

(1982) 02 KAR CK 0015

In the Karnataka High Court

Case No : Writ Petition No's. 3899 to 3901, 8749 to 8753, 11889 and 11890 of 1981 and Ors.

B.P. Automobiles and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 05-02-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 286, 301

Karnataka Sales Tax Act, 1957 — Section 2 (u-2), 5 (3) (a), 5 (3) (b), 6 B, 6 B (1)

Citation : (1983) 2 KarLJ 105 : (1984) 55 STC 93

Hon'ble Judges : M.N. Venkatachaliah, J; M. Rama Jois, J

Bench : Division Bench

Advocate : K. Srinivasan, Indrakumar, B.V. Katageri, Sarangan, Channabasappa, Kashinatha Rao Patil and Devanathan, for the Appellant; B.S. Keshava Iyengar, the Advocate-General and M.R. Achar, High Court Government Advocate, for the Respondent

Judgement

Venkatachaliah, J.—These writ petitions are amongst the batch of writ petitions challenging the levy of an additional tax on turnover u/s 6B of the Karnataka Sales Tax Act, 1957 [as substituted by section 3 of the Karnataka Sales Tax (Amendment) Act, 1981 (Karnataka Act 7 of 1981)]. As the contentions urged are common, all the writ petitions were heard together so that all the learned counsel appearing in the cases are afforded an opportunity of being heard.

The writ petitions now disposed of by this order are, so far as the contentions raised and urged are concerned, representative of the batch. The other petitions in the batch will be disposed of in convenient batches following this pronouncement.

2. The petitioners are "dealers" registered under the Karnataka Sales Tax Act, 1957 (hereinafter referred to as the "Act"). Section 6B of the "Act", as it presently obtains, was substituted in place of the old section 6B, by section 3 of the Karnataka Act 7 of 1981. Section 6B of the "Act" as it earlier stood envisaged

and provided for an additional tax levied on and collected from every dealer liable to pay tax u/s 5 or u/s 6 at the rate of 10 paise in the rupee on the sales tax or purchase tax or both payable, as the case may be, by such dealer. Sub-section (2) of section 6B provided that the provisions of the Act and Rules made thereunder including those relating to refund or exemption from tax shall, in so far as may be, apply in relation to the levy, assessment and collection of such additional tax as they apply in relation to the levy, assessment and collection of sales tax or purchase tax under the "Act". This provision was substituted by section 3 of the Karnataka Act 7 of 1991. There is material difference between the provisions of the earlier sub-section (1) and the substituted sub-section. While the earlier provisions envisaged an additional levy on a dealer calculated at 10 paise in the rupee on the amount of sales tax or purchase tax or both payable by him, the present sub-section (1) envisages a levy at 1/2 per cent on the "total turnover" of a dealer whose "total turnover" in a year exceeds rupees one lakh. Section 6B as it now stands reads :

"6B. Levy of turnover tax. - (1) Every dealer whose total turnover in a year exceeds rupees one lakh shall, in addition to the tax payable, if any, under other provisions of this Act, pay a tax at the rate of one-half per cent of his total turnover :

Provided that no tax under this sub-section shall be payable on any part of such turnover which relates to, -

- (i) sale or purchase of goods specified in the Fifth Schedule;
- (ii) sale or purchase of goods specified in the Fourth Schedule;
- (iii) sale or purchase of goods in the course of inter-State trade or commerce;
- (iv) sale or purchase of goods in the course of export outside the territory of India or sale or purchase in the course of import into the territory of India; and
- (v) all amounts collected by way of tax under the provisions of this Act or the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956).

(2) The provisions of this Act and the Rules made thereunder including those relating to refund or exemption from tax shall, so far as may be, apply in relation to the levy, assessment and collection of the tax payable under sub-section (1), as they apply in relation to the levy, assessment and collection of sales tax or purchase tax under this Act."

3. The amending Act received the assent of the Governor on 4th April, 1981. However, by virtue of the requisite legislative declaration contained in the Bill the provisions of the "Act" become enforceable from the date of the introduction of the Bill as provided by the Provisional Collection of Taxes Act, 1974.

4. We may now set out the facts of some of the cases, which are typical and illustrative of the position of the petitioners in this batch of writ petitions, to show how the provisions of the substituted section 6B are construed by the authorities

to affect the dealers.

In W.P. No. 32906 of 1981, the petitioner - a public limited company carries on the business of hire-purchase financiers of motor vehicles. In respect of the assessment year 1980-81, the petitioner submitted its annual return in form No. 4 in regard to its turnover. "Motor vehicles" dealt with by the petitioners falling as they do under entry 71 of the Second Schedule are, in respect of their sales, exigible to a single point levy at the point of first sale, i.e., at the point of sale by the automobile dealer in favour of the petitioners. As the "motor vehicles" constituting the subject-matter of the hire-purchase agreement suffer tax at the point of first sale by the automobile dealers in favour of the petitioner, the sales that the hire purchase agreements might eventually culminate in as between the petitioner and the hirers in terms of the agreements became second sales and exempt from levy of tax u/s 5(1) by virtue of section 5(3)(a), of the "Act". However, the assessing authority, upon a construction of the provisions of section 6B, has held that notwithstanding the circumstance that the turnover of the second sales by the petitioner is not exigible to tax u/s 5(1) of the "Act", the turnover of such second sales, nevertheless, attracts the levy u/s 6B. The petitioner's turnover for the two working days that fell between 29th March, 1981, and 31st March, 1981, was Rs. 2,37,000 and turnover tax at 1/2 per cent u/s 6B amounting to Rs. 1,185 is demanded from the petitioner under the demand notice dated 17th September, 1981 (annexure C). The legality of this demand is challenged by the petitioner.

In W.P. Nos. 11889 of 1981 and 11890 of 1981, the petitioners are second dealers in automobile chassis and automobile spare parts in the State of Karnataka. They say that the quantum of their turnover of taxable sales is almost negligible in the State of Karnataka. A major part of their turnover, it is stated, represented second sales of merchandise included in the Second Schedule which, by virtue of section 5(3)(a) of the "Act", are exempt from levy u/s 5(1) of the "Act". The Assistant Commissioner of Commercial Taxes, Belgaum, has caused the issue of a notice dated 1st June, 1981 (as per annexure A appended to the memorandum of writ petition in W.P. No. 11889 of 1981) requiring the petitioners to pay turnover tax at 1/2 per cent, u/s 6B on the turnover of Rs. 36,47,537.10 for the period between 1st April, 1981, and 30th June, 1981, though in respect of this turnover the petitioners as the second dealers in the Second Schedule goods are exempt from levy u/s 5(1). The assessing authority construing section 6B as enabling such a levy has called upon the first petitioner to pay a sum of Rs. 18,237.68 by way of turnover tax. The legality of this notice is challenged by the petitioners.

In W.P. Nos. 23916 to 23921 of 1981, the petitioners are dealers in petroleum and petroleum products including kerosene, which are goods listed in the Second Schedule to the "Act". Their taxable turnover liable to tax u/s 5(1) is stated to be negligible and the bulk of their turnover is as second dealers in these goods respecting which they are exempt from tax by virtue of section 5(3)(a). They say

that section 6B does not authorise a levy on such second sales and any construction placed upon the provision as supporting the levy would render the provision itself unconstitutional.

