

(1952) 09 MAD CK 0009
In the Madras High Court
Case No : Writ Petition No. 227 of 1952

C. Govindarajulu Naidu and Co.	Vs	APPELLANT
State of Madras and Another		RESPONDENT

Date of Decision : 09-09-1952

Acts Referred:

Constitution of India, 1950 — Article 245, 245(1), 246, 286(1), 286(2)
Madras General Sales Tax Act, 1939 — Section 22, 3

Citation : AIR 1953 Mad 116 : (1952) 65 LW 1046 : (1952) 2 MLJ 614

Hon'ble Judges : Rajamannar, C.J;Venkatarama Ayyar, J

Bench : Division Bench

Advocate : K. Rajah Iyer and C. Venugopalachari, for the Appellant; V.K. Thiruvengkatachari, General and V.V. Raghavan, for Govt . Pleader, for the Respondent

Judgement

Venkatarama Ayyar, J.—This petition raises substantial questions as to the interpretation of Article 286 of the Constitution. The petitioners

are merchants carrying on business in the City of Madras as tanners and exporters of tanned hides and skins. This petition arises out of

proceedings taken by the State of Madras under the Madras General Sales Tax Act for assessing the tax payable by the petitioners in respect of

their dealings for the year 1950-51. The facts as stated before us by agreement of both the parties are that during this period the petitioners

purchased 12,123 pieces of hides and sums from Messrs. Abdui Gani & Company, Dacca for a price of Rs. 1,04,595-4-6; 74,000 pieces from

merchants in Calcutta and Cawn-pore for a price of Rs. 7,18,042-2-9; and 3,694 pieces locally for a price of Rs. 43,575-0-10, in all 89,81?

pieces for a price of Rs. 8,66,212-8-1. During the same period the petitioners themselves directly exported to foreign countries 7,250 pieces on

C.I.F. contracts for a price of Rs. 1,07,515-15-1; sold to dealers in Madras 60,627 1/2 pieces for a price of Rs. 8,55,396-1-0; and sold locally

22,807 pieces for a price of Rs. 2,76,099-4-11, in all 90,684 pieces for a price of Rs. 12,99,011-5-0. It must be stated that with reference to the

sale of 60,627 1/2 pieces to local dealers, the petitioners claimed that the goods covered by these sales had in fact been exported to foreign

countries, while the respondent stated that it could not be definitely ascertained whether those pieces were ultimately exported or not.

2. On these facts the point in dispute before the taxing authorities was whether the petitioners were liable to pay sales tax on Rs. 8,00,212-8-1

under Rule 16 (2) (i) and (ii) of the Madras Turnover and Assessment Rules as purchasers of rawhides and skins which were either tanned or

exported by them. The petitioners claimed that the goods which they had purchased were all exported to foreign countries either directly or

through other dealers and that they must in consequence be regarded as export exempt from taxation under Article 286(1)(b). The Deputy

Commercial Tax Officer, Moore Market Division rejected this contention by his order dated 14th August, 1951, and stated that

the dealers are not found eligible for any relief under Article 286 of the Indian Constitution as they pay tax on the purchase value of untanned hides

and skins bought for tanning, and that all the tanned goods tanned by them and got from others were sold to other dealers in the State, which

stages are not one in the course of export outside the Indian Territory.

On this basis, the tax payable was assessed at Rs. 14,936-2-8 and after deducting advance payments amounting to Rs. 6,702-7-9, a demand was

made for the balance of Rs. 8,233-10-11. The petitioners preferred an appeal against this order to the Commercial Tax Officer, Madras North,

and in the memorandum of appeal they stated their ground of exemption as follows:

We have to appeal to you that we have sold goods to the exporters at Madras who have ultimately exported the goods outside India which fact

could be verified from their records. For many of the items we have clear proof of the goods being exported by documents and bills which clearly

proves that our goods were exported.

In a further statement filed by them on 29th September, 1951, they again stated

that "out of the total, we have sold to exporting houses for the purpose of export outside India Rs. 10,22,912-0-1." On 23rd February, 1952, the Commercial Tax Officer, North Madras, dismissed the appeal on the ground that "the appellants sold to exporters or themselves exported through commission agents hides and skins tanned by them." That is to say, it was held that the petitioners did not directly export the goods themselves, but only sold them to dealers who exported them; or that they tanned the rawhides and skins and exported them as tanned goods and therefore, they were liable as purchasers of raw hides and skins and not as exporters of tanned goods.

It should be stated that under the Madras Act VI of 1951 which came into force on 20th April, 1951, the petitioners had a right to prefer an appeal against the order of the Commercial Tax Officer dated 23rd February, 1952, to the Sales Tax Tribunal and in fact on 17th March, 1952, they wrote to the Deputy Commercial Tax Officer to stay the collection on the ground that they were appealing to the Tribunal. But no such appeal was preferred and instead, the present writ has been filed challenging the validity and correctness of the order of assessment. In this petition the following questions were raised for our determination :

(1) Is the Madras General Sales Tax Act "ultra vires" of the powers of the Madras Legislature on the ground that Entry No. 48 in the Provincial

List in the 7th schedule to the Government of India Act of 1935 authorised tax only on sales and not on purchases?

(2) Is the imposition of tax on the purchaser by the Turnover and Assessment Rules void on the ground that the Legislature had unconstitutionally delegated its functions to the executive?

(3) Is the Madras General Sales Tax Act void as repugnant to Article 14 of the Constitution on the ground that it discriminated against purchasers in some trades while taxing sellers generally?

(4) Are the Turnover and Assessment Rules framed under the Madras General Sales Tax Act void on the ground that they are repugnant to the parent Act?

(5) Whether the imposition of tax is in contravention of Article 286 of the Constitution and, therefore, illegal?

