BOMBEY HIGH COURT

Hindustan Lever Ltd

Vs.

State of Maharashtra

Writ Petition Nos. 477, 587 and 924 of 1990

(S.P. Bharucha and B.N. Sridrishna, JJ.)

28.08.1990

JUDGEMENT

S.P. Bharucha, J.

1. These three writ petitions challenge the constitutionality of Maharashtra Ordinance No. 9 of 1989, and the Maharashtra Act No. 2 of 1990 which replaced it. They have been heard and can be disposed of together.

2. The petitioners in each writ petition manufacture, inter alia, vanaspati in the State of Maharashtra and, for the purpose, purchase vegetable non-essential oil within the State. They dispatch and sell vanaspati, inter alia, outside the State.

3. Maharashtra Act No. 28 of 1982 introduced with effect from July 1, 1982 section 13AA into the Bombay Sales Tax Act, 1959 ("the said Act"). The provision, which we shall call "the old section 13AA", purported to levy an additional purchase tax on goods specified in Part I of Schedule C of the said Act when the dealer who purchased them used such goods in the manufacture of taxable goods and dispatched the same outside the State. The petitioner challenged the constitutionality of the old section 13AA by writ petitions filed in this Court. These writ petitions were dismissed *Wipro Products Limited v. State of Maharashtra*[1]The petitioners preferred appeals to the Supreme Court. Special leave to appeal was granted. Stay of recovery of penalty was ordered by the Supreme Court at the interim stage. It was stated also that if the petitioners succeeded in the appeals the amount of the additional purchase tax and interest recovered from them would be refunded with interest at the rate of 12 per cent per annum. The appeals were allowed on October 19, 1989 ([1990] 76 STC 71). Before refunds as ordered were made, Maharashtra Ordinance No. 9 of 1989 introduced a new section 13AA into the said Act effective from July 1, 1982. The said Ordinance also sought to validate recoveries made in pursuance of the old section 13AA. These petitions were filed to challenge the said Ordinance

and were amended to challenge Maharashtra Act No. 2 of 1990, which replaced it. At the interim stage (See [1990] 78 STC 114.) of the writ petitions the validating provision was stayed, refund as ordered by the Supreme Court was directed and the petitioners were given liberty to pay tax under the new section 13AA under protest, such payments to be subject to the outcome of the petitions and refundable with

[1][1989] 72 STC 69

interest at the rate of 12 per cent per annum in the event of the petitioners succeeding in the petitions. The respondents filed appeals against the interim orders. The Division Bench that heard the appeals directed that the writ petitions them selves should be heard and disposed of very expeditiously by a Division Bench. Accordingly, a Division Bench has heard the writ petitions.

4. It is necessary at the outset to note the provisions of Act No. 2 of 1990 which replaced, in identical terms, Ordinance No. 9 of 1989. Section 1 sets out the short title and states that it shall come into force immediately. Section 2 and 3 read thus :

> "2. Substitution of section 13AA in Bom. LI of 1959. - For section 13AA of the Bombay Sales Tax Act, 1959 (hereinafter referred to as 'the principal Act'), the following section shall be substituted, and shall be deemed to have been substituted with effect from the 1st July 1982, namely :-
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> "13AA. Purchase tax payable on goods in Schedule C, Part I, when manufactured goods are not sold. - (1) Where a dealer, who is liable to pay tax under this Act, purchases any goods specified in Part I of Schedule C, directly or through commission agent, from a person who is or is not a registered dealer and uses such goods in the manufacture of taxable goods, then unless the goods so manufactured are sold by the dealer, there shall be levied, in addition to the sales tax, paid or payable, if any, or as the case may be, the purchase tax levied or leviable, if any, under the other provisions of this Act in respect of purchases of such goods, a purchase tax at the rate of two paise in the rupee on the purchase price of the goods, so used in the manufacture, and accordingly the dealer shall include purchase price of such goods in his turnover of purchases in his return under section 32, which he is to furnish next thereafter.
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> (2) A dealer who becomes liable to pay tax under sub-section (1) shall, unless he has already furnished a return including therein the turnover of such purchases during the period commencing on the 1st July, 1982 and ending on the day immediately preceding the date of commencement of the Bombay Sales Tax (Amendment) Act, 1990, or is exempted from furnishing such return, by a general or special order issued in this behalf by the Commissioner, furnish a consolidated return including therein the turnover of such purchases for the period aforesaid, within a period of three months from the date of the commencement of the said Act.'
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> "3. Validating provisions and saving. - (1) Notwithstanding anything contained in any judgment, decree or order of any court or Tribunal to the contrary, any assessment,

