PUNJAB AND HARYANA HIGH COURT

Bata India Limited

Vs

State of Haryana

Civil Writ Petition No. 5503 of 1982

(S.S. Sandhawalia, C.J. and I.S. Tiwana, J.)

02.08.1983

JUDGMENT

S.S. Sandhawalia, C.J.

1. Whether the mere despatch of manufactured goods to a place outside the State is synonymous or analogous to the "consignment of goods in the course of Inter-State trade or commerce", as specified in entry No. 92(b) of List-I of the Seventh Schedule of the Constitution of India (recently inserted by Section 5 of the Constitution) (Forty sixth Amendment) Act, 1982, and, therefore, is now within the legislative competence of Parliament alone for the levying of tax, to the total exclusion of the State legislature, has come to the fore as the spinal question in this set of twenty-one writ petitions.

2. The background in which this issue has come to be raised calls for a brief resume at the very out-set. The State of Haryana, in the purported exercise of its power under Section 9 of the Haryana General Sales Tax Act (hereinafter called 'the Act') had issued the notification, annexure P/2, dated July 19, 1974 *inter alia* imposing the incidence of tax on the despatch of the manufactured goods to a place outside the State to its branch or commission agent or any other person on behalf of the manufacturer. This imposition was assailed by a number of manufacturers in this Court and ultimately, a Division Bench in *M/s. Goodyear India Limited v. State of Haryana*[1] , struck down the notification aforesaid as *ultra vires* of Section 9 of the Act. To override the effect of said judgment, the Governor of Haryana issued Ordinance I of 1983 on January 13, 1983, whereby Section 9 of the Act was sought to be amended with retrospective effect to include within its sweep the despatch of manufactured goods to a place outside the State in any manner otherwise than by way of sale and the impugned notification, annexure P/2 was also validated. Meanwhile, the Constitution (Forty-sixth Amendment) Act, 1982, which had been passed much earlier was enforced with effect from February 2, 1983. Thereby *inter alia* entry No. 92(6) in List-I of the Seventh Schedule to the Constitution was inserted. The meaningful effect of this and other provisions of the Constitution (Forty-sixth Amendment) Act, 1982, would necessarily call for detailed notice hereafter. Later, the Haryana General Sales Tax (Amendment and Validation) Act, 1983 (Haryana Act No. 3 of 1983), was enacted by the Haryana Legislature and enforced with effect from March 31, 1983. The said replaced and repealed the earlier

Ordinance. The present writ petitions *inter alia* seek to assail the Amending Haryana Act No. 3 of 1983 with particular reference to the imposition of tax, on dispatches of manufactured goods to a place outside the State in any manner otherwise than by way of sale including dispatches by a Manufacturer to his own branches and offices and equally challenge the validation of the earlier notification (annexure P/2) and the action taken thereunder.

3. The factual matrix lies in a narrow compass and is not in serious dispute and may be noticed from CWP No. 5503/1982. M/s Bata India Limited is the well-known concern engaged in the business of manufacture and sale of various types of shoes and has a manufacturing Unit at Faridabad within the State of Haryana. It has various depots and branches spread out over the whole of the country as also within the State of Haryana itself. It is averred that for the manufacture of canvas shoes in the State of Haryana the petitioner-Company purchases rubber from various dealers outside the State of Haryana. However, within the State of Haryana, it purchases packing materials for the packing of the end product (of manufactured shoes) and lubricating oil which is used in the machines during the manufacturing process. It is the stand that the petitioner-Company does not purchase any other raw material within the State of Haryana except packing material and lubricating oils aforesaid.

4. For the Assessment Year 1975-76, the respondent Assessing Authority, Ambala Cantt, - *vide* its order, dated December 16, 1980 *inter alia* levied purchase tax on the manufactured goods which had been transferred by the Company to its depots outside the State of Haryana by virtue of the notification annexure P/2, dated July 19, 1974, issued under the purported exercise of power under Section 9 of the Act. The Assessing Authority further directed, - *vide* order annexure P/l, that the notices under Sections 25(5), 46, 47 and 50 of the Act be issued to the petitioner as to why interest be not levied for not depositing the tax payable and also as to why penalty be not imposed under the Sections referred to above. In pursuance of the said directions, the Assessing Authority then issued the notice, annexure P/3.

5. Whilst assailing the levy of tax and the notification purportedly authorising the same, the petitioner-Company's stand is that neither packing material nor lubricants are purchased or used *stricto sensu* in the *manufacture of canvas shoes which is the end product.* It is the claim that what Section 9 of the Act and the law chooses to tax are the material used in the manufacture of the end product, and not merely employed for the manufacture of the same. It is sought to be pointed out that lubricants for running the machinery employed for the making of canvas shoes, is not used in their manufacture but purely for the manufacturing process employed therefor and consequently is not an integral part or component of the end product. Similarly, the packing material for the shoes, e.g., card board boxes or plastic wrapping is highlighted to be materials not even remotely used strictly in the manufacture of canvas shoes.

6. Again as regards the legal aspect, it is the stand that the goods merely transferred by the manufacturer to its own depots outside the State of Haryana were not within the unamended provisions of Section 9(1)(b) and the notification, annexure P/2, purported to be issued thereunder. It is pointed out that the said notification was struck down by the Division Bench in *M/s. Good year India Limited's case* (supra). The subsequent retrospective amendment of Section 9 of the Act, as also the validation of the earlier notification by virtue of Act No. 3 of 1983, is sought to be assailed on a wide variety of legal grounds which would find detailed mention later in their proper contexts. Suffice it to mention that primarily the very competence of

the Haryana Legislature to levy tax on the mere consignment or despatches of goods outside the State of Haryana in the course of inter-State trade and commerce is assailed generically, and pointedly so after the enforcement of the Constitution (Forty-sixth Amendment) Act, 1982 and the insertion of Entry 92-B in List-1 of the Seventh Schedule.

7. In a somewhat exhaustive return filed on behalf of the respondent-State to the amended petition, preliminary objections have been raised on the ground of the alternative remedies of appeals and a reference being available to the writ petitioners. These, obviously were not seriously pressed in view of the challenge laid on behalf of the writ petitioners to the very legislative competence of the Haryana Legislature to enact the impugned law and further the constitutionality of the same.