5. Indeed the respondents have not filed their returns in this batch of writ petitions. However, since the question is one of law and of interpretation, we told the learned Advocate-General that we will take notice of the submissions made in the course of arguments in reply to the contentions urged in the petitions. We also told the learned Advocate-General that he could formulate his contentions in the form of a memo so that the contentions urged by him may go on record.

We have heard Sri K. Srinivasan, Sri Indrakumar, Sri B. V. Katageri, Sri Sarangan, Sri Channabasappa, Sri Kashinatha Rao Patil, Sri Devanathan, the learned counsel who addressed arguments for the petitioners, and the learned Advocate-General and Sri M. R. Achar, the learned High Court Government Advocate, for the respondents.

6. A number of contentions are taken in the memorandum of writ petitions. Initially, the submission of the counsel for the petitioners was that in view of section 6B(1) including inter-State and export turnover within the concept of "total turnover", as defined in section 2(u-2) of the "Act", was unconstitutional as offending article 286 of the Constitution. But this line of argument was not pursued and Sri K. Srinivasan stated - and this submission was adopted by all other learned counsel - that he would not urge the question of constitutionality, but would rest his case on a point of construction, and would urge that the expression "total turnover" occurring in section 6B(1) should be understood to mean a turnover excluding the inter-State and import and export turnover. It may be pointed out here that section 2(u-2) of the "Act" defines "total turnover" to mean the aggregate turnover in all goods of a dealer whether or not the whole or any part of it is liable to tax including the turnover relating to sales in the course of inter-State trade or of export or import. On the basis of the contentions actually urged at the hearing, the controversy in the matter admits of being identified and formulated thus :

(A) The expression "total turnover" in the clause "whose total turnover in a year exceeds Rs. 1,00,000" in section 6B(1) ought not to be read with the definition of "total turnover" u/s 2(u-2); but must be so understood as to exclude inter-State sales and export sales, as else section 6B(1) would render itself susceptible to the vice of unconstitutionality by taking into account the quantum of turnover of inter-State sales and export sales in selecting "dealers" for the levy of the additional tax u/s 6B.

(B) Section 6B brings about an unconstitutional discrimination, violative of the constitutional pledge of equality, by making the classification between persons brought within the net of the levy u/s 6B and those excluded from it, dependent upon the quantum of turnover which includes sales and purchases in the course of inter-State trade and commerce and export, a differentia which has no rational

nexus to the objects of the legislation.

(C) The State Legislature has no competence to levy a tax on the "turnover" and as such the levy u/s 6B would not be a tax under entry 54, List II.

(D) That section 6B, as substituted by Karnataka Act 7 of 1981, imposes restrictions on the freedom of trade, commerce and intercourse within the meaning of article 304(b) of the Constitution and the legislative measure, not having been introduced or moved in the legislature with the previous sanction of the President of India, is unconstitutional.

(E) Even if section 6B is valid, by virtue of the provisions of section 6B(2), the exemptions u/s 5(3)(a) and (b) are also attracted for computation of taxable turnover and that the turnover exigible to tax u/s 6B(2) would stand, pro tanto, reduced. 7. Point (A) : The main thrust of the argument is that the expression "total turnover" in the clause "every dealer whose total turnover in a year exceeds Rs. 1,00,000" in the first part of section 6B(1) of the "Act" cannot be read with the statutory definition of "total turnover" in section 2(u-2) of the "Act", but must be understood only as such turnover respecting which the State Legislature has competence to levy tax and so understood the line of demarcation of dealers in whose cases the levy u/s 6B(1) is attracted would depend upon the quantum of total turnover excluding the transactions of inter-State sales and purchases and sales and purchases in the course of export and import.

7. The argument for the revenue is that the first part of section 6B(1) is not a provision for levy or imposition of the tax; that it merely specifies the class of dealers whose turnover in intra-State transactions is liable to turnover tax u/s 6B(1) and that it was only for that limited purpose the total turnover, including inter-State and import and export turnover, is taken into account. But the levy of turnover tax, u/s 6B(1) was, so proceeds the argument, only on such turnover respecting which the State Legislature had competence to levy tax, as is evident from the proviso to section 6B(1), and therefore, it is not impermissible to give to the expression "total turnover" in the first part of section 6B(1) the same meaning as in section 2(u-2) of the "Act".

8. In support of their interpretation, the learned counsel for the petitioners placed reliance on the pronouncement of the Supreme Court in *A.V. Fernandez Vs. The State of Kerala*,

In that case the appellant A. V. Fernandez, a registered manufacturer of coconut oil and oilcake in the State of Kerala had purchased, during the period between 1st April, 1951, and 31st March, 1952, copra of the value of Rs. 7,16,048-1-4 and after manufacturing oil therefrom in his oil mills sold the oil partly in the Kerala State and partly outside it. The oilcake produced, of a value of Rs. 67,155-15-5, was sold entirely within the State. The total value of the oil sold was Rs. 6,76,719-0-11 comprised of inter-State sales of Rs. 3,67,816-10-1 and intra-State sales to the extent of the balance of Rs. 3,08,902-6-10. The gross

turnover for the year, which included both the purchase of copra and sale of oil and oilcake, was Rs. 14,59,923-1-8. Rule 7(1)(k) of the Rules framed under the Travancore-Cochin General Sales Tax Act, 1125, entitled the appellant to deduct from his gross turnover the entire purchase turnover of copra provided the entire turnover of the oil manufactured out of that copra was included in the gross turnover. The appellant, therefore, claimed to be entitled to deduct the whole purchase turnover of copra out of the gross turnover of the sales of coconut oil, which included the inter-State sales turnover of coconut oil amounting Rs. 3,67,816-10-1.

The case of the appellant was that as the entire purchase turnover of copra was part of his gross turnover and as he had manufactured coconut oil out of the entire quantity of copra so purchased and sold it, irrespective of the fact (that) a part of it was sold outside the State, he was entitled, in terms of rule 7(1)(k) to add the entire sales turnover of coconut oil in the gross turnover to and claim the deduction of the entire purchase turnover of copra. His further case was that he was also not liable to pay tax to the State on the inter-State sales turnover of coconut oil in view of section 26 of that Act read with article 286 of the Constitution.

The stand of the authorities, however, was that since in view of article 286 and section 26 introduced into the Act no tax could be levied on the inter-State sales turnover, the turnover of the appellant relating to coconut oil and outside the State could not be included either in the total turnover or taxable turnover. In this view of the matter they excluded the inter-State sales turnover of coconut oil to the extent of Rs. 3,67,816-10-1, both from the gross turnover and taxable turnover. Consequently only that part of the purchase turnover of copra corresponding to the intra-State sales turnover of oil was permitted to be excluded from the gross turnover so arrived at, for purposes of rule 7(1)(k). Consequently deduction, only to the extent of the purchase turnover of copra, as was attributable to the oil manufactured and sold within the State out of the 4 gross turnover, was given.