3. We have held in Writ Petn. Nos. 21 and 41 of 1958 that this Court would not entertain in proceedings by way of writ such objections to the assessment of the sales tax as could have been urged before the Tribunals constituted under the Act and that only objections relating to the validity of the Act would be open to the petitioners. In this view, the petitioners would be entitled to urge objections (1) to (4) aforesaid. As for objection No. (5), we should decline to entertain it in accordance with our judgment in Writ Petition Nos. 21 and 41 of 1952. But, Mr. K. Rajah Ayyar pressed upon us that it would be inconvenient that some questions should be decided in writ and others before the Sales Tax Tribunal and that it would be more satisfactory that the entire question should be disposed of by us. The learned Advocate-General also invited us to decide the issues raised with reference to Article 286 as they go to the root of the matter and a decision thereon would settle all the controversies. We accordingly proceed to deal with the various contentions.

4. This petition was heard along with Writ Petn. Nos. 21 and 41 of 1952 in which questions (1) to (4) herein were the sole points for determination and after hearing counsel in all these petitions on those questions, we held therein that the Madras Act IX of 1939 was "intra vires" of the powers of the Provincial Legislature, that it was not open to the objection that it was an unconstitutional delegation by the Legislature of its functions to the executive, that it was not repugnant to Article 14 of the Constitution as being discriminative and that the Rules framed thereunder were valid excepting only Rule 16 (5). That judgment will govern this petition also and the questions (1) to (4) herein must accordingly be answered against the petitioners.

5. The substantial question that remains for determination is whether the imposition of tax in this case is in contravention of Article 286 of the Constitution.

6. Article 286 of the Constitution so far as is material is as follows:

286(1). No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place (a) outside the State; or (b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

EXPLANATION: For the purpose of Sub-clause (a), a sale or purchase shall be

deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce:

Provided that President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty first day of March 1951.

7. It will be seen that Article 286 deals with three classes of cases: (1) Where the sale or purchase takes place outside the State which must mean the State imposing the tax. and according to the explanation, sale or purchase must be deemed to take place in that State where as a direct result of the sale the goods are delivered for the purpose of consumption in that State; Article 286(1)(a) and Explanation : (2) Where the sale or purchase takes place in the course of the import of goods into or export of goods out of India; Article 286(1)(b); and (3) Where the sale or purchase takes place in the course of inter-State trade or commerce with a proviso that the operation of this Rule might be suspended by the President until 31st March, 1951; Article 286(2). In the three cases aforesaid, the power of the State to impose a tax is taken away. The third category mentioned above might be left out of account as the assessment in question relates to the period 1950-51 and by virtue of the Adaptation of Laws (Fourth Amendment) Order, 1952, Article 286 is to come into operation in Madras only after 31st March, 1951.

8. The questions that have been argued before us are:

(1) The purchase of hides and skins by the petitioners in Dacca in Pakistan and in the States of West Bengal and Uttar Pradesh as also locally was all for the purpose of export to foreign countries and that, therefore, they are

exempt from taxation on the ground that it was made in the course of export and that Article 286(1)(b) gives to such purchases immunity from State taxation;

(2) If the above contention fails, the purchase of 12,123 pieces from Dacca for a price of Rs. 3,04,595-4-6 must be considered as purchase in the course of import into India and that it is, therefore, exempt from taxation under Article 286(1)(b).

(3) The purchases in Calcutta and Cawnpore were outside the State of Madras and therefore not liable for taxation in view of Article 286(1)(a).

And

(4) lastly, it was argued that the Turnover and Assessment Rules framed as they were in 1939 mixed up indiscriminately sales which are liable to be taxed under the Constitution and sales which are not, and that, therefore, they must be rejected in their entirety. QUESTIONS 1 AND 2:

9. It will be convenient to consider these two questions together as their determination depends on the meaning to be given to the words "sales or

purchases in the course of export or import." The learned Advocate-General contends that those words must be limited to the sales or purchases

under which the goods are actually exported or imported, whereas Mr. Rajah Ayyar contends that those words must be given an extended

significance as including not merely the particular transaction under which the export or import of goods takes place, but all the chain of

transactions which are entered into either with the object of exporting or importing the goods or with the knowledge that they would be exported

or imported. He argues that for this purpose, we must have regard to the nature of the goods which are exported or imported, the usual course of

business and the exigencies of the trade in those goods and on a consideration of all the circumstances it must be decided whether the transactions

in respect of which immunity is claimed under the Article are so intimately connected with the actual export or import as properly to be considered

as forming part of it.

It is stated that the rawhides and skins of South India enjoy considerable popularity in world markets under the name of East India Kips, that there

is considerable demand for it in foreign countries, that the export of hides and skins is one of the main items of the foreign trade of this State, that

they are generally purchased with the object of being exported and that it would therefore be legitimate to treat the chain of sales culminating in the export as forming one transaction. It is accordingly contended that all the purchases of raw hides and skins wherever made were all made in the course of export and therefore, not liable for taxation. Authority for this extended construction was sought in American decisions, in Article 1, Section 3 (3), section 9 (5) , and section 10 (2).

10. Section 8 (3) is as follows:

The Congress shall have power to regulate commerce..... among the several States.

This is familiarly known as the "commerce clause."

11. Section 9 (5) is as follows:

No tax or duty shall be laid on articles exported from any State.

12. This is a restriction en the power of the Congress. Section 10 (2) is in these terms:

No State shall, without the consent of the Congress, lay any imposts and duties on imports or exports, except what may be absolutely necessary for executing its inspection laws.