8. The broad factual background is not in serious dispute barring the mixed question that the packing material used for the packing of the manufactured goods has been alleged to be a part of the manufactured goods themselves. It is admitted in terms both the impugned Ordinance and the subsequent Haryana Act No. III of 1983 were enacted in the wake of the decision of the Division low Bench in *M/s. Goodyear India Limited's case* (supra), in order to override the effect of the said judgment holding that a mere transfer of goods by a manufacturer to one of its own branches outside the State, was not covered by the words "disposes of" and consequently the notification annexure P/2, was beyond the scope of Sections 9 and 15 of the Act. The gravamen of the stand of the respondents is that by the Amending Act, the despatch of the manufactured goods to a place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce has expressly been brought within the sweep of the law by the amendment in Section 9(1)(b) of the Act. It is the claim that in view of this amendment, the ratio of the *Goodyear India Limited's case* (supra) is no longer attracted and in any case is no longer good law. Basic reliance of the respondents as regards legislative competence is sought to be derived from Entry No. 54 of List-II of the Seventh Schedule. It is reiterated that the Haryana Legislature is competent to enact the law and tax transactions of the consignment or despatch of goods outside the State of Haryana by virtue of the aforesaid entry. It is averred that the exercise of this power in no way infracts Articles 301 to 305 of the Constitution pertaining to the Freedom of Trade, nor does it violate any other constitutional provision including Articles 14 and 19(1)(g). Reliance is also sought to be placed on the registration certificate issued under the Act including the one in favour of the writ petitioners and it is sought to be alleged that the despatch of goods outside the State would be violative of its terms. The powers of the respondent-State to claim interest on the tax due and also to levy penalty for the alleged failure to deposit the tax, are reiterated to be necessary consequential provisions. Both the competence of the Haryana Legislature to enact the law as also validity thereof with particular reference to bring within the sales tax net the despatches of the manufactured goods to places outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce is vehemently asserted.

9. Now, as already noticed, out of the wide variety of the grounds of challenge, the learned counsel for the writ petitioners Dr. Chitaley has spear-headed the thrust of his attack against the amendment of Section 9(1)(b) of the Act (and the validation of the notification and the consequential action taken thereunder) on the bedrock of the very absence of the legislative competence of the Haryana Legislature. This is firmly rested on the recently enacted Constitution (Forty-sixth Amendment) Act, 1982 (hereinafter called the 'Forth-sixth Amendment), and in

particular to the amendments wrought thereby in Article 269 and the insertion of Entry No. 92-B in List -1 of the Seventh Schedule to the Constitution. The core of the contention is that the impugned amendment in Section 9(1)(b) of the Act, in pith and substance, imposes a tax on the consignment of goods by a manufacturer to himself in the course of inter-State trade of commerce and, therefore, by virtue of the Forty-sixth Amendment and primarily because of Entry No. 92-B, such a taxing power on the consignment of goods is now exclusively in the Parliamentary field of legislation to the total exclusion of the State Legislatures. Consequently, the Haryana Legislature is now denuded of the legislative power to levy such a tax by the impugned amendments.

10. The aforesaid contention has a twin facet - the constitutional position prior to the Forty-sixth Amendment and the one subsequent thereto. However, since it is the admitted position that the impugned Haryana Act No. 3 of 1983 was enacted on March 31, 1983 after the enforcement of the Forty-sixth Amendment on February 2, 1983, the pride of place must first be given to the contention resting on the existing post-Forty-sixth Amendment constitutional position and the alleged absence of legislative competence of the Haryana Legislature on the subject.

11. As is now manifest the particular challenge by the writ petitioners is rested on some of the specific changes wrought in the Constitution by the Forty-sixth Amendment. Before quoting and adverting to them individually, the larger question that first falls for consideration is as to what was the true intention of Parliament in bringing about these amendments, in particular, the pointed insertion of sub-clause (h) in Article 269(1) [and the change introduced in clause (3) thereof] as also entry No. 92-B in List-1. Since it is a constitutional change which we are called upon to construe, obviously the exercise is not to be done in any narrow isolationism but on a much wider spectrum. Perhaps in the context of a constitutional amendment the celebrated rule in Heydon's case is attracted with even greater vigour. One must, therefore, first closely examine as to what were the existing provisions of the Constitution prior to the Forty-sixth Amendment thereof. Therein, one must look for the mischief or defect for which the provisions thereof did not then provide. The amending provisions have then to be seen to determine as to what remedy has now been provided thereby. Lastly, one must look for the true rationale for such a remedy. The following observations of Lord Reid in the celebrated House of Lords' case of *Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg AG.*[2], in this context are particularly illuminating :-

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

Parliament when the Bill which became the Act in question was before it, and you consider whether there is disclosed some unsatisfactory state of affairs which Parliament can properly be supposed to have intended to remedy by the Act....."

12. Manifestly, the real issue herein is not merely that of the legislative competence of the Haryana Legislature. Indeed, it pertains to the legislative competence of all State Legislations vis-a-vis, that of Parliament, and inevitably raises issues of national import having larger ramifications. One must, therefore, even risk the reproach of prolixity in order to unravel the true import of the constitutional changes wrought by the Forty-sixth Amendment. This is possible only when viewed in the correct perspective of its legislative background which demands examination at considerable depth.

13. For our purposes, it is unnecessary to delve deeply into the pre-Constitution position. It suffices to mention that prior to its promulgation, each State attempted to subject the same transaction to tax on the nexus doctrine under its Sales Tax Laws. The consequent result was that on the basis of one or the other element of the territorial nexus, the same transaction had to suffer tax in different States with the inevitable hardship to trade and consumers in the same or different States. The framers of the Constitution being fully alive to the intricacies of the problem, sought to check the same by a somewhat complex constitutional scheme and by imposing restrictions on the States' power with regard to levy tax on the sale or purchase of goods under Article 286. However, in the actual and practical application of the various States Sales Tax Laws serious complications arose leading to an equally acute conflict of judicial opinion with regard to the scope and nature of sales in the course of inter-State trade or commerce or in the course of import or export. It was this situation which necessitated the Sixth Amendment to the Constitution in 1956, which radically amended Article 286 and further separated the power to tax inter-State sales from the State List and put it in the Union List by inserting Entry No. 92-A in List-1 of the Seventh Schedule. Further clause (g) was added to Article 269 for assigning to the States 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. Clause (3) was also added to Article 269 to empower Parliament to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce. The resultant effect is that now under the Constitution, the power to levy tax on the sale or purchase of goods is referable to the legislative power vested in the States by virtue of Entry No. 54 in List-II of the Seventh Schedule. However, this legislative authority of the States is restricted by three limitations contained in Articles 286(1)(a), 286(1)(b) and 283(3) of the Constitution, respectively. These limitations overlap to some extent but they are cumulative, and the legislative power to tax sales and purchases of goods by the States can be exercised only if it is not hit by any of these limitations which relate to

(i) tax on sales in the course of import or export;

(ii) tax on sales outside the State; and,

(iii) tax on sales of essential goods.