Both the High Court and the Supreme Court upheld the stand of the revenue. The Supreme Court held that the effect of section 26, introduced into the Travancore-Cochin General Sales Tax Act, 1125, a pre-Constitution law so as to bring that law in conformity with the requirements of article 286 of the Constitution, was, in so far as categories of sales falling within article 286 of the Constitution were concerned, the "setting at nought and of obliterating in regard thereto the provisions contained in the Act relating to the imposition of tax on the sale or purchase of such goods". Section 26 was in terms similar to article 286. It was, therefore, held that the turnover of inter-State sales could neither be included in the gross turnover nor in the net taxable turnover. The Supreme Court, referring to tax effect of and the limitation on legislative power implicit in article 286 said :

"..... So far as sales falling within the categories specified in article 286

of the Constitution and the corresponding section 26 of the Act are concerned, they are, as it were, taken out of the purview of the Act and no effect is to be given to those provisions If these provisions of the Act and the rules made thereunder do not apply to the sales falling within those categories, the value thereof cannot be included in the turnover of the dealer"

The Supreme Court, pointing out the essential distinction and the consequences stemming from the recognition of that distinction between cases where there was a mere statutory exemption and cases of non-liability, observed :

"There is a broad distinction between the provisions contained in the statute in regard to the exemptions of tax or refund or rebate of tax on the one hand and in regard to the non-liability to tax or non-imposition of tax on the other. In the former case, but for the provisions as regards the exemptions or refund or rebate of tax, the sales or purchases would have to be included in the gross turnover of the dealer because they are prima facie liable to tax and the only thing which the dealer is entitled to in respect thereof is the deduction from the gross turnover in order to arrive at the net turnover on which the tax can be imposed. In the latter case, the sales or purchases are exempted from taxation altogether. The legislature cannot enact a law imposing or authorising the imposition of a tax thereupon and they are not liable to any such imposition of tax. If they are thus not liable to tax, no tax can be levied or imposed on them and they do not come within the purview of the Act at all. The very fact of their non-liability to tax is sufficient to exclude them from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed."

The learned counsel for the petitioners placed strong reliance on the underlined portion of the above excerpt and urged that consistent with this pronouncement no part of the turnover relating to inter-State or export transactions could be included in the expression "total turnover" occurring in the first part of section 6B(1).

9. The learned counsel for the petitioners stated that the principle of the above pronouncement of the Supreme Court could well be illustrated by the way it was understood and applied in two cases, one of the Madras High Court in T. A. Kumarasamy Pathar v. State of Madras [1969] 23 STC 447 and the other a Full Bench decision of the Allahabad High Court in Commissioner, Sales Tax, U.P. v. Allied Chemicals, Kanpur [1969] 23 STC 165 (FB).

10. In T. A. Kumarasamy Pathar's case [1969] 23 STC 447 the facts were these : Section 3 of the Madras General Sales Tax Act, 1959, imposed a tax on every dealer "whose total turnover for a year was not less than Rs. 10,000". The turnover respecting intra-State sales of the assessee in that case was estimated by the authorities at Rs. 8,935.40. The turnover of inter-State sales of the assessee was Rs. 12,421.12. The two together amounted to Rs. 21,356.52. The question was whether for purposes of ascertainment of the cut-off line of Rs.

10,000 the inter-State sales turnover could, as the authorities did, be taken into account. If the turnover of inter-State sales of Rs. 12,421.12 could not be included for the purpose, the assessee's turnover would obviously fall below the statutory minimum of Rs. 10,000; otherwise he would become assessable. Veeraswami, J. (as His Lordship then was), who spoke for the Division Bench, noticing that the Act itself confined the charge, as it should, to local sales or purchases, observed that the expression "sale" as defined in the Act should be taken to be the local sale or purchase. The learned Judge relying upon A.V. Fernandez Vs. The State of Kerala, proceeded to say :

"..... If that be so, turnover and total turnover can only relate to such sales or purchases and cannot include what is an inter-State sale or export or import sale. It is true that in the definition of "total turnover" it is said to include turnover whether or not the whole or any portion of such turnover is liable to tax. This has no reference to inter-State sales which are outside the scope of the Act but has reference only to sales which are normally chargeable to tax under the Act but due to exemption are not subject to tax."

The definition of "total turnover" under the Madras Act, unlike the Karnataka Act, did not expressly refer to and include sale or purchase in the course of inter-State trade and export. The Madras High Court read down the expression "total turnover" to mean turnover excluding such inter-State and export turnover respecting which the State Legislature had no competence to tax. It is no doubt true that, as contended by the learned counsel for the petitioners, had the definition of "total turnover" in the Madras Act been on the lines of its Karnataka counterpart, then, consistent with the reasoning in Kumarasamy Pathar's case [1969] 23 STC 447, its constitutional validity might well be expected to have been held against.

11. In the Full Bench of the Allahabad High Court in Commissioner, Sales Tax, U.P. v. Allied Chemicals, Kanpur [1969] 23 STC 165 (FB) , Pathak, J. (as His Lordship then was), after referring to and setting out the observations of the Supreme Court in A.V. Fernandez Vs. The State of Kerala, , proceeded to say :

"These observations, to my mind, completely support the conclusion that the sales made outside Uttar Pradesh by the assessee cannot be taken into account at all in the assessment proceedings against it. Those sales cannot be taken into consideration when applying the first proviso to section 3(1) and that is so whether what is contemplated by that proviso is the gross turnover or net turnover."

Gulati, J., in his concurring opinion referred to a contention similar to the one urged by the State in this case that as long as inter-State sales and export sales were not ultimately subjected to tax, there was indeed no exceeding of the constitutional limitation in article 286, observed : "..... The argument proceeded that so long as such sales were not subjected to tax, the mandate contained in article 286 could not be said to have been violated merely because

such sales were included in the gross turnover of a dealer in order to determine as to whether or not he was liable to pay tax in respect of his other sales. The State was not bound to provide that a dealer shall not be liable to tax if his turnover did not exceed a particular limit, but if it did provide a minimum limit, it was open to the legislature to further provide that the minimum turnover so provided would include such sales as were not liable to tax. The argument is attractive indeed, but cannot be accepted in view of the clear pronouncement of the Supreme Court in the case of *A.V. Fernandez Vs. The State of Kerala*, It was ruled in that case :

""The very fact of their non-liability to tax is sufficient to exclude them from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed".

