." The expression "coal mine" is separately defined in clause (b) of Section 2 of the Coal Mines Provident Fund and Bonus Schemes Act, 1948. Ramaswami, J. speaking for the Court observed at p. 261:

> "As a matter of construction it must be held that all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to a coal mine will come within the scope and ambit of the definition only when they belong to the coal mine. In other words, the word or occurring before the expression 'belonging to a coal mine' in the main definition has to be read to mean 'and'."

This case, as well as the decision in New Central Jute Mills Co. Ltd. v. Assistant Collector of Central Excise, Allahabad [(1970) 2 SCC 820 : (1971) 2 SCR 92] are distinguishable on the facts and legislation which this Court was considering. In the New Central Jute Mills Co. Ltd. case, the Privy Council decision in the Hindusthan Cooperative Insurance Society Ltd. case was referred to and distinguished. It is, however, contended by the learned Solicitor General that both in Nathella Sampathu Chetty case as well as the New Central Jute Mills Co. Ltd. case this Court was considering the effects of the two Acts which were made by Parliament by Central legislation and it is, therefore, not strictly a case of incorporation because the Central Legislature is deemed to have, while making the latter enactment, kept in view the provisions of the former Act. In our view this may not be conclusive.

32. In Ram Sarup v. Munshi [AIR 1963 SC 553 : (1963) 3 SCR 858] a judgment of the Bench of five Judges of this Court held that the repeal of the Punjab Alienation of Land Act, 1900, had no effect on the continued operation of the Punjab Pre-emption Act, 1913, and that the expression "agricultural land" in the later Act had to be read as if the definition of the Alienation of Land Act had been bodily transposed into it. After referring to the observations of Brett, L.J. in Clarke case, Rajagopala Ayyangar, J. speaking for the Court observed at pp. 868-69:

> "Where the provisions of an Act are incorporated by reference in a later Act the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which its provisions have been incorporated. In the circumstances, therefore, the repeal of the Punjab Alienation of Land Act of 1900 has no effect on the continued operation of the Pre-emption Act and the expression 'agricultural land' in the later Act has to be read as if the definition in the Alienation of Land Act had been bodily transposed into it."

The above decision of this Court is more in point and supports our conclusion. In our view, the intention of Parliament for modifying the Motor Vehicles Act has no relevance in determining the intention of the Orissa Legislature in enacting the Taxation Act. Apart from this aspect of the power of taxation, as we have said earlier, is not in the Concurrent List III but in List II and construed as a taxation measure we cannot extend the ambit of it by mere implication. As we said it is possible for both the Acts to co-exist even after the definition of 'motor vehicle' in the Act has been amended. It is, therefore, clear that the definition of 'motor vehicle' as existing prior to 1956 Amendment would alone be applicable as being incorporated in the Taxation Act."

The principle laid down in Mahindra and Mahindra Ltd. Vs. Union of India and Another is to the same effect.

35. His second submission was that Section 19(5)(c) and Rule 10(9) (c)were violative of Article 14 of the Constitution as there was no rational nexus with the objective sought to be achieved. He reiterated that when the purpose behind such a provision is only to check evasion, and there was no such apprehension in the case of sales to State Government, benefit of ITC could not be denied wherever dealers were making sales to the Government.
He further argued that when benefit of ITC is given even when sales are made outside the State but to a registered dealer, then why it should not be accorded on sales that are made to the Government as well as by treating the sales to outside State Government at par with the sales to the registered dealers. It was sought to be justified on the ground that insofar as the State Government is concerned, though it is treated as a dealer, no registration is required since the State Governments are not obliged to get themselves registered under the TNVAT Act. The only problem was that because of this the State Government is not in a position to give 'C' form. ITC to the appellant was denied only for not furnishing 'C' form. For this proposition, apart from relying upon the celebrated judgment in the case of D.S. Nakara and Others vs. Union of India , Mr. Bagaria also relied upon the judgment of this Court in Union of India and Others vs. N.S. Rathnam and Sons in the following manner:

> "12. The judgment of this Court in Kasinka Trading case [(1995) 1 SCC 274] , no doubt, lays down the principle that there is wide discretion available to the Government in the matter of granting, curtailing, withholding, modifying or repealing the exemptions granted by earlier notifications. It is also correct that the Government is not bound to grant exemption to anyone to which it so desires. When the duty is payable under the provisions of the Act, grant of exemption from payment of the said duty to particular class of persons or products, etc. is entirely within the discretion of the Government. This discretion rests on various factors which are to be considered by the Government as these are policy decisions. In the present case, however, the issue is not of granting or not granting the exemption. When the exemption is granted to a particular class of persons, then the benefit thereof is to be extended to all similarly situated persons. The notification has to apply to the entire class and the Government cannot create sub¬classification thereby excluding one sub-category, even when both the sub-categories are of same genus. If that is done, it would be considered as violating the equality clause enshrined in Article 14 of the Constitution. Therefore, judicial review of such notifications is permissible in order to undertake the scrutiny as to whether the notification results in invidious discrimination between two persons though they belong to the same class. In *Aashirwad Films v. Union of India*[7], this aspect has been articulated in the following manner:
>
> (SCC pp. 628-29, paras 9-12)
>
> "9. The State undoubtedly enjoys greater latitude in the matter of a taxing statute. It may impose a tax on a class of people, whereas it may not do so in respect of the other class.

10.A taxing statute, however, as is well known, is not beyond the pale of challenge under Article 14 of the Constitution of India.

11. In Chhotabhai Jethabhai Patel & Co. v. Union of India [AIR 1962 SC 1006], it was stated: (AIR p. 1021, para 37)

'37. But it does not follow that every other article of Part III is inapplicable to tax laws. Leaving aside Article 31(2) that the provisions of a tax law within legislative competence could be impugned as offending Article 14 is exemplified by such decisions of this Court as Suraj Mall Mohta & Co. v. A.V. Visvanatha Sastri [AIR 1954 SC 545 : (1955) 1 SCR 448] and Shree Meenakshi Mills Ltd. v. A.V. Visvanatha Sastri [AIR 1955 SC 13 : (1955) 1 SCR 787] . In K.T. Moopil Nair v. State of Kerala [AIR 1961 SC 552] the Kerala Land Tax Act was struck down as unconstitutional as violating the freedom guaranteed by Article 14. It also goes without saying that if the imposition of the tax was discriminatory as contrary to Article 15, the levy would be invalid.'

12. A taxing statute, however, enjoys a greater latitude. An inference in regard to contravention of Article 14 would, however, ordinarily be drawn if it seeks to impose on the same class of persons or occupations similarly situated or an instance of taxation which leads to inequality. The taxing event under the Andhra Pradesh State Entertainment Tax Act is on the entertainment of a person. Rate of entertainment tax is determined on the basis of the amount collected from the visitor of a cinema theatre in terms of the entry fee charged from a viewer by the owner thereof."

14. What follows from the above is that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that, that differential must have a rational relation to the object sought to be achieved by the statute in question. If the Government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory.

In *Sube Singh v. State of Haryana*[8], this aspect is highlighted by the Court in the following manner: (SCC p. 548, para 10)

"10. In the counter and the note of submission filed on behalf of the appellants it is averred, inter alia, that the Land Acquisition Collector on considering the objections filed by the appellants had recommended to the State Government for exclusion of the properties of Appellants 1 and 3 to 6 and the State Government had not accepted such recommendations only on the ground that the constructions made by the appellants were of 'B' or 'C' class and could not be easily amalgamated into the developed colony which was proposed to be built. There is no averment in the pleadings of the