These two provisions are generally referred to as the export and import clause and as it is on the authorities on this clause that the petitioners

mainly rely in support of their position; they will be examined first. In -- "Brown v. The State of Maryland", (1827) 12 U S 419: 6 Law Ed. 678 a

statute of Maryland provided that all importers of foreign articles should obtain a licence on payment of a prescribed fee before they sold the

goods and the appellant was convicted under the Act for selling imported goods without taking out a licence. The Court held that this was in

substance a tax on imports and therefore, opposed to section 10 (2). In answer to a contention that as soon as the goods entered the State they

ceased to be imports and were therefore liable to be taxed by the State like other goods within its jurisdiction, the Court observed:

While we admit that there must be a point of time when the prohibition ceases and the power of the State to tax commences, we cannot admit that

this point of time is the instant that the articles enter the country... It is sufficient for the present to say generally that when the importer has so acted

upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has perhaps lost its distinctive

character as an import and has become subject to the taxing power of the State; but while remaining the property of the importer in his ware-house

in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the Constitution:

In -- "Anglo-Chilean Nitrate Sales Corporation v. Alabama", (1933) 283 US 218: 77 Law Ed 710, the appellant was a Corporation carrying on

the business of importing nitrate from Chile and selling it to purchasers in its original packages. In holding that a tax by the State of Alabama on

these sales was obnoxious to Section 10 (2) as amounting to a tax on imports the Court observed:

The right to import the nitrate included the right to sell it in the original bags while it remained the property of appellant and before it lost its

distinctive character as an import. State prohibition of such sales would take from the appellant the very rights in respect of importation that are

conferred by the Constitution and laws of the United States.

It is argued on the basis of these two decisions that if import does not cease on the entry of the goods into the country but extends to the stage of

their first sale, export should likewise be held to begin not when the goods leave the country, but when they are purchased with the object of being

exported and that therefore the purchase made by the petitioners with the object of export must be held to be purchase which ""takes place in the

course of export."" It is conceded by the petitioners that no authority on the export and import clause has laid down such a proposition.

The cases cited by them with reference to export, -- "Fair Bank v. United States", (1901) 181 U S 283: 45 Law Ed. 862, -- "United States v.

Hvoslef, (1915) 237 U S 1: 59 Law Ed. 813, and -- "Thames and Mersey Marine Insurance Co. v. United States", (1915) 237 U S 19: 59 Law

Ed. 821, do not bear on this point. They merely decided that to levy a stamp duty on documents which are considered according to mercantile

usage as forming part of the documents of title relating to the exported goods, would in substance be to tax the goods themselves and that would

be in contravention of Section 9 (5). In -- "Fair Bank v. United States", the duty was levied on foreign bills of lading; in -- "United States v.

Hvoslef, it was imposed upon charter-parties which were exclusively engaged in the carriage of cargo to foreign ports, and in -- "Thames and

Mersey Marine Insurance Co. v. United States", it was upon policies insuring cargo against marine risks during the voyage to foreign ports.

13. On the other hand, the decisions in -- "Turpin v. Burgess", (1886) 117 U S 504: 29 Law Ed. 988, -- "Spalding v. Edwards", (1923) 262 U S

66: 67 L Ed. 865 and -- "Empresa Siderurgica, S.A. v. Merced" (1949) 337 U S 154: 93 L Ed. 1270, point to a contrary conclusion.

14. In -- "Turpin v. Burgess", (1886) 117 US 504: 29 Law Ed. 988, the tax was levied on manufactured tobacco which was intended for export.

At the time of the imposition, the goods were in the factory. It was held that the tax was not on exports because it was laid before the goods had

left the factory In -- "Spalding v. Edwards", (1923) 282 U S 60: 07 L Ed. 865, the appellants had sold goods to a firm in Venezuela through

commission agents in New York. The appellants entrusted the goods to a common carrier, the consignment being made deliverable to the firm at

Venezuela. But the sale documents were drawn up in the name of the commission agents who paid the price after the appellants had entrusted the

goods to the common carrier. In form the transaction was one of sale by the appellants to the commission agents and not to the Venezuela firm.

The State of New York claimed the right to impose a tax on the sale on the footing that the sale was to the commission agent and that at that stage

the export had not begun and that therefore Section 10 (2) did not apply. It was held that notwithstanding that on the documents the transaction

was one of sale between the appellants and the Commission agents in substance the export had begun when the goods had been entrusted to the

common carrier and that Section 10 (2) would therefore operate on such goods and the document of sale between the appellants and the

commission agents did not affect the matter. If the contention of the petitioners is well-founded, a simple answer to the claim of the State would

have been to hold that even on the basis that the sale was by the appellants to the commission agents, that was impressed with the character of

export on the principle laid down in -- "Brown v. The State of Maryland", (1827) 12 U S 419: 6 Law Ed. 678, and that therefore the sale could

not be taxed having regard to Section 10 (2).

"Empress Siderurgica, S.A. v. Merced", (1949) 337 U S 154: 93 Law Ed. 1276, is a recent decision in which the scope of the export and the

import clause came up again for consideration. A corporation in Columbia purchased a cement plant in California with a view to export it to

Columbia. The factory was being gradually dismantled and the materials transported to Columbia. During the years of assessment, a portion had

been dismantled and the rest was in the process of being dismantled. A tax having been levied on the property at that stage, the question arose

whether it could be considered as export for purposes of Section 10 (2). Douglas, J., observed:

It is not enough that there is an intent to export, or a plan which contemplates exportation, or an integrated series of events which will end with it.

The tax immunity runs to the process of exportation and the transactions and documents embraced in it..... It is the entrance of the articles into

the export stream that marks the start of the process of exportation. Then there is certainty that the goods are headed for their foreign destination

and will not be diverted to domestic use. Nothing less will suffice.

It was accordingly held that though there was the intention to transport the materials to Columbia and that was in the process of being carried out,

nevertheless as the foreign journey had not actually begun, there was no export within the meaning of Section 10 (2). This decision is direct

authority against the contention of the petitioners that a purchase preceding the actual export is part of it. Though the purchase was for the purpose

of export, it was held that that was not sufficient to give immunity from taxation and that Section 10 (2) would not come into operation until the

goods were put in transit.