Equally, the States have now been denuded of the power to tax inter-State sales or purchases which is now exclusively vested in the Union Parliament by Entry No. 92-A of the Union List.

14. In exercise of the powers conferred on Parliament by the Sixth Amendment to the Constitution, it enacted the Central Sales Tax Act, 1956 with the avowed objects contained in the Preamble thereof in the terms undermentioned :-

> "An Act to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject."

However, if it was the hope of the legislators to finally resolve the problems of the levy of the Central and the States' Sales Tax, the same apparently was believed by the actual working of the said laws. The complexity of the said problems again necessitated a reference by the Ministry of Law and Justice to the Law Commission to look into seven specific questions and other related problems arising out of the administration of the Central Sales Tax and the constitutional restrictions on the imposition of Sales Tax by the State Governments. This reference was the subject-matter of a very close and illuminating examination of the said problems by the Law Commission of India culminating in its 61st Report on certain problems connected with powers of the States to levy tax on the sale of goods and with the Central Sales Tax Act, 1956. To prevent any diffusion of focus, one must concentrate on the following specific question which was referred to the Law Commission :-

"Intro.8 (ii) :

Evasion of Central Sales Tax by means of transfer of goods from one State to another, on what purports to be a consignment transfer or a transfer to another branch of the same institution."

The aforesaid question was pointedly considered in Chapter-2 of the 61st Report of the Law Commission (hereinafter called 'the Report'), wherein the problem was posed as under :-

> "22: It has been stated that difficulties exist in relation to the taxation of 'consignment transfers', - i.e., transfer of goods by one branch of a commercial agency or institution to another branch outside the State. Central Sales Tax, it is stated, cannot be levied on such transfers, because there is no inter-State 'sale', even though there is inter-State movement."

The Law Commission noticed that the taxation of mere consignment of goods by a manufacturer from one-branch to another branch in a different State, was not strictly within the scheme of the Central Sales Tax Act, because it was relatable only to taxes on the sale or purchase of goods in the course of inter-State trade or commerce. It also considered the propriety of introducing a provision taxing consignments from branch to branch even though such a legislative provision was theoretically within the competence of parliament under its residuary powers of taxation by virtue of Entry No. 97 of List-1. The Law Commission also considered the impact of *Kelvinator of India v. State of India*[3], on the important question of consignment transfers. As a solution to

the problem posed, the Law Commission indicated its preference for broadening the scope of sale under the Central Sales Tax Act to bring within its sweep inter-State consignment of goods not amounting to sale as against an alternative of a separate Act for the purpose. In para 2.23 it made its recommendation for the necessary amendment in the definition of 'sale' in Section 2(g) of the Central Sales Tax Act. To effectuate this purpose, a constitutional amendment was also deemed necessary in the following words :-

> "2.26: We should point out that to achieve the above object, an amendment of the Constitution, in order to authorise the distribution of the proceeds of the tax on consignments, is unavoidable. No doubt, Parliament already possesses the power to levy a tax on inter-State consignments under its residuary power. But the distribution of the proceeds of the tax to be so levied cannot be provided for within the language of article 269, and must need an expansion of the scope of article 269. It would appear that the expression "sale or purchase" occurring in article 269 (and in Union List, entry 92A) will have to be given the same interpretation as has been given to it under State List, entry 54."

The ultimate conclusion and recommendation on this point was in the following terms in Chapter 12 at pages 178-179 of the Report :-

"Point 6 - Consignments.

What are described sometimes as "consignment transfers" are not taxable as sales under the present law. The Union can tax them under the residuary power, but even if such a tax is levied, the proceeds of the tax cannot be distributed to the States without amending article 269(1)(g) and 269(3) of the Constitution.

Therefore, if, as a matter of policy consignments are to be included in the Central Sales Tax Act, it will be necessary first to amend article 269(1)(g) and 269(3) of the Constitution, by adding an Explanation to that article, somewhat on the following lines :-

"Explanation. - For the purpose of this article, the expression "sale or purchase" includes a consignment of goods occasioning their movement from one place to another, by a dealer to any other place of his business or to his agent or principal."

5. The aforesaid recommendation contained as it is in the 61st Report of the Law Commission of India, was rendered in May, 1974. It would appear that the matter remained under a prolonged consideration by the Government of India and it was not till 1981 that the Constitution (Forty-sixth Amendment) Bill was brought forward and ultimately passed by Parliament in 1982 and actually enforced on February 2, 1983. That, in pith and substance, the recommendations of the Law Commission on this point found favour with the Government and later with Parliament, is plain both from the amendments in the Constitution enacted thereby and the Statements of Objects and Reasons appended to the Constitution (Forty-sixth Amendment) Bill, 1981 (Bill No. 52 of 1981). The relevant paras thereof pertaining to the specific point before us, deserve notice *in extenso* :-

> "3. This position has resulted in scope for avoidance of tax in various ways. An example of this in the practice of inter-State consignment transfers, i.e., transfer of goods from

head office or a principal in one State to a branch or agent in another State or vice versa or transfer of goods on consignment account, to avoid the payment of sales tax on inter-State sales under the Central Sales Tax Act ....."

* * * *

The various problems connected with the power of the States to levy a tax on the sale of goods and with the Central Sales Tax Act, 1956, were referred to the Law Commission of India. The Commission considered these matters in their Sixty-first Report and recommended *inter alia* certain amendments in the Constitution if as a matter of administrative policy it is decided to levy tax on transactions of the nature mentioned in the preceding paragraphs.

* * * *

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

* * * *

"10. A new entry is sought to be inserted in the Union List in the Seventh Schedule, as entry 92-B to enable the levy of tax on the consignment of goods where such consignment takes place in the course of inter-State trade or commerce."

* * * *

"11. Clause (1) of article 269 is proposed to be amended so that the tax levied on the consignment of goods in the course of inter-State trade or commerce shall be assigned to the States. Clause (3) of that article is proposed to be amended to enable Parliament to formulate by law principles for determining when a consignment of goods takes place in the course of inter-State trade or commerce."

* * * *

"14. The Bill seeks to achieve the above objects".

