
(2010) 02 KAR CK 0039
In the Karnataka High Court
Case No : S.T.R.P. No"s. 56 and 57 of 2007

B.V. Aswathaiah and Brothers	Vs	APPELLANT
The State of Karnataka		RESPONDENT

Date of Decision : 15-02-2010

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 2 (1) (t), 25 A, 6, 6 D, 8 A

Citation : (2010) 31 VST 496

Hon'ble Judges : K.L. Manjunath, J;Aravind Kumar, J

Bench : Division Bench

Advocate : R.V. Prasad, for the Appellant; Geetha Menon, AGA, for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—The assessee is questioning the correctness and legality of the orders dated 17-10-2006 passed by the Karnataka Appellate Tribunal in S.T.A. Nos. 547 and 548/2001 whereunder the orders of the Joint Commissioner of Commercial Taxes (Appeals) dated 23-4-2001 passed in No. KST.AP.419 and 420/1999-2000 dismissing the Assessee's appeals came to be confirmed by raising questions of law as enumerated herein below.

2. The facts leading to the filing of these two revision petitions are as follows:

(I) The Government of Karnataka issued a Notification Bearing No: FD 58 CSL 93(VI) dated: 31-3-1993 in exercise of its power conferred u/s 8A of the Karnataka Sales Tax Act, 1957 (for short "the Act") exempting the tax payable u/s 6 of the Act on the purchase of Raw-batties consumed in the manufactured of Agarbatti in the State for sale. The said Notification reads as follows:

In exercise of the powers conferred by Section 8A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby exempt with effect from the First day of April, 1993-

(i) the tax payable by a manufacture of Agarbathi u/s 6 of the said Act, on the purchase of "Raw Bathi" consumed in the manufacture of Agarbathi in the State for sale;

(ii) the tax payable by a dealer u/s 5 of the said Act on the sale of "Raw Bathi" to a manufacturer of Agarbathi in the State subject to production of declaration in Form-37 duly filled and signed by the manufacturer to whom the said goods are sold.

(II) The assessee is engaged in manufacture and sales of Agarbathies under the brand name "Nandi" and is registered both under KST and CST Act. The assessee is also an exporter of Agarbathi.

(II-A) The facts in respect of these two Revision Petitions are independently enumerated as follows:

(III) Re 56/2007: For the period of assessment from 1-4-1995 to 31-3-1996 the assessee declared a total turnover of Rs. 11,68,10,238.72ps. The assessee had effected inter-State sales of Rs. 5,46,02,895.29 ps, consignment sale outside the State to the tune of Rs. 2,62,75,046.81 ps, sales in the course of export to the tune of Rs. 34,66,690/- and effected export to the tune of Rs. 1,54,33,058.93 ps. The Assessing Officer concluded the said assessment by holding the total gross turnover at Rs. 11,68,10,238/- and demanded tax thereon.

(IV) There afterwards a notice u/s 25A came to be issued calling upon the assessee to show cause as to why the tax on consignment sales should not be demanded on the ground a purchase turnover of Rawbathies used in the manufacture of Agarbathies which are consigned to place out side the State of Karnataka and sold, had escaped assessment u/s 6 of the Act and accordingly the Assessing Authority proposed to levy turnover tax u/s 6-B of the Act, surcharge u/s 6C, Cess u/s 6D of the Act. On considering the reply filed by the assessee an order came to be passed u/s 25A of the Act, by order dated 29-9-1999 (Annexure-G).

(V) The Assessee filed an appeal before the Joint Commissioner of Commercial Taxes (Assessment) II, Bangalore-3 which came to be dismissed by Order dated 23-4-2001 (Annexure-J).

(VI) The assessee being aggrieved by the said order of the First Appellate Authority filed further appeal before the Karnataka Appellate Tribunal in STA 547/01. The Tribunal on considering the grounds urged in the appeal memorandum, by its order dated 17-10-2006 dismissed the appeal and confirmed the orders passed by the Assessing Officer as up held by the First Appellate Authority as per Annexure-A

Re 57/2007:

(VII) For the period of assessment from 1-4-1996 to 31-3-1997 the assessee declared a total turnover of Rs. 12,92,66,490.07ps. The assessee had effected

inter-State sales of Rs. 5,98,31,792.00 ps., Consignment sale outside the State to the tune of Rs. 3,28,87,550.81 ps, sales in the course of export to the tune of Rs. 5.14.260/- and directed exports to the tune of Rs. 1,67,65,438.00 ps. The Assessing Officer concluded the said assessment by holding the total gross turnover at Rs. 12,92,66,490/- and demanded tax thereon.