12. Indeed, in *Kumarasamy Pathar's* case [1969] 23 STC 447 , the Madras High Court, while dealing with a provision analogous to section 5(5) of the "Act", took the view that even for purposes of the minimum turnover prescribed in the Act for bringing a dealer within the purview of the Act, the expressions such as "total turnover", "gross turnover", etc., ought not to take into account the turnover of inter-State and export transactions. The Full Bench opinion of the Allahabad High Court would also show that for purposes of sales tax laws of the State, no part of the inter-State or export turnover should be included in the gross turnover for any purpose. Both the Madras and the Allahabad High Courts have reached this conclusion solely on the basis of the pronouncement of the Supreme Court in *A.V. Fernandez Vs. The State of Kerala*, . The question is whether the observations in *A.V. Fernandez Vs. The State of Kerala*, support this conclusion that even for the purpose of the classification of the dealers, the turnover in inter-State and export transactions should not be reckoned ? Or whether such exclusion is only in relation to turnover "on which sales tax can be levied or imposed" ? The learned Advocate-General says that *A.V. Fernandez Vs. The State of Kerala*, actually supports the stand of the revenue and the understanding of its effect in *Kumarasamy Pathar's* case [1969] 23 STC 447 and *Allied Chemical's* case [1969] 23 STC 165 is not correct.

13. The learned Advocate-General says that on the language of the interpretation clause in section 2(u-2) of the "Act" and the use of the expression "total turnover" in two places in section 6B(i) for two different purposes - one for the purpose of identification of dealers liable to turnover tax and the other read with the proviso to that sub-section for the purpose of actual impost - makes for a substantial difference. The statutory definition of the expression "total turnover" occurring in section 2(1)(u-2) provides :

""total turnover" means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of

India."

The learned Advocate-General says it is a sound rule of construction to give the same meaning to the same words occurring in different parts of the same section unless sufficient reasons can be assigned. But a word in one part of a section may have to be understood in a different sense from that which it bears in another part or to give a meaning different from the one given in the definition section if the context so requires. Here the expression "total turnover" in the two places in section 6B(1) of the "Act", says the learned Advocate-General, are used in different contexts and that the expression in the clause "every dealer whose total turnover in a year exceeds rupees one lakh" cannot be qualified and controlled by the proviso to sub-section (1) of section 6B(1) as suggested by the learned counsel for the petitioners. It is further urged that the Supreme Court in *A.V. Fernandez Vs. The State of Kerala*, read down the meaning of the expression "total turnover" to exclude the inter-State and export turnover in the context of "gross turnover" liable to tax under the Act. Such turnover in inter-State and export transactions are to be excluded in any provision of law imposing or authorising the imposition of tax for the reason that the provisions of the "Act", so far as such inter-State sales or purchases are concerned, are set at nought and obliterated being over-borne by the constitutional provisions. Referring to the contention of the petitioners that the provisions of the "Act" prescribing the quantum of turnover which marks the cut-off line between dealers included in the net of taxation u/s 6B(1) and those excluded therefrom is part of the law imposing or authorising the imposition of tax and that the turnover of inter-State and export transactions respecting which the State Legislature has no competence to legislate cannot be included in such turnover, the learned Advocate-General says that having regard to the context in which the expression "total turnover" occurs, i.e., in a clause which lays down the line of classification and demarcation with reference to the "total turnover" of the dealers, it cannot be regarded as a provision imposing or authorising the imposition of a tax. The learned Advocate-General referred to section 5(5) of the "Act" providing the line of demarcation between the dealers liable to pay tax on their turnover u/s 5(1) and those who are not, which is in similar terms and has like effect. The expression "laws imposing taxation" should, says the learned Advocate-General, receive a limited construction. Every provision of a law dealing with taxation is not necessarily a provision imposing taxation. It all depends upon the purport of the provision in the scheme of taxation. Reference, in this behalf, was made in *Palaniappa Chettiar and Co. and Others Vs. Deputy Commercial Tax Officer, Moore Market Division, Madras and Another*,

14. The learned Advocate-General further says that the Supreme Court in *A.V. Fernandez Vs. The State of Kerala*, emphasised this distinction by the following observations :

"This position is not at all affected by the provisions with regard to registration and submissions of returns of the sales tax by the dealers under the Act. The

legislature, in spite of its disability in the matter of the imposition of sales tax by virtue of the provisions of article 286 of the Constitution, may for the purposes of the registration of a dealer and submission of the returns of sales tax include these transactions in the dealer's turnover. Such inclusion, however, for the purposes aforesaid would not affect the non-liability of these transactions to levy or imposition of sales tax by virtue of the provisions of articles 286 of the Constitution and the corresponding provision enacted in the Act, as above."

Indeed, says the learned Advocate-General the very passage relied upon by the petitioners in *A.V. Fernandez Vs. The State of Kerala*, furnishes the answer. The Supreme Court said :

"..... The very fact of their non-liability to tax is sufficient to exclude them from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed."

In a taxing law the question as to which part of it is a provision which imposes a tax must needs depend on the context in which and the purposes for which the provision occurs. It is no doubt true, as observed by the Madras High Court in the case of *Palaniappa Chettiar and Co. and Others Vs. Deputy Commercial Tax Officer, Moore Market Division, Madras and Another*, that fulfilment of a condition would be a constituent fact in the emergence of tax liability and therefore an essential element in the imposition of the tax. But learned Advocate-General says in the present case the provision for differentiation and classification of dealers on the basis of their "total turnover" is not one such condition.

On a careful consideration of the matter, we find it difficult to reject the case of the revenue that the expression "total turnover" occurring in the first part of section 6B(1) requires to be read in terms of section 2(u-2) and should not be confined to a turnover in respect of which the State Legislature is competent to impose a tax.

We accordingly hold and answer Point (A) against the petitioners.

15. Point (B) : It is alternatively contended by the petitioners that if the expression "total turnover" occurring in the first part of section 6B(1) is construed co-extensively with the definition of "total turnover" in section 2(u-2) of the "Act", it would lead to discriminatory results violative of article 14 of the Constitution. Several illustrative examples were given in support of this argument. It was stated that where a dealer who has an intra-State sales turnover of Rs. 2,000 but has an inter-State turnover of Rs. 99,000 would become liable to pay tax on his intra-State sales turnover of Rs. 2,000 u/s 6B(1), while a dealer who had a turnover of intra-State sales of Rs. 99,900 and had no inter-State sales would escape from the net of tax u/s 6B(1).

16. It is no doubt true that tax laws are as much subject to article 14 as any other law. But in the matter of taxation the legislature, having regard to the innate complexities besetting the policy of a tax and the diverse and varied

economic criteria, that go in the formulation of any policy of taxation enjoys a very wide latitude in the matter of choice of persons and things for the purposes of taxation. A State, it is said, does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation, if it does so reasonably : see *V. Venugopala Ravi Varma Rajah Vs. Union of India and Another*, . In matters of taxation, the court cannot meticulously scrutinise the impact of the burden of a tax-law on different persons or interests, but can only strike down, if the court is satisfied that the method adopted is arbitrary, capricious, fanciful or clearly unjust. If the legislature has adopted one method for imposition of tax burden, the court cannot strike down the law on the ground that the legislature should have adopted another method which, in the opinion of the court, is more reasonable : see *KHANDIGE SHAM BHAT AND ANOTHER Vs. AGRICULTURAL Income Tax OFFICER, KASARAGOD, AND ANOTHER.*, In view of the intrinsic complexity of fiscal adjustments of diverse elements, there is considerably wide discretion in the matter of classification for taxation purposes. If the classification by a taxing statute is a reasonable one, it is not vulnerable on the ground of discrimination merely because it taxes, or exempts from tax, some income or objects and not others.