respondents stating the basis of classification of structures as 'A', 'B' and 'C' class, nor is it stated how the amalgamation of all 'A' class structures was feasible and possible while those of 'B' and 'C' class structures was not possible. It is not the case of the State Government and also not argued before us that there is no policy decision of the Government for excluding the lands having structures thereon from acquisition under the Act. Indeed, as noted earlier, in these cases the State Government has accepted the request of some landowners for exclusion of their properties on this very ground. It remains to be seen whether the purported classification of existing structures into 'A', 'B' and 'C' class is a reasonable classification having an intelligible differentia and a rational basis germane to the purpose. If the State Government fails to support its action on the touchstone of the above principle, then this decision has to be held as arbitrary and discriminatory. It is relevant to note here that the acquisition of the lands is for the purpose of planned development of the area which includes both residential and commercial purposes. That being the purpose of acquisition, it is difficult to accept the case of the State Government that certain types of structures which according to its own classification are of 'A' class can be allowed to remain while other structures situated in close vicinity and being used for same purposes (residential or commercial) should be demolished. At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures on the lands proposed to be acquired. This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with RC roofing, mosaic flooring, etc. No attempt was also made from the side of the State Government to place any architectural plan of different types of structures proposed to be constructed on the land notified for acquisition in support of its contention that the structures which exist on the lands of the appellants could not be amalgamated into the plan."

36. The learned Advocate General, in reply to the aforesaid arguments, submitted that the High Court had repelled these contentions in its well reasoned judgment by referring to the law laid down in various judgments of this Court. He also submitted that a recent judgment pronounced by this Court in the case of *Jayam and Company vs. Assistant Commissioner and Another*[9] fully covers the case against the appellants. Specifically refuting the argument that Section 19(5)(c) of the Act will only apply when there were inter-State sales at the time of incorporation, he submitted that Section 19(5)(c) as well as Section 8(2) remain unchanged as there were no amendments therein. Only Section 8(1) was amended vide Taxation Laws (Amendment) Act, 2007. The purpose thereof was reflected in the objects and reasons thereto as follows:-

"2. CST being an origin-based tax is inconsistent with VAT (which is a destination-based tax). Moreover, CST results in cascading of tax (i.e. tax on tax), since it is not rebatable against VAT. In view of these factors, there has been a consensus that the CST should be phased out. This is also a pre-requisite for introduction of an integrated Goods and Services Tax (GST), which the Government purposes to introduce by 1st April, 2010. The issue of phasing out of the CST has been deliberated upon for over a decade. The Empowered Committee of State Finance

Ministers (EC), constituted by the Government of India, has been making efforts in this direction since July, 2000. Finally, after a series of meetings, a consensus has been arrived at between the Central Government and the State Governments on the roadmap for phasing out of the CST as also on the package of compensation to the States for revenue loss on this account.

3. Accordingly, it is proposed to phase out the CST in 4 steps, i.e., reducing the CST rate from 4% to 3% w.e.f. 1st April, 2007, from 3% to 2% w.e.f. 1st April, 2008, from 2% to 1% w.e.f.1st April, 2009 and eventually abolishing the tax on 31st March, 2010. An integrated national Goods and Services Tax (GST) is proposed to be introduced w.e.f. 1st April, 2010. The agreed package for compensation to the States for revenue loss on account of phasing out of the CST shall consist of non-monetary measures as well as monetary measured.

4. The implementation of the above proposals requires the amendment of the CST Act as also the Additional Duties of Excise (Goods of Special Importance) Act, 1957... "

37. Insofar as argument of the appellant predicated on Article 14 is concerned, reply of the learned Advocate General was that a reading of Section 8(1) of the CST Act would show that classification is contained in the Central Act itself which treats sale to a registered dealer outside the State in one category and sale to an unregistered dealer outside the State in a different category. This provision contained in Section 8(1) of the CST Act never underwent any change. Therefore, those sales which were made to unregistered dealers outside the State were constituted a different class and, thus, provisions contained in Section 19(5) (c) to deny ITC on such sales was perfectly justified based on reasonable classification.

