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(2010) 10 CHH CK 0007

In the Chhattisgarh High Court

Case No : Writ Petition No''s. 58, 59, 130, 1917, 1918, 1919, 1920, 2665, 2666, 2667, 2060, 2685, 2686, 2687, 2691, 2692, 2693, 2694, 2695, 2696, 2700, 2701, 2702 and 2703 of 2002, 94, 97, 129, 176, 177, 277, 278, 393, 406, 407, 424, 675, 687, 846, 853, 884, 1115 a

Baba and Son''s Tradelink Co. APPELLANT

Vs

State of Chhattisgarh and Others RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Central Sales Tax Act, 1956 — Section 2(g), 3, 3(a), 6
Constitution of India, 1950 — Article 141, 19, 19(1), 19(1)(f), 229
Contract Act, 1872 — Section 23

Citation : (2011) 45 VST 272

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Kishore Bhaduri, Rakesh Ranjan Agrawal, Ashish Shrivastava, Neelabh Dubey, Ms. Smiti Sharma, B.D. Guru, Pankaj Shrivastava, V.R. Tiwari, Ajay Mishra, Harsh Wardhan, Adil Minhaj, Parag Kotecha, Ms. Nilima Verma, Sanjay Patel, Ratan Pusty, Amrito Das, Akhilesh Dalpati, P.K. Badhuri, Vaibhav Goverdhan, Adtiya Tiwari, Pallav Mishra, Qamrul Aziz, S.R.J. Jaiswal, Basant Dewangan, Varunendra Mishra, Rajendra Tripathi, Ghanshyam Patel, Hari Shankar Patel and Anup Majumdar, for the Appellant; C.S. Vaidyanathan with D.S. Surana, Advocate General and A.S. Kachhwaha, Deputy Advocate-General for the State, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—W.P. Nos. 2060, 58, 59, 130, 1917, 1918, 1919, 1920, 2665, 2666, 2667, 2685, 2686, 2687, 2691, 2692, 2693, 2694, 2695, 2696, 2700, 2701, 2702 and 2703 of 2002, W.P. Nos. 94, 97, 129, 176, 177, 277, 278, 393, 406, 407, 424, 675, 687, 846, 853, 884, 1115 and 2158 of 2003, W.P. (T) Nos. 5307, 5806, 6135, 6193, 6195, 6288, 6353, 6464, 6482, 6504, 6505, 6521, 6555, 6593, 6617, 6666, 6715, 6722, 6775, 6829, 6830, 6865, 6984, 6999, 7170, 7256, 7470, 7484 and 7593 of 2007, W.P. (T) Nos. 402, 403, 404, 405, 406, 407, 408, 409, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 2599, 2600, 2812 and 6430 of 2008, W.P. (T) Nos. 947, 1589, 3309, 3785, 3786, 3787, 3823, 3824, 3827, 4064, 4101, 4189, 4193, 4194, 4244, 4278, 4326, 4353, 4354, 4356, 4357, 4358, 4367, 4411, 4412, 4415, 4416, 4417, 4481, 4494, 4505, 4506, 4519, 4533, 4534, 4535, 4538, 4541, 4542, 4547, 4548, 4553, 4554, 4599, 4600, 4601, 4607, 4608, 4611, 4612, 4614, 4615, 4616, 4624, 4629, 4630, 4631, 4633, 4646, 4655, 4659, 4660, 4677, 4685, 4686, 4687, 4693, 4694, 4695, 4696, 4698, 4699, 4706, 4713, 4714, 4723, 4724, 4732, 4742, 4743, 4744, 4745, 4746, 4747, 4748, 4753, 4770, 4771, 4772, 4773, 4774, 4777, 4778, 4833, 4850, 4853, 4859, 4860, 4861, 4862, 4874, 4879, 4880, 4900, 4902, 4908, 4913, 4915, 4916, 4917, 4919, 4925, 4926, 4946, 4947, 4952, 4953, 4954, 4957, 4958, 4959, 4979, 5033, 5041, 5048, 5052, 5057, 5058, 5068, 5069, 5072, 5110, 5116, 5123, 5155, 5156, 5220, 5221, 5281, 5327, 5328, 5384, 5405, 5406, 5407, 5432, 5439, 5441, 5457, 5458, 5480, 5481, 5482, 5486, 5487, 5492, 5494, 5498, 5499, 5500, 5509, 5510, 5511, 5516, 5524, 5525, 5526, 5550, 5573, 5575, 5576, 5577, 5579, 5588, 5618, 5666, 5668, 5669, 5670, 5677, 5678, 5679, 5680, 5681, 5682, 5694, 5697, 5698, 5706, 5707, 5708, 5709, 5710, 5726, 5727, 5728, 5729, 5730, 5731, 5732, 5733, 5734, 5738, 5739, 5773, 5774, 5808, 5810, 5828, 5832, 5855, 5856, 5882, 5899, 5900, 5928, 5931, 5943, 5944, 5945, 5948, 5949, 5950, 5953, 5956, 6010, 6011, 6012, 6013, 6014, 6015, 6021, 6022, 6023, 6024, 6125, 6140, 6141, 6142, 6171, 6188, 6190, 6191, 6192, 6193, 6194, 6203, 6234, 6237, 6238, 6264, 6265, 6266, 6267, 6268, 6310, 6312, 6318, 6324, 6333, 6464, 6465, 6740, 6764, 6765, 6766, 6820 & 7479 of 2009, W.P. (T) Nos. 105, 331, 409, 410, 454, 518, 1161, 1163, 1164, 1235, 1240, 1316, 1317, 1332, 1336, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1403, 1404, 1505, 1512, 1551, 1552, 1553, 1558, 1570, 1572, 1616, 1617, 1618, 1619, 1625, 1641, 1666, 1667, 1735, 1737, 1742, 1754, 1764, 1765, 1766, 1786, 1787, 1788, 1789, 1828, 1830, 1831, 1832, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1878, 1883, 1884, 1914, 1915, 1916, 1917, 1942, 1950, 1951, 1956, 1960, 1969, 1970, 2037, 2038, 2078, 2079, 2090, 2106, 2128, 2129, 2130, 2131, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2200, 2201, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2239, 2253, 2302, 2303, 2304, 2343, 2365, 2439, 2440, 2445, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2499, 2500, 2501, 2590, 2593, 2594, 2595, 2620, 2621, 2649, 2694, 2697, 2699, 2700, 2701, 2706, 2707, 2708, 2727, 2730, 2752, 2755, 2757, 2758, 2759, 2767, 2783, 2786, 2787, 2842, 2870, 2881, 2886, 2887, 2919, 2920, 2944, 2946, 2947, 3000, 3005, 3007, 3019, 3032, 3055, 3056, 3057, 3058, 3069, 3080, 3081, 3086, 3093, 3094, 3097, 3098, 3156, 3205, 3275, 3287, 3288, 3289, 3306, 3307, 3375, 3376, 3391, 3401, 3402, 3408, 3427, 3470, 3525, 3526, 3527, 3528, 3529, 3556, 3576, 3577, 3579, 3705, 3754, 3757, 3758, 3759, 3776, 3798, 3905, 3907, 3908, 3914, 3915, 3970, 4013, 4029, 4135, 4505, 4524, 4533, 4536, 4539, 4540, 4542, 4577, 4578, 4666, 4667, 4695 and 4870 of 2010, involve a common question of law as to

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whether purchase of tendu leaves by the petitioners, who are registered exporters under the Chhattisgarh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 (for short, "the Adhiniyam 1964") read with the provisions of the Chhattisgarh Tendu Patta (Vyapar Viniyaman) Niyamavali, 1966 (for short, "the Niyamavali, 1966"), falls within the definition of inter-State sale or intra-State sale. The facts, which are common, in brief, for disposal of this batch petitions, are that the petitioners are dealers of tendu leaves, registered as "exporters of tendu leaves". A tender notice was issued by the respondent--Chhattisgarh State Minor Forest Produce (Trading and Development) Co-op. Federation Limited (for short, "the Federation"). Pursuant to the said tender notice, the petitioners submitted their tender forms for purchase of tendu leaves. On consideration of the tender forms, the petitioners were allotted various tendu leaves lots. Thereafter, purchase agreement under condition No. 7 of the tender notice was executed between the Governor of Chhattisgarh acting through the Conservator of Forest, ex officio General Manager of the Federation. The petitioners were required to pay taxes under the terms of the purchaser''s agreement. Thus, these petitions.

2. Shri Rajesh Ranjan Agrawal, learned counsel appearing for the petitioners in W.P. No. 2060 of 2002, W.P. No. 393 of 2003, W.P. No. 218 of 2004, W.P. (T) No. 4646 of 2009, W.P. CD No. 4900 of 2009 and W.P. CD No. 4902 of 2009, would submit that the petitioners are registered as exporters under the provisions of the Adhiniyam, 1964 and the Niyamavali, 1966. In addition, they are registered dealers under the State Sales Tax Act as well as the Central Sales Tax Act (for short, "the CST Act"). Shri Agrawal would further submit that the petitioners are under obligation to export tendu leaves to its manufacturing units situated in State of West Bengal and State of Jharkhand. Thus, the sale comes within the meaning of inter-State sale, as provided u/s 3(a) of the CST. The agreement of goods was inevitable, as they were registered exporters. The sale of tendu leaves and movement of tendu leaves to outside State of Chhattisgarh are inseparably connected, as it was a sale by acceptance of tender and subsequent agreement between the petitioners and Federation.

3. Shri Agrawal would further submit that the Commissioner, Commercial Tax, Raipur, in circular No. 9767 dated October 10, 2001 directed that the industrial bamboo sold to ITC Bhadrachalam, Andhra Pradesh, pursuant to tender by the purchase and support with the TP and moved outside the State, as inter-State sale u/s 3(a) of the CST, wherein sale was treated as "inter-State" sale. The present case is identical to the case of ITC, Bhadrachalam, Andhra Pradesh. Therefore, the circular of the Commissioner dated October 10, 2001 is binding on the Department, as held by the Supreme Court in umpteen number of cases. It is apparent from the terms and conditions of the tender notice and the agreement that the sale of tendu leaves was for export to outside the State of Chhattisgarh.