17. In *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, the Supreme Court said :

"There is a wide range of selection and freedom in appraisal not only in the objects of taxation and the manner of taxation but also in the determination of the rate or rates applicable.

The burden of proving discrimination is always heavy and heavier still when a taxing statute is under attack, and it is on a person complaining of discrimination. The burden is proving not possible "inequality" but hostile "unequal" treatment. This is more so when uniform taxes are levied. When the legislature reasonably applies an uniform rate after equalising matters between diversely situated persons, differences in treatment must be capable of being reasonably explained in the light of the object for which the particular legislation is undertaken. This must be based on some reasonable distinction between the cases differentially treated. To be able to succeed in the charge of discrimination, a person must establish conclusively that persons equally circumstanced have been treated unequally and vice versa."

Even if there is a doubt in the mind of the court in regard to a question of constitutionality, it must be resolved by upholding constitutionality. Thomas Cooley (*A Treatise on the Constitutional Limitations*, page 182) says :

"It has been said by an eminent jurist, that when courts are called upon to pronounce the invalidity of an Act of legislation, passed with all the forms and ceremonies requisite to give it the force of law, they will approach the question with great caution, examine it in every possible aspect, and ponder upon it as

long as deliberation and patient attention can throw any new light upon the subject and never declare a statute, void, unless the nullity and invalidity of the Act are placed, in their judgment beyond reasonable doubt. A reasonable doubt must be solved in favour of the legislative action, and the Act be sustained."

18. Now turning to the actual effect of the provision, it is seen that dealers whose total turnover in a year exceeds Rs. 1,00,000 are chosen for the levy of the additional tax u/s 6B(1). In this classification no one, whose turnover exceeds Rs. 1,00,000 is left out and amongst those whose turnover is less than a lakh of rupees no one is included. So far as the rationality and intelligibility of the differentia are concerned, learned counsel do not have much to say. The classification is quite intelligible and proceeds on well-defined and clear-cut lines. The classification is, apparently on the assumption as to the capacity of those whose total turnover is over a lakh of rupees, to bear the burden of the additional tax. That capacity is being judged by a common yardstick. The emphasis of the argument of the learned counsel for the petitioners is somewhat on the lines that there is no rational nexus between the classification and objects of the legislation. The distinction between intra-State sales and inter-State sales will undoubtedly assume materiality in regard to the power of the State to impose tax on such sales. Indeed a close parallel and close analogy is furnished by section 5(5) of the "Act" which is in the "Act" over the years unchallenged. It reads :

"A dealer whose total turnover in any year is less than twenty-five thousand rupees shall not be liable to pay tax for that year."

The meaning of the expression "total turnover" in that provision also cannot be different either and must draw the implications from section 2(u-2). Of course, the counsel now say that if section 6B(1) is constitutionally bad, section 5(5) could be no better. But what is of importance is both u/s 5(5) and section 6B(1) the total turnover, including inter-State and import and export turnover on which it is not competent for the State Legislature to levy tax, has been taken only for the purpose of identifying the dealers and the actual levy under both the sections is only on intra-State turnover. The classification proceeds on a rational basis. Therefore, we are of the view that even though the words "total turnover" used in the first part of section 6B(1), include inter-State sales, it would not bring about any hostile discrimination against any class of dealers. Indeed a proportion of intra-State and inter-State transactions in the turnover of a dealer may itself vary from year to year and the provision prescribing a "total turnover" of Rs. 1,00,000 as the cut-off line cannot be termed irrational and therefore cannot be said to suffer from the vice of hostile discrimination and therefore to be unconstitutional. We accordingly answer Point (B) against the petitioners.

19. Point (C) : The contention is that the State Legislature, in exertion of its legislative power under entry 54 of the List II, has no competence to levy a tax on the "turnover", as according to the argument, such a tax would not be a tax either on sale or purchase of goods within the meaning of the said entry. This

argument was addressed by Sri B. V. Katageri and Sri K. Channabasappa appearing for some of the petitioners.

This argument has no merit. It is no doubt true that the power to tax is available in relation to a "sale" or purchase as recognised by the general law and transactions which are not really sales or purchases according to the established concepts cannot be subjected to tax. But a tax on "turnover" is in reality a tax on the aggregate of the sales or purchases, as the case may be, of a dealer during a year.

20. Indeed a similar argument was considered by the Supreme Court in *S. Kodar Vs. State of Kerala*, where the constitutional validity of section 2(1) of the Tamil Nadu Additional Sales Tax Act, 1970 (Act No. 14 of 1970), which provided that the tax payable by dealers under the Tamil Nadu General Sales Tax Act, 1959, shall, in the case of dealers whose total turnover for a year exceeded 10 lakhs of rupees be increased by additional tax at the rate of 5 per cent of the tax, was challenged on the ground that a tax on turnover was no tax on sales. The Supreme Court repelling the contention said : "As regards the contention that the State Legislature has no power to pass the measure, we are of the view that the additional tax is really a tax on the sale of goods It is in reality a tax on the aggregate of sales effected by a dealer during a year So, the contention of the appellants that the additional sales tax is not a tax on sales but on the income of the dealer is without any basis."

We, accordingly, hold and answer Point C) against the petitioners.

21. Point (D) : The argument on this point was advanced by Sri Kashinath Rao Patil, the learned counsel for some of the petitioners. Apart from raising the contention, he did not make any submission in substantiation of it. We may however examine the merits of the contention.

The contention is that section 6B of the "Act", as substituted by Karnataka Act 7 of 1981, imposes unreasonable restrictions on the freedom of trade, commerce and intercourse, and therefore violative of article 301 of the Constitution. Even if the restrictions can be said to be reasonable, the argument proceeds, the legislative measure, not having been introduced with the previous sanction of the President, is unconstitutional.

It is no doubt true that taxation laws are not outside Part XIII of the Constitution. But as observed by the Supreme Court in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, that it would be reasonable and proper to hold that restrictions, freedom from which is guaranteed under article 301, would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade. But the mere imposition of tax simpliciter on sales does not by itself imply any restriction on or hampering of trade. In *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, , the Supreme Court observed :

"Taxes may and do amount to restrictions; but it is only such taxes as directly

and immediately restrict trade that would fall within the purview of article 301. The argument that all taxes should be governed by article 301 whether or not their impact on trade is immediate or mediate, direct or remote, adopts, in our opinion, an extreme approach which cannot be upheld."

In *Andhra Sugars Ltd. and Another etc. Vs. State of Andhra Pradesh and Others*, the Supreme Court referring to the observations of Gajendragadkar, J. (as His Lordship then was), in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, stated that this interpretation of article 301 was not dissented from in *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, Normally a tax which is non-discriminatory and in relation to goods used in inter-State trade or commerce, not so excessive or prohibitive as to become a direct and immediate impediment in the free flow of trade and commerce, on sale of goods does not violate article 301. Sri Kashinath Rao did not even indicate in what manner the present taxing measure was violative of article 301. In view of the nature of the tax envisaged by section 6B(1), we do not think that any case of violation of the right guaranteed under article 301 is made out.