reassessment, levy or collection of tax in respect of purchases effected by any dealer made or purporting to have been made, or any action taken or thing done in relation to such assessment, reassessment, levy or collection, under the provisions of the principal Act during the period commencing on the 1st day of July 1982 and ending on and including the day immediately preceding the date of commencement of this Act, shall be deemed to be as valid and effective as if such assessment, reassessment, levy or collection or action or thing had been duly made, taken or done under the principal Act, as amended by this Act; and accordingly. -

(a) all acts, proceedings or things done or taken by the State Government or by any officer of the State Government or by any other authority in connection with the assessment, reassessment, levy or collection of any such tax, shall, for all purposes be deemed to be, and to have always been done or taken in accordance with law;

(b) no suit, appeal, application or other proceedings shall, lie or be maintained or continued in any Court or before any Tribunal, officer or other authority, for the refund of any tax so paid; and

(c) no Court, Tribunal, officer or other authority shall enforce any decree or order directing the refund of any such tax. ....."

5. It is also necessary at the outset to refer to the relevant constitutional provisions. Entry 54 of List II of the Seventh Schedule to the Constitution empowers the State Legislatures to made laws in respect of "taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I". Entry 92A of List I entitles Parliament to make laws in respect of "taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce". Entry 97 of List I empowers Parliament to make laws in respect of "any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists". With effect from February 2, 1983, entry 92B was introduced in List I. It provides for "taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce". Simultaneously, clause (h) was added to sub-section (1) of article 269 and sub-section (3) to that article was amended. By reason of the introduction of the said clause (h) "taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce" are to be levied and collected by the Government of India but to assigned to the States. By reason of the said sub-section (3) "Parliament of, or consignment of, goods takes place in the course of inter-State trade or commerce."

6. The Supreme Court considered the appeals of the petitioners in respect of the constitutionality of the old section 13AA along with the appeals filed, inter alia, by Goodyear India Ltd., against the State of Haryana, against the orders of the Punjab and Haryana High Court in writ petitions which impugned the constitutionality of section 9 of the Haryana General Sales Tax Act, 1973. Having set out the provisions of the old section 13AA; we shall state the relevant portions of the

Supreme Court judgment (which we shall call "the Goodyear judgment ", first dealing with the old section 13AA and then dealing with section 9 of the Haryana General Sales Tax Act.

The old section 13AA read thus :

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

7. The Supreme Court noted that the question that arose in the petitioners' appeals was whether the levy of additional purchase tax at 2 per cent under the old section 13AA was a tax on purchase falling under entry 54 of List II of the Seventh Schedule or it was a tax on the dispatch of the manufactured goods outside the State. If it was the latter, the State Legislature would have no power to impose it. If it was the former, then it was valid. The question therefore was : upon a true construction of the old section 13AA, on what was the imposition of tax made, or, in other words, what was the incidence of that taxation or the taxable event ? Sales tax could not be imposed unless the goods were actually sold. It was not livable if there was a transfer in some other form. It was, therefore, necessary to ascertain what was the taxable event under the old section 13AA. A taxing event was that event the occurrence of which immediately attracted the levy or the charge of the tax. The effect of the old section 13AA was that the levy was attracted only when the goods which were purchased were used in the manufacture of taxable goods and the goods so manufactured were dispatched by the dealer to his own place of business or his agent's place of business outside the State. Therefore, the incidence of tax was attracted not on the purchase but only when the goods so purchased were used in the manufacture of taxable goods and were dispatched outside the State. What was dispatched was not the raw material which had been purchased on payment of purchase tax but a completely different commodity. If the raw materials as such purchased on payment of purchase tax were dispatched outside the State, the additional tax under section 13AA of the Act was not attracted. Hence, the incidence of the additional tax had no nexus with the purchase of the raw materials. Purchase tax under the said Act was attracted when the taxable event, i.e., the purchase of goods, occurred, but the taxable event for the imposition of the additional tax occurred, but the taxable event for the imposition of the additional tax occurred only when the goods so purchased were used in the