4. Shri Agrawal would next submit that the sale in the case on hand is inter-State sale. Even if contract of sale itself does not provide for the movement of

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goods from one State to another, but such movement was as a result of an incident of the contract. In support of his contention, Shri Agrawal placed reliance upon the decisions of Similipahar Forest Development Corporation Limited v. State of Orissa [1995] 96 STC 627 (Ori), W.A. Shah Enterprises (P) Ltd. Vs. District Forest Officer and Others, Karnataka Soaps and Detergents Ltd. Vs. The District Forest Officer, Sathyamangalam Division and Others, . The petitioners are not free to export tendu leaves without TP-4 wherein the route and timing of the journey and destination is clearly provided. Condition No. 4 of annexure II of the tender notice, which was condition precedent for taking delivery of goods from the Federation, pursuant to sale of tendu leaves make it clear that sale was as a result of implied contract of sale. The State of Chhattisgarh has no jurisdiction to charge the local taxes at the rate of 20 per cent, as the same is contrary to the provisions of the CST Act. He further placed reliance on the decision of the Supreme Court rendered in State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc., to the effect that the identical issues were involved in the cases and the transaction in question was held as inter-State sale.

5. Shri Agrawal would further submit that the definition of "exporter of tendu leaves" is given under rule 2(5) of the Niyamavali, 1966. Condition No. 5 of annexure I and Condition No. 12 of annexure I of the tender notice wherein it is provided that if there is a breach of Adhiniyam, 1964 and Niyamavali, 1966 or agreement, as the case may be, the exporter would be punished u/s 15 of the Adhiniyam, 1964 and also blacklisted for five years, make it clear that the movement was a part of covenant of the agreement. Sale certificate issued in form L is only in favour of the exporters, who are required to export the tendu leaves outside the State. Form K read with rule 8(5) of the Niyamavali, 1966 clarifies that the Federation has complete control over the exporter of tendu leaves and, as such, the entire transaction comes within the purview of inter-State sale.

6. It is further urged that purchase on auction by outsider and thereafter carrying goods outside is a local sale and not inter-State sale, but in the case on hand, this was not an auction purchase but the purchase was made on the basis of bids submitted by the tenderers and thereafter there was full control of Federation. Thus, all the cases wherein the sale was made by auction as held in Maharashtra Timber Laghu Udyog Mahasangh, Pune and Others Vs. State of M.P. and Others, are not applicable to the facts of the case. Thus, the petitions may be allowed and the petitioners may be permitted to pay inter-State sales tax, not the local taxes, in accordance with law.

7. Shri Ashish Shrivastava, learned counsel appearing for the petitioners in W.P. No. 58 of 2002, W.P. No. 59 of 2002, W.P. No. 130 of 2002, W.P. No. 129 of 2003, W.P. No. 176 of 2003, W.P. No. 177 of 2003, W.P. No. 406 of 2003, W.P. No. 407 of 2003, W.P. No. 424 of 2003, W.P. No. 884 of 2003, W.P. No. 1115 of 2003, W.P. (I) No. 4189 of 2009, W.P. CD No. 4193 of 2009, W.P. (T) No. 4194 of 2009, W.P.

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CD No. 4356 of 2009, W.P. (I) No. 4553 of 2009, W.P. CD No. 4554 of 2009, W.P. CD No. 5900 of 2009, W.P. CD No. 6764 of 2009, W.P. CD No. 6765 of 2009, W.P. (T) No. 6766 of 2009, W.P. CD No. 454 of 2010, W.P. CD No. 518 of 2010, W.P. CD No. 2593 of 2010, W.P. (T) No. 2594 of 2010, W.P. CD No. 3019 of 2010 and W.P. (T) No. 2595 of 2010, while adopting the submission made by Shri Agrawal, would submit that the petitioners required tendu leaves as raw materials for the purpose of manufacture of bidis in its manufacturing units situated outside the State of Chhattisgarh. The State monopoly has been created for sale and purchase of tendu leaves. The Federation has been appointed as an agent to function as a registered society on behalf of the State Government. The petitioners are registered as "dealer" under the Chhattisgarh Commercial Tax Act, Andhra Pradesh Commercial Tax Act and Maharashtra Commercial Tax Act and also registered as a dealer in the respective States under the CST Act.

8. Shri Shrivastava would further submit that the petitioner submitted a tender for purchase of tendu leaves of various lots of different units. Being successful, the petitioners entered into a purchaser''s agreement. Under the agreement, petitioners were required to make payment on instalments on due dates. The petitioners were required to pay the purchase price along with sales tax, surcharge and forest development tax and thereupon the petitioners were directed to take delivery on the basis of delivery order. Delivery order dated November 20, 2002 issued from the office of Managing Director, Zila Vanopaj Sahakari Sangh Maryadit, East Bhanu-pratappur would show that the consignment of tendu leaves was delivered under TP-4 for being transported outside the State of Chhattisgarh.

9. Shri Shrivastava would next submit that the sale of tendu leaves of the Federation and purchase of the same by the petitioners is in the course of inter-State trade and commerce and, as such, the same are exigible to tax on inter-State sale u/s 6 of the CST Act and, as such, levy and imposition of State sales tax/commercial tax/VAT are unauthorized and beyond competence of the State respondents, in view of the requirement of TP-4, which regulates movement of tendu leaves to outside the State. It is further urged that right from the inception to the completion of sale there existed an implied condition for movement of goods and accordingly such sale is deemed to be a "sale" within the meaning of section 3 of the CST Act. Tendu leaves were purchased, which occasioned movement to State of Andhra Pradesh/Maharashtra for the purpose of being consumed as raw material in manufacture of bidis.

10. Shri Neelabh Dubey, learned counsel appearing for some of the petitioners, would submit that (i) the petitioners are registered as exporter of tendu leaves; (ii) the business of tendu leaves is a monopoly trade and is governed in totality by the Adhiniyam, 1964 and the Niyamavali, 1966; (iii) the agreement is also governed by tender notice which has five annexures containing terms and conditions including the purchaser''s agreement; and (iv) clauses Nos. 3 and 2, in the purchaser''s agreement clearly provide that all provisions of the

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Adhiniyam, 1964 and the Niyamavali, 1966 shall specifically form part of tender notice and purchaser''s agreement.

11. Elaborating his abovesaid points of contentions, it is urged that the Adhiniyam, 1964 and the Niyamavali, 1966 provide for controlling of all facets of the monopolistic business in tendu leaves. Definition of the word "exporter" itself forms a part of the contract. Thus, the exporters are bound to move all the purchases outside the State for consumption or sale. The petitioners are bound to comply with the provisions of the Adhiniyam, 1964 and the Niyamavali, 1966, which entail the movement of tendu leaves outside the State. Thus, there is an inextricable link between the sale and movement of goods outside the State and, as such, this satisfies the criteria laid down u/s 3(a) of the CST Act, thus, it comes within the meaning of inter-State sale chargeable to tax under the CST Act. The Federation is an agent of the Government, as has been explained by the High Court of Hari Om Vs. State of M.P. and Another,

12. Shri Dubey would next submit that the tenders were invited for sale and purchase of tendu leaves. From the point of receipt of tenders to opening of tenders, the officers of the Government are involved along with Federation, at all places.

13. On the question of nature of control on exporters, Shri Dubey would submit that the Adhiniyam, 1964 provides for explicit control on sale, purchase and movement of tendu leaves. Section 5 of the Adhiniyam, 1964 provides for restriction on purchase or transport of tendu leaves. Sub-section (2)(b) of section 5 provides for grant of TP and further that from the place where tendu leaves had grown, tendu leaves may move inside the State only for the purpose of manufacturing of bidis and it may be moved outside the State by any person after obtaining necessary permission. This section has to be read along with sections 11, 12 and 12A of the Adhiniyam, 1964 and various other Rules.

14. Shri Dubey would further submit that the certificate of registration specifically provides for estimated quantity of leaves handled annually for export of tendu leaves. Form I and form J provide for maintaining register of accounts of tendu leaves of exporter and statement of periodical return of tendu leaves of exporter. Form K, which is a declaration by an exporter, provides for estimated export during the ensuing year in standard bags. The aforesaid requirements, which are submitted to the forest officers in advance would clearly go to show that exporter is a person who takes leaves outside State for the purpose of sale or its own use.

15. The provisions of section 12A prescribes that any manufacturer or exporter of tendu leaves with whom excess quantity is left over after his requirement or export shall not resell such excess quantity of tendu leaves without the permission of the State Government. Thus, it is an express bar upon the seller as without permission of the State Government, he shall not sell the tendu leaves.

16. It is further argued that perusal of section 12A along with other sections of

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the Adhiniyam, 1964 would prescribe that an exporter of tendu leaves may only sell his share of tendu leaves outside the State and it would never possibly sell it inside the State. Any sale inside the State is in fact prohibited. The sale of tendu leaves by the Federation to the exporter is intricately connected with the movement of the said tendu leaves outside the State.

17. Section 3 of the CST Act states that sale and purchase of goods shall be deemed to have taken place in the course of inter-State trade and commerce, if sale or purchase (a) occasions movement of goods from one State to another or (b) is effected by a person, by transfer of documents of title to the goods during movement from one State to another.

18. It is next contended that whenever a sale of tendu leaves takes place inside the State between the Federation and the exporter, it is very well within the knowledge of the State Government that the goods shall move from State of Chhattisgarh to another State. Not only the State Government have knowledge that the goods would move but it exercises complete control over the goods by controlling every stage of movement of the goods.

19. In Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others, , the Supreme Court held that "under the rules, an exporter means a person who sells tendu leaves to one having business outside the State or who exports them for the manufacture by him of bidis outside the State".

20. The Supreme Court in various cases has held that even the movement, which is incidental to the contract of sale would come within the meaning of inter-State sale.