We accordingly answer Point (D) also against the petitioners.

22. Point (E) : This question turns upon the construction of sub-section (2) of section 6B. The controversy is in this area : Whether the cases of exemption from and non-liability to tax, u/s 6B(1), enumerated in the proviso to section 6B(1) are exhaustive or whether having regard to the express language of section 6B(2) the exemptions not expressly enumerated in the proviso but available u/s 5(3)(a) and (b) of the "Act" in respect of tax leviable under the "Act" generally are also attracted in computing the turnover for purposes of the levy of turnover tax u/s 6B(1).

23. It is useful to recapitulate the scheme in regard to the exemptions under the "Act". Section 5(1) of the "Act" is the charging section so far as the main impost under the "Act" is concerned. It provides that every dealer shall pay, for each year, tax on his taxable turnover at the rate of 4 per cent of such turnover. Sub-section (3) of section 5 says that notwithstanding anything contained in sub-section (1) of section 5, no tax under the "Act" shall be levied :

(a) In the case of sale of goods mentioned in column (2) of the Second Schedule at the rate specified in the corresponding entry in column (3) of that Schedule payable by the first or the earliest of successive dealers in the State who is liable to tax on the taxable turnover of sales.

(b) Similarly, in the case of purchase of any goods mentioned in column (2) of the Third Schedule at the rate and only at the point specified in the corresponding entries in columns (4) and (3) of that schedule, payable by the dealer liable to pay tax under this Act on the taxable turnover of purchases.

Section 5(4) provides that the tax under the "Act" shall, in respect of sale or purchase of any of the declared goods mentioned in column (2) of the Fourth

Schedule, be at the rate and only at the point specified in the corresponding entries at columns (4) and (3) of the Fourth Schedule.

Section 8 provides for exemption of tax respecting goods specified in the Fifth Schedule, subject to the conditions and exemptions, if any, set out therein. Section 8A empowers the State Government to provide by notification, an exemption or for reduction in the rate, in respect of any tax payable under the Act.

Let us see how many of these exemptions are enumerated in the proviso to section 6B(1). Exemptions in section 8 and section 5(4) are the subject-matter of exemptions under clauses (i) and (ii), respectively, of the proviso to section 6B(1). So far as the exemptions u/s 8A are concerned, it is common ground that any exemptions granted u/s 8A, to the extent they are not otherwise and specifically excluded for purposes of the levy u/s 6B, are attracted to the levy u/s 6B.

The exemptions envisaged in clauses (iii) and (iv) of the proviso relate to the inter-State and export or import transactions. Really they are not instances of exemptions, but cases of non-liability; they are instances of legislative recognition of constitutional immunity from tax.

24. The real controversy is whether the exemptions u/s 5(3)(a) and (b) which are not expressly enumerated in the proviso to section 6B(1) are also attracted to the levy u/s 6B(1). The petitioners contend that by virtue of section 6B(2), these exemptions are also attracted while the revenue contends that section 6B(2) is purely a machinery and procedural provision and the exemptions envisaged in the proviso to sub-section (1) of section 6B are exhaustive. The petitioners say that section 6B(2) is not merely a procedural provision; but acts as a conduit to attract exemptions other than those expressly enumerated in the proviso to section 6B(1). We may here recapitulate sub-section (2) of section 6B. It reads :

"The provisions of this Act and the Rules made thereunder including those relating to refund or exemption from tax shall, so far as may be, apply in relation to the levy, assessment and collection of the tax payable under sub-section (1), as they apply in relation to the levy, assessment and collection of sales tax or purchase tax under this Act."

25. Reliance was placed by the petitioners on the pronouncement of the Supreme Court in the case of *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, in which provisions of section 9(1) and (2) of the Central Sales Tax Act came in for interpretation. The relevant facts of that case and the precise question which arose for consideration in that case are :

(i) Section 6 of the Central Sales Tax Act was the charging section. It provided for the levy of Central sales tax by any dealer in any State on all sales effected by him in the course of inter-State transactions. Sub-section (2) of section 8

provided that the rate of tax payable on such inter-State sales shall be the same as fixed under the sales tax law of the appropriate State. Section 9(1) of the Central Sales Tax Act provided that the tax payable under that Act shall be levied and collected in the appropriate State by the Government of India in the manner provided in sub-section (2) of section 9. Sub-section (2), inter alia, provided that the authorities empowered to assess, collect and enforce payment of the State's general sales tax law shall assess, collect and enforce payment of the Central sales tax on behalf of the Government of India in the same manner as the tax on the sale or purchase of goods under the State law is assessed, paid and collected.

(ii) The respondent in that case was a dealer in handloom and powerloom cloth. He had effected inter-State sales of those goods. Those goods were among the goods specified in the Second Schedule to the Act. Consequently in view of section 5(3)(a) of the Act, the levy of tax under the Act was at single point at the hands of the first dealer. Admittedly the respondent in that case was not a first dealer. He was called upon to pay Central sales tax on his inter-State sales turnover.

(iii) The stand of the respondent-assesses was that, as -

(a) Section 9(1) provided that the Central sales tax shall be levied and collected as provided in section 9(2);

(b) Section 9(2) in turn provided that the assessment and collection shall be made in accordance with the sales tax law of the appropriate State; and

(c) Under the sales tax law of this State there could be only a single point levy on the sales of handloom and powerloom cloth, in view of section 5(3)(a) read with the relevant entry in the Second Schedule - no tax was leviable under the State Act as he was not the first dealer and that, consequently, no tax could be levied on such inter-State sales also, in view of section 9(1) and (2) of the Central Act.

The Supreme Court held that section 9 of the Central Act providing as it did that the tax imposed u/s 6 shall be levied, assessed and collected in the same manner as the turnover of sales and purchases of State tax is assessed, brought within its sweep the provisions of the State law regarding the exemptions also. The Supreme Court observed :

"The expression "in the manner" may give rise to two conflicting views, namely, (i) it is concerned only with the calculation of the tax, and (ii) it deals not only with the calculation of the rates but also the manner of levy of the tax. But section 9(1) dispels the ambiguity for it says that the tax payable by any dealer under the Central Act shall be levied and collected in the appropriate State by the Government of India in the manner provided in sub-section (2); The expression "levy" means "impose". u/s 5(3)(a) of the Mysore Sales Tax Act, 1957, hereinafter called the State Act, tax shall be levied in the case of the sale of any of the goods mentioned in column (2) of the Second Schedule by the first

or the earliest of successive dealers in the State, who is liable to tax under that section, a tax at the rate specified in the corresponding entry of column (3) of the said schedule on the turnover of sales of such dealer in each year relating to such goods. When section 9(1) says that under the Central Act tax shall be levied in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected, it is reasonable to hold that the expression "levied" in section 9(1) of the Central Act refers to the expression "levied" in section 5(3)(a) of the State Act"

Relying on the aforesaid view, the petitioners contend that the wording of section 6B(2) being similar to section 9(1) and (2) of the Central Sales Tax Act, it must receive the same construction and have the same significance, in the matter of assessment on turnover tax u/s 6B(1) of the "Act" and therefore, it should be held that the provisions of section 6B(2) of the "Act" attract the exemptions u/s 5(3)(a) and (b) of the "Act".