(VIII) There afterwards a notice u/s 25A of the Act came to be issued calling upon the assessee to show cause as to why the tax on consignment sales should not be demanded. On the ground a purchase turnover of Rawbathies used in the manufacture of Agarbathies which are consigned to place out side the State of Karnataka and sold, had escaped assessment u/s 6 of the Act and accordingly the Assessing Authority proposed to levy turnover tax u/s 6-B of the Act, surcharge u/s 6C, Cess u/s 6D of the Act. On considering the reply filed by the assessee an order came to be passed u/s 25A of the Act by order dated 29-9-1999 (Annexure-G).

(IX) The Assessee filed an appeal before the Joint Commissioner of Commercial Taxes (Assessment) II. Bangalore-3 which came to be dismissed by Order dated 23-4-2001 (Annexure-J).

(X) The assessee being aggrieved by the said order of the First Appellate Authority filed further appeal before the Karnataka Appellate Tribunal in STA 548/01. The Tribunal on considering the grounds urged in the appeal memorandum, by its order dated 17-10-2006 dismissed the appeal and confirmed the orders passed by the Assessing Officer as up held by the First Appellate Authority as per Annexure-A

(XI) A common order dated 17-10-2006 passed in STA 547-548/01 of Karnataka Appellate Tribunal is assailed in these Revision petitions by the assessee.

3. It is noticed from the order sheet of this Case by order dated: 24-10-2007 both Revision Petitions had been admitted. Since, the questions of law raised for consideration by this Court are common to both the Revision Petitions the same are considered and a common order is being passed. It is also admitted by the learned Advocate for the appellant and learned Government Advocate that questions of law formulated in the appeal memorandum has not been formulated in the order dated 24-10-2007 by oversight & request this Court that said questions of law arises for consideration and same may be formulated and considered by this Court. The questions of law which arise for consideration in these revision petitions are as follows:

a) Whether, on the facts and in the circumstances of the petitioner's case, the Appellate Tribunal was right in dismissing the appeal filed by the petitioner and holding that "Consignment Sale" was not a "Sale" as defined u/s 2(1)(t) under the provisions of the Act?

b) Whether, on the facts and in the circumstances of the petitioner's case, it can be held that the Appellate Tribunal was right in law in holding that the language

employed in the Notification bearing No. FD 58 CSL 93(VI). Bangalore, dated 31-3-1993 did not grant exemption from payment of tax u/s 6 of the Act on the purchase turnover of rawbathis used in manufacture of agarbathi for sale by way of consignment?

4. We have heard Sri. R.V. Prasad, learned Counsel appearing for the Revision Petitioner-assessee and Smt. Geetha Menon, learned Additional Government Advocate for the Respondent Revenue.

5. Sri. R.V. Prasad would contend that the exemption notification dated: 31-3-1993 is to be construed liberally and in favour of the assessee by contending that purchase turnover of Raw-agarbathies consumed in the manufacture of Agarbathi in the State for sale is exempted and by harmonious reading of the said notification it is to be understood that exemption is for the raw-bathies consumed in the manufacture of Agarbathies for being sold in the State of Karnataka. He elaborates his submission that nature of sale i.e. inter-State and Intra-State sale in the course of export or consignment sale is immaterial for the purpose of availing exemption. He would further contend that by another Notification dated: 31-3-1995 issued with effect from 1-4-1995 in exercise of power conferred u/s 8A of the Act exempting the turnover Tax u/s 6-B of the Act with effect from 1-4-1995 by a manufacturer of Agarbathies in respect of turnovers relating to purchase of Raw-bathtes consumed in the manufacture of Agarbathies in the State for sale also and hence contends that by combined reading of these two notifications the only conclusion required to be arrived at is that, the charging Section would come into play only in the event of the Rawbathies is not consumed in the manufacture of Agarbathies in the State and not otherwise. It is further contended that the word "sale" used in the notifications referred to above is not qualified with the words "for being sold in the State of Karnataka" and what is qualified is the manufacturing activity and it is the "manufacturing activity" alone which is required to be construed for extending the benefit arising under the notifications and thus harps upon the act of manufacture. He would also contend that so long as activity of manufacture takes place that would suffice to extend the benefit of notification and the sale could be in any manner and not necessarily within the state which would alone entitle the assessee to claim the benefit of exemption notification.