16. It is now apt and indeed necessary to quote the changes wrought by the Forty-sixth Amendment for ease of reference and it would suffice to read the relevant provisions of Article 269 and Entries Nos. 92-A and 92-B of List-1 of Seventh Schedule :

"269. Taxes levied by the Union, but *assigned to the States.* -

(1) The following duties and taxes shall be levied and collected by the Government of India, but shall be assigned to the States in the manner provided in clause (2), namely;

(a)

(b) * * * *

(c)

(d) * * * *

(e)

(f) * * * *

Ins. by the Constitution (Sixth Amendment) Act, 1956.	(g) 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.
Ins. by the Constitution (Forty-sixth Amendment) Act, 1983.	(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.

(2) * * * *

(3) Parliament may by law, formulate principles for determining when a *sale or purchase of*

Amended by the Forty Sixth Amendment.	"or consignment of goods takes place in the course of inter-State trade or commerce."

"Entry No. 92-A;

Inserted by the Sixth Amendment.	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 No. 92-B;

Ins. by the Forty-Sixth	Taxes on the consignment of goods (whether the consigment is to the

Amendment.	person making it or to any other person) where such consignment takes places in the course of inter-State trade or commerce."

17. It is in the aforesaid historical legislative background that one must necessarily approach and interpret the aforequoted provisions. It is manifest that herein the whole problem was the evasion of tax by means of consignment transfer of goods from one branch of the same institution to another of its branches outside the State. This was one of the specific issues which was referred by the Government to the Law Commission and was so viewed and examined by the latter. The recommendations made by the Law Commission for removing the aforesaid evil were the extension of the definition of sale to include within its ambit the said contignment transfers and to make the necessary legislative and constitutional changes to bring them to tax exclusively by the Union of India. That this was adopted and so enacted, is then plain from the Statement of Objects and Reasons annexed to the Bill for the Forty-sixth Amendment and the relevant changes wrought thereby. A plain reading of these would leave little manner of doubt that the legislative power to tax consignment transfers of goods from one branch of an institution to another branch thereof outside the State and all matters incidental, ancillary or complementary thereto are now declared to be vested in the Union of India to the total exclusion of the States.

18. Now a bare reference to the heading of Article 269 would make it plain that the taxes enumerated in clause (1) thereof are those, which are both levied and collected by the Union of India. These are areas of legislation which are exclusively in the Central field. A reference to sub-clauses (a) to (f) of clause (1) of Article 269 is again indicative of the nature of taxation which is earmarked for levy and collection by the Union, but is to be later assigned to the States. Historically, sub-clause (g) pertaining to taxes on sale or purchase of goods where such sale or purchase took place in the course of inter-State trade or commerce, was inserted by the Sixth Amendment to remedy the somewhat similar evil of the different States attempting to tax the same transaction of sale and purchase in inter-State trade and commerce. Complementary thereto Entry No. 92-A was also added to the Union List to exclusively vest the legislative power therefor in the Centre. An identical legislative pattern has now been adopted by inserting sub-clause (h) in Article 269(1) and adding Entry No. 92-B to the Union List. What the Sixth Amendment did with regard to the legislative competence to tax sales or purchases in the course of inter-State trade or commerce, has now been done by the Forty-sixth Amendment pertaining to taxes on consingment of goods in the course to Inter-State trade or commerce. In pristine essence, the power to tax consignment of goods in the course of inter-State trade or commerce and all matters ancillary or complementary thereto have now been exclusively reserved to the Union. Again the language employed in the aforesaid clause (h) and Entry No. 92-B is significant. It talks, in terms, of the consignment of goods by a person either to himself or any other person in the course of inter-State trade or commerce. Therefore, the specific case of consignment from one branch of the institution to its other branches in other States, is specifically and particularly covered by the language of these provisions and confined to the Union's field.

19. The change brought about in clause (3) of Article 269 again cannot be passed unnoticed. Parliament is now equally empowered to formulate priniciples for determining when a

consignment of goods takes place in the course of inter-State trade or commerce. Inevitably, the whole matter is now left in the parliamentary field including the formulation of tests as to what should be deemed as consignment of goods in the course of inter-State trade or commerce. It is well to recall that acting under this very power, Parliament enlarged the scope of sales and purchases of goods in the course of inter-State trade or commerce by Section 3 of the Central Sales Tax Act, 1956. Parliament is now clothed with the identical power with regard to consignment of goods in the course of inter-State trade or commerce as well and might well exercise that constitutional power. For our purposes, it suffices to notice that it is now clothed with the power of enlarging or expanding the concept of the consignment goods, if so inclined.

20. Lastly, in this context, one may recall that for purposes of determining legislative competence, we have now to construe entry No. 92-B of the Union List. It is so well-settled that legislative entries in the seventh Schedule and in particular, those authorising the levy of tax are to be given their widest connotation that it would be wasteful to multiply authorities. Suffice it to recall the following observations in *Kherbari Tea Co. Ltd. and another v. State of Assam and others*[4]*,*

> "It is hardly necessary to emphasise that Entries in three Lists in the Seventh Schedule which confer legislative competence on the respective Legislatures to deal with the topics covered by them must receive the widest possible interpretation, and so it would be unreasonable to read in the Entry any limitation of the kind which Mr. Pathak's argument seems to postulate. Besides, it is well settled that when a power is conferred on the Legislature to levy a tax, that power itself must be widely construed, it must include the power to impose a tax and select the articles or commodities for the exercise of such power, it must likewise include the power to fix the rate and prescribe the machinery for the recovery of the tax ....."

Reference in this connection may also be made to *Navinchandra Mafatlal, Bombay v. Commissioner of Income Tax, Bombay City*[5]*,* and *Waverly Jute Mills Co. Lt. v. Raymon and Co. (India) Pvt. Ltd.*[6]*,* it would follow from the above, that by virtue of Entry No. 92-B, the Union is now clothed with not only the power to tax the consignment of goods *stricto sensu* but the said power would equally embrace all ancillary and complementary areas as well to the exclusion of the State Legislatures therefrom.

21. To conclude on this aspect, the constitutional changes wrought by the Forty-Sixth Amendment in Article 269 read with the insertion of Entry No. 92-B in the Union List, would leave no manner of doubt that the legislative arena of tax on the consignment of goods (whether to ones ownself or to any other person) in the course of inter-State trade or commerce and all ancillary, complementary or consequential matters, are now declared to be exclusively reserved for parlimentary legislation and any intrusion into this field by the State Legislatures is explicitly barred.

22. Now once that is so, the remaining issue is whether the impugned amendment in Section 9(1)(b) of the Act brought about by Haryana Act No. 3 of 1983, in essence, levies the tax on the consignment of the goods in the course of inter-State trade or commerce or in any case intrudes into a field ancillary or complementary thereto.