26. The learned Advocate-General's first contention on this aspect is that section 6B(2) was merely a machinery provision. This contention cannot be accepted. In fact a similar contention raised in the matter of construction of section 9(2) of the Central Sales Tax Act, which was similarly worded was rejected by the Supreme Court having regard to the use of the word "levied" in section 9(1) of the Central Sales Tax Act.

Next, the learned Advocate-General asked us to distinguish the ratio of that judgment on the ground that in section 6B(1), unlike section 9(1) and 9(2) of the Central Sales Tax Act, there are ample intrinsic aids which compel the view that the exemptions enumerated in the proviso to section 6B(1) are exhaustive and that no other exemptions could be imported into section 6B(1). He contended that in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, the Supreme Court was persuaded to the view it took because there was no indication in the "Act" to the contrary. He referred to the following observations in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*,

"..... There is no reason why the Central Act made a departure in the manner of levy of tax on the specified goods which are taxed only at a single point under the State Act; if any such radical departure was intended, the Central Act would have expressly stated so"

and sought to distinguish that case on the ground that section 6B expressly, and by necessary implication, provides for the exclusion of the exemptions u/s 5(3) (a) and (b) of the "Act". Formulating the reasons which, according to him, indicate that section 6B(2) should not be given this significance, he stated :

(a) That section 6B(1) requires that every dealer shall in addition to the tax payable if any, under other provisions of the Act pay the additional tax, clearly making manifest the legislative intent that the levy u/s 6B(1) is attracted to a turnover irrespective of the consideration that that turnover was otherwise exempt for the purposes of section 5(1) or 6, as the case may be. If exemptions

u/s 5(3)(a) and (b) are brought in through sub-section (2) there will be no instance where a turnover otherwise exempt would be taxable u/s 6B(1) and in such an event the expression "if any" in section 6B(1) - which was intended to emphasise that there is a "turnover" taxable u/s 6B(1) which may not be taxable u/s 5(1) - would be rendered nugatory;

(b) That the proviso to section 6B(1) exhaustively enumerates - and was intended to exhaust all - the exemptions in relation to the levy u/s 6B and the scheme of and the need for the enumeration would be rendered nugatory if section 6B(2) is given the meaning which the petitioners impute to it and would detract from the exhaustiveness, legislatively intended, for, the construction suggested by the petitioners would have the effect of rewriting the proviso by adding to it what was, as a legislative policy, omitted from it;

(c) That no construction of section 6B(2) which would militate against the scheme and clear intent of section 6B(1) should be permitted; and

(d) That the expression "so far as may be" in section 6B(2) was intended to avoid such a construction of that sub-section and the construction suggested by the petitioners would ignore this expression.

27. After a careful consideration of the matter, it appears to us that even if what is urged by the learned Advocate-General was the intention in the mind of the law-makers, the language of sub-sections (1) and (2) of section 6B does not advance and effectuate that intention. If the legislative intention is not manifest in the language of the statute it is nowhere else. In a taxing provision one has to look merely at what is clearly said. There is no room for any intendment; there is no presumption as to a tax. Nothing is to be read in; nothing is to be implied. One can only look fairly at the language used. If in some cases the letter of the law is disregarded, it is on account, as a necessary implication, of the other statutory language.

The learned Advocate-General relied on certain observations of the Supreme Court in *Sudhir Chandra Nawn Vs. Wealth-tax Officer, Calcutta and Others*, , *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*, and *D.G. Gose and Co. (Agents) Pvt. Ltd. Vs. State of Kerala and Another*, These authorities have no bearing on the question under consideration and do not advance the argument any further. The argument of the learned Advocate-General pushed to its logical conclusion is that the scheme said to be implicit in sub-section (1) of section 6B must whittle down the effect of section 6B(2). There appears to be no justification to do that particularly as this is a taxing statute.

In *F. L. Smidth & Co. v. F. Greenwood* (1922) 8 TC 193 it was said :

"It is important to remember the rule, which the courts ought to obey, that, when it is desired to impose a new burden by way of taxation, it is essential that this intention should be stated in plain terms. The courts cannot assent to the view that, if a section in a taxing statute is of doubtful and ambiguous meaning,

it is possible out of that ambiguity to extract a new and added obligation not formerly cast upon the taxpayer."

If, as contended by the learned Advocate-General, the legislature evinced an express intention to exclude the benefit of the other exemptions of the Act, it ought to have said so in as many and plain words. If the other exemptions were intended to be excluded, it would be reasonable to expect the legislature to have omitted the references both to the "levy" and "exemptions" in section 6B(2).

28. In *Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another*, the Supreme Court said :

..... It is a well-settled rule of interpretation that where there are two expressions which might have been used to convey a certain intention, but one of those expressions will convey that intention more clearly than the other, it is proper to conclude that, if the legislature used that one of the two expressions which would convey the intention less clearly, it does not intend to convey that intention at all the legislature would have expressed itself clearly and not left its intention to be gathered by doubtful implication from other provisions of the Act."

The implication of the words "in addition to the tax payable, if any" in section 6B(1) of the "Act" may very well be that the legislature conceived the possibility of a transaction respecting which the dealer may not be liable u/s 5(1), but yet may be liable u/s 6B. But it is an altogether different thing to say that what is exempt u/s 5(1) must necessarily be subject to tax u/s 6B(1) or that the court of construction ought to find out some residual positions where necessarily some turnover exempt u/s 5(1) ought to be exigible to the impost u/s 6B(1). Such intention is neither express, and to the extent it is said to be implied, cannot prevail as it militates against the express wording of section 6B(2). The clear and unambiguous language of section 6B(2) and the inescapable effect of it, as indicated by the ratio in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, cannot be whittled down and made to yield to the doubtful and supposed intention of section 6B(1).

29. It would be useful to compare the language of section 25B(4) of the "Act" with that of section 6B(2). Section 25B(4) is a special provision in regard to levy of tax on purchase of sugarcane. Section 25B(1) is the charging section. Sub-section (4) of section 25B reads :

"The provision of this Act relating to assessment, payment and recovery, appeal and revision shall mutatis mutandis apply in respect of tax payable under this Act for purchase of sugarcane."