15. Apart from authorities, an examination of the grounds on which the decisions in --"Brown v. The State of Maryland", (1827) 12 U S 419: 6

Law Ed. 678 and - 1942-5"Anglo Chilean Nitrate Sales Corporation v. Alabama", (1933) 288 U S 218: 77 Law Ed. 710 rest also show that

they are incapable of application to sales preceding exports as contended by the petitioners. One ground for holding that import of goods extends

to the first sale is that the object of importing them is to sell them in the country of import and that therefore the import must be held to continue

until they reach the hands of the purchaser. In the --"Licence cases", (1847) 12

Law Ed 287, Taney, C.J., stated that while imported articles are in the hands of the importer for sale... they may be regarded as merely "in transitu" and on their way to the distant cities, villages and country for which they are destined and where they are expected to be used and consumed and for the supply of which they were in truth imported. Black J., observed in -- "Hooven v. Evatt". (1944) 324 U S 652: 89 Law Ed. 1252: The Court in -- "Brown v. Maryland", was in reality treating goods in the hands of an importer for sale as though they were still in transit until the first sale had been made.

This reasoning will not apply to a transaction" which takes place before the transit begins. Another reason assigned for this rule is thus stated by

Marshall, C. J., in -- "Brown v. The State of Maryland":

The counsel for the plaintiffs in error contended that the importer purchases, by payment of the duty to the United States, a right to dispose of his

merchandise, as well as to bring it into the country, and certainly the argument is supported by strong reason, as well as by the practice of nations,

including our own. The object of importation is sale; it constitutes the motive for paying the duties; and it the United States possess the power of

conferring the right to sell, as the consideration for which the duty is paid, every principle of fair dealing requires that they should be understood to

confer it.

That is to say, when an importer pays to the United States customs duties on the goods imported he thereby purchases a right to sell the goods

free from any further taxation and that therefore the States cannot impose a tax on those goods. This reasoning again will be inapplicable to a

purchase preceding the export and apart from that, there is also high judicial authority in India for holding that this doctrine is inapplicable to the law

of this country. In the -- "Province of Madras v. Paidanna and Sons", 1942-5 F L J 61: 1942 2 M L J 327, Sir Maurice Gwyer, C. J., observed

as follows:

""It does not appear to us that it would necessarily follow from the principle of the Maryland decision that in India the payment of customs duty on

goods imported from abroad or the payment of an excise duty on goods manufactured or produced in India can be regarded as conferring some

kind of licence or title on the importer or manufacturer to sell his goods to any purchaser without incurring a further liability to tax.

He also expressed himself strongly against the introduction of the doctrine of original packages into Indian law and observed:

I should much regret if any contribution of mine to the elucidation of the problems which come before this Court were thought to have included the introduction of some kind of "original package" doctrine and all the refinements and complications which that doctrine has brought in its train in the Courts of America.

Thus the decisions on the export and import clause do not support the contention of the petitioners that an export must be construed as including

purchases prior to the transaction under which the goods are exported.

16. We may now examine the authorities on the commerce clause. Section 8 (3) confers on the Congress the power to regulate interstate

commerce and as the Congress is supreme in respect of the powers delegated to it under the Constitution, any State legislation which encroaches

on that field would be void. On the other hand, the States possess, subject to the powers delegated to the Congress and subject to such other

limitations as are imposed by the Constitution, sovereign powers and the power of taxation is one of such powers which could be exercised,

subject only to the limitations aforesaid. When, therefore, the validity of a taxing statute of a State is called in question as infringing Section 8 (3),

the point that arises for determination is, whether the impugned statute trespasses into the area of inter-state commerce and that in turn depends on

where the region of inter-state commerce begins and where it ends. If the State legislation cuts in between those two points it will be struck down

as unconstitutional. But subject to this, it will have full operation.

Thus, the discussion in the authorities on this subject is directed to ascertaining the points of commencement and of termination of the inter-state

commerce. A number of authorities has been cited before us on the question. It will be sufficient to refer to the more important among them. In --

"Coe v. Error", (1886) 116 U S 517: 29 LEd. 715, timber standing in a forest in the State of New Hampshire was cut down with the object of

exporting them to the State of Maine and the logs had in furtherance of this object been deposited on the riverside for the purpose of being floated

down. The State of New Hampshire imposed a tax on the logs of wood and the question was, whether it was in contravention of Section 8 (3). In

negating this contention, Bradley, J., observed:

Are the products of a State, although intended for exportation to another State and partially prepared. for that purpose by being deposited at a

place or port of shipment within the State, liable to be taxed like other property within the State? Do the owner's state of mind in relation to the

goods, that is, his intent to export them, and his partial preparation to do so, exempt them from taxation? This is the precise question for

solution..... There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and

protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they

commence their final movement for transportation from the State of their origin to that of their destination.

When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an "entrepot"

for that particular region, whether on a river or a line of railroad such products are not yet exports nor are they in process of exportation, nor is

exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination or have started

on their ultimate passage to that State. Such goods do not cease to be part of the general mass of property in the State, subject, as such, to its

jurisdiction and to taxation in the usual way, until they have been shipped or entered with a common carrier for transportation to another State or

have been started upon such transportation in a continuous route or journey.

This authority lays down that the power of the State to tax properties within its jurisdiction is not taken away until the inter-state journey begins;

and that the fact that the goods are intended for inter-state commerce, is not enough to deprive States of their powers of taxation. This is a

principle that has been uniformly followed in the subsequent decisions. In -- "Mcgoldrick v. Berwind-White Coal Mining Co.", (1940) 309 U S

83: 84 Law Ed 565, the respondent which was a Corporation in Pennsylvania engaged in the production of coal challenged the validity of a New