23. The stage is now set to notice precisely the impugned retrospective amendment wrought by the amending Act. It is apt to read the relevant parts only and juxtapose the original and the amended provisions:

Original provisions	*Amended provisions.*
9. (1) Where a dealer liable to pay tax under this Act, - (a) 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 goods specified in Schedule B, or	(i) - - x - -
(b) Purchases goods, other than those specified in Schedule B except milk, from any source in the State and uses them in the State in the manufacture of any other goods and disposes of the manufactured goods in any manner otherwise than by sale whether within the State or in the course of export out of the territory of India within the meaning of sub-section (1) of Section 5 of the Central Sales Tax Act, 1956.	(b) purchases goods, other than those specified in Schedule B, from any source in the State and uses them in the State in the manufacture of any other goods and either disposes of the manufactured goods in any manner otherwise than by way of sale in the State or despatches the manufactured goods to 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.xx xx xx (bb) xx xx"

24. To correctly appreciate and focus oneself on the real issue, it may straightaway be highlighted that herein the challenge on behalf of the petitioners is directed only to the insertion of the aforesaid underlined words. These offending words alone are assailed (of course with their consequential results of validation etc.) on behalf of the writ petitioners as beyond the legislative competence of the Haryana Legislature for allegedly trenching on the exclusive Parliamentary field of legislation. No attack herein is levelled against the other situations visualised by Section 9(1)(b), namely, with regard to the disposal of the manufactured goods in any manner otherwise than by way of sale in the State or in the course of export outside the territory of India. To immaculately pinpoint the core of the attack to the amended provisions, the same may be isolated and read as under :-

9. Liability to pay purchase tax. -

(1) Where a dealer liable to pay tax under this Act. -

purchases goods, other than those specified in Schedule B except milk, from any source in the State and uses them in the State in the manufacture of any other goods and despatches the manufactured goods to a place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce;

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

25. In construing Section 9 of the Act, one must at the very threshold notice what was virtually admitted and in any case not put in serious dispute. The said Section is the charging Section for the levy of the purchase tax as its heading itself indicates. It imposes the liability for the payment of purchase tax. In the closing part of sub-section (1) thereof, it is provided in terms that 'there shall be levied' a purchase tax subject to the provisions of Section 17 at rates which may be notified under Section 15 of the Act This Section in itself specifies the person who is liable to pay tax, the goods on which the same is leviable and with some precision lays down the taxable events which would attract the liability of the said purchase tax. It is unnecessary to labour the point because it seems plain on principle that Section 9 indeed is the charging Section for the levy of purchase tax. It is to be sharply distinguished from machinery Sections which are intrinsically procedural and provide the mode and manner of the collection of taxes etc., therefore, can be widely and liberally construed. Consequently, once it is held that Section 9 of the Act is the charging Section, then it is well-settled that such a provision is to, be precisely and strictly construed. Equally, it is not in dispute that if a charging Section travels beyond the legislative entry and the field authorised to the legislature thereby, then the same cannot possibly be sustained.

26. What next calls for notice is the real nature of a despatch of goods by a manufacturer to one of his own branches outside the State. It seems axiomatic that such a despatch of goods by the consignee to himself is not a sale of goods and indeed never can be so. It deserves highlighting that in such a situation what, in essence, takes place is nothing more than the shifting of goods from one place to another or in essence from one branch to another branch of the same owner. There is not the remotest change in the ownership of the goods. Equally, there is no change in the control over the said goods or the capacity to later dispose them of by the real owner. There is merely a change in the physical situs of the goods without any change in the basic incidents of ownership and control. Therefore, in its true nature a mere despatch of goods outside the State to another branch of the original institution is and never can be the equivalent of a sale either as a term of art in the existing sales tax legislation and not remotely so in common parlance and its dictionary meaning.

27. As I will presently attempt to demonstrate in the amended provision of Section 9(1)(b) of the Act, the real taxing event is the despatch of the manufactured goods to a place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce. Is there any sharp line of distinction betwixt the despatch aforesaid and the consignment of goods by the manufacturer to himself or to any other person in the course of inter-State trade or commerce ? To my mind, there is indeed none. The two situations and the phraseology employed

therefor are virtually identical and synonymous. Indeed, if in Section 9(1)(b) the word 'despatches' is substituted by the word 'consigns', or in the alternative in entry No. 92-B, the word "consignment" is substituted by the word 'despatch', then neither of the two provisions suffer any significant change in meaning. There is both plausibility and merit in the submission of Dr. Chitaley on behalf of the writ petitioners that despatch of goods in the course of inter-State trade or commerce is yet another name for the consignment of such goods in the course of inter-State trade or commerce. The phraseology used generically is in essence synonymous with each other in its broad concept. Again the specific words 'despatch' or 'consign' are similar and almost interchangeable when used in their specific commer,cial sense. In Webster's New International Dictionary, the word 'consign' means. To send or address (by bill of landing or otherwise) to an agent in another place, to be cared for or sold, or for the use of such agent. In Shorter Oxford English Dictionary, the relevant meaning assigned to this word is to deliver or transmit (goods) for sale or custody; usually implying their transit by ship, railway, etc. And in The Random House Dictionary, as, to ship, as by common carrier, esp. for sale or custody; to address for such shipment. The relevant meaning of the word 'despatch' in the Random House Dictionary is a method of effecting a speedy delivery of goods, money etc. a conveyance or organization for the expeditious transmission of goods, money etc. It would follow from the above that despatch of goods and consignment of goods (barring legal quibbles) are inter-changeable terms. Therefore, once despatch of goods in the course of inter-State trade or commerce and consignment of goods whether to oneself or any other person in such inter-State trade or commerce are etymological or legal equivalents, then by virtue of Entry No. 92-B to List-I, the legislative competence to tax such a transaction is exclusively vested in Parliament. Thus on the broader and larger conspectus, each and every tax on the consignment of goods by what-ever name called is now reserved for being levied by the Union of India. However, the amended provisions of Section 9(1)(b) of the Haryana Sales Tax Act attempt to levy an identical tax in the garb of a levy on the despatch of manufactured goods to places outside the State of Haryana, and therefore, intrudes and trespasses into an arena exclusively reserved for taxation by the Union of India.