6. In support of his submissions he relies upon the following decisions:

(i) 1981 (48) STC 239 - Assessing Authority-cum-Excise and Taxation Officer, Gurgaon and Anr. v. East India Cotton Manufacturing Co. Ltd.

(ii) 1993 (88) STC 98 - Hotel Balaji and Ors. v. State of Andhra Pradesh and Ors.

(iii) (1993) 92 STC 261 - Sipani Fibres v. State of Karnataka.

(iv) Full Bench decision of Karnataka Appellate Tribunal in STA 744 and 745/2001 dated: 14-11-2008 in the matter of Astra IDL India Ltd. v. State of Karnataka.

He would contend that the consignment sale is not a "sale" within the State nor

is it a "sale" in the course of inter-State trade or commerce as defined u/s 3 of Karnataka Sales Act, 1956 and it comes u/s 6A of Central Sales Tax Act and it cannot be construed to come within definition of total turnover occurring in Section 2(u-2) of the KST Act and hence, the consignment sale is a "sale" falling u/s 6A of Central Sales Act and thus outside the purview of Karnataka Sales Tax Act, 1956. Thus, order of the Tribunal is contended to be erroneous and accordingly he prays that substantial questions of law raised in these two petitions be answered in favour of the assessee and against the revenue.

7. Per contra Srat. Geetha Menon. Learned Counsel appearing for the Respondent Revenue would contend that the words used in the exemption notification is to be construed Ejusdem Generis and when the same is applied it clearly postulates that exemption from payment of tax as also the turnover tax would be applicable only when all the ingredients of notifications are complete namely raw-bathies purchased should be consumed in the manufacture of Agarbathies and the manufacturing activity has to take place in the State and also the sale should take place within the State. She further contends that State has issued exemption from levy of purchase tax on sales including consignment sales, since the State would not stand to gain any revenue in respect of consignment sales In ease exemption is also extended the consignment sales.

8. Elaborating her submissions she would also rely upon the judgment of Hon''ble Supreme Court in the ease of Hotel Balaji Supra wherein, the enactment of various States challenging the levy of purchase tax and its interpretation regarding exemption in eases of sales have been extended to contend that, the act of State Legislature excluding the consignment sales has been approved and as such submits that the questions of law framed herein above is required to be answered in favour of the Revenue and against the assessee.

9. Having heard the learned Counsel appearing for the parties, perusing the records as also the judgment cited at the bar, it would be necessary to extract the relevant provisions of the Act as also the exemption notifications for considering the said contention. Relevant provisions of the Act are as follows:

2. Definitions.- (1) In this Act unless the context otherwise requires,-

a) to s) xxxxxxxxx

t) "Sale" with all its grammatical variation and cognate expressions means every transfer of the property in goods (Other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, (and includes,-

(i) a transfer otherwise that in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration)

ii) a transfer of property in goods (Whether as goods or in some other form) involved in the execution of a works contract;

iii) a delivery of goods on hire purchase or any system of payment by instalments;

iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;)

Explanation 1. - A transfer of property involved in the supply or distribution of goods by a society (including a co-operative society), club, firm or any association to its members, for cash or for deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act.

Explanation 2. ? xxxxxx

Explanation 3. - (a) The Sale or purchase of goods [(Other than in the course of inter - State trade or commerce or in the course of import or export)] shall be deemed, for the purpose of this Act to have taken place in the State whenever the contract of sale or purchase might have been made, if the goods are within the state.-

(i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and

(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchase, whether the assent of the other party is prior or subsequent to such appropriation.

(b) Where there is a sing contract of sale or purchase of goods situated at more places than one. the provisions of Clause (a) shall apply as if there were separate contracts in respect of the goods at each of such place.