York legislation imposing a tax on the sales effected by it in New York. The

respondent maintained an office in New York, obtained orders and for carrying them out imported goods and the local agent at New York distributed them to the purchasers. On these facts it was contended that the tax was illegal as levied on inter-state commerce. In negating this contention the Court observed that after the goods had come to rest in the State of New York they were liable to be taxed like every other property within the State and that its only relation to the commerce arises from the fact that immediately preceding transfer of possession to the purchaser within the State, which is the taxable event regardless of the time and place of passing title, the merchandise has been transported in interstate commerce and brought to its journey's end. Such a tax has no different effect upon inter-state commerce than a tax on the "use" of property which has just been moved in inter-state commerce..... or the familiar property tax on goods by the state of destination at the conclusion of their inter-state journey. -- "Brown v. Houston", (1885) 114 U S 622: 29 Law Ed. 257, -- "American Steel and Wire Co., v. Speed", (1904) 192 U S 500: 48 Law Ed. 538. This Court has uniformly sustained a tax imposed by the State of the buyer upon a sale of goods, in several instances in the "original packages," effected by delivery to the purchaser upon arrival at destination after an inter-state journey, both when the local seller has purchased the goods extra-state for the purpose of resale and when the extra-state seller has shipped them into the taxing state for sale there. Respondent, pointing to the course of its business and to its contracts which contemplate the shipment of the coal inter-state upon orders of the New York customers, insists that a distinction is to be taken between a tax laid on sales made, without previous contract, after the merchandise has crossed the state boundary, and sales, the contracts for which when made contemplate or require the transportation of merchandise inter-state to the taxing state... But we think this distinction is without the support of reason or authority. In the result, the taxation was held to be legal, The principle established in this case that the doctrine of original packages has no application to inter-state commerce had been already laid down in -- "Woodruff v. Parham", (1869) 75 US 123: 19 Law Ed. 382, and -- "Hinson v. Lott", (1869) 75 U S 148: 19 Law Ed. 387; and it has never been questioned.

17. Considerable reliance was placed on behalf of the petitioners on the following decisions: -- "Bobbins v. Taxing District of Shelby County",

(1887) 120 U S 489: 30 Law Ed 694, -- "Dahnke-Walker Milling Co. v. Bondurant", (1921) 257 U S 282: 66 Law Ed 239, --"Lemke v.

Farmers" Grain Co.", (1922) 258 US 50: 66 Law Ed 458. -- "Shafer v. Farmers" Grain Co.". (1925) 268 US 189: 69 Law Ed 909, -- "Real

Silk Hosiery Mills v. Portland", (1925) 268 U S 325: 69 Law Ed 982, and -- "Currin v. Wallace", (1939) 306 U S 1: 83 Law Ed. 441. In --

"Bobbins v. Taxing District of Shelby County", the appellant was carrying on within the State of Tennessee the business of soliciting orders for the

sale of goods of the firm of Rose, Robbins and Company, of Cincinnati, in the State of Ohio, by exhibiting samples, a business known as that of a

drummer. Under a law of Tennessee, drummers were required to take out before carrying on their business a licence on payment of the fees

prescribed thereunder. The validity of this imposition was impugned on the ground that the drummer was engaged in the carrying on of inter-state

commerce and that the State had no power to burden it by any measure of taxation. This contention was upheld.

In -- "Dahnke-Walker Milling Co. y. Bondu-rant", the question was about the validity of a statute of Kentucky which prescribed various

conditions under which Corporations of other States could do business in the State. As the business out of which the dispute arose was purchase

of grain for inter-state commerce, it was held that the provisions of the Act amounted to an interference with that commerce, and were therefore

void. In --"Lemke v. Farmers" Grain Co.", North Dakota enacted a legislation requiring that the purchases of grains intended for transport to

markets in Minnesota should be made only by persons holding a licence and imposed various restrictions in the matter of carrying on of that

business. It was held that this was unconstitutional interference with the carrying on of inter-state commerce and was illegal. The decision in --

"Shafer v. Farmers" Grain Co.", is again on the validity of a North Dakota statute which introduced a compulsory system of licence and regulation

with reference to the purchase of grains intended to be exported to other States. The Act was held to be unconstitutional.

In -- "Real Silk Hosiery Mills v. Portland", a statute of Oregon required licence to be taken from persons engaged in inter-state trade as a

condition of their carrying on business. Following the decision in -- "Robbins v. Taxing District of Shelby County", the Court held that this was an

unconstitutional interference with inter-state commerce. It will be noticed that in all the above cases the point for determination was whether the

States could impose restrictions on the carrying on of inter-state commerce by requiring that a licence should be taken and imposing restrictive conditions.

These authorities do not bear directly on the question as to when transactions assume the character of inter-state commerce so as to be immune

from taxation. The principle on which these decisions rest is that a State Law will be invalid, if it, to any extent, burdens inter-state commerce. Vide

-- "Spector Motor Service v. O'Connor", (1951) 340 U.S. 602: 95 Law Ed. 573. In -- "Curran v. Wallace", the question was about the validity

of a federal legislation providing for the regulation of the tobacco trade. The contention was that it related purely to intra-state commerce and was

therefore unconstitutional. It was held that the purchase of goods in one State for transportation into another constituted interstate commerce and

was, therefore, within the regulatory jurisdiction of the Congress u/s 8 (3).

18. Our attention was also invited to decisions in which the question discussed was how far interruptions in the course of transport of goods could

be regarded as terminating the journey so as to enable the States to impose a tax on the goods at that stage. Thus, in --"General Oil Co. v. Grain",

(1908) 209 US 211: 52 Law Ed 754 oil which was shipped from Pennsylvania and destined ultimately for points in the States of Arkansas,

Louisiana, and Mississippi was held not to be inter-state commerce when in the course of transit it was unloaded into tanks and barrels for the

purpose of distribution at the places of destination. A tax laid on it was upheld as not being in violation of Section 8 (3).

In -- "Beacon v. Illinois", 227 U S 504: 57 Law Ed 615 it was decided that grain which was shipped from the Western States for delivery in the

Eastern States ceased to be in transit, when it was stopped at Chicago and removed to the owner's grain elevator for inspection, weighment and

assortment before being despatched to their destination, It was observed that the owner had

established a local facility in Chicago for his own benefit, & while through its

employment, the grain was there at rest, there was no reason why it should not be included with his other property within the state in an assessment for taxation which was made in the usual way, without discrimination.