manufacture of taxable goods and such taxable goods were dispatched outside the State by a dealer-manufacturer. The proper question which the court had to address itself to was whether, the old section was, in pith and substance, not levying tax on purchase but one levying tax on purchase but one levying tax on consignment. It was well-settled that while determining the nature of a tax, though the standard or the measure on which the tax was levied might be a relevant consideration, it was not the conclusive consideration. One had to have regard not to the name to the name of the tax but to its real nature, its pith and substance. This determined into which category the tax fell. On an analysis of the old section 13AA, the court found that the goods which were despatched were different from the goods on the purchase of which the purchase of which the purchase tax had been paid. The true test to find out what was the pith and substance of the legislation was to ascertain its true intent. This would determine its validity. The charging event was the event the occurrence of which immediately attracted the charge. The taxable event could not be postponed to the occurrence of a subsequent condition. In that event, it would be the subsequent condition the occurrence of which would attract the charge and would be taxable event. That being so, section 13AA was held to introduce a tax on dispatch and could not be sustained.

8. Clause (b) of sub-section (1) of section 9 of the Haryana Act need only be reproduced to indicate what was under challenge in Goodyear judgment . It read thus :

> "(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 dispatches the manufactured goods to a place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export outside the territory of India within the meaning of sub-section (1) of section 5 of the Central Sales Tax Act, 1956; or"

9. The Supreme Court noted that it was well-settled that what was the taxable event or what necessitated taxation in an appropriate statute had to be found out by construing its provisions. The essential task was to find out what was the taxable event. The essence of a tax on goods manufactured or produced was that the right to levy it accrued by virtue of their manufacture. On the other hand, a duty on the sale of goods could not be levied merely because goods had been manufactured or produced, not could it be levied merely because the goods had been consumed or used or even destroyed. The right to levy the duty did not come into existence before the time of the sale. The main question was whether the tax envisaged by the provision was a tax on the purchase/sale of given goods or a tax on the dispatch/consignment of such goods and that depended on, as to whether the taxable event was the purchase/sale of given goods or the dispatch/consignment of such goods. Analyzing the provision, the court come to the conclusion that the provision did not provide for the imposition of the purchase tax on the transaction of purchase of the taxable goods but where, further, the taxable goods were used up and turned into

independent taxable goods, losing their original identity, and thereafter when the manufactured goods were dispatched outside the State, only then was the tax levied and the liability to pay the tax created. The identification of the subject-matter of the tax was to be found in the charging section. Analyzing the provision, it appeared that the two conditions specified before the event of dispatch outside the State, namely, the purchase of goods in the State and the use of them for the manufacture of other goods in the State, were only descriptive of the goods liable to tax under the provision in the event of their dispatch outside the State. It was necessary in all cases to find out what was the essence of the duty that was attracted. A taxable event was that which was closely related to imposition. In the provision there was such close relationship only with dispatch. Therefore, the goods purchased were used in the manufacture of a new independent commodity and, thereafter, the manufactured commodity was dispatched outside the State. In this series of transactions, when the levy was imposed at the third stage of dispatch after manufacture, the original transaction was completely eclipsed or ceased to exist. The levy had no direct connection with the transaction of purchase of raw materials, it had only a remote connection or lineage. It might be indirectly and very remotely connected with the transaction of purchase of raw material. The levy lost its character of purchase tax on the transaction.