21. In support of his contention that the sale of tendu leaves from the stage of production till consumption outside the State was under control of the State Government, he relies on the decision of the Supreme Court rendered in Singareni Collieries Co., Ltd. Vs. State of Andhra Pradesh and Others, He further placed reliance on the decision rendered in Commissioner of Sales Tax, Maharashtra State, Bombay v. Raisaheb Rekchand Mohta Spinning & Weaving Mills Private Limited [1991] 80 STC 60 (Bom), Oil India Ltd. Vs. The Superintendent of Taxes and Others, , English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax Officer and Others, , Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, and upon the decision of the High Court of Bombay rendered in Commissioner of Sales Tax, Maharashtra State, Bombay v. Nivea Time STR No. 3 of 1993 (decided on August 14, 1997)1.

22. Shri Anup Majumdar, learned counsel appearing for some of the petitioners, while adopting the submission made by Shri Dubey, would submit that although there is no stipulation in the tender notice or agreement about export or inter-State sale, yet the nature of the sale has to be inferred by movement of goods occasioned due to the contract. Shri Majumdar would further submit that the petitioners being registered exporter of tendu leaves could not have sold tendu

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leaves inside the State of Chhattisgarh. Since the petitioners were registered as "exporters" and, as such, it was not required to specify that the exporters are purchasing leaves for taking outside the State. The sale was also conditioned by permission of the State under TP.

23. Shri Majumdar would further submit that the restrictions imposed under sections 12 and 12A of the Adhiniyam, 1964 make it clear that the tendu leaves purchased by the petitioners were meant for consumption or use outside the State of Chhattisgarh. Accordingly, the restrictions and control of the State Government and its agency continued till the tendu leaves are exported and transported beyond the territory of the State of Chhattisgarh. Clause 10 of the agreement provides that non-compliance of the conditions of the tender notice transportation/delivery and purchase condition will not render the purchase complete. Thus, the movement of tendu leaves from the State of Chhattisgarh to outside the State was inseparable from the sale of tendu leaves.

24. Other learned counsel appearing for the different petitioners adopted the above-stated submissions made by Shri Agrawal, Shri Shrivastava, Shri Dubey and Shri Majumdar, learned counsel.

25. On the other hand, Shri C.S. Vaidyanathan, learned senior counsel appearing with Shri D. S. Surana, Advocate-General and Shri A.S. Kachhwaha, Deputy Advocate-General for the State, would submit that if the movement of goods, from one State to another takes place independently of the contract of sale there being no compulsion or obligation under the contract to make such movement of goods then the sale will not be deemed to be an inter-State sale u/s 3(a) of the CST Act.

26. The Supreme Court prior to enactment of the CST Act interpreted article 286(2) of the Constitution of India in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, The test was thereafter affirmed in Endupuri Narasimham and Son Vs. The State of Orissa and Others, holding that the test was

A sale could be said to be in the course of inter-State trade only if two conditions concur;

(i) A sale of goods, and

(ii) A transport of those goods from one State to another under the contract of sale.

27. The Supreme Court reiterated the test laid down in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, in The Cement Marketing Co. of India Ltd. and Another Vs. The State of Mysore and Another, and State of Jammu and Kashmir and Others Vs. Caltex India (Ltd.), that the transport or movement has to be under the contract of sale, i.e., to say the transactions themselves involved the movement. The test appears to have been diluted in Oil India Ltd. Vs. The Superintendent of Taxes and Others, , where the Supreme

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Court held that even if no provision is made in the contract for movement, if the movement is envisaged by the parties such as a pipe line having been laid for the movement specially to execute the contract for moving the goods from one State to another, then such movement will be an incident of the contract of sale, but in Balabhagas Hulaschand Vs. State of Orissa, , the test laid down in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, was reiterated.

28. Shri C.S. Vaidyanathan, relies on several decisions in support of his contention and would further submit that in DCM Limited Vs. Commissioner of Sales Tax, Delhi, the Supreme Court held that the determinative test is whether the purchasers are obliged contractually to move the goods from one State to another.

29. He would next submit that if the movement takes place as a result of other statutory or non-statutory requirements but not as a result of an express or implied requirement under the contract of sale, it will not make the sale an inter-State sale. In support of his contention, he relics on the decision of Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others, . In State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc., the facts were different, as delivery of goods was made only after the TPs have been obtained. It appears that the attention of the court was not drawn to the ratio laid down by a Constitution Bench of the Supreme Court in State of A.P. Vs. National Thermal Power Corporation Ltd. and Others,

30. His next contention is that the purchase of tendu leaves in Chhattisgarh is materially different from that of in Orissa and in the case on hand, the sale is complete within the State. The movement of goods from Chhattisgarh to any other State is not pursuant to any express or implied stipulation in the contract. The contract docs not oblige the purchaser to move the goods from Chhattisgarh to any other State.

31. The learned senior counsel referred clauses:

Clause 4, 41(a), 41V, 4V, 4VI, 4VIII

Clause 6(b), 6(4), 6(5)

Clause 8(1), 8(11)

Clause 9

Clause 10

Clause 14c(b), 14c(c)(i), clause 18

Clause 20(1), 20(2) of the agreement to establish his point.

32. The provisions of section 12A are merely to ensure that the monopoly created in respect of trading in tendu leaves in the State Government by section

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5 is not circumvented. The provisions of the Adhiniyam, 1964 and the Niyamavali, 1966 as also the forms contemplated that the application for grant of TP is made by the purchaser in respect of goods which are already purchased and consequently the movement is not pursuant to the contract of sale or purchase.

33. The sale/purchase eligible to tax, which is subject-matter of the petition, is the sale by the Federation to tenderer/purchaser and not further sale by the purchaser. Section 12A of the Adhiniyam, 1964 deals with further sale by the tenderer. Section 5(1) (Explanation 1) in terms excludes sale by the Federation to tenderer from the rigour of section 5(1). Further section 12A is nearly a regulatory provision to ensure that the monopoly trading is not violated. This is not a condition imposed by the contract but a requirement of a law. Equally the requirement of TP under sub-section (2) of section 5 of the Adhiniyam, 1964 is a statutory requirement which has to be complied with by all the dealers of the tendu leaves. It is in exercise of the State legislative power to regulate under articles 245 and 246 of the Constitution and not power to contract under article 229. Section 23 of the Contract Act requires all applicable laws to be complied with the clause in the agreement stipulating compliance with the Adhiniyam, etc., is nearly by way of abundant caution.

34. Shri Kishore Bhaduri, learned counsel appearing for the Federation, while adopting the submission made by Shri C. S. Vaidyanathan, learned senior counsel appearing for the State, would submit that the Federation is the apex body of other primary societies. The societies who are members of the Federation follow three tire system, i.e.:

(i) Primary society at village level (Prathmik Laghu Vanopaj Prathmik Samiti),

(ii) District level society consisting of members of primary societies at district level (Zila Laghu Vanopaj Sahakari Samiti), and

(iii) Apex societies, i.e., the answering respondents (Federation).

35. Shri Bhaduri, would further submit that the Federation and other societies are not meant for profit or other benefits, but for welfare of individual numbers of the primary societies who pluck and pick all the tendu leaves and bring to collection centre. The procedure of sale is as under:

? The tenders for collection of tendu patta are called by Forest Department.

? The tendu leaves are auctioned on the basis of as it is where it is basis, i.e., the portion of the forest where tendu trees are found are allocated as lots all over the State and the purchasers are free to inspect those trees and leaves thereof for their assessment of quality of the leaves.

? The prospective purchasers/buyers are allowed pre-inspection of the area of forest containing tendu trees.

? After pre-inspection the tenders are called for lots and the purchasers bid in

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such tender for particular lots, on being successful in tender, the purchaser is bound to get those tendu leaves plugged from the trees.

? After the completion of the bid, the purchaser is required to enter into an agreement with the Federation. The agreement provides for purchase of entire tendu leaves by paying the entire amount in one stroke or by payment of the entire amount in 4 equal instalments. The tendu leaves are procured and stored by the purchaser under dual lock system, one key remains with the Federation and another with the purchaser. In case, the purchaser opts for payment by instalments then the tendu leaves of the value of the instalments are released by the Federation in presence of the purchaser. This process is adopted to ensure regular payment and during plucking till godowning and thereafter the entire risk for the goods is of the purchaser therefore is required to ensure the goods at his own cost.

? After plucking the leaves, they are collected in a bundle of 50 leaves each and 1000 bundles of such leaves become 1 unit bag. These plucking is done by the purchaser and the purchaser or his agent remains present in the jungle while the process of plucking. The wages/amount as charges for such plucking is paid through the society.

? After the leaves have been plucked by the members, and collected, the purchasers are bound to remove the same from the lots within 24 hours to their respective godowns for processing. The entire cost of transporting the leaves from the lots to the processing places is born by the purchaser.

? These plucking is being done by the members of primary societies.

? The processing of leaves like moistening, bagging, etc., are being done by the purchaser himself, through the member of the primary society and after processing, the leaves are stored in the respective godowns. It is important to mention that the transport permit is issued by the Forest Department to the purchaser for transporting these leaves from lots to the god own/processing place and such TPs are also granted for transporting the processed leaves from the place of processing to godowns.

? It is important to mention that the Federation does not provide any godown to the purchaser for storage, or in case some godown are provided by the State for storage of tendu leaves, the purchasers pay rent to the State for hiring such facility.

? At the time when the goods are taken away by the purchaser after payment of the price, the TPs are provided to facilitate the purchaser to route through the forest produce, through the forest areas so as to avoid registration of any forest offence or otherwise against the purchaser.

? The role of the society/Federation finishes thereafter.

? The taxes as leviable on the said tendu patta are recovered by the society/

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federation. Since the sale of tendu leaves are made at the stage when the leaves are attached to the trees, if cannot be said/interpreted that the processed tendu patta or movement thereof is as a consequence of sale.

36. Having heard learned counsel appearing for the parties and perused the pleadings and the documents appended thereto, I propose to deal with the questions of law on the issue of inter-State sale, in respect of the facts of the instant case.

37. Tendu trees are grown in forest. The tendu leaves are used for manufacturing of bidis and other similar products. The, then, State of Madhya Pradesh for regulating in the public interest the trade of tendu leaves by creation of State monopoly, enacted the Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964, which obtained the assent of the President on November 3, 1964. On creation of State of Chhattisgarh, pursuant to the provisions of the M.P. Reorganization Act, 2000, the Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 was adapted by the State of Chhattisgarh and it became the Chhattisgarh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 and became applicable in the State of Chhattisgarh, also.