(c) Notwithstanding anything contained in the Sale of Goods Act, 1930 (Central Act 3 of 1930), for the purpose of this Act, the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract shall be deemed to have taken place in the State, if the goods are within the State at the time of such transfer, irrespective of the place where the agreement for works contract is made, whether the assent of the other party is prior or subsequent to such transfer;

(d) Notwithstanding anything contained in the Sale of Goods Act, 1930 (Central Act 3 of 1930), for the purpose of this Act, the transfer of the right to use any goods for any purpose (whether or not for a specified period) of shall be deemed to have taken place in the State, if such goods are for use within the state, irrespective of the place where the contract of transfer of the right to use the goods is made.]

Explanation 3-A. - Every transaction supply by way of or as a part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxication) where such

supply or service is for cash, deferred payment or other valuable consideration, shall be deemed to a sale of those goods by the person making the supply and purchase of those goods by the person making the supply and purchase of those goods by the person to whom such supply is made;]

Explanation 4. - Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, two independent sales or purchase shall, for the purpose of this act, be deemed to have taken place,-

(a) When the goods are transferred from a principal to his selling agent and from the selling agent to the purchaser, or

(b) When the goods are transferred from the seller to a buying agent and from the buying agent to his principal, if the agent is found in either of the cases aforesaid,-

(i) to have sold the goods at one rate and to have passed on the sale proceeds to his principal at another rate, or

(ii) to have purchased the goods at one rate and to have passed them on to his principal at another rate, or

(iii) not to have accounted to his principal for the entire collections or deductions made by him in the sales or purchases effected by him on behalf of his principal, or

(iv) to have acted for a fictitious or non-existent principal;)

Explanation 4-A. - Every transfer of property in goods by the Central Government, any State Government, a statutory body or a local authority for cash or for deferred payment or other valuable consideration, whether or not in the course of business, shall deemed to be a sale for the purposes of this Act),

Section 2(u-2)

"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;)

Section 6-B

6-B. Levy of Resale tax. - (1) Every registered dealer and every dealer who is liable to get himself registered under Sub-sections (1) and (2) of Section 10 whose total turnover in a year is not less than the turnovers specified in the said sub-sections, shall be liable to pay tax at the rate of one and half per cent of such portion of the total turnover which is not liable to tax u/s 5, 5A, 5B, 5C or 6:

Provided that no tax under this Sub-section shall be payable on that part of such

turnover which relates to.-

- (i) sale or purchase of goods specified in the Fifth Schedule;
- (ii) sale or purchase of goods in the course of interstate trade or commerce;
- (iii) sale or purchase of goods in the course of export out of the territory of India or sale or purchase in the course of import into the territory of India;
- (iv) all amounts collected by way of tax under the provisions of this Act or the Central Sales Tax Act, 1956 (Central Act 74 of 1956);
- (v) all amounts falling under the head "Freight", when specified and charged for by the dealer separately without including such amount in the price of the goods sold;
- (vi) all amounts allowed as discount, provided that such discount is allowed in accordance with the terms of a contract or agreement entered into a particular case and provided also that the accounts show that the purchaser has paid only the sum originally charged less discount;
- (vii) (a) all amounts allowed to purchases in respect of goods returned by them to the dealer when the goods are taxable on sales provided that the goods were returned within a period of six months from the date of delivery of the goods and the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made;
- (b) all amounts received from the seller in respect of goods returned to them by the dealer, when the goods are taxable on the purchase value provided that the goods are taxable on the purchase value provided that the goods were returned within a period of six months from the date of delivery of the goods and the account show the date on which goods were returned and the date on which and the amount for which refund was received;
- (viii) such amounts towards labour charges and other like charges not involving any transfer of property in goods, actually incurred in connection with the execution of works contract, or calculated at the rates prescribed;
- (ix) all amounts realised by a dealer by the sale of his business as a whole;
- (x) the total amount paid or payable by the dealer as a consideration for the purchase of any of the goods in respect of which tax is leviable at the point of purchase:

Provided further that, save as otherwise provided in this sub-section, no other deduction shall be made from the total turnover of a dealer for the purpose of this section.

(2) The provision of this Act and the rules made thereunder shall, so far as may be, apply in relation to the assessment, collection or refund of the resale tax, as they apply in relation to the assessment, collection or refund of tax under the

other provisions of this Act.