10. Ranganathan, J., added a few words to the judgment that was delivered by Sabyasachi Mukharji, J. Simply stated, he said, section 9 of the Haryana Act and the old section 13AA only purported to levy a purchase tax. The tax became eligible not on the occasion or event of purchase but only later. It materialized only if the purchaser utilized the goods purchased in the manufacture of taxable goods and despatched the goods so manufactured (otherwise than by way of sale) to a place of business situated outside the State. It was one thing or levy a purchase tax where the character and class of goods in respect of which the tax was levied was described in a particular manner and another thing where the tax, though described as a purchase tax, actually became effective with reference to a totally different class of goods and the too only on the happening of an event which was unrelated to the act of purchase. The taxable event was the consignment of the manufactured goods and not the purchase.

11. Against this background of the facts and the law, the first question to which we must address ourselves is : when does the dealer become liable to pay the tax under the new section 13AA. According to Mr. Andhyarujina, learned counsel for the petitioners in Writ Petition No. 477 of 1990, the dealer became liable to pay the tax upon the manufacture, with the use as raw material of goods specified in Part I of Schedule C of the said Act which had been purchased by him, of the taxable goods. According to Mr. Cooper, learned counsel for the petitioners in Writ Petition No. 587 of 1990, and Mr. Kothari, learned counsel for the petitioners in Writ Petition No. 924 of 1990, the tax became payable by the dealer upon the non-sale of the manufactured article, that is, upon the dealer doing some act which made the subsequent sale of the manufactured article within the State an impossibility. Mr. Cooper and Mr. Kothari argued, in the alternative, that the tax became payable upon the manufacture of the manufactured article. According to the learned Government Pleader, the tax became payable upon the non-sale of the manufactured article, i.e.,

upon the dealer doing some act which made the subsequent sale of the manufactured article within the State an impossibility.

12. Shorn of verbiage which is unnecessary in the context, sub-section (1) of the new section 13AA reads thus : "where a dealer who is liable to pay tax under the said Act, purchases any goods specified in Part I of Schedule C and uses such goods in the manufacture of taxable goods, then, unless the goods so manufactured are sold by the dealer, there shall be levied, a purchase tax at the rate of two paise in the rupee on the purchase price of the goods so used in the manufacture". The words "unless the goods so manufactured are sold by the dealer" in the sub-section have to be read in the context of the definition of sale in section 2(28) of the Act. Thereunder sale means a sale of goods made within the State. Reading sub-section (1) of section 13AA accordingly, we are of the view that the charging event under the new section 13AA is the use of goods specified in Part I of Schedule C which have been purchased by the dealer, in the manufacture of taxable goods. The word "then" in the sub-section is of great significance. When does the levy attach ? It attached "then", this is to say, when the dealer "uses the goods in the manufacture of taxable goods". This interpretation is supported by the obligation imposed upon the dealer in the last words of the sub-section, viz., to include the purchase price of such goods in the turnover of purchases in the return which he has to furnish next thereafter. The obligation to pay the tax is relieved if the goods so manufactured are sold by the dealer in the State. This is in the nature of an exemption or defeasance and does not derogate from the principal obligation, which is to pay the tax upon use in manufacture.

13. The words "unless the goods so manufactured are sold by the dealer", it is submitted by the learned Government Pleader, should be considered as imposing the liability to pay the tax. The submission is that the liability rises upon non-sale within the State. Put positively, the liability is said to arise when the dealer does some act which makes the subsequent sale of the manufactured article in the State an impossibility. Upon a plain reading, we find, for reason already stated, the construction unacceptable. Secondly, it does not accord with the obligation imposed upon the dealer to include the purchase price of Schedule C, Part I goods used in the manufacture of taxable goods in the turnover of purchases in the return which he has to furnish next thereafter; the event that renders the subsequent sale of the manufactured article within the State an impossibility may occur long, long after he is required to furnish such return. Thirdly, many acts might be said to render the subsequent sale of the manufactured article in the State an impossibility. The taxable event is, ordinarily, some event rather more certain.