In -- "Susquehanna Coal Company v. South Amboy", 228 US 665: 57 Law Ed 1015 coal shipped from the State of Pennsylvania and landed at

New Jersey and dumped into a coal depot was held liable for State taxation, although destined ultimately for ports in Other States as there was

something more than an incidental interruption of the continuity of the transportation through the State and there was ""a business purpose and

advantage in the delay."" These authorities are relevant only as showing that the period during which the State loses its power to tax on the ground

of inter-state commerce should be confined to the time when there is a continuous course of transit. In -- "Minnesota v. Blasius", (1933) 290 US

1: 78 Law Ed 131 the law relating to the power of the State to impose tax in relation to the commerce clause was thus summed up:

Thus, the State cannot tax inter-state commerce, either by laying the tax upon the business which constitutes such commerce or the privilege of

engaging in it, or upon the receipts, as such, derived from it. Similarly, the States may not tax property in transit in inter-state commerce If

the inter-state movement has not begun, the mere fact that such a movement is contemplated does not withdraw the property from the State's

power to tax it. If the inter-state movement has begun, it may be regarded as continuing, so as to maintain the immunity of the property from State

taxation, despite temporary interruptions due to the necessities of the journey or for the purpose of safety and convenience in the course of the

movement When property has come to rest within a State, being held there at the pleasure of the owner, for disposal or use, so that he may

dispose of it either within the State, or for shipment elsewhere, as his interest dictates, it is deemed to be a part of the general mass of property

within the State and is thus subject to its taxing power.

19. The above authorities on the commerce clause, far from supporting the contention of the petitioners that export should be deemed to include

the chain of transactions preceding it clearly establish that immunity from taxation under the commerce clause should be narrowly construed so as

to limit it to the period between the actual commencement and termination of inter-state commerce.

20. Turning now to Article 286, the question is what is the exact import of the words ""sale of goods where it takes place in the course of export or

import"" or ""in the course of inter-state trade."" Mr. K. Rajah Ayyar argues that the words ""in the course of export"" are equivalent to ""for the

purpose of export"" & that construction would take in not merely the last transaction under which the goods are actually exported but also the prior

sales which were effected for the purpose of export or even with the knowledge that the goods will be exported. But when dealing with extra-state

transactions, the Explanation to Article 286(1)(a) enacts that the delivery must be ""for the purpose of consumption.

And when two different expressions are used in the same context, the reasonable inference is that they refer to two different matters, and therefore,

the words ""in the course of export"" cannot bear the same meaning as ""for the purpose of export."" In their natural meaning the words ""in the course

of export"" would have a more restricted operation than the words ""for the purpose of export."" Quite obviously the words ""in the course of"" have

been suggested by the decisions of the American Courts on the commerce clause. The object of Article 286(2) is clearly to prevent States from

interfering with the free flow of commerce in the country by erecting barriers of taxation. That was precisely the object of the commerce clause in

America and, interpreting that clause, the decisions have established as already seen that the States enjoy full powers of taxation so long as they do

not trespass into the region of inter-state commerce and that that region begins when the goods commence their interstate journey and ends when

they reach their destination.

Whether the goods are in the course of transit, is the paramount question to be decided under, the commerce clause. It is this conception that

appears to have been adopted in the words ""sale of goods where it takes place in the course of inter-state trade."" These words limit the prohibition

on the power of the State to impose tax on sales only where they are the subject-matter of inter-state commerce. The power of the State to tax

sales before the inter-state commerce commences and after it ends is left untouched. In this view, the power of the States to impose tax under

Article 286(2) would be of the same character and extent as the power of the States in America in relation to the commerce clause.

21. It has next to be noted that under Article 286(1)(b) the prohibition on the power of the State to tax exports & imports is stated in precisely the

same terms as in relation to inter-state commerce under Article 286(2); and that is only in respect of sales or purchases which take place in the

course of the import or the export of the goods. It would be in accordance with sound rules of construction to put the same meaning on the words

in the course of"" occurring both in Article 286(1)(b) and in Article 286(2). Thus understood the; prohibition under Article 286(1)(b) will begin to

operate only from the time when the goods exported begin their international journey and it will cease when that journey ceases. In other words,

the prohibition is limited to the period covered by the actual exportation or importation of the goods. The power of the State to impose tax at any

stage before or after is not affected.

22. It may also be observed that in American law, the commerce clause and the export and import clause operate differently on the power of the

State to impose tax. While under the commerce clause the States have, as already mentioned, plenary powers of taxation subject only to the

powers of the Congress to regulate inter-state commerce, in the case of the export and import clause, it is a total want of jurisdiction. The

distinction between the two was thus stated in -- "Richfield Oil Corporation v. State Board", (1946) 329 U S 69: 91 Law Ed 80:

The two constitutional provisions, while related, are not co-terminous. To be sure, a State tax has at times been held unconstitutional both under

the Import-Export Clause and under the Commerce Claus³. But there are important differences between the two. The invalidity of one derives

from the prohibition of taxation on the import or export; the validity of the other turns nowise on whether the article was, or had ever been, an

import or export. Moreover, the Commerce Clause is cast, not in terms of a prohibition against taxes, but in terms of a power on the part of

Congress to regulate commerce..... As recently stated in -- "McGoldrick v. Berwind-White Coal Mining Co.", (1940) 309 US 33: 84 Law Ed

565, the law under the Commerce Clause has been fashioned by the Court in an effort "to reconcile competing constitutional demands, that

commerce between the States shall not be unduly impeded by State action, and that the power to lay taxes for the support of State Government shall not be unduly curtailed."

It would appear that the intention of the framers of the Constitution was to discard this distinction and enact one law for both foreign and inter-state trade and that they chose to adopt the law relating to inter-state commerce in America as furnishing a basis for reconciling the competing demands of both the union to control and regulate commerce, inter-state and foreign, in the best interest of the country, and of the States, to raise revenue on transactions, which are rendered possible by the protection afforded by the States.