Section 6C

6-C. Levy of Additional Tax. - (1) Every registered dealer and every dealer who is liable to get himself registered under Sub-section (1) and (2) of Section 10 whose total turnover in a year is not less than the turnovers specified in the said sub-sections, shall be liable to pay tax at the rate of one per cent of such portion of the total turnover which is liable to tax u/s 5, 5B, 5C or 6:

Provided that no tax under this Sub-section shall be payable on that part of such turnover which relates to:-

- (i) sale or purchase of goods specified In the Fifth Schedule;
- (ii) sale or purchase of goods in the course of interstate trade or commerce;
- (iii) sale or purchase of goods in the course of export out of the territory of India or sale or purchase in the course of important Into the territory of India;
- (iv) all amounts collected by way of tax under the provisions of this Act or the Central Sales Tax Act, 1956 (Central Act 74 of 1956);
- (v) all amount falling under the head "Freight", when specified and charged for by the dealer separately without including such amounts in the price of the goods sold;
- (vi) all amounts allowed as discount, provided that such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of a contract or agreement entered into a particular case and provided also that the accounts show that the purchaser has paid only the sum originally charged less discount;
- (vii) (a) all amounts allowed to purchases in respect of goods returned by them to the dealer when the good are taxable on sales provided that the goods were returned within a period of six months from the date of delivery of the goods and the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made;
- (b) all amounts received from the sellers in respect of goods returned to them by the dealer, when the goods are taxable on the purchase value provided that the goods are taxable on the purchase value provided that the goods were returned within a period of six months from the date of delivery of the goods and the accounts show the date on which the goods were returned and the date on which and the amount for which refund was received;
- (viii) such amounts towards labour charges and other like charges not involving any transfer of property in goods, actually incurred in connection with the execution of works contract, or calculated at the rates prescribed;
- (ix) all amounts realized by a dealer by the sale of his business as a whole;

(x) the total amount paid or payable by the dealer as a consideration for the purchase of any of the goods in respect of which tax is leviable at the point of sale;

(xi) the total amount paid or payable to the dealer as a consideration for the sale of any of the goods in respect of which tax is leviable at the point of purchase.

Provided further that, save as otherwise provided in this sub-section, no other deduction shall be made from the total turnover of a dealer for the purposes of this Section.

(2) The provisions of this Act and the rules made thereunder shall, so far as may be, apply in relation to the assessment, collection or refund of the additional tax, as they apply in relation to the assessment, collection or refund of tax under the other provisions of this Act.]

8-A. Power of State Government to notify exemptions and reductions of tax. - (1) The State Government may, by notification, make an exemption, or reduction in rate (xxxx), in respect of any tax payable under this Act.-

(a) on the sale or purchase of any specified goods or class of goods, at all points in the series of sales by successive dealers; or

(b) by any specified class of persons, in regard to the whole or any part of their turnover;

(c) on the sale or purchase of any specified class of goods by any specified class of dealers in regard to the whole or part of their turnover.]

(2) Any exemption from tax or reduction in the rate of tax, notified under Sub-section (1) may be subject to such restrictions and conditions as may be specified in the notification.

(2-A) The State Government may, by notification, transpose any entry or part thereof from one schedule to another schedule and alter the point of levy of sale or purchase, but not so as to enhance the rate of tax in any case:

Provided that where the point of levy is altered under this Sub-section in respect of any goods and if such goods have been subjected to tax under the unaltered entry, then such goods shall not be subjected to tax under the transferred entry.]

(3) The State Government may, by notification, (xxxxx) (cancel or vary any notification issued under Sub-section (1) [or Sub-section (2-A).] [(3-A) xxxxx.]

(4) If any restriction or condition specified under Sub-section (2) is contravened or is not observed by a dealer, the sales or purchases of such dealer may, with effect from the commencement of the year in which such contravention or non-observance took place, be assessed to tax or taxes under the appropriate provisions of this Act as if the provisions of the notification under Sub-section (1) did not apply to such sales or purchases.]