14. But we shall consider whether the levy under the new section 13AA falls within entry 54 of List II on both counts. If, as we are inclined to hold, the liability to pay the tax under the new section 13AA arises upon the use of the purchased Schedule C, Part I goods in the manufacture of taxable goods, the levy would seem to be in the nature of excise. The principle was explained by Sir Maurice Gwyer in the judgment of the Federal Court in Province of *Madras v. Boddu Paidanna & Sons*[2] Duties of excise, it was said, which the Constitution Act exclusively assigned

to the Central Legislature were duties levied upon the manufacturer or producer in respect of the manufacture or production of the commodity taxed. The tax on the sale of goods which the Constitution Act assigned exclusively to the Provincial Legislatures was a tax levied on the occasion of the sale of the goods. A tax levied on the first sale was, in the nature of things, a tax on the sale by the manufacturer or producer but it was levied upon him qua seller and not qua manufacturer or producer. In In re Sea Customs Act, section 20(2) AIR 1963 Supreme Court 1760, the same point was made. It was said that the taxable event in the case of duties of excise was the manufacture of goods and the duty was not directly on the goods but on the manufacture thereof. In the case of sales tax, which was also imposed with reference to goods, the taxable event was the act of sale. Though both excise duty and sales tax were levied with reference to goods, the two were very different imposts. In the one case the imposition was on the act of manufacture or production while in the other it was on sale. The levy under the new section 13AA is attracted when a dealer who has purchased goods specified in Part I of Schedule C of the said Act uses these goods in the manufacture of taxable goods. That the levy is called a purchase tax or that it is computed at the rate of 2 per cent of the purchase price of the goods so used in the manufacture cannot make a significant deference. It is the pith and substance of the provision which counts and that, in our view, is that the levy is on the use of these goods in the act of manufacture. The levy is, therefore, of the nature of excise and outside the purview of entry 54 of List II; consequently, it is outside the competence of the state Legislature.

15. The learned Government Pleader pointed out that the argument that the levy under the old section 13AA was on manufacture had been raised in the Goodyear judgment but had not been accepted by the Supreme Court. The liability under the old section 13AA was held to arise not upon manufacture but upon the subsequent dispatch of the manufactured article outside the State.

16. To consider, now, the validity of the new section 13AA upon the construction put

[2][1942] 1 STC 104; [1942] FCR 90

forward by the learned Government Pleader, if the liability to pay the levy under the new section 13AA arises upon non-sale, i.e., upon the dealer doing some act which makes the subsequent sale of the manufactured article within the State an impossibility, the Goodyear judgment , applies, it seems to us, on all fours. To adapt the words used in it, analyzing the provisions of the new section 13AA, we reach the conclusion that it does not provide for the imposition of the additional purchase tax on the transaction of purchase of the taxable goods but when, further, the taxable goods are used up and turned into independent taxable goods, losing their original identity, and, thereafter, when the dealer does some act which renders the sale of the independent taxable goods within the State an impossibility, only then is the tax levied and the liability to pay it created. It is the cumulative effect of that event which causes the tax to be imposed. To draw a familiar analogy, it is the last straw on the camel's back. To adapt the judgment's words again, a taxable event is that which is closely related to imposition. In the new section 13AA, as construed by the learned Government Pleader, there is such close relationship only when the act of the dealer which readers the subsequent sale of the manufactured article within the State an

impossibility. Therefore, the goods purchased are used in the manufacture of a new independent commodity and thereafter the dealer deals with the manufactured article in such a manner as renders its subsequent sale in the State an impossibility. In this series of transactions, when the levy is imposed at the third stage of rendering the sale of the manufactured article within the State an impossibility, the original transaction is completely eclipsed or ceases to exist. The levy has no direct connection with the purchase of the Schedule C, Part I raw materials. it has only a remote connection or lineage. It may be indirectly and very remotely connected with the transaction of the purchase of raw material. The levy loses its character of purchase tax on that transaction.