38. It is indisputable that the trade in tendu leaves would consist of dealing, i.e., in purchase and sale of those leaves. Transportation of tendu leaves come under regulation of the State of Madhya Pradesh by virtue of the Adhiniyam, 1964, with the Niyamavali, 1966.

39. Plucking and trading of tendu leaves normally take place in summer season. Accordingly, the tender notices are issued in the month of May or June of every year for sale of tendu leaves.

40. u/s 4 of the Adhiniyam, 1964 there is a provision for appointment of agents on behalf of the State Government.

41. Section 5 provides for restriction on purchase or transport of tendu leaves that no person other than the State Government, an officer of State Government authorized in writing in that behalf or an agent in respect of the unit, in which the leaves have grown, would purchase or transport tendu leaves.

42. Sub-section (2) of section 5, which is a non obstinate clause provides that tendu leaves purchased from the State Government or any officer or agent specified in said sub-section by any person for manufacturer of bidis within the State or by any person for sale outside the State may be transported by such person outside the unit in accordance with the terms and conditions of a permit to be issued in that behalf by such authority in such manner and on payment of such fees as may be prescribed.

43. Sub-section (3) of section 5 further provides for sale of tendu leaves to the Government officer or agent as specified in sub-section (1) of section 5.

44. Section 11 of the Adhiniyam, 1964 provides for registration of manufacturer

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of bidis and exporters of tendu leaves.

45. Section 12A of the Adhiniyam, 1964, which was inserted by amendment with effect from December 31, 1988 provides that any manufacturer of bidis or exporter of tendu leaves with whom the excess quantity is left over after his requirement or export, shall not resell such excess quantity of tendu leaves without the permission of the State Government or any officer as may be authorized in this behalf. Thus, sale of tendu leaves was permissible with express sanction of the State Government or any officer, as may be authorized in this behalf,

46. Section 19 provides for making of Rules by the State Government, inter alia, in respect of publication of price list of tendu leave, manner of registration, form of declaration, amount of fees, etc.

47. In exercise of power u/s 19 of the Adhiniyam, 1964, the Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Niyamavali, 1966 was framed, which was subsequently adapted by the State of Chhattisgarh.

48. Under the provisions of rule 2(5) of the Niyamavali, 1966 the "exporter of tendu leaves" is defined as under:

(5) ''Exporter of tendu leaves'' means a person or party who exports tendu leaves outside Madhya Pradesh for his or its own use or sells tendu leaves to another person or party carrying on trade in tendu leaves at a place outside Madhya Pradesh;

49. Under the provisions of rule 2(7) of the Niyamavali, 1966 the "purchaser" is defined as under:

(7) ''Purchaser'' means a person or party to whom tendu leaves have been sold by the State Government u/s 12;

50. Under the provisions of rule 2(11) of the Niyamavali, 1966 the "transport permit" is defined as under:

(11) Transport permit'' means a permit issued under clause (b) of sub-section (2) of section 5 for transport of tendu leaves;

51. Rule 4 of the of the Niyamavali, 1966 provides for four types of transport permit (for short, "TP"), namely; (i) for transport from collection depot to storage godown; (ii) for transport from one storage godown to another or to distribution centre; (iii) for transport from distribution centre to sattedar or mazdoors; and (iv) for transport outside the State.

52. The application was to be made in form D to the Divisional Forest Officer who was held as competent to grant the permit or shall authorize any officer or person to issue the permit.

53. There were certain conditions as provided under sub-rule (3) of rule 4 stating that the tendu leaves shall be transported only by the route specified in the

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permit, further the transportation of tendu leaves will not take place after sunset and before sunrise. There was a provision for cancellation of TP in case of misuse or likely to be misused of TP. Rule 8 of the Niyamavali, 1966 provides for registration for manufacturers of bidis and/or exporters of tendu leaves.

54. The petitioners are registered dealers under the provisions of sales tax of the concerned States and that of State of Chhattisgarh. In addition, they were registered under the provisions of the Central Sales Tax (Registration and turnover) Rules, 1957 also. They are also registered as "exporters of tendu leaves" under the provisions of section 11 of the Adhiniyam, 1964, read with rule 8 of the Niyamavali, 1966. There is a clear provision that a purchaser may be registered either as exporter of tendu leaves or exporter and manufacturer of bidis or manufacturer of bidis. Indisputably, the petitioners are registered as exporters of tendu leaves.

55. In the tender notice, it is provided that the tendu leaves collected/purchased from Government lands, forest lands, and private holdings at different collection centres (phads) and processed, bagged and stored the same in godowns at various places in the State.

56. The Federation, acting in the name of and on behalf of the Governor of Chhattisgarh, invites sealed tenders from persons/registered firms/legal companies for purchase of said tendu leaves. Terms and conditions and instructions of the tenderers were provided in the tender notice, its annexures and schedule. The tenders were invited for purchase of lots of tendu leaves collected from different units and storage godowns.

57. Condition No. 7 of the tender notice provides for execution of purchaser''s agreement after the offer of successful tenderer is accepted. In the tender notice, condition No. 7(ii) provides for execution of an agreement in respect of every lot within 30 days of issuance of the acceptance of his offer by the Federation.

58. Condition No. 7(iii) provides, inter alia, for delivery of the leaves lot wise on either full payment or on payment by instalments. Normally, the payment of purchase price is made in four equal instalments one in October, second in mid November, third in first week of January next year and fourth in mid February next year.

59. Condition No. 9 of the tender notice provides for delivery of leaves after the payment of the instalments in accordance with the provisions contained in annexures I and IV.

60. Condition No. 1(xix) of annexure I of the tender notice defines the word "tax payable". "Tax payable" means, vanijyik kar, forest development cess and other taxes/cess as leviable from time to time, on the purchase price of the tendu leaves in a lot. The sale of tendu leaves is on "as is where is basis".

61. Condition No. 5(v) provides that the tenderer must be registered under the

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Adhiniyam and Niyamavali as manufacturer/exporter on the date of submission of the tender and if successful, he must obtain registration certificate till the date of expiry of contract period. Condition No. 6 provides for payment of earnest money by every tenderer. Condition No. 11 provides for delivery of leaves stating that the delivery of leaves to the purchaser will be made only after full payment of the amount of instalment due, has been made.

62. Condition No. 11(v)(a) provides that if the purchaser wants to take open delivery of the leaves of the lots after full payment of the due amount of first instalment, he shall give an application to this effect to the conservator of forests. On an application by the purchaser, the conservator of forests shall permit open delivery to the purchaser, according to the procedure prescribed by the Federation. One fourth of the total notified quantity of the lot shall be delivered under the open delivery. While giving the delivery, no selection of bags from the lot shall be permitted and the delivery shall be given from that one side of the stack only from which the delivery has been commenced.

63. Condition No. 12 of annexure I of the tender notice provides for breach of Adhiniyam, etc., which reads as under:

12. Breach of Adhiniyam, etc.

A purchaser, who commits any breach of provisions of Adhiniyam, Niyamavali and/or any condition of the purchaser''s agreement as a result of which he is punished u/s 15 of the Adhiniyam or where his agreement is terminated, shall be liable to be blacklisted for a period up to 5 years.

64. Condition No. 4 of annexure II of the tender notice, which is a form of declaration provides for declaration to the effect that the tenderer holds a certificate of registration as manufacturer of bidis and/or exporter of tendu leaves under the Adhiniyam, 1964.

65. In accordance with condition No. 7 of tender notice, the purchaser''s agreement is executed (for short "the agreement"). Clause 1 of the agreement provides for period of purchaser''s agreement.

66. Clause 2 of the agreement provides for parts of the agreement, which reads as under:

2. Parts of the agreement

This agreement shall always be deemed to be subject to the provisions of Chhattisgarh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964, the rules made thereunder and the orders and notifications issued from time to time under the said Adhiniyam and the rules and the terms and conditions of the said tender notice including the general/other terms and conditions of the tender and instructions for tenderers contained in annexure I of the tender notice, all of which shall form part of and shall be deemed to have become part of this agreement and which shall be construed to have been specifically provided for in

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these presents.

67. Clause 4 of the agreement provides for procedure for collection/purchase and payment and delivery of leaves at collection centres. Clause 4 reads as under:

4. Procedure for collection/purchase and payment and delivery of leaves at collection centers.

I. (a) The purchaser shall take the delivery of the green tendu leaves collected in the Primary Society Bhiragaon, which has been fully described in Schedules A and B, on all the collection centers given in Schedule B or any other additional center decided by Managing Director, District Union, within the next two days of the date of collection from primary society or any person authorized by the Managing Director, District Union. The purchaser will not obtain tendu leaves directly from collectors/producers after paying collection charges/purchase price.

Note: The purchaser shall not raise any objection, if the leaves delivered by the society to him in the standard bundle of 50 leaves fit for manufacturing bidies, are less or more by 2 leaves.

(b) The purchaser will take the delivery only on the collection centers mentioned in 4.1 (a) above. The leaves found on unauthorized phad/place will be forfeited in addition to the action under Adhiniyam and this contract.

(c) No collection centre shall be allowed to be opened within the boundaries of reserved/protected forests except in forest village or rocky areas/standy bed or rivers and nalas. Collection centres shall not be established beyond, half kilometre of village habitation. Permission for opening collection centres within the boundaries of reserved/protected forests in the places other than places mentioned above, may if necessary under special circumstances, be granted by the concerned conservator of forests on the recommendation of the concerned Managing Director, District Union.

II. The primary society will collect the tendu leaves from the Government lands and forests lands and pay the collection rate per standard bag fixed by the Government and purchase the green unbagged tendu leaves from the private producers during collection season.

III. Purchaser shall appoint representative for each collection centre. Purchaser will submit list of such representatives along with samples of their attested signatures, addresses and photographs in duplicate to the Managing Director, District Union, on or before April 15, 2009. If the Managing Director, District Union, directs the purchaser to remove any representative, the purchaser shall immediately remove such person and bar him from carrying out any work under this agreement.