28. Though the above finding would in a way conclude the matter in favour of the writ petitioners, yet the same results seem to flow on a closer analysis of the real taxing event spelt out by the impugned provisions of Section 9(1)(b) of the Act. Adverting to its specific terms and placing them on the well-known anvils, it is first plain that the "taxable person" herein is in terms specified as the dealer liable to pay tax under the Act. The phrase 'dealer' has been expressly defined in Section 2(c) of the Act and thus no ambiguity with regard to the "taxable person" under Section 9 of the Act remains. Similarly, the "taxable goods" are equally determinable with precision. Specifically, under clause (b) these are goods other than those specified in Schedule-B, used in the manufacturing process. There was no dispute before us that the taxable goods here were plainly identifiable. The third and the crucial thing, namely, the "taxable event" under Section 9(b), therefore, is only the despatch of the manufactured goods to a place outside the State. In other words, it is the consignment of goods which attracts the liability of purchase tax and in pristine essence is the "taxable event" under Section 9(1)(b) of the Act. Once that is so, it is plain that shorn off all surplusage the Act purports to tax even the consignment of goods to the person making it in the course of inter-State trade or commerce.

29. Again, viewed from another angle also it is first evident that under Section 9(1)(b), where a dealer purchases goods for the express purpose of manufacturing other goads within the State, then *stricto sensu* such purchase by itself does not attract any tax under the provision. It was

rightly argued on behalf of the writ petitioners that if the Company, being a 'dealer' under the Act purchases large quantities of packing materials and lubricating oils (under its Registration Certificate) for manufacturing shoes, and stores them even for a year or more, no liability for purchase tax under Section 9(1)(b) of the Act would by itself arise. Similarly, even when the purchased materials are used up and absorbed in the manufacture of goods such conversion or manufacture by itself again does not attract any purchase tax liability. Herein again, the rightful stand is that if the manufactured goods, namely; shoes here were kept in storage in the Company's godown in the factory for even a year or two, this would not still attract any purchase tax liability. Therefore, neither the original purchase of goods nor the manufacture thereof into the end product by itself attracts purchase tax and consequently are not even remotely the taxable events. What directly and pristinely attracts the tax and can be truly labelled as the taxing event under Section 9(1)(b) of the Act is the three-fold exigency of :-

> (i) disposal of the manufactured goods in any manner otherwise than by way of sale in the State; or
>
> (ii) despatch of 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,
>
> (iii) disposal or despatch of the manufactured goods in the course of export outside the territory of India.

It is these three exigencies alone which are the taxable events in the amended Section 9(1)(b) of the Act. As already noticed, the challenge is levelled only to the taxable event of the mere despatch of manufactured goods to a place outside the State in category (ii) above. Consequently, in a statute where the taxable event is the despatch or consignment of goods outside the State, the same would come squarely within the wide sweep of Entry No. 92-B and thus excludes taxation by the States.

30. Even placing the case of the respondent-State at the highest, it appears to me that it still cannot escape the wide sweep of Entry No. 92-B. It was sought to be argued on behalf of the respondent-State that the taxable event was not necessarily the very ultimate act of despatch, but a composite one. Assuming entirely for the sake of argument (without holding so), it would follow that the taxable event herein would be the manufacture of goods and their despatch outside the State. Now analysing the situation, it is obvious that the manufacture of goods simplicitor cannot be possibly the subject-matter of the levy of sale or purchase tax by the States under Entry No. 54 of List-II. This has been well-settled eversince the classic exposition in *The Province of Madras v. M/s. Boddu Paidanna & Sons*[7], Whereas manufacture may be the subject-matter of a duty of excise, by itself, it cannot *stricto sensu* be leviable to sale or purchase tax. A confusion in this context sometimes arises from the dual capacity of the manufacturer both as a producer and a seller of goods. Sales or purchase tax can be leviable on a manufacturer in his capacity as a seller but not as a mere producer or manufacturer of goods. The classic words of C. J. Gwyer on this point are as under :-

> "The duties of excise which the Constitution Act assigns exclusively to the Central Legislature are, according to 1939 F. C. R. 18, 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 Act assigns exclusively to the provincial Legislatures, is a tax levied on the occasion of the sale of the goods. Plainly a tax levied on the first sale must in a nature of things be a tax on the sale by the manufacturer or producer; but it is levied upon him *qua* seller and not *qua* manufacturer or producer".

"- - - It is the fact of manufacture which attracts the duty, even though it may be collected later; and we may draw attention to the Sugar Excise Act in which it is specially provided that the duty is payable not only in respect of sugar which is issued from the factory but also in respect of sugar which is consumed within the factory. In the case of a sales tax the liability to tax arises on the occasion of a sale, and a sale has no necessary connexion with manufacture or production. The manufacturer or producer cannot of course sell his commodity unless he has first manufactured or produced it; but he is liable, if at all, to a sales tax because he sells and not because he manufactures or produces; and he would be free from liability if he chose to give away everything which came from his factory."

From the above, it would follow that even if purchase tax is levied compositely on the manufacture plus the mere despatch of goods outside the State, the taxable event would still remain the despatch thereof because the tax on the manufacture of goods is admittedly beyond the legislative competence of the States' Sales Tax laws. It would follow, therefore, that any levy which imposes a tax on the consignment of goods simplicitor or compositely with their manufacture and consignment as such, would still come within the umbrella of Entry No. 92-B alone. It is worthwhile to remember that the competence to tax such transaction is not even remotely in the concurrent list and is now exclusively in the Union List. Therefore, even when viewed from the aspect of a composite taxable event as well, the legislative power would still be covered by Entry No. 92-B alone.

31. To sum, up, it would appear that the respondent-State of Haryana on its zeal to tax the mere consigment of goods outside the State in the course of inter-State trade or commerce had earlier issued the impugned notification, annexure P/2 by attempting to bring the same within its scope. In *M/s. Goodyear India Limited's case* (supra), it was held that such consignment of goods was beyond the existing provisions of Section 9 of the Act which authorised levy of purchase tax in the event of the disposal of manufactured goods otherwise than by way of sale. The view taken was that mere consignment of goods by a manufacturer to himself was not in any way a disposal of the manufactured goods. To overcome this difficulty, the respondent-State has now attempted to bring the consignment of goods outside the State in the course of inter-State trade or commerce within the sales tax law by labelling them as the despatch of manufactured goods outside the State. In doing so, it has travelled far beyond the scope of Entry No. 54 of List-II even if the most liberal construction is placed thereon. Indeed, it seems to be somewhat colourable attempt to intrude into the exclusive Parliamentary power to tax the consignment of goods (by virtue of Entry No. 92-B of List-I) in the thin garb of levying a tax on the purported despatch of manufactured goods outside the State.