23. If that is the true meaning of Article 286, why asks Mr. Rajah Ayyar, should not the Legislature have simply enacted that the State shall not lay tax on exports or imports. But then that would have brought in the doctrine of original packages and it was clearly with a view, to avoid it and assimilate the law on the subject Of the exports and imports to that on inter-state commerce that the language used in the American authorities on the construction of the commerce clause was adopted. Even so, argues Mr. Rajah Ayyar, the language used in Article 286 suggests a wider operation of the prohibition on the powers of the State to tax than would result on the construction adopted here. The language is, it must be conceded, somewhat involved but it is due to the fact that two different classes of transactions were clubbed together in one Article. If A in Madras sells goods to B in Calcutta and in performance of the contract consigns them to a common carrier, then from that stage the goods are in transit in inter-state commerce and the State loses its power of taxing the sale. That is a plain case under the inter-state commerce clause. But not seldom does it happen that even before a contract is entered into with reference to goods A might consign them to his own order or control in Calcutta and while the goods are actually in transit a transaction of sale might be concluded and completed by transfer of the relative documents of title. That transaction might be concluded at Madras. But nevertheless, the State of Madras will have no power to tax the sale as the sale takes place while the goods are in the course of inter-state commerce. It is the lumping up of these two kinds of transactions in a single

provision that has resulted in a tangle in expression.

24. It must accordingly be held that both in Articles 286(1)(b) and 286(2) the power of the State to impose a tax on export or import or inter-state

trade or commerce is taken away only in respect of sales or purchases made: directly in relation to the goods which are the subject-matter of

transportation either in interstate or international commerce, whether such sales take place prior to the commencement of the transport or during its

progress. The prohibition does not extend to sales or purchases which have no direct connection with the goods which are exported.

25. In the light of this conclusion we may examine the facts relating to the first question. 7,250 pieces of hides and skins were exported directly by

the petitioners under C.I.F. contracts. That would clearly be exports not liable for taxation. The Commercial Tax Officer held that the goods which

had been purchased as raw hides and skins were tanned by the petitioners in their own tannery and exported as tanned hides and skins. The

petitioners contend that what they did was not tanning but merely curing the hides and skins so as to preserve them from decay and putrefaction so

that they may be in a fit condition for export. If that is so -- and that is not seriously disputed -- the ground on which the tax was imposed in the

present case must be rejected as untenable. But the substance of the matter is that the petitioners are not taxed as exporters, but as the last

purchasers who exported the goods and the tax is imposed on the sum of Rs. 8,66,212-8-1 which is the price which they paid to their sellers in

Dacca, Calcutta, Cawnpore and locally. Therefore, if the contention of the petitioners that all their purchases form part of the process of export

fails, then they can escape taxation only by establishing that the purchases by them are not liable to be taxed, and that is the point raised in

questions 2 and 3.

26. On the second question relating to the purchase of 12,123 pieces of raw hides and skins in Dacca, the argument of the petitioners is that they

are imports from Pakistan and exempt from taxation in view of Article 286(1)(b). The facts established are that the representatives of the

petitioners used to go to Dacca, make the purchases there, pay the price, and consign the goods from there to Madras. The contracts of purchase

were completed in Dacca, before the goods were put in transit; and what the

petitioners did was merely to transport their own goods from Dacca to Madras.

Dealing with inter-state commerce, Willis remarks that "whenever there is traffic or commercial intercourse between a person in one state and a person in another state there is inter-state commerce." Vide Willis on Constitutional Law, page 289. On the same principle, unless the goods are in transit under a contract between two persons in two different countries, entered into either at the commencement of the transport or during its progress, there can be no question of a sale or purchase in the course of import. It should therefore be held that the transport by the petitioners of their own goods after purchase in Pakistan cannot be brought under Article 286(1)(b) as a purchase in the course of import.

But the claim of the petitioners to exemption in respect of these purchases must be upheld on a different ground. If, the purchases were completed in Dacca, that would be outside the operation of the Madras General Sales Tax Act as that authorises a levy of tax only on sales or purchases within the Province of Madras; and as the tax has been imposed on the petitioners as purchasers, it must be held to be unauthorised. It may be that the petitioners are liable to be taxed under the Act in respect of any subsequent dealings by them with reference to these goods within the State of Madras, if that is authorised by the Act. But the assessment of tax has been made on them only as purchasers of hides and skins, and that is clearly illegal.

27. The third contention relates to the purchase of 74,000 pieces of hides and skins in Calcutta and Cawnpore for a price of Rs. 7,18,042-2-9 and it raises a rather difficult question on the interpretation of Article 286(1)(a) and the Explanation thereto. For a proper appreciation of these provisions, it will be useful if we first ascertain the powers of taxation which States possess apart from Article 280, and then examine how far those powers have been abridged or modified by the provisions of that Article. The power to impose taxes on sales was conferred on the States by Entry No. 48 in the Provincial List in the Government of India Act, 1935, and under the Constitution that power is granted by Entry No. 54 in the State List in the Seventh Schedule. Article 245(1) enacts that "The Legislature of a State may make laws for the whole or any part of the

State.

On these provisions three possible cases can be conceived. There may be a sale which is wholly intra-state; a sale which is wholly extra state and a

sale which may be described as inter-state by which is meant a sale in which the essential ingredients such as conclusion of the contract, delivery of

the goods, payment of price and the passing of title take place partly in one State and partly in another or others. The first two categories do not

present any difficulties; taxation of an intra-state sale will be "intra vires" and the taxation of an extra-state sale "ultra vires" of the powers of the

State Legislature. The problem arises only with reference to inter-state sales. One question is whether having regard to the limitations prescribed in

Article 245(1), the State Legislature has competence to impose a tax on such sales. It is well-settled that the power of a State to impose taxes is

not conditioned on the subject-matter being wholly within its jurisdiction. The exercise of the power will be valid, if there is sufficient territorial

connection with reference to the subject-matter. That was clearly laid down by the Privy Council in --"Wallace Brothers and Co. v. Commissioner

of Income Tax, Bombay", 1948 FLJ 32, where it was observed:

Given a sufficient territorial connection between the person sought to be charged and the country seeking to tax him, Income Tax may properly

extend to that person in respect of his foreign income.