IV. It is the responsibility of the representative of the purchaser at every collection centre that he will obtain the information of collection from primary society daily during collection period. Representative of the purchaser shall have

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to take possession of tendu leaves on the basis of their particulars in the collection booklet and he shall give receipt in prescribed form to the representative of the society immediately after taking possession of tendu leaves. The leaves which have been delivered to the purchaser and the leaves the delivery of which has not been taken by the purchaser within next two days from the date of collection will be at the risk of purchaser at the collection centres.

V. If the purchaser fails to take the delivery of tendu leaves within next 2 days of the date of collection then,

(A) In addition to any action for the violation of the purchaser''s agreement, Managing Director of the District Union in his discretion for the part or the whole quantity of the tendu leaves

(i) Can refuse the delivery of tendu leaves to the purchaser.

(ii) Can deliver the leaves to the purchaser only after recovering the supervision charges of Rs. 50 per standard bag. If the leaves are delivered later on after drying, bagging and transportation to the purchaser by Federation of primary society or district union as the case may be, then the purchaser in addition to supervision charges will pay the expenditure incurred on drying, bagging and transportation, etc., as decided by the Managing Director of the District Union whose decision shall be final and binding on the purchaser.

(B) The Federation can dispose such leaves through sale and can recover the loss amount from the purchaser.

VI. The purchaser shall not refuse to take the delivery of the tendu leaves offered by the primary society unless leaves are unfit for the manufacture of bidies. The leaves not accepted by the purchaser will be separately kept by the primary society and will be produced for inspection to Sub-Divisional Forest Officer/ Divisional Forest Officer or to the any officer authorized by them. The inspecting officer will deliver his decision to the representative of the purchaser on the collection centre only which will be final and binding on the purchaser. If the purchaser docs not take the delivery of tendupatta within next two days of the decision tendu patta shall be on the purchaser''s risk and action may be taken according to the Condition V(A) and (B).

VII. If the purchaser is offered any quantity in addition to notified quantity by the primary society, the purchaser is bound to take the delivery of additional quantity on phad.

VIII. The purchaser will himself treat, bag, load, transport and godown the leaves after taking the delivery of the green leaves and bear the expenses on these works himself. The purchaser is also responsible for the proper treatment of the phad to protect the leaves from termite and other insects. So the responsibility of any damage to the leaves from termite and other insects between collection and delivery is of the purchaser only.

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IX. In case of any dispute regarding boundaries of primary societies, the decision of Managing Director of District Union shall be final and binding on the purchaser.

X. If the Managing Director of District Union in his discretion communicates to take the delivery of empty hessian bags and jute yarn, the purchaser shall be bound to take delivery of such quantity on the rate fixed by the Managing Director, District Union. Purchaser shall make payment of the cost of above quantity of bags and jute yarn in the officer of Managing Director of District Union in the form of bank draft/demand draft of a scheduled bank drawn in favour of Managing Director, C. G. State Minor Forest Produce (Trading and Development) Co-operative Federation Limited payable at Bank branch of the place shown in annexure VI for the District Union on or before April 30, 2009. The purchaser will be delivered bags and yarn after the full payment as mentioned above only.

XI. Purchaser shall cross mark the existing mark on the bags supplied by the District Union before bagging such bags. Any bag, found with its original mark intact and not cross-marked during transportation of leaves, shall be treated as illegal collection and transportation and liable to be seized. Purchaser shall write the name of the district union, name of primary society, name of the purchaser, name of the phad, serial No. of the bag on the phad and number of bundles in the green colour on the bags provided by the District Union or purchased by himself. The purchaser will clearly write the serial No. of godown on each bag in black colour.

68. Clause 6 of the agreement provides for procedure for payment of amount due and delivery of leaves. Sub-clause 1(a) of clause 6 provides that if the purchaser wants, he can remove the tendu leaves up to the notified quantity of the lot from the collection centres under transit pass issued as per the provisions of the Adhiniyam and Niyamavali.

69. Sub-clause 1(b) of clause 6 of the agreement reads under:

(b) If the purchaser does not want to get the leaves released from the phad after paying the full balance amount due and expresses the written desire to store the leaves in the godowns under double lock of purchaser and Federation to avail of the facility of the payment in instalments up to April 15, 2009 or 21 days from the date of purchaser appointment order whichever is later, he will be permitted to store the leaves in the godowns taken on rent by him in the State of Chhattisgarh, specially approved for this purpose by the Managing Director, District Union or any officer authorized by him for the purpose after executing the tripartite agreement (annexure VII) enclosed with this tender notice. The permission to transport the leaves from phad to godowns will be granted after it only. For the purpose of inspection in the godowns, stacking of the tendu leaves will be done minimum 2 feet away from the godown walls. If the Managing Director, District Union directs the purchaser through a letter by March 31, 2009 or 15 days from the date of purchaser appointment order whichever is later to

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take the godowns of Forest Department Federation/primary society/others on rent, then he will be bound to do so on the rent of Rs. 15 per actual bag but he will not be required to execute the tripartite agreement in annexure VII and can keep the leaves in the godown till April 15, 2010, but if the purchaser wants, he can store the leaves in his own godown under double lock of purchaser and Federation after paying the rent of 15 per actual bag. The purchaser will have to make the payment of godown rent on the basis of storage capacity of the godown fixed by the Managing Director, District Union by May 15, 2009 in one instalment.

70. Clause 7 of the agreement provides for facility of delivery of leaves against bank guarantee also.

71. Clause 8 of the agreement provides for payment of taxes, which reads as under:

8. Payment of taxes

(i) Under this agreement an instalment shall not be deemed to have been paid unless all taxes due thereon are also fully paid.

(ii) The purchaser shall pay the value added tax under Chhattisgarh Value Added Tax Adhiniyam, 2005 as amended from time to time and Forest Development Cess and other taxes/cess through bank/demand draft in favour of Managing Director, Federation, at the headquarters of District Union.

(iii) The purchaser, unless exempted by the income tax authorities in the prescribed pro forma, shall pay the income tax due under the income tax Act, 1961, in the form of a separate bank/demand draft drawn on any scheduled bank, in favour of Managing Director, District Union, payable at his head quarter. The purchase price of any part of leaves shall not be deemed to have been paid, unless income tax payable on it has also been fully paid.

72. Clause 9 of the agreement provides for issue of sale certificate in form L, after giving delivery of tendu leaves.

73. Clause 9 of the agreement of 2002 and clause 10 of the subsequent agreement provides for compliance of agreement to the effect that if the terms and conditions of tender notice pertaining to delivery and sale and of this agreement are not fully complied with it will be considered that the purchase of leaves has not taken place. In the original Hindi format in addition to delivery and sale the word "transport" has also been added before "delivery".

74. Clause 14 of the agreement provides for termination of the agreement on the grounds firstly; if the purchaser fails to pay the instalment before the due date and the last instalment within 15 days of its due or fails to comply with any provisions, the agreement may be terminated after giving 15 days notice and further after affording an opportunity of hearing to the purchaser, the purchaser may also be blacklisted for a period up to 5 years. Sub-clause (c) of clause 15 of

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the agreement provides for the steps to be taken after termination of the agreement.

75. Clause 16 of the agreement provides for performance of duties, etc., by purchaser, i.e., acts and duties required to be done by him and shall abstain from doing by himself or by his servants and agents any act prohibited by/or under the provisions of the said Adhiniyam and the said Niyamavali in so far as they are not inconsistent in the context of this agreement.

76. Clause 20 of the agreement provides for first charge. The amount of purchase price or the balance thereof as the case may be as is due under the terms and conditions of the tender notice and the terms and conditions of this agreement, the Adhiniyam and the rules, shall form first charge on the tendu leaves taken delivery of by the purchaser.

77. Sub-clause (2) of clause 20 further provides that until the first charge is fully discharged, the purchaser shall not export or utilize for manufacture of bidies or otherwise dispose of such tendu leaves. Terms and conditions of the tender notice and the agreement in all the years is the same.

78. Now the question for consideration before this court is as to whether the sale of tendu leaves from the lots of tendu leaves to the petitioners, who are registered as exporter of tendu leaves under the Adhiniyam, 1964 and the Niyamavali, 1966, is in the course of inter-State trade and amounts to inter-State sale. Further, whether the sale of tendu leaves preceding the movement of such leaves can be attributed to the contract of sale and further whether the movement of tendu leaves under TP was independent of the contract of sale.

79. There is no dispute that the Federation is an instrumentality of the State, as forest officers are ex officio members and officers of the Federation. Further, there is a monopoly in favour of the State in transaction of forest produces including tendu leaves. Thus, the Adhiniyam, 1964 was enacted and the Niyamavali, 1966 thereunder was framed. The State Government through its agency and officers authorised on its behalf are only competent to enter into transaction of sale and purchase of tendu leaves.

80. The contention of the petitioners are that; (i) the petitioners are registered as exporters; (ii) all the provisions of the Adhiniyam, 1964 and the Niyamavali, 1966 are part of the purchaser''s agreement and; (iii) the restrictions imposed on the petitioners under the provisions of sections 5, 11, 12A and 19 of the Adhiniyam, 1964 read with rule 2(5), 2(7), 2(11) and rule 4 of the Niyamavali, 1966 establish the fact that the purchase of tendu leaves by the petitioners occasioned the movement of tendu leaves outside the State of Chhattisgarh, is not acceptable.

81. Clause 2 of the agreement, i.e., parts of the agreement provides that "the agreement shall always be deemed to be subject to the provisions of the Adhiniyam, 1964 and the rules made thereunder". Thus, it cannot be held that

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the provisions of the Adhiniyam, 1964 and the Niyamavali, 1966 are parts of the agreement, but the agreement is conditional upon compliance of the provisions of the Adhiniyam, 1964 and the Niyamavali, 1966.

82. Contention of Shri Vaidyanathan, learned senior counsel appearing for the State, that movement takes place as a result of other statutory or non statutory requirements but not as a result of an express or implied terms under the contract of sale, and the movement of tendu leaves was an independent transaction, merits acceptance.