17. The learned Government Pleader submitted that the Supreme Court had rendered the Goodyear judgment only with reference to the charging event and not with reference to the subject-matter or incidence of the levy. The Goodyear judgment , itself shows the contrary. It states (at page 95 of the report in the Sales Tax Cases), "the identification of the subject-matter of a tax is to be found in the charging section". The charging section must be analyzed. The taxable event must be located. This will show what the subject-matter of the levy is. The Goodyear judgment , sets out the test that was applied to the provisions there concerned. Applying this test to the levy imposed by the new section 13AA on the basis that it is on the use of the Schedule C, Part I goods purchased by the dealer in the manufacture of other taxable goods, the conditions specified before the event of manufacture, viz., the purchase of such goods in the State, is only descriptive of the goods liable to tax. Applying the test on the basis that the levy is on some act of the deals which renders the subsequent sale of the manufactured article within the State an impossibility, the two conditions specified before that, namely, the purchase of such goods in the State and the use of them for the manufacture of taxable goods, are only descriptive of the goods liable to tax.

18. As we have said, Mr. Cooper and Mr. Kothari also urged that the charging event under the new section 13AA was the act of non-sale, that is to say, some act by the dealer which rendered it impossible for the manufactured article to be sold within the State. But, they urged that the new section 13AA was invalid on that account. A dealer, they said, manufactured goods so as to sell them. What he did not sell within the State he sent for sale outside the State. The tax under the new section 13AA was, therefore, as much a tax on consignment as was the old section 13AA. The argument, attractive though it is, proceeds upon the assumption that what the dealer does not sell within the State held will send outside the State for sale. We cannot invalidate a taxing provision proceeding upon an assumption.

19. The learned Government Pleader placed reliance on the judgment of the Supreme Court in *State of Tamil Nadu v. Kandaswami*[3] which approved, in so far as it was relevant to the contentions urged before it, the judgment of a learned singly Judge of the Kerala High court in *Malabar Fruit Products Company v. Sales Tax Officer*[4] The provisions which were considered in these two judgments were similar. We may reproduce as representative, the relevant portion of section 7A of the Madras General Sales Tax Act, 1959, which was under the consideration of the

Supreme Court in Kandaswami's case .

> "7A. (1) Every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable under section 3, 4 or 5, as the case may be, and either. -
> (a) consumes such goods in the manufacture of other goods for sale or otherwise; or
> (b) disposes of such goods in any manner other than by way of sale in the State; or
> (c) dispatches them to a place outside the State except as direct result of sale or purchase in the course of inter-State trade or commerce, shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in section 3, 4 or 5, as the case may be, whatever be the quantum of such turnover in a year :
> Provided that a dealer (other than a casual trader or agent of a non-resident dealer) purchasing goods [the sale of which is liable to tax under sub-section (1) of section 3] shall not be liable to pay tax under this sub-section, if his total turnover for a year is less than twenty-five thousand rupees ....."

The court was of the view that the provision was a charging as well as a remedial provision. Its main object was to plug leakage and prevent evasion of tax. In interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book should be eschewed. If more than one construction was possible, that which preserved its workability and efficacy was to be preferred to the one which would render it otiose or sterile. The aspect of the provision's constitutionality was not before the Supreme Court. The constitutionality of the Kerala provision was before the learned single Judge of the Kerala High Court. It was urged that it imposed a consumption tax. He repelled the argument that the tax was imposed not with reference to the purchase of tools but with reference to their use on the basis that sales tax was imposed on the occasion of sale of goods but had no reference to the point of time when the sale took place. Both Kandaswami's case and Malabar Fruit Products' case [1972] 30 STC 537 (Ker) were considered by the Supreme Court in the Goodyear judgment [1990] 76 STC 71. With reference to the mode of interpretation set forth in Malabar Fruit Products' case [1972] 30 STC 537 (Ker) and approved in Kandaswami's case , the Goodyear judgment said, while bearing it in mind, that it had to be examined how the provision before it could be construed with reference to well-settled principles of fiscal legislation. It had been said on numerous occasions that fiscal laws must be strictly