38. After considering the respective submissions and going through the case law that is presented before this Court, it would be apt to remark at the outset that most of the contentions of the appellants stand answered by the judgment of this Court in Jayam and Company. That case also pertains to the TNVAT Act. The issue was as to whether sub-section (20) of Section 19 of the TNVAT Act, which was brought into this statute by Amendment Act 22 of 2013, could be given retrospective effect. Sub-section (20) of Section 19 reads as under:

"S. 19(20) Notwithstanding anything contained in this section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed."

39. Thus, this case also concerned the same provision, namely, Section 19 of the TNVAT Act, though the issue raised was not the same which has arisen for consideration in these appeals. However, while answering the aforesaid question, the ITC scheme contained in Section 19 of the TNVAT Act was gone into and discussed at length. After reproducing Section 19, attributes of this provision were taken note of in the following manner:

"11. From sub-section (10) onwards, provisions are made to follow the procedure and fulfill the requisite conditions for availing ITC. For the purposes of this particular issue, sub-section (10) is the material provision. This provision, which is couched in negative terms, categorically stipulates that such ITC would be admissible to the registered dealer and a/w connected matters he would not be entitled to claim this credit 'until the dealer receives an original tax invoice duly filled, signed and issued by a registered dealer from where the goods are purchased '. Further, such original tax invoice should evidence the amount of input tax. So much so, even if the original tax invoice is lost, the obligation cast on the registered dealer is to obtain duplicate or carbon copy of such tax invoice from the selling dealer and only then input tax is allowed.

From the aforesaid scheme of Section 19 following significant aspects emerge:-

(a) ITC is a form of concession provided by the Legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.

(b) Concession of ITC is available on certain conditions mentioned in this Section.

(c) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax.

12. It is a trite law that whenever concession is given by statute or notification etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the 'dealers' to get the benefit of ITC but its a concession granted by virtue of Section 19. As a fortiorari, conditions specified in Section 10 must be fulfilled. In that hue, we find that Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it is not permissible for the dealers to argue that the price as indicated in the tax invoice should not have been taken into consideration but the net purchase price after discount is to be the basis. If we were dealing with any other aspect do hors the issue of ITC as per the Section 19 of the VAT Act, possibly the arguments of Mr. Bagaria would have assumed some relevance. But, keeping in view the scope of the issue, such a plea is not admissible having regard to the plain language of sections of the VAT Act, read along with other provisions of the said Act as referred to above.

13. For the same reasons given above, challenge to constitutional validity of sub-section (20) of Section 19 of VAT Act has to fail. When a concession is given by a statute, the Legislature has power to make the provision stating the form and manner in which such concession is to be allowed. Sub-section (20) seeks to achieve that. There was no right, inherent or otherwise, vested with dealers to claim the benefit of ITC but for Section 19 of the VAT Act. That apart, we find that there were valid and cogent reasons for inserting Section 19(20). Main purport was to protect the Revenue against clandestine transactions resulting in evasion of tax. High Court has discussed

this aspect in detail and our task would be accomplished in reproducing those paras as we are concurring with the discussion:

> "64. Let us now point out the background/reasons for inserting Section 19(20) by Amendment Act 22 of 2010, by referring to the Chart, the sample instance is detailed in the Chart in paragraph (34). Let us recapitulate the entries in the Chart. Based on the sale price, i.e., Rs. 36,780/- in the tax invoice, an amount of Input Tax Credit, i.e., Input Tax Credit of Rs. 4m597.50 was available to the petitioner when he re-sells goods. Based on the Credit Note, the same goods are re-sold within the State at a lesser price than what was purchased, i.e., Rs. 33,777.78 (taking into account discount price, there is a profit margin for the dealer) and thereby the output tax payable to the Government is reduced, leaving excess Input Tax Credit at the hands of the dealer. The said excess credit in the hands of the dealer might be adjusted to their other liabilities or might claim refund of the said excess Input Tax Credit. Taking excess Input Tax Credit and later in the guise of credit note giving discount and reducing the price of the goods which reduces the Output tax payable to the Government dwindles State revenue.