A comparison of section 6B(2) with section 25B(4) would bring out the difference which is material in guiding whether the former is merely procedural. Section 25B(4) being a machinery or procedural provision, does not use the words "Levy" or "exemption" whereas section 6B(2) does, which indicates that the latter is not

merely a machinery or procedural provision. Reliance on the expression "so far as may be" used in section 6B(2) cannot also advance the argument of the revenue any further as there are many other provisions in the Act which, ex facie, are not attracted to the proceedings of levy, assessment and collection of turnover tax u/s 6B(1) and the expression "so far as may be" can be regarded as referring to such provisions. The learned Advocate-General comparing the language of section 8A on the one hand and sections 5(3)(a) and 5(3)(b) on the other, urged that while the former speaks of exemption the latter is only a case of non-levy on subsequent sales or purchases, as the case may be, and not cases of exemption, and therefore, cannot be brought within the rubric of "exemption" u/s 6B(2). There appears to be a fallacy in this reasoning. Section 5(1) of the "Act" is the charging provision. Having regard to the language of section 5(1), the effect of section 5(3)(a) and (b) is to expressly exempt what would otherwise fall within the scope of section 5(1). An exemption can arise only when there is a levy otherwise attracted to the case covered by the exemption. That apart, the Rules to which section 6B expressly alludes, provide in rule 6(4) and 6(4)(i) thus :

"Rule 6. (4) In determining the taxable turnover, the amount specified in clauses (a) to (k) shall, subject to the conditions specified therein, be deducted from the total turnover as determined under clauses (a) and (b), of sub-rule (1)."

"Rule 6. (4)(i) All amounts for which the goods specified in the Second, Third and Fourth Schedules are sold or purchased by a dealer when such sales or purchases are exempt from the tax leviable under any of the provisions of the Act."

This would make it clear that section 5(3)(a) and 5(3)(b) refer to and provide for exemptions.

30. It was next urged by the learned Advocate-General that if we give the meaning that the petitioners want to give to section 6B(2), the expression "total turnover" in the second part of section 6B(1) would really be read as "taxable turnover". This consequence appears to us not to have been altogether unintended by the amendment having regard to the speech of the Honourable Finance Minister on the floor of the Legislature. Referring to the objects and purposes of the amendment, the Honourable Finance Minister said :

"..... As an experimental measure, we propose to do away with the additional tax and concurrently introduce a half per cent turnover tax to be levied on the lines of a similar levy which is in force in Andhra for over a decade. On this account, the net increase in revenue is anticipated at rupees three crores."

A speech by a mover of a Bill is one of the external aids to construction : see K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, . The speech of the Finance Minister would show that what was intended by section 6B was in substance an additional impost on the lines imposed by the Andhra Pradesh law.

It is seen that in Andhra Pradesh additional tax is levied u/s 5-A of the Andhra Pradesh General Sales Tax Act, 1957, which reads :

"5-A. Levy of additional tax on turnover. - Every dealer who is liable to pay tax u/s 5 shall, in addition to the tax payable under that section, pay for each year a tax at the rate of one-fourth paise on every rupee of his turnover liable to tax if his total turnover for that year is rupees three lakhs or more."

What is subjected to additional tax u/s 5-A of the Andhra Act is the taxable turnover of the dealer having an overall turnover of rupees three lakhs or more. The additional tax proposed to be levied u/s 6B(1) of the "Act", as stated by the Finance Minister being similar to the Andhra levy, was also apparently intended to be a tax on the taxable turnover u/s 5(1). The only difference is that in regard to the choice of the persons on whom tax is levied u/s 6B, the State Legislature has selected dealers whose turnover including import and export sales turnover is one lakh or more.

31. It is no doubt true that in the task of interpretation of statutes the "surest index of a mature and developed jurisprudence is not to make a fortress out of the dictionary but to remember that statutes always have some object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning".

Indeed in *Seaford Court Estates Ltd. v. Asher* [1949] 2 KB 481, Lord Denning observed :

"It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

But we are dealing with a taxation measure and permissible limits of interpretation cannot allow the view urged for the revenue to prevail.

32. In view of the foregoing discussion, we hold and answer point (E) in favour of the petitioners and against the revenue. We hold that the exemptions provided under sections 5(3)(a) and 5(3)(b), to the levy under sections 5(1) and 6 of the "Act", are, by virtue of section 6B(2) of the "Act", also attracted to the levy u/s 6B(1).

33. Before we dispose of these petitions by appropriate directions, our attention was invited to a batch of cases included in this order in which court-fee paid is insufficient.

In Writ Petitions Nos. 24216 of 1981, 16275 of 1981, 17729 of 1981, 20428 of 1981, 21074 of 1981, 22357 of 1981 and 14892 of 1981, there are more petitioners than one and there is, accordingly, deficit of court-fee payable. The particulars of the case numbers and the amount of deficit court-fee are as below :

Sl.	W.P.	No.
Name of the petitioner's	Number of	Deficit No. counsel petitions court-fee
1. 24216 of 1981 Sri Kashinath Rao Patil	2	100
2. 16275 of 1981 do.	11	1,000
3. 17729 of 1981 do.	19	1,800
4. 20428 of 1981 do.	3	200
5. 21074 of 1981 Sri V. T. Rayareddy	7	600
6. 22357 of 1981 Sri Kashinath Rao Patil	13	1,200
7. 14892 of 1981 Sri R. Nagaraj	12	1,100

We direct that the deficit court-fee in these petitions shall be made good by the petitioners, failing which the same shall be recovered in accordance with law.

34. In the result, for the reasons aforesaid, we make the following order :

(1) The writ petitions are allowed in part.

(2) Writs of mandamus shall issue to the respondents restraining them from levying turnover tax u/s 6B of the Karnataka Sales Tax Act, 1957, (as substituted by Karnataka Act 7 of 1981), on turnovers which are exempt from levy of tax under the Act by virtue of section 5(3)(a) and 5(3)(b) of the "Act".

(3)(i) Wherever assessments have been completed on the petitioners u/s 6B(1), including the turnover exempt from tax u/s 5(3)(a) and 5(3)(b), the said assessments are to that extent, quashed;

(ii) If any turnover tax u/s 6B was recovered pursuant to such assessments, the same shall, to the extent the tax relates to turnover exempt u/s 5(3)(a) and (b), be refunded to the petitioners concerned; and

(iii) Wherever assessments are not completed but payments were made towards turnover tax u/s 6B, by the petitioners, in respect of the turnover exempt from tax u/s 5(3)(a) and 5(3)(b) the same shall be refunded to the petitioners concerned.

(4) In Writ Petitions Nos. 24216 of 1981, 16275 of 1981, 17729 of 1981, 20428 of 1981, 21074 of 1981, 22357 of 1981 and 14892 of 1981, referred to in para 33, the petitioners are directed to make good the deficit court-fee within six weeks from today, failing which the same shall be recovered from them in accordance with law. (5) In all the writ petitions disposed of by the main and subsequent orders relating to the challenge to section 6B of the Karnataka Sales Tax Act, 1957, we direct the office, in relaxation of the rules regarding issue of writs, that a common writ with short cause title of the first case in the batch, shall be issued to the State and the Commissioner of Commercial Taxes. It shall not be necessary to issue individual writs. A copy of the writ shall also be

furnished to Sri M. R. Achar, the learned Government Advocate.

(6) In the circumstances of the case, the parties are left to bear and pay their own costs in all these petitions.

At the conclusion of the above order, the learned counsel for the petitioners made oral applications under article 134-A of the Constitution for certificates of fitness under article 133 to appeal to the Supreme Court from this order. The case, in our opinion, does involve substantial questions of law of general importance needing to be decided by the Supreme Court. We accordingly grant certificates of fitness prayed for.