[(5)(a) Where any restriction or condition specified under Sub-section (2) in respect of goods taxable at the point of sale is contravened or is not observed by the purchaser of such goods, notwithstanding that such a purchaser is not a dealer or that the sale value of such goods is less than the turnover specified in Sub-section (5) of Section 5, such purchaser shall be liable to pay an amount equal to the difference between the tax payable at the rates specified under the Act and the tax paid at the rates specified under the notification on the goods purchased in respect of which such contravention or non-observance has taken place, as if the provision of the notification under Sub-section (1) did not apply to such purchases and in addition, such purchaser shall also be liable to pay by way of penalty a sum [not less than one half but) not exceeding the amount equivalent to the amount of tax leviable on the sale price of such goods.

[(aa) where the purchaser is a registered dealer, the assessing authority of such purchaser and in other cases the Assistant Commissioner of Commercial Taxes of the Area or any officer empowered under Sub-section (1) of Section 28. may levy penalty under this sub-section.

(b) The difference of the tax amount and the penalty levied under this Sub-section shall be recovered in the manner specified u/s 13.]

(Provided that no penalty issued under Sub-section (1) or Sub-section after a period of eight years from the close of the year to which the purchase relates.)

[(6) Any notification issued under Sub-section (1) or Sub-section (2-A) shall be valid until it is cancelled under Sub-section (3), notwithstanding that the tax payable in accordance with such notification in respect of any specified goods or class of goods or by any specified class of person or on the sale or purchase of any specified class of goods by any specified class of dealers, is modified by an amendment to this Act.]

Notifications are as follows:

Notification No. FD 58 CSL 93(VI), Bangalore, dated 31st March, 1993, Karnataka gazette, dated 31st March, 1993.

In exercise of the powers conferred by Section 8A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby exempt with effect from the First day of April, 1993-

(i) the tax payable by a manufacture of Agarbathi u/s 6 of the said Act, on the purchase of "Raw Bathi" consumed in the manufacture of Agarbathi in the State for sale;

(ii) the tax payable by a dealer u/s 5 of the said Act on the sale of "Raw Bathi" to a manufacturer of Agarbathi in the State subject to production of declaration in Form-37 duly filled and signed by the manufacturer to whom the said goods are sold.

Notification No. FD 58 CSL 95(25), Bangalore, dated 31th March, 1995.

In exercise of the powers conferred by Section 8A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby exempts with effect from the First day of April, 1995 the turnover tax payable u/s 6-B of the said Act by a manufacturer of Agarbathi in respect of turnovers relating to purchase of raw bathies, consumed in the manufacture of Agarbathi in the State for sale.

10. It is not in dispute that for both the years, the revision petitioner has sent goods for consignment sale outside the State of Karnataka. For the said purpose Raw-bathies were purchased from unregistered dealers by the revision petitioners. The exemption notification is meant to encourage the manufacture in the State and for increasing the said industry in the State of Karnataka. The consignment sent outside the State is not a sale effected in the State of Karnataka. In so far as understanding and interpreting an exemption notification guiding principle would be to read the notification as a whole and In this context contends the decision in Innamuri Gopalan and Others Vs. State of Andhra Pradesh and Another, would be beneficial and relevant paragraph reads as follows:

(1) That the operative words of the notification were to be found in the first paragraph granting the exemption and the appellants were within that provision. As the proviso could not apply to cases where an additional duty of excise was not leviable under Clause 3 of the Bill, the operation of the exemption was unaffected by the proviso and the appellants were therefore entitled to relief from sales tax granted by the notification;

(2) that the object behind the framers of the notification may be to avoid double taxation, but the operation of an enactment or of a notification has to be judged not by the object, which the Legislature or the notifying authority, as the case may be, may have had in mind but by the words which it has employed to effectuate the legislative intent.

(3) Statutes have to be construed as a whole so as to avoid any inconsistency or repugnancy among its several provisions, but if there is nothing to modify alter, or qualify the language of a statute, the words and sentences have to be construed in their ordinary and natural meaning. There is no equity in a taxing statute and either the subject is within it or not, on the words of the enactment or the rules validly made thereunder. In a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the words of the provision. If the taxpayer is within the plain terms of the exemption he cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the statute or rule or by necessary implication therefrom, the matter is different.

Yet another principle which requires to be borne in mind while considering the exemption notification is that it should be construed strictly and on this issue the

decision rendered by the Hon'ble Supreme Court in the case of Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others, . It follows that the principle of strict interpretation is to be made and the object of the rule making authority is not required to be looked into, but what is required is the actual words used in the Notification. It is held in Hansraj's case as follows:

It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax payer is within the plain terms of the exemption it, cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different but that is not the case here.