83. A Constitution Bench of the Supreme Court in Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others, held that "to constitute a sale in the course of export of goods out of the territory of India, common intention of the parties to the transaction to export the goods followed by actual export of the goods to a foreign destination is necessary. But intention to export and actual exportation are not sufficient to constitute a sale in the course of export, for a sale by export involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Knowledge that the goods purchased are intended to be exported does not make the sale and export parts of the same transaction, nor does the sale of the quota with the sale of the goods lead to that result.

(emphasis supplied)

84. The Supreme Court further held that the transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be regarded as one in the course of export, unless the sale occasions export. And to occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it. Thus, I do not agree with the contentions of the petitioners that the provisions of the Adhiniyam, 1964 and the Niyamavali, 1966 are part of the agreement, i.e., contract of sale. Requirement of TP for movement of tendu leaves is a reasonable restriction on movement of tendu leaves not from the delivery point to outside the State only, but TP is required even for other movements from one area to another area, within State also. Contract of sale and movement of tendu leaves are independent and separable and have no bond or link, in between. Mere knowledge that the tendu leaves were purchased with intention to export outside the State of Chhattisgarh does not form a part of the transaction of sale.

85. Section 5(b) of the Adhiniyam, 1964 read with rule 4 of the Niyamavali, 1966 clearly provides that TP is required from collection depot to storage godown or to distribution centre to sattedars of mazdoors and for transport outside the State. Thus, the contention of the petitioners that grant of TP for movement of tendu leaves outside the State occasions movement is not acceptable. It is a measure

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of control on movement of tendu leaves to outside, being regulatory, under the provisions of the Adhiniyam, 1964 and the Niyamavali, 1966. It is neither an express part of the contract nor implicit in the contract of sale.

86. The movement of tendu leaves was not a part of the contract of sale, as it does not require movement of tendu leaves from the State of Chhattisgarh to outside the State of Chhattisgarh. As monopoly in transaction of tendu leaves is in favour of State (See Hari Om Vs. State of M.P. and Another, the State imposes reasonable restrictions on movement of various forest produces including tendu leaves at every stage. This is a requirement in case of manufacturers of bidis who take tendu leaves from the point of delivery to their respective units, also.

87. Section 12A of the Adhiniyam, 1964, which provides for resale of excess quantity of tendu leaves, which are not taken either by the manufacturers of bidis or exporter of tendu leaves, the sale within State can be effected with the permission of the State Government or any officer as may be authorized in this behalf. This is again a regulation for sale and resale of tendu leaves. The restriction as contained in section 12A has no inextricable link between transaction of sale and movement of tendu leaves.

88. The registration of the petitioners as exporter of tendu leaves is for the purpose of exporting tendu leaves outside the State of Chhattisgarh. After sale of tendu leaves, it can further not be held that it was a part of the contract of sale or the terms and conditions of the purchaser''s agreement, which obliges the exporters to move tendu leaves purchased by them, under terms of the contract of sale, outside the State.

89. It is indisputable that tender notice with its annexures is part of the agreement as discussed in the preceding paras of this judgment. Condition No. 11 of annexure I of the tender notice clearly states that delivery of leaves has to be made on full payment on the basis of certificate granted by the Conservator of Forest. There is no mention that the delivery has to be taken for exporting tendu leaves outside the State, either in sale certificate or delivery order or after issue of TP.

90. Condition No. 12 of annexure 1 of the tender notice provides for breach of Adhiniyam, Niyamavali or condition of the purchaser''s agreement, which may lead to termination of the agreement and blacklisting. Termination of the agreement is on account of non-compliance of the provisions of the Adhiniyam, 1964 and the Niyamavali, 1966, which are statutory in nature and are applicable to all traders, whether they are registered as exporters or manufacturers of bidis within the State. The blacklisting is a part of penalty with the purpose to regulate to and control forest produces so that it may not fall in the hands of the traders, who may indulge into black marketing. Looking from any angle, it cannot be held that sale of tendu leaves to exporters, occasions movement of tendu leaves outside the State.

91. Clause 4 of the agreement gives a detailed procedure for collection, purchase

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and delivery of leaves at collection centres. Sub-clause (v) of clause 4 of the agreement obliges the petitioners to take delivery of tendu leaves within next two days of collection. The contentions of the petitioners that after delivery, the tendu leaves have to be taken outside within two days is contrary to the facts and is noticed to be rejected.

92. Sub-clause (1)(b) of clause 6 of the agreement requires the purchasers to take leaves release from phad after paying the full balance amount due and the same may be kept in godown under double lock of purchaser and Federation. That has been done in order to preserve tendu leaves and further to ensure all the payments are made. It is nowhere provided in the terms of the contract either expressly or impliedly that after taking delivery of leaves the petitioners (exporters) have to move the tendu leaves from the State of Chhattisgarh to outside the State of Chhattisgarh.

93. The certificate of sale issued in form L under rule 9 of the Niyamavali, 1966 does not provide for movement of tendu leaves except name of the purchaser, name of the sale depot and unit, quantity sold/delivered (in standard bags) and date of sale/delivery.

94. Clause 10 of the agreement provides for compliance of terms and condition of tender notice as well as the agreement pertaining to delivery and sale.

95. According to the learned counsel appearing for the respective petitioners, there is one word "transport" also before word "delivery". The compliance of transport/delivery and sale, are before sale is complete, not after sale has been complete. Thus, this clause is also of no assistance to the petitioners to establish that the sale obliges the petitioners to move tendu leaves outside the State.

96. Form I, i.e., to maintain register of accounts of tendu leaves of manufacturer/exporter, is not relevant. Form J, i.e., to maintain statement of periodical return of tendu leaves and manufacturer/exporter and declaration by manufacturer/exporter under form K, nowhere provide that the petitioners are obliged to move leaves purchased under the contract of sale outside the State. Clause 8 of form K only requires a declaration to the extent of quantity of tendu leaves exported annually during the previous two years. This does not have any bearing on the contract of sale.

97. Contention of Shri Agrawal, learned counsel appearing for the petitioners that memo dated October 10, 2001 issued from the office of the Commissioner, Commercial Tax, Chhattisgarh Raipur, wherein the sale of industrial bamboos for outside the State for using in ITC, Bhadrachalam, Andhra Pradesh has been treated as inter-State sale, is not applicable, to the facts of the instant cases, as the facts are different. In this batch of cases as the movement of leaves was not as a result or under covenant of the contract. Thus, I do not agree with the contention of Shri Agrawal.

98. The delivery order dated November 20, 2002 from the office of Zila Vanopaj

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Sahakari Sangh Maryadit, East Bhanu-pratappur, was issued after sale was complete. Neither contract of sale nor TP provides for any control or restriction on the petitioners in respect of diversion, transfer of sale of tendu leaves to any person or unit outside the State of Chhattisgarh. Thus, it is distinguishable from the facts of the case of Singareni Collieries Co., Ltd. Vs. State of Andhra Pradesh and Others,

99. I cannot lose sight of the fact that under clause 8 of the agreement, there is a specific mention that the petitioners shall pay the commercial tax/VAT under the provisions of law, as amended from time to time and forest development cess and other taxes/cess through bank/demand draft in favour of the Federation. It appears that the purchase price has been fixed, having regard to the agreement of the petitioners to pay all the taxes afore-stated before entering into the agreement for purchase of tendu leaves.

100. Contentions of the petitioners that the transaction of sale has been shown in the income tax of the exporters, which they have filed outside the State, does not make any difference in the well-settled principles of law that in order to bring transaction of sale within the frame work of inter-State sale, it is essential that there must be transport of goods from one State to another under the contract of sale or purchase.

101. In Endupuri Narasimham and Son Vs. The State of Orissa and Others, a Constitution Bench of the Supreme Court while considering sale or purchase to be inter-State sale held that "in order that a sale or purchase might be inter-State, it is essential that there must be transport of goods from one State to another under the contract of sale or purchase".

102. In The Cement Marketing Co. of India Ltd. and Another Vs. The State of Mysore and Another, a Constitution Bench of the Supreme Court held as under (page 183 in 14 STC):

13. ...Thus if the goods moved under the contract of sale, it cannot be said that they were intra-State sales. It was not the volition of the first appellant to supply to the purchaser the goods from any of the factories of the second appellant. The factories were nominated by the Government by authorisations which formed the basis of the contract between the buyer and the seller. Applying these tests to the facts of the present case we are of the opinion that the sales were in the nature of inter-State sales and were exempt from sales tax. In these circumstances the contracts of sale in the present case have been erroneously considered to be intra-State sales.

103. A Constitution Bench of the Supreme Court in Singareni Collieries Co., Ltd. Vs. State of Andhra Pradesh and Others, C 563 in the facts where an allottee of coal could not use it otherwise than in accordance with the conditions of the order of allotment, nor divert or transfer any such coal to any other person except under a written authority from the Central Government and no person could acquire or purchase or agree to acquire or purchase coal from a colliery,

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and no colliery owner could despatch or agree to despatch or transport any coal from the colliery except under the authority and in accordance with the authority of the Central Government held that the supply, use and disposal of coal were, therefore, regulated from the stage of production till consumption, held as under (page 210 in 17 STC):

22. Coal in the appeals under review was transported from the collier'' "of the Company to the consumers outside the taxing State, as a result of the covenant or incident of the contract of sale and therefore the sale must be regarded as an inter-State sale and not liable to be taxed under the Hyderabad General Sales Tax Act, 1950....

104. A Constitution Bench of the Supreme Court in State of Jammu and Kashmir and Others Vs. Caltex India (Ltd.), observed as under (page 619 in 17 STC):

6. As regards the first question, it is admitted by the parties that petrol was transported from Pathankot in the State of Punjab to Nandpur in the State of Jammu and Kashmir under the contract of sale. The petrol was kept in storage at a depot of the respondent at Pathankot and it was carried in the trucks of the respondent from Pathankot and delivered to the Nandpur farm in the State of Jammu and Kashmir. The price of the petrol supplied was paid to the respondent at Delhi by the Director-General of Supplies. Upon these facts it is manifest that there was movement of goods from the State of Punjab to the State of Jammu and Kashmir under the contract of sale and there was completion of sale by the passing of property and the delivery of the goods to the purchaser....