32. The matter deserves examination from another angle as well. Undoubtedly, now by virtue of Entry No. 92-B, the Union of India is clothed with the power to levy tax on the consignment of goods in the course of inter-State trade or commerce. If in the exercise of this power Parliament now wishes to bring to tax consignment of goods from one State to another (as it inevitably

may), it would *qua* the State of Haryana, would be doing a similar if not identical exercise which the Haryana legislature has already done by the amendment in Section 9(1)(b) of the Act in taxing a purported despatch of manufactured goods outside the State. Whilst Parliament would be taxing the consignment of goods in the course of inter-State trade or commerce, the State would be levying the tax on the despatch of manufactured goods to a place outside the State in the course of inter-State trade or commerce. Inevitably, it would thus result in a duality of taxation on the same or similar transactions - one by the State of Haryana and other by the Union of India. It is significant to highlight that admittedly the power of taxation herein is not even remotely in the Concurrent List and is exclusively in the Parliamentary field by virtue of Entry No. 92-B. Therefore, allowing the State to tax the consignment of goods in inter-State trade or commerce, in the garb of a tax on the despatch of such goods outside the State otherwise than by way of sale in the course of inter-State trade or commerce, would, in essence, be negativing the whole constitutional exercise culminating in the relevant provisions of the Forty-sixth Amendment for confining the taxation power on inter-State consignment of goods to the Union of India alone.

33. In fairness to the learned Advocate General, Haryana, one must refer to his insistent reliance on the Single Bench judgment in *Malabar Fruit Products Company, Bharananganam, Kottayam and others v. The Sales Tax Officer, Palai, and others*[8], which was affirmed by the Letters Patent Bench in *Yusuf Shabeer and others v. State of Kerala and others*[9], and was also approvingly referred to by their Lordships of the Supreme Court in *The State of Tamil Nadu v. M.K. Kandaswami and others*[10],. A close analysis of *the Malabar Fruit Products Company's case* (supra) would indicate that the challenge to the somewhat similar provisions of Section 5A of the Kerala General Sales Tax Act, 1963, was primarily on the ground, that the tax imposed thereby was not, in essence, a tax on sale or purchase but in fact act was a tax on the use or consumption of goods. It was this contention which was repelled by the learned Single Judge and affirmed in appeal by the Letters Patent Bench. Their Lordships of the Supreme Court whilst referring to the said judgments expressly noticed that therein the primary argument was that the charging Section imposes a tax not on the sale or purchase of goods but on its use or consumption. It is plain that this issue does not even remotely arise in the present case and no such or similar argument what-so-ever has been advanced on behalf of the writ petitioners. On the hallowed rule in *Quinn v. Leathern*[11], affirmed in *State of Orissa v. Sudhansu Sekhar Misra and others*[12] , a precedent is an authority only for what it actually decides and not for what may remotely follow therefrom. The essence is the ratio of the decision and not every passing observation therein. Consequently, the aforesaid set of cases are plainly distinguishable and are indeed not at all relevant to the basic issue now under consideration before us. It deserves highlighting that the question of the legislative competence of the Kerala or the Madras Legislatures to enact the respective State Tax Legislations, in the aforesaid cases, was not at all raised at any stage whatsoever. Therefore, the challenge based on the ground that any part of the respective Sections in the said Acts travelled beyond Entry No. 54 of List No.II did not and indeed could not fall for consideration. What is even more significant is the fact that at that stage no question of the intent and import of the Forty-sixth Amendment to the Constitution could arise nor equally the effect of the insertion of Entry No. 92-B in List No. 1 of the Seventh Schedule. Learned counsel for the writ petitioners had rightly pointed out that their Lordships of the Supreme Court in *The State of Tamil Nadu v. M.K. Kandaswami and others*[13], had themselves noticed that the question before them was the scope and interpretation of Section 7-A of the Madras General Sales Tax Act, 1959, and obviously not of the constitutionality thereof or the legislative competence of the Madras

Legislature to enact the same. On the significant and precise issues before us the aforesaid judgments are thus of no aid to the respondent-State and are plainly distinguishable.

34. So far I have examined the issues before us on the provisions of the Constitution as amended by the Forty-sixth Amendment. However, to keep the record straight, it must be noticed in fairness to Dr. Chitaley, the learned counsel for the writ petitioners that his firm stand was, that the insertion of Entry No. 92-B and the relevant changes introduced in Article 260 of the Constitution were more in the nature of a categoric declaration of the existing constitutional position rather than any radical change thereof. It was the argument in the alternative that even prior to the Forty-sixth Amendment, the legal position was substantially the same and the States did not possess the legislative competence to tax a mere consignment of goods in the course of inter-State trade or commerce under Entry No. 54 of the State List.

35. Now it appears to me that the aforesaid stand is both plausible and not devoid of merit. As has been noticed at some length in the earlier parts of this judgement, the real nature of a mere consignment of goods by a manufacturer to his own branches outside the State, does not in any way amount to a sale or disposal of the goods as such. This is more so in view of the strict construction placed on a sale or purchase under the Sales- Tax statutes way-back in *The State of Madras v. M/s. Gannon Dunkerley & Co. (Madras) Ltd.*[14], and the long line of later decisions following the same. Consequently, the mere manufacture and consignment of goods outside the State to himself by a manufacturer is not a sale or disposal thereof with the result that it would not be within the ambit of Entry No. 54 of List No. II. The said entry is the Magna Carta of the legislative competence of the States to impose sales tax and no other foundational right barring this entry was even invoked on behalf of the respondent-State to enact the impugned amendment. Consequently, *de hors* the Forty--RESULT-sixth Amendment, an attempt to tax the mere consignment or despatch of manufactured goods outside the State in the course of inter-State trade or commerce, would not come within the ambit of Entry No. 54 and consequently of the competence of the respective State Legislatures. Plainly enough, it was because of these limitations and the leakage of revenue which was complained of by the States and the problem arising therefrom that the matter had to be referred to the Law Commission for proposing a solution. As is obvious from the quotations from the 61st Report of the Law Commission, it clearly took the view that the power to levy tax on consignment of goods would theoretically fall within the residual Entry No. 97 of List-I and, therefore, legislative and constitutional amendments were pre-requisites to meet the problem. It was only because the Law Commission had proposed the solution by bringing mere consignments also within the ambit of a sale by amending the Central Sales Tax Act and for assigning the revenue therefrom to the States, that the constitutional amendments in Article 269 had been adopted by Parliament in its wisdom and Entry No. 92-B has been inserted in List-I to place the matter beyond all doubt. It would thus follow that even in the pre-Forty-sixth Amendment situation, the mere consignment of goods in the course of inter-State trade or commerce was still beyond the scope of Entry No. 54 of List-Il and thus not within the legislative competence of the States and was entirely within the Parliamentary field of legislation by virtue of Article 248 and the residuary Entry No. 97 of List-I.