11. Another factor which requires to be noticed by us is that when an exemption Clause has been pressed into service to get the benefit of exemption, the claimant must prove that he is covered by the provision.

12. Keeping the above principles enunciated by their Lordships of the Hon'ble Supreme Court, the words used in the notifications in question is required to be examined. The words used in the notification in question are as follows:

Consumed in the manufacture of Agarbathi in the State for sale.

The exemption to an assessee is available u/s 6 and 6-B respectively in the event raw-bathies purchased by the assessee is consumed in the manufacture of Agarbathies within the State and for sale in the State. A combined reading of these words as used in the notification would without any doubt throw light that all the three ingredients are to be satisfied namely.

(i) The Raw-bathies should be consumed in the manufacture of Agarbathies.

(ii) Manufacture of Agarbathies should take place in the State.

(iii) Alter manufacture of Agarbathies in the State for being sold in the State. Thus the words prefixed to "sale" should be considered by applying the doctrine of Noscuntur a Sociis. The word should be known words it accompany or associated words as it would have much relevance in understanding the import of the words in a statutory provision. Thus the word "sale" occurring in these two notifications will have to be gauged by the implication of the words from the surrounding context. When the words prefixing the sale are susceptible of analogous meaning they are to be understood to be used in their cognate expressions. The word "sale" takes its colour from the words preceding it i.e., Rawbathies consumed in the manufacture in the State. It would be of benefit to extract paragraph 26 of the judgment of the Hon'ble Supreme Court in the case of C.B.I., A.H.D., Patna Vs. Braj Bhushan Prasad and Others, which reads as under:

26. We pointed out the above different, shades of meanings in order to determine as to which among them has to be chosen for interpreting the said word falling in Section 89 of the Act. The doctrine of *noscitur a sociis* (meaning of a word should be known from its accompanying or associating words) has much relevance in understanding the imports of words in a statutory provision. The said doctrine has been resorted to with advantage by this Court in a number of cases vide *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, , *M/s. Rohit Pulp and Paper Mills Ltd. Vs. Collector of Central Excise, Baroda*, , *Oswal Agro Mills Ltd. v. CCE (1993) Supp. 3 SCC 716*, *K. Bhagirathi G. Shenoy and Others Vs. K.P. Ballakuraya and Another*, , *M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad*, .

13. Applying the principles enunciated in the above decisions it can be seen that in the instant case when there is no sale of goods at the hands of petitioner, in so far as the consignment of sales are concerned the same would not form part of total turnover. In the instant case the revision petitioner cannot, be said to have sold by consignment sales "unto himself" in as much as if the consignment sales were to be "sale" within the definition of Section 2(1)(t) of the Act same would have constituted part of the total turnover" as defined u/s 2(1)(u-2) of the Act. By reading of definition of "sale" as per Section 2(1)(t) it cannot be held to include consignment sales. The sale as mentioned in the exemption notifications should take place within the State. In this regard it would be of benefit to extract the relevant portion of the judgment in *Hotel Balaji's* case as found at pages 142-143 which reads as follows:

The levy created by the said provision is a levy on the purchase of raw material purchased within the State which is consumed in the manufacture of other goods within the State. If, however, the manufactured goods are sold within the State, no purchase tax is collected on the raw material, evidently because the State gets larger revenue by taxing the sale of such goods (The value of manufactured goods is bound to be higher than the value of the raw material). The State Legislature does not wish to-in the Interest of-trade and general public-tax both the raw material and the finished (manufactured product. This is a well-known policy in the field of taxation. But where the manufactured goods are not sold within the State but are yet disposed of or where the manufactured goods are sent outside the State (otherwise than by way of inter - State sale or export sale) the tax has to be paid on the purchase value of the raw material. The reason is simple: if the manufactured goods are disposed of otherwise than by sale within the State or are sent out of the State (i.e., consigned to dealers' own depots or agents), the State does not get any revenue because no sale of manufactured goods has taken place within Haryana. In such a situation, the State says, it would retain the levy and collect it since there is no reason for waiving the purchase tax in these two situations. Now coming to inter-State sale and export sale, it may be noticed that in the case of inter-State sale, the State of Haryana does get the tax revenue-may not be to the full extent. Though the Central sales tax is levied and collected by the Government of India, Article 269

of the Constitution provides for making over the tax collected to the States in accordance with certain principles. Where, of course, the sale is an export sale within the meaning of Section 5(1) of the Central Sales Tax Act (export sale) the State may not get any revenue but large national interest is served thereby. It is for these reasons that tax on the purchase of raw material is waived in these two situations. Thus, there is a very sound and consistent policy underlying the provision.