65. Learned Advocate General contended that seller and buyer coalition is issuing purchase invoice at an escalated price thereby taking benefit of excess Input Tax Credit and later in the guise of credit notes giving discount, reduced the price of the same goods and thereby reducing the output tax payable to the Government creates a dent of the State revenue. Learned Advocate General further submitted that excess Input Tax Credit available in the hands of the dealer is being adjusted to their other liabilities and the dealer might also make a claim of refund of Input Tax Credit as per Section 19(18) of the Act which were ultimately resulted in creating dent on the State revenue.

66. To contend as to how the so called discount and reduction of sale price caused revenue loss to the Government, the learned Advocate General has drawn our attention to the illustration stated in paragraph (6) of the counter which reads as under:-

> " Purchase price of 10 Washing Macines Tax paid on purchase at 12.5% (ITC allowed)
> Sale price after discount tax payable on sales at 12.5% Excess ITC available (Difference between ITC and Output Tax)
> Excess ITC Adjusted ... Rs. 1,00,000/-
> Rs···12,500/¬
> Rs···.75,000/¬
> Rs···.9,375/-
> ... Rs. 3,125/¬Rs. 12,500 - Rs.9,375 ... Rs. 3,125/-"

67. As rightly contended by the learned Advocate General, the "Input Tax Credit" adjusted in the above illustration comes to Rs. 3,125/- in a single transaction and that it would run to

several lakhs and crores for a year for a single dealer. The excess Input Tax Credit earned by the petitioners is being adjusted against the outstanding tax due or carried forward to next year or refunded. If this trend is allowed to continue, the concept of VAT that meant for payment of tax on every value addition gets defeated.

68. In order to protect the revenue and with a vie to curb the clandestine transactions resulting in evasion of tax, in respect of second and subsequent sales, Section 19(20)was introduced, where any dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of "Input Tax Credit" over and above the output tax of those goods, shall be reversed.

69. Constitutional Validity of fiscal legislation:- When there is a challenge to the constitutional connected matters of validity of the provisions of a Statute, Court exercising power of judicial review must be conscious of the limitation of judicial review must be conscious of the limitation of judicial intervention, particularly, in matters relating to the legitimacy of the economic or fiscal legislation. While enacting fiscal legislation, the Legislature is entitled to a great deal of latitude. The Court would interfere only where a clear infraction of a constitutional provision is established. The burden is on the person, who attacks the constitutional validity of a statute, to establish clear transgression of constitutional principle. Observing that the law relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc., in *R.K. Garg vs. Union of India*[10], this Court held as under:

40. In another judgment in *ALD Automotive Pvt. Ltd. & Anr. v. The Commercial Tax Officer & Ors*[11]. pronounced in today's date, the scheme of this very provision is discussed again in detail to the same effect.

41. It is very clear from the aforesaid discussion that this Court held that ITC is a form of concession which is provided by the Act; it cannot be claimed as a matter of right but only in terms of the provisions of the statute; therefore, the conditions mentioned in the aforesaid Section had to be fulfilled by the dealer; and sub-section (20) of Section 19 was constitutionally valid. It was also noted, in the process, that there were valid and cogent reasons for inserting that provision and the main purpose was to protect the Revenue against clandestine transaction resulting in invasion of tax.

42. The reasoning given in that judgment while upholding sub-section (20) of Section 19 shall equally apply while examining the validity of Section 19(5)(c) thereof. The High Court has noted the specific stand taken by the State Government to the fact that in respect of unregistered dealer in other States, the State of Tamil Nadu has no mechanism to prevent invasion of tax and loss of revenue cost by trade with such unregistered dealers in the State of Tamil Nadu. Therefore, the provision was aimed at achieving a specific and justified purpose and could not be treated as discriminatory.