36. Indeed, an analysis of the larger constitutional scheme for imposition of Sales Tax would indicate that the same falls into three basic categories. These are the sale, purchase and the consignment of goods. Whilst sale and purchase were clearly assigned to the legislative

competence of the States, - vide Entry No. 54 of List No. II, the consignment of goods being neither a sale nor purchase thereof was consequently outside the same. Prior to the Forty-sixth Amendment, this somewhat grey or penumbral area could be brought in only under the residual Entry No. 97 of List No. 1. However, the Forty-sixth Amendment on this point seems to have declared the constitutional position by clearly placing the consignment of goods in the course of inter-State trade or commerce in the exclusive Parliamentary field. Apart from Entry No. 92-B in List No. 1, the basic constitutional mandate with regard to the legislative competence is provided by Articles 245 to 248, which seems to make it manifest that the States' legislative powers are somewhat limited and residual legislative power under our Constitutional Scheme is vested in the Union of India and not in the States.

37. As is sometimes inevitable in thinly divided issues, even if two interpretations were possible, there appear to be added weighty reasons for tilting to the view which I am inclined to take. As has already been noticed, the up-holding of the impugned amendment by the respondent-State of Haryana (and similar State legislations which inevitably may well follow), would lead to a duality of taxation whenever the Union of India later chooses to exercise its power to tax the consignment of goods in the course of inter-State trade or commerce. The be-setting sin in this field as already noticed, has been the competing attempts of the States *inter se* to tax the same inter-State transactions. The duplication of State and Union legislation on the same or similar fields is thus to be equally avoided. The constitutional scheme for sales tax laws appears to be to distinctly demarcate the legislative fields of the States and the Central taxation powers. Consequently, the view I am persuaded to accept would avoid all possibility of duality of tax or conflict betwixt the legislative powers or acts of the States and the Union of India.

38. Again, historically, it is apt to recall that earlier the Sixth Amendment to the Constitution had been necessitated by the attempts of the individual States to bring to tax the same transactions in the course of inter-State trade or commerce. This had led to a duality of taxation with its consequential inevitable impediments to the free flow of trade resulting from multi-point taxation and equally an acute conflict of judicial opinion. If each State is now allowed to tax the consignment of goods outside its territory in the garb of the alleged despatch thereof, there might well result again an arena of conflict of taxation between the neighbouring States and even betwixt those from where the consignment of goods originates and where the same is received, thus bringing in its wake a fresh evil of multi-point taxation. It is perhaps for this reason that in order to plug the leakage of tax by the consignment of goods out of one State to another, the remedy provided was not the empowering of the States individually to levy taxes on such consignment of goods, but instead to exclusively vest the Union of India with the power to levy and collect taxes on such consignments. The view I am inclined to take would thus avoid any conflict of taxation betwixt the competing States as also the multi-point levy of taxes and lead to by a uniform rate of tax by Parliament alone.

39. Reference in this context must also be made to Article 248 and the residual Entry No. 97 in List-I, which expressly states that any other matter not enumerated in List-II or List-III including any tax not mentioned in either of those lists is to be within the Union List. It is thus plain that the residuary power is vested in the Union of India. Assuming entirely for the sake of argument that there is a grey or a penumberal area around Entry No. 92-B pertaining to matters ancillary, complementary and consequential to the clear-cut power of taxation on the consignment of goods, then one should tilt to allocate the same to the Union of India by the hallowed rule of the

wide amplitude of legislative entries as also because of the ultimate residual power in the Union of India.

40. Lastly, it would appear that the consignment of goods by manufacturers to their various branches all over India in the course of inter-State trade or commerce is a national level feature. The Scheme of Article 269, as is evident from sub-clauses (c) to (h) of Clause (1), would appear to be that the taxes of this nature are visualised to be both levied and collected by the Union. Consequently, taxes on the consignment of goods in the course of inter-State trade or commerce all over the country would aptly fall in this class. Equally, in the field of the somewhat vexed Central-State relations also, it appears that though the levy and the collection of such taxes is by the Union of India, they are ultimately to be assigned to the States themselves. It is not that the States are in any way denuded of all revenue arising primarily or indirectly from their territories but for reasons of uniformity, the power to levy or collect the tax is vested in the Government of India but the benefits thereof revert to the States themselves by being assigned to them in the manner provided in Clause (2) of Article 269.

41. To finally conclude, it must be held that the mere "despatch of goods to a place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce" is synonymous with or is in any case included within the ambit of the "consignment of goods either to the person making it or to any other person in the course of inter-State trade or commerce", as specified in Article 269(1)(b) and Entry No. 92-B of List-I of the Seventh Schedule to the Constitution. Consequently, the levy of sale or purchase tax on such a despatch or consignment of goods and matters ancillary or subsidiary thereto, would be within the exclusive legislative competence of Parliament to the total exclusion of the State legislatures.

42. Once that is so, a *fortiorari,* the impugned provision in so far as it levies a purchase tax on the consignment of goods outside the State in the course of inter-State trade or commerce, is beyond the legislative competence of the State of Haryana and is, therefore, void and inoperative. The amendment to Section 9(1)(b) of the Act introduced by Section 3 of the Act No. 3 of 1983, is thus unconstitutional and is hereby struck down. As a necessary consequence, the retrospective validation of the notification, annexure P/2 and the consequential validation of all actions taken thereunder have to be equally quashed. The writ petitions are allowed in the terms aforesaid, but in view of the great intricacy of the issues involved, the parties are left to bear their own costs.

43. Ere I part with this judgment, I feel compelled to notice that on behalf of the writ petitioners, the impugned provisions as also the actions sought to be authorised thereby were assailed on a wide variety of other grounds as well. Included therein was the challenge on the basis of the freedom of trade, commerce and intercourse under Articles 301 to 305, and equally to the levy of penalties for failure to pay the tax and the claim for interest on the alleged tax due. However, in the wake of my aforesaid finding that the respondent State of Haryana lacks the very legislative competence to make the impugned amendment, which has been struck down, the aforesaid issues are rendered entirely academic. I would, therefore, refrain from pronouncing any opinion thereon.

Cases Referred.

11983 R.L.R. 68
21975(1) All England Reports 810

31973(2) S.C.C. 551
4AIR 1964 SC 925
5AIR 1965 SC 58
61963 S. C. Page 90
71942 Federal Court 33
8(1972)30 S.T.C. 537
91973(32) S.T.C. 359
101975(36) S.T.C. 191
111901 A.C. 595
12AIR 1968 SC 647
131975 (36) S.T.C. 191
14AIR 1958 SC 560