14. The Hon'ble Supreme Court in the Hotel Balaji's case while interpreting Rule 42-E of Gujarat Sales Tax Rules held as follows:

Even if we agree with the appellants and read Rule 42-E along with Section 15B, they cannot succeed. Rule 42-E provides for set-off. etc., in case the manufactured goods are sold within the State of Gujarat. It no doubt means the set-off, etc., is not available if the manufactured goods are disposed of otherwise than by way of sale or are consigned to manufacturer's own depots (or to the depots of his agents) outside the State of Gujarat. What in effect the State says is this: "Raw material when purchased is taxable but I won't tax the raw material if you sell the goods manufactured out of such raw material within the State because I derive larger revenue there; I do not want to tax both the raw material and the manufactured goods, in the interest of trade and public. But if you dispose of the manufactured goods in some other manner, I will tax the purchase of raw material because there is no reason why I should forego the purchase tax due to raw material, when I am not getting any revenue from your method of disposal or dispatch of manufactured products." There is nothing objectionable in the State saying so. It: can indeed rely on the principle of the decision of this Court in *Godrej & Boyce Mfg. Co. v. Commissioner of Sales Tax* reported in [1992] 87 STC 186.

15. The raw materials purchased by the assessee in the instant case is taxable. However exemption is provided for by virtue of notification since taxable goods are used in the manufacture by an assessee in the State and such manufacture also results in sale within the State which would yield higher revenue to the State. It is in this context the notifications are required to be examined and interpreted. However, the proposition sought to be put forward by the Learned Counsel for the petitioner, if it were to be accepted then the very provision of exemption being granted would become otiose.

16. Yet another submission is made as referred to supra by Sri. R.V. Prasad to contend the legislature itself have introduced another notification dated: 31-3-1997 whereunder the Government has exempted tax payable by a manufacturer of Agarbathi u/s 6 of the Act not only for sale in the: State, but also in the course of inter-State Trade or Commerce to contend that consignment sale also comes within its sweep. If this proposition were to be accepted the contentions raised with regard to interpretation of two notifications referred to supra will crumble under the weight of this 31-3-2007 notification in as much as the earlier notification does not extend similar exemption.

17. In these circumstances, the decisions relied upon by the learned Counsel for the petitioner-assessee would not be of any assistance and the interpretations sought to be put for ward by pressing into service these decisions would be erroneous. Accordingly, the said contentions are hereby rejected. In view of the above, the questions of law formulated herein above are answered as follows:

-----	Questions
Answers	-----
	a)
Whether, on the facts and Answered in the affirmative in the circumstances of and Tribunal was right in the petitioner's case, the dismissing the appeal filed Appellate Tribunal was by the petitioner by holding right in dismissing the that consignment sale was appeal filed by the not a sale as defined under petitioner and holding Section 2(1)(t) of the KST that "Consignment Sale" Act, 1957. was not a "Sale" as defined under Section 2(1)(t) under the provisions of the Act?	
b) Whether, on the facts and Answered in affirmative in the circumstances of and Tribunal was right in the petitioner's case, it holding that language can be held that the employed in the notification Appellate Tribunal was bearing No FD 58 CSL 93(VI) right in law in holding dated 31-3-1993 does not that the language grant exemption from employed in the payment of tax under Notification bearing No. Section 6 of the Act on FD 58 CSL 93(VI), purchase turnover of raw Bangalore, dated 31-3- bathies used in the 1993 did not grant manufacture of Agarbathies exemption from payment sale by way of consignment. of tax u/s 6 of the Act on the purchase turnover of rawbathis used in manufacture of agarbathi for sale by way of consignment?	

18. In view of the above Revision Petitions filed by the Assessee are hereby dismissed. No order as to costs.