105. Further a Constitution Bench of the Supreme Court in Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others, , while considering the restriction on the transport contained in section 5 of the Adhiniyam, 1964 and rules 4 to 9 of the Niyamavali, 1966 observed that the Adhiniyam, 1964 was enacted for regulating "the trade in tendu leaves" by creating a State monopoly in such trade. The Supreme Court observed as under:

10. The long title of the Act recites that the Act was enacted for regulating ''the trade in tendu leaves'' by creating a State monopoly in such trade. Trade in tendu leaves would consist of dealing in those leaves, i.e., their purchase and sale. Transport of the leaves once purchased or sold would not prima facie be an organic or integral part of dealing in those leaves. It is something extraneous to dealing in those leaves, something which takes place after the purchase or the sale thereof is completed and property in them has passed from the dealer to the purchaser and therefore does not form part of the trade in that commodity. That being so the restrictions on their transport contained in section 5 cannot be held to be the integral part of the trade monopoly but as ancillary or incidental thereto, made for its effective enforcement. If that be so, it affects the right of the purchaser under article 19(1)(f) to hold and to dispose of the goods he has acquired, a right which is not co-related, as the right under clause (g) is, with the monopoly which the section seeks to create. It follows, therefore, that such a

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provision would have to pass the test of reasonableness under clause (5) and the first part of clause (6) of article 19. That would also be the position in respect of article 304(b). But since the requirement of these provisions is the same the yardstick of reasonableness would be common to all these cases. It is well recognised that when an enactment is found to infringe any of the fundamental rights guaranteed under article 19(1), it must be held to be invalid unless those who support it can bring it under the protective provisions of clause (5) or clause (6) of that article. To do so, the burden is on those who seek that protection and not on the citizen to show that the restrictive enactment is invalid. (Cf. Saghir Ahmad Vs. The State of U.P. and Others, and Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam,

....

13. In our view reading of section 5(2) along with rule 9 of the said Rules, what they are intended to require is that a manufacturer must have a permit to move the leaves purchased by him from the unit or units where he has purchased them to his warehouse outside and from there to his branches and also when he transports them to his sattedars. But, no such permit was intended to be necessary when the leaves are distributed for the manufacture of bidis by these sattedars to the mazdoors whom he employs. A construction so limited in its sweep is commendable as it is consistent with the object of the Act and is also in harmony with clauses (5) and (6) of article 19 and clause (b) of article 304....

106. In The State of Bihar and Another Vs. Tata Engineering and Locomotive Co. Ltd., the Supreme Court considering the earlier decisions rendered in State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others, , The Bengal Immunity Company Limited Vs. The State of Bihar and Others, Endupuri Narasimham and Son Vs. The State of Orissa and Others, Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, The Cement Marketing Co. of India Ltd. and Another Vs. The State of Mysore and Another, , Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others, K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes, Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another, held as under (page 149 in 27 STC):

14. The decided cases establish that sales will be considered as sales in the course of export or import or sales in the course of inter-State trade and commerce under the following circumstances:

(1) When goods which are in export or import stream are sold;

(2) When the contract of sale or law under which goods are sold requires those goods to be exported or imported to a foreign country or from a foreign country as the case may be or are required to be transported to a State other than the State in which the delivery of goods takes place; and

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(3) Where as a necessary incidence of the contract of sale goods sold are required to be exported or imported or transported out of the State in which the delivery of goods takes place.

107. The facts of the aforestated case were that the dealers were required to move the trucks, buses chassis and other spare parts purchased by them from the State of Bihar to places outside Bihar. They were so required by the terms of the contracts entered into by them with the assessee. They would have committed breach of their contracts and incurred the penalty prescribed in their dealership agreements, if they had failed to abide by the term requiring them to move the goods outside the State of Bihar.

108. Another Constitution Bench of the Supreme Court in The State of M.P. and Others Vs. Chhotabhai Jethabhai Patel and Co. and Another, , affirmed the observations of the Supreme Court in Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others,

109. A Bench of two honourable judges of the Supreme Court in Oil India Ltd. Vs. The Superintendent of Taxes and Others, observed as under (page 449 in 35 STC):

9. Even though clause 7 of the supplemental agreement does not expressly provide for movement of the goods, it is clear that the parties envisaged the movement of crude oil in pursuance of the contract from the State of Assam to the State of Bihar. In other words, the movement of crude oil from the State of Assam to the State of Bihar was an incident of the contract of sale. No matter in which State the property in the goods passes, a sale which occasions ''movement of goods from one State to another is a sale in the course of inter-State trade''. The inter-State movement must be the result of a covenant express or implied in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale: See State Trading Corporation of India Ltd. Vs. State of Mysore,

(emphasis supplied)

110. In the aforesaid case, the question for consideration was whether the sales made by the petitioner in pursuance to clause 7 of the second supplemental agreement to Government of India through the agency of Indian Oil Corporation were sales in the course of inter-State trade and were therefore liable to sales tax under the Central Sales Tax Act.

111. Subsequently, a Bench of two honourable judges of the Supreme Court in Balabhagas Hulaschand Vs. State of Orissa, , explained the event of inter-State

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sale as under (pages 214 and 215 in 37 STC):

12. Furthermore, we can hardly conceive of any case where a sale would take place before the movement of goods. Normally what happens is that there is a contract between the two parties in pursuance of which the goods move and when they are accepted and the price is paid the sale takes place. There would, therefore, hardly be any case where a sale would take place even before the movement of the goods. We would illustrate our point of view by giving some concrete instances:

Case No. I.--A is a dealer in goods in State X and enters into an agreement to sell his goods to B in State Y. In pursuance of the agreement A sends the goods from State X to State Y by booking the goods in the name of B. In such a case it is obvious that the sale is preceded by the movement of the goods and the movement of goods being in pursuance of a contract which eventually merges into a sale the movement must be deemed to be occasioned by the sale. The present case clearly falls within this category.

Case No. II.--A who is a dealer in State X agrees to sell goods to B but he books the goods from State X to State Y in his own name and his agent in State Y receives the goods on behalf of A. Thereafter the goods are delivered to B in State Y and if B accepts them a sale takes place. It will be seen that in this case the movement of goods is neither in pursuance of the agreement to sell nor is the movement occasioned by the sale. The seller himself takes the goods to State Y and sells the goods there. This is, therefore, purely an internal sale which takes place in State Y and falls beyond the purview of section 3(a) of the Central Sales Tax Act not being an inter-State sale.

Case No. III.--B, a purchaser in State Y, comes to State X and purchases the goods and pays the price thereof. After having purchased the goods he then books the goods from State X to State Y in his own name. This is also a case where the sale is purely an internal sale having taken place in State X and the movement of goods is not occasioned by the sale but takes place after the property is purchased by B and becomes his property.

112. Thereafter, a Bench of three honourable judges of the Supreme Court in Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, held that it is not true to say that for the purposes of section 3(a) of the Central Sales Tax Act, it is necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale. His Lordship Y. V. Chandrachud, C. J., speaking for the Bench, relying on view of the Supreme Court in Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, The Cement Marketing Co. of India Ltd. and Another Vs. The State of Mysore and Another, State Trading Corporation of India Ltd. Vs. State of Mysore, , Singareni Collieries Co., Ltd. Vs. State of Andhra Pradesh and Others, , K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes, , Oil India Ltd. Vs. The

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Superintendent of Taxes and Others, , held that "it would be enough if the movement was in pursuance of and incidental to the contract of sale".

113. The facts of the aforesaid case, i.e. Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, were that the respondent-company had its factory at Faridabad in the State of Haryana wherein it manufactured goods in pursuance of specific orders received at or booked by it at its registered office in Delhi. Despatch of goods, billing and receipt of payment was done from the said office at Delhi. Question arose whether the sales effected by the respondent occasioned the movement of goods from the State of Haryana to the Union Territory of Delhi. The determination of the situs of the sale was necessary to decide which of the sales tax authorities: that of Haryana or of Delhi could assess such sales. The State of Haryana contended that they were inter-State sales made at Faridabad while the Union of India contended that they were intra-State sales effected within the Union Territory of Delhi.

114. In Indian Oil Corporation Ltd. and Another Vs. Union of India (UOI) and Others, the Supreme Court observed as under (page 5 in 47 STC):

6. Section 3(a) of the Central Sales Tax Act, 1956, provides that ''a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase occasions the movement of goods from one State to another''. It is now well-settled by a series of decisions of this court that a sale shall be an inter-State sale u/s 3(a) if there is a contract of sale preceding the movement of goods from one State to another and the movement is the result of a covenant in the contract of sale or is an incident of that contract; in order that a sale may be regarded as an inter-State sale it is immaterial whether the property in the goods passes in one State or another....

115. In Commercial of Sales Tax, Uttar Pradesh and others, Vs. M/s. Bakhtawar Lal Kailash Chand Areti and others, etc. etc., a Bench of three honourable judges, relying on Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, held that "it is immaterial whether a completed sale precedes the movement of goods or follows the movement of goods, or for that matter, takes place while the goods are in transit. What is important is that the movement of goods and the sale must be inseparably connected.

116. Recently a Constitution Bench of the Supreme Court in State of A.P. Vs. National Thermal Power Corporation Ltd. and Others, held as under (page 300 in 127 STC):

25. It is well-settled by a catena of decisions of this court that a sale in the course of inter-State trade has three essential ingredients: (i) there must be a contract of sale, incorporating a stipulation, express or implied, regarding inter-State movement of goods; (ii) the goods must actually move from one State to another, pursuant to such contract of sale; the sale being the proximate cause of movement; and (iii) such movement of goods must be from one State to another State where the sale concludes. It follows as a necessary corollary of these

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principles that a movement of goods which takes place independently of a contract of sale would not fall within the meaning of inter-State sale. In other words, if there is no contract of sale preceding the movement of goods, obviously the movement cannot be attributed to the contract of sale. Similarly, if the transaction of sale stands completed within the State and the movement of goods takes place thereafter, it would obviously be independently of the contract of sale and necessarily by or on behalf of the purchaser alone and, therefore, the transaction would not be having an inter-State clement. Precedents are legion; we may briefly refer to some of them. In English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax Officer and Others, 1 SCR 631, this court held that when the movement of the goods from one State to another is an incident of the contract it is a sale in the course of inter-State sale and it docs not matter which is the State in which the property passes. What is decisive is whether the sale is one which occasions the movement of goods from one State to another....