[3]36 STC 191

[4][1972] 30 STC 537

construed, words must say what they mean, nothing should be presumed or implied, the words must say so. The true test must always be the language used. The court went on to say that the questions involved in Kandaswami's case and in Malabar Fruit Products' case [1972] 30 STC 537 (Ker) were not concerned with the actual argument with which the court was concerned in the Goodyear case . It was well-settled that a precedent was an authority only for what it actually decided and not for what might remotely or even logically follow from it. The ratio of

Kandaswami's case and Malabar Fruit Products' case [1972] 30 STC 537 (Ker), could not be properly applied in construing the provisions before the court in the Goodyear judgment .

20. We must consider the new section 13AA as it stands. We can assume nothing, imply nothing. The True test is the language used. Upon the language used, the levy imposed by section 13AA is, in our view, a levy on the use of Schedule C, Pat I goods purchased by a dealer in the manufacture of taxable goods. The levy takes effect on the occasion of manufacture and, therefore, the levy is in the nature of excise. The State Legislature is not competent to make laws in respect of such levy. Even if we accept the argument that the levy attaches upon some act of the dealer which renders the subsequent sale of the manufactured article in the State an impossibility, we are not persuaded to hold that the levy is on the purchase of goods specified in Part I of Schedule C which, after being purchased by the dealer, are used by him in the manufacture of taxable goods. The charging event is, on that basis, far too remotely connected with the transaction of the original purchase. The levy, therefore, does not bear the character of a purchase tax on the transaction of such purchase and is, therefore, outside entry 54 of List II.

21. The learned Government Pleader urged that the purchase tax which was levied under the said Act at the time of the purchase of the Schedule C, Part I goods was at a concessional rate. This, she submitted, was because the tax burden on the dealer would otherwise have been very heavy. The levy and recovery of the additional purchase tax levied by the new section 13AA was necessary because it was not known at the time of the purchase how the dealer would deal with the purchased goods. If he dealt with the purchased goods in the manufacture of some taxable article and it was sold in the State, the State would recover sales tax which would take care of the balance of the purchase tax. On the other hand, if the manufactured article did not come to be sold in the State, for whatever reason, the State lost its legitimate share of the full purchase tax due in respect of the purchased goods and, in such event, the full purchase tax was made recoverable. Since a part had been recovered at the time of the purchase, the balance was sought to be recovered by way of the additional purchase tax and the new section 13AA was, in that sense, a remedial provision. It must immediately be pointed out that, as far as we can ascertain, at no stage prior to the Statement appended to Maharashtra ordinance No. 9 of 1989 had it been said that the purchase tax levied under the said Act was at a concessional rate. The argument advanced by the learned Government Pleader finds expression in paragraph 2 of that Statement. A similar argument was advanced before the Supreme Court in the Goodyear judgment . The court, in this context, cautioned against employing assumptions and presumptions. To accept the argument of the learned Government Pleader that the purchase tax that was originally imposed under the said Act was at a concessional rate would be to proceed upon an assumption for which there appears to be no basis. In any event, even if it were so, and whatever may have been the object of the State Legislature in enacting the new section 13AA, its plain words do not support the contention that the levy that it imposes is on the price of the Schedule C, Part I goods which the dealer had purchased.

22. Concluding upon this aspect, therefore, we hold that the new section 13AA was beyond the competence of the State Legislature and that the new section 13AA is, therefore, unconstitutional and bad in law.