43. It is stated at the cost of repetition that Section 19 of TNVAT Act deals with ITC. It incorporates provision for grant of ITC under certain circumstances and, at the same time,

also lays down the conditions in which such ITC would be admissible. It is in this context sub-section (5) of Section 19 is to be analysed. Sub-section (5) stipulates certain contingencies where such ITC would not be admissible. There is no quarrel about clauses (a) and (b). We are only concerned with clause (c) of this sub-section which provides that ITC would not be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce falling under sub-section (2) of Section 8 of the Central Sales Tax Act. To put it tersely, sale by a dealer who is registered in the State of Tamil Nadu which is effected outside the State of Tamil Nadu will qualify for ITC only when the said sale is made to a registered dealer. If it is to an unregistered dealer, it would not be admissible. This classification is based on intelligible differentia having a proper rationale. Insofar sales to unregistered dealers are concerned, that too situated outside the State of Tamil Nadu, the State would not have any mechanism to find out the genuineness of these sales. In essence, the State is putting the condition that ITC would be admissible when Form 'C' is given, which can be given only in those cases where sale is to a registered dealer. Prescribing such a condition in order to ensure that there is no evasion, has a rationale purpose and objective. Consideration of this aspect in the context of the very nature of the ITC scheme, which is a concession and not a right, would lead us to the conclusion that it was open to the Legislature to make such a provision.

44. In view of the aforesaid discussion, we do not find any merit in the contentions raised by Mr. Giri. The judgments cited by him would have no application either.

45. One argument of Mr. Bagaria, however, needs little deeper consideration. He has argued that the appellant represented in his case is making sales only to the State of Karnataka. In such a case, there cannot be any apprehension about evasion of tax.

46. Section 2(15) defines the term 'dealer' and includes State Government as well by means of Explanation II which reads as under:

> "Explanation II: The Central Government or any State Government which, whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act." not apply to any State Government or Central Government. A conjoint reading of the aforesaid two provisions would show that when a sale is made to the State of Karnataka, it is made to a dealer but that dealer is under no obligation to get itself registered under the TNVAT Act. Because of this exemption, no State Government does that and since it is not a registered dealer, it would not be in a position to issue any Form C. But for that, the genuineness of sales made to a State Government cannot be doubted. This situation puts those dealers who are making sales to the State Government in disadvantageous position, even when it is clear that there is no possibility of tax evasion as there cannot be any such apprehension in case of sales to the State Government. We may point out here that benefit of ITC is given whenever sale is made to a dealer outside State of Tamil Nadu and the said dealer is a registered dealer.

48. Having regard to the above, we are of the opinion that the provisions of Section 19(5)(c) are to be read down by construing that those dealers who are making sales exclusively to the other State Governments (i.e. outside the State of Tamil Nadu), the said States would be deemed as registered dealers for the purposes of availing benefits of ITC. Otherwise, in such a situation, it would be difficult to hold that test of reasonable classification is met in this limited context. It becomes unnecessary to deal with other contentions of Mr. Bagaria.

49. Result of the aforesaid discussion would be to uphold the judgment of the High Court with one rider, namely, that in those cases where a dealer makes sales exclusively to the other State Government(s), benefit of ITC would be allowed without insisting on the furnishing of Form 'C'. However, in order to avail this benefit, a certificate from said the State Government to whom the supplies are made would be obtained by the dealer claiming ITC and submitted to the VAT authorities.

50. As a consequence, we allow Civil Appeal arising out of SLP(Civil) No. 9326 of 2015 to the extent indicated above and other appeals are dismissed with cost.

Judgment Referred.

[1]*AIR 1969 SC 0147*
[2]*(1974) 33 STC 0200 (SC)*
[3]*(1974) 4 SCC 0098*
[4]*(1985) Supp. SCC 0205*
[5]*(1974) 2 SCC 0777*
[6]*(1979) 2 SCC 0529*
[7]*(1983) 1 SCC 0305*
[8]*(2015) 10 SCC 0681*
[9]*(2016) 15 SCC 0125*
[10]*(1981) 4 SCC 0675*
[11]*SLP(Civil) Nos.36112-36113 of 2013*