117. In State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc., relying on clauses 3.13 and 3.6 of the agreement between the dealer and the corporation, which reads as under (page 234 in 7 VST):

3.13 The successful tenderer shall pay security deposit at 25 percent of the full purchase price of the lot(s) within 15 days of issue of ratification order provided that where the tenderer makes purchase for purpose of export outside India, he may, if he so elects and on furnishing the requisite papers in support thereof, tender the security deposit in the form of bank guarantee (B G) to the extent of 20 percent of the full sale value of the stock purchased in the prescribed form valid for a period of not less than one year and the said BG shall be released after finalisation of the export deal.

3.6 Sale once finalised in favour of a tenderer cannot be transferred subsequently to any other person.

118. Came to the conclusion that the sale was not complete, as tendu leaves were released after finalisation of the export deal. Accordingly, it was held that (pages 333 and 334 of 7 VST):

20. In order to decide whether sale is an inter-State it is sufficient that the movement of goods should have been occasioned by the sale or should be incidental thereto. What is important is that the movement of goods and the sale must be inseparably connected. It is not necessary that there should be an existence of contract of sale incorporating the express or implied provision regarding inter-State movement of goods. Even if hypothetically it is accepted that such a requirement is necessary in the facts of the present case such implied stipulation does exist. This is referable to clause 3.7 of the agreement.

119. In clause 7 of the agreement, which provides for facility of delivery of leaves against bank guarantee, does not state anywhere that if the export deal is finalized thereafter only the bank guarantee will be released.

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120. In DCM Limited Vs. Commissioner of Sales Tax, Delhi, , the relevant facts were that clause 7 of the contract also indicates that the chemicals were to be sold in the territories outside Delhi. The assignment of specific territories is indicated in clause 1. Under the contract, the purchasing dealer(s) was required to submit monthly stock of sales to the assessee. Every month, the purchasing dealer was required to submit a market report to the assessee. Under the contract, the price at which the chemicals were to be sold in different territories was also fixed by the assessee. Each purchasing dealer had executed separate contract(s) with the assessee. On reading the contract, it was found that the movement of the goods was under covenant of the contract. In view of the above-stated facts, the Supreme Court held as under (pages 423-425 in 21 VST):

14. The short point which we have to decide in this batch of civil appeals is whether the movement of chemicals was under the obligations, indicated in the contract, or whether such movement was due to reasons extraneous to such obligations?

15. In our view taking of delivery in Delhi by the purchasing dealers for their assigned territories outside Delhi per se would not take away the transactions in question from the category of inter-State sales. The determinative test to be applied in this case is: whether the purchasing dealers were obliged contractually to remove the goods from Delhi, in which they were bought, to the assigned territories and whether in fact the goods stood actually removed. It is this test that would decide the question as to whether the sales in question were ''inter-State sales'' or ''local sales''....

....

17. ...Once it is found that the purchasing dealers were obliged under the contract(s) to take the chemicals to their respective territories outside Delhi, once it is found that the purchasing dealers were obliged to sell the chemicals in their respective assigned territories, once it is found that the said purchasing dealers were obliged to enter into separate contract(s) with the assessee, once it is found that each of the purchasing dealers were required to sell the chemicals in their assigned territories at the price fixed by the assessee and once it is found that each of the purchasing dealers was obliged to submit monthly reports to the assessee then in that event the mode in which each of the purchasing dealers could sell their goods either by way of stock transfer or inter-State sale or local sale becomes irrelevant. The obligation of the purchasing dealer(s) under the contract indicates the control of the assessee over the movement of the goods.

121. The Division Bench of the High Court of Madhya Pradesh in Maharashtra Timber Laghu Udyog Mahasangh, Pune and Others Vs. State of M.P. and Others, , wherein the facts of the case were that the members of the petitioner participated in the auction in various depots and thereafter being resident of Maharashtra State obtained transit permit for taking timbers to the State of Madhya Pradesh. The petitioners applied for C certificate on the ground that the

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movement of timber, on the basis transit permit, was occasioned on account of sale of timbers. Thus, they are entitled to form C. The Division Bench of the High Court of Madhya Pradesh held as under:

16. ...It is also not disputed that the procedure is that the form with earnest money has to be filled in and if the bid is accepted signature of the highest bidder is taken on the bid list and it is also not disputed that when a certificate is issued showing the price and thereafter, the price is paid and the delivery of goods is taken. It is also not in dispute that what is sold is not unascertained goods but are ascertained goods as the separate lots are unnumbered and auctions are held lot wise and for each lot bids are invited and when the highest bid is accepted a memorandum is prepared, the signature of the highest bidder is taken and a certificate is issued. In view of this procedure which is not in dispute, it is clear as it appears that the sale is complete when the bid is accepted and a certificate is issued. As it is clear that the property in goods passes as soon as the bid of the purchaser is accepted and his signatures are taken and this is what is the definition of sale provided in section 2(g) of the Central Sales Tax Act....

...It is, therefore, clear that the sale or purchase should occasion the movement of goods, i.e., the movement of goods should be a part of the transaction of sale or purchase and so long as it is not established that the movement of goods from the State of M.P. to the State of Maharashtra or Gujarat takes place because of the sale or purchase or as a part of the contract of sale or purchase, it is not possible to hold that this movement of goods was occasioned because of the sale or purchase.

122. The identical issue came into consideration before the High Court of Madhya Pradesh in Zunaid Enterprises v. State of Madhya Pradesh W.P. No. 16775 of 2007 (decided on July 15, 2010) reported as M.M. Traders Vs. State of M. P. and Others, connected matters, wherein the High Court of Madhya Pradesh held as under (page 371 in 36 VST):

30. Merely by issuance of transit passes to the purchasers, in our opinion, it would not be a case of inter-State sale. The purchase agreement (P/5) contained in Schedule IV in the case of sale of tendu leaves provides the detail, method of sale, delivery. It is nowhere contemplated that the goods were to move from outside the State of Madhya Pradesh expressly or impliedly nor it was incidental thereto. In our opinion, the sale of tendupatta is not inseparably connected with the movement. There is no relationship in cause of sale and effect of movement. Merely by the fact that the exporter licence is held by some of the dealers is not enough to make it a case of inter-State sale on the settled principles of law laid down by the apex court in various decisions.

31. There was stipulation in the agreement with respect to tendupatta for payment of commercial tax, forest development cess and any other tax, which was to form part of sale price without payment of these taxes, the payment of

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price shall not be deemed to have been made. In view of the aforesaid discussion, in our opinion, the liability of tax could not have been escaped by the petitioners.

123. A common thread running into the ratio as laid down by the Constitution Benches of the Supreme Court in Endupuri Narasimham and Son Vs. The State of Orissa and Others, The Cement Marketing Co. of India Ltd. and Another Vs. The State of Mysore and Another, , Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another, , State of Jammu and Kashmir and Others Vs. Caltex India (Ltd.), and State of A.P. Vs. National Thermal Power Corporation Ltd. and Others, and other cases are that "movement of goods which takes place independently of a contract of sale would not fall within the meaning of inter-State sale". If there is no contract of sale preceding the movement of goods, obviously the movement cannot be attributed to the contract of sale. Similarly, if the transaction of sale stands completed within the State and the movement of goods takes place thereafter, it would obviously be independently of the contract of sale, the transaction would be intra-State sale.

124. The concept of "pursuant to", "incidental" and "relatable" developed in Oil India Ltd. Vs. The Superintendent of Taxes and Others, and Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, . In State of A.P. Vs. National Thermal Power Corporation Ltd. and Others, , the Supreme Court noted the observation o Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, and other cases, as under (pages 300 and 301 in 127 STC):

25. In Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, it was observed that a sale would be an inter-State sale even if the contract of sale does not itself provide for the movement of goods from one State to another provided, however, that such movement was the result of a covenant in the contract of sale or was an incident of the contract. Similar view was expressed in Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others, In Manganese Ore (India) Ltd. Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur, , after referring to Balabhagas Hulaschand Vs. State of Orissa, it was observed that so far as section 3(a) of the CST Act is concerned there is no distinction between unascertained or future goods and goods which are already in existence, if at the time when the sale takes place these goods have come into actual existence.

125. However, ultimately it was held that after completion of transaction of sale, if the movement of goods takes place thereafter that would obviously be independently of contract of sale and necessarily not an inter-State sale.

126. It is a trite law that by virtue of article 141 of the Constitution of India, the judgment of the Constitution Bench of the Supreme Court is binding on all the courts including the Supreme Court till the same is overruled by a Larger Bench. (See Official Liquidator Vs. Dayanand and Others,

127. The facts involved in this batch of cases came within the illustration as case

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No. 3 in Balabhagas Hulaschand Vs. State of Orissa, , as in the cases on hand, the petitioners, registered as dealers in other States, have purchased tendu leaves in State of Chhattisgarh and thereafter, the tendu leaves were taken out to other States. This is purely an internal sale and the movement of goods is not occasioned by the sale but takes place after the property is purchased. After the tendu leaves are purchased by the petitioners, the same become their property.

128. For the reasons and analysis aforestated, unhesitatingly, I hold that the purchase of tendu leaves was an independent transaction, which was complete in the State of Chhattisgarh. Movement of tendu leaves thereafter was a different transaction and independent of the contract of sale. There is no link between the contract of sale and movement of leaves from State of Chhattisgarh to outside the State of Chhattisgarh. Further, the movement of leaves to outside State of Chhattisgarh was not occasioned by sale of tendu leaves, as it was not on account of covenant of the contract of sale. Thus, the sales are intra-State sales. The petitioners are liable to pay all the taxes accordingly under the provisions of the State Acts. All the interim reliefs granted earlier stand vacated. The petitioners are accordingly directed to make payment of balance amount of taxes to the respondent-State, as aforestated.

129. In the result, all the writ petitions are liable to be and are hereby dismissed. There shall be no order as to costs.

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