23. It must follow from this finding that the validating provision in section 3 of Maharashtra Ordinance No. 9 of 1990 and of Act No. 2 of 1990 must fall. We must add that the validating provision in section 3 would be bad in law even if the new section 13AA were held to be infra vires. A Legislature may re-enact a legislation which has been struck down as invalid and validate what has been done under it provided the Legislature cures the defect for which it was struck down. Where the legislation has been struck down on the ground that it fell outside the competence of a Legislature, that Legislature cannot cure the defect. The old section 13AA was found by the Supreme Court in the Goodyear judgment , to impose a tax on consignment and, therefore, to be outside the competence of the State Legislature. The State Legislature, therefore, could not, short of an amendment to the Seventh Schedule of the constitution, cure the defend by reason of which the old section 13AA was struck down. Nor could it do so by insisting in section 3 that the old section 13AA had imposed a "tax in respect of purchases effected by any dealer" in the face of the finding of the Supreme Court in the Goodyear judgment , to the contrary. Reference need be made in this behalf only to the judgment of the Supreme Court in *Shri P. C. Mills Ltd. v. Broach Borough Municipality*[5], The Supreme Court said : "Before we examine section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a Legislature sets out to validate a tax declared by a court to be illegally collected under ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralize the effect of the earlier decision of the court which becomes ineffective after the change of law. Whichever method is adopted it must be within the competence of the Legislature and

[5] AIR 1970 SC 192
legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law, it can at any time make such a valid law and make it retrospective so as to bind even past transactions. The validity of a validating law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the validation law for a valid imposition of the tax."

24. The interim orders that this Court had passed on these writ petitions provided that the petitioners were at liberty to pay the tax under the new section 13AA as and from December 6, 1989, under protest. The tax so paid would be subject to the outcome of the petitions and would be refundable by the respondents with interest at the rate of 12 per cent per annum in the event of the petitioners succeeding in the petitions. The orders of the Supreme Court at the interim stage of the appeals in the earlier writ petitions challenging the old section 13AA was that if the petitioners succeeded therein the amount of tax paid thereunder would be refunded by the respondents with interest at the rate of 12 per cent per annum. Upon the decision being rendered in the Goodyear judgment , the respondents did not make such refund but the Maharashtra Ordinance No. 9 of 1989 came to be promulgated. Our order must encompass these matters.

25. The writ petitions are made absolute. It is declared that the provisions of Maharashtra Ordinance No. 9 of 1989 and of Maharashtra Act No. 2 of 1990 are unconstitutional and null and void.

26. The respondents shall, subject to verification, refund to the petitioners in Writ Petition No. 477 of 1990 the amount of Rs. 2,63,60,139 with interest thereon at the rate of 12 per cent per annum. The respondents shall pay to the petitioners interest at the rate of 12 per cent per annum on the principal amount of Rs. 1,64,51,455 from December 1, 1989, till the date of refund or realization.

27. The respondents shall, subject to verification, refund to the petitioners in Writ Petition No. 587 of 1990 the amounts of Rs. 2,21,06,705 and Rs. 65,000 with interest thereon at the rate of 12 per cent per annum from the dates of payment till the date of refund of realization.

28. The respondents shall, subject to verification, refund to the petitioners in Writ Petition No. 924 of 1990 the amounts of Rs. 42,44,670 with interest thereon at the rate of 12 per cent per annum from the dates of payment till the date of refund or realization.

29. The respondents shall also refund to the petitioners such amounts as have been recovered from them under the provisions of the new section 13AA. Such amounts as have been recovered on and after December 6, 1989, shall be refunded with interest at the rate of 12 per cent per

annum from that date.

30. The learned Government Pleader applies for four months time to make the aforesaid refunds. Counsel for the petitioners oppose the application and state that the figures were available with the respondents all along so that verification would have been carried out. Nonetheless, having regard to the amounts involved, we direct that all the aforesaid refunds shall be made within four months from today.

31. The respondents shall pay to each of the petitioners the costs of the writ petitions quantified at Rs. 1,000.

32. Oral application by the learned Government Pleader for leave to appeal to the Supreme Court refused.
Order accordingly.