We had occasion recently to consider this question in Criminal Appeal No. 129 of 1952 (Mad) and we held that sales tax could be levied on sales

which are of an inter-state character, provided they were substantially effected within the State and that a law imposing such a tax is not "ultra

vires" of the powers of the Legislature. It is unnecessary to cover the same ground once again. It may be added that a different conclusion would

lead to the startling result that inter-state sales could not be the subject of taxation by any State.

28. A more difficult question is which among the States in which inter-state sales take place has the power to tax such sales? One possible view is

that as there is a sale only when property in the goods passes, it is only that State in which property passes that the competence to impose tax on

the sale. This was the substantial question which was considered by us in Criminal Appeal No. 129 of 1952 (Mad) to which reference has already

been made. There, the assesseees who were carrying on business in the City of Madras claimed exemption from sales tax in respect of certain sales

in which the property passed to the purchasers in Calcutta. But the contracts themselves had been concluded in Madras. The goods were

consigned to the common carrier in Madras and the assesseees had also their Head Office in Madras. On these facts, we held that for purposes of

sales tax the sale must be held to take place where the bargain was concluded and the transaction substantially effected and that passing of

property in goods was not a decisive factor.

This conclusion was reached on a consideration of -- "Norfolk and W. R. Co. v. Sims", (1903) 191 U S 441: 48 Law Ed 254 and --"American

Express Co. v. State of Iowa", (1905) 196 U S 133: 49 Law Ed 417. These authorities lay down that when there is a sale of goods, the material

element for the purpose of taxation is the agreement of sale under which the right of the parties get finally fixed; that the passing of property,

delivery of goods and payment of price are matters on which the parties are free to settle their own terms; that the power of the State to impose

taxes cannot depend on the terms of the bargains which the parties might make; and that where there is a consummated sale, the venue of the sale

for purposes of taxation is the place where the agreement was concluded, the rest of the transaction being treated merely as a process of execution

of the agreement.

Reliance was also placed on the observations of Black J., in -- "Richfield Oil Corporation v. State Board of Equalisation", (1946) 329 U S 69: 91

Law Ed 80. Reference may also be made to the following observations of Stone J., in -- "McGoldrick v. Berwind-White Coal Mining Co.",

(1940) 309 U S 33: 84 Law Ed 565: ""The place where the title passes has not been regarded as the test- of inter-state character of sale."" How far

the later decision in -- "McLeod v. Dilworth Co.", (1944) 322 US 327: 88 Law Ed 1304, can be reconciled with the decision in -- "McGoldrick

v. Berwind-White Coal Mining Co.", is not material for the present discussion as Frankfurter, J., who delivered the judgment of the majority

accepts the authority of -- "McGoldrick v. Berwind-White Coal Mining Co.", and proceeds to distinguish it. Nor is it material to consider how far

the decision in -- "McLeod v. Dilworth Co.", could be reconciled with the decision

of the same learned Judge in -- "General Trading Co. v. State Tax Commission", (1944) 322 U S 335: 88 Law Ed 1309. The point is that it is generally agreed that it is not the passing of property in goods that determines the right of the states to impose tax. The position is thus stated by a learned American Writer. Vide 57 Harvard Law Review, page 1091.

Furthermore, the question whether title passes in the state of origin of the goods or in the state of destination has not hitherto been thought determining under the commerce clause. -- "Caldwell v. North Carolina", (1903) 187 U S 622: 47 Law Ed 336; -- "Norfolk and W. R. Co. v. Sims"; -- "Rearick v. Pennsylvania", (1906) 203 U S 507; 51 Law Ed 295. In this last case, Mr. Justice Holmes said: "Commerce among the several States is a practical conception, not drawn from the 'witty diversities' of the law of sales.

Under the Indian Sale of Goods Act the provisions as to passing of title are subject to a contract to the contrary "vide" Section 19. If the power of a State to impose sales tax is to depend on the passing of property in the goods, it will follow that it is in the power of the parties to determine by their bargain the extent of that power and it would be possible for them to deprive a State of its power to tax a transaction which takes place within its limits by adopting artificial terms as to the passing of title. While such terms will be binding on the parties themselves in determining their mutual rights and obligations as to when the risk commences and the like, there is no reason why the State which has sovereign power of taxation within the limits prescribed by the Constitution should, in the exercise of such power, be controlled by the contracts of the parties. The correct view, therefore, to take of the matter, is to hold that the right to impose a tax arises in India, as in America, when the contract is concluded, provided of course the contract is completed by the passing of property.

29. In -- Criminal Appeal No. 129 of 1952 (Mad) we had not to consider the effect of Article 286 of the Constitution on the powers of a State to impose sales tax, as the assessment under consideration there related to the period between 1st April 1947 and 31st December 1947. The point for determination now is how far the power which the States otherwise possess of imposing sales tax is affected by Article 286(1)(a) and that

depends on the interpretation to be given to the Explanation. Is the power of taxation conferred by the Explanation in addition to the power

possessed by the State? Or, is it in substitution of it?

To take an illustration, if a contract is concluded in Madras and to bring out the problem in relief, let us assume that under the agreement of parties

the property in the goods also passed in Madras, but the goods are actually delivered in Bombay, would the State of Madras have the power to

tax the sale? But for the Explanation, it would have had. Has the Explanation the effect of taking away the right? It is undoubted that under the

Explanation, the State of Bombay will have the power to impose tax. If the Explanation has to be interpreted as conferring an additional power,

then both the States will have the power to tax, the State of Madras acting under Entry No. 54 and under the Madras General Sales Tax Act and

the State of Bombay by virtue of the Explanation.

What can be put against this construction is that it results in double taxation of the same transaction. But if we adopt the view that the Explanation

has the effect of superseding powers of the State Legislature in cases falling under the Explanation, that will have the effect of depriving the States

of revenue in respect of transactions which are substantially effected there. Looking at the cast of the statute, the conferment of the power of

taxation on States is under Article 246 of the Constitution and Entry 54 in the State List which correspond to Section 100 and Entry 48 in the

Seventh Schedule in the Government of India Act of 1935. Then comes Article 286(1)(a) which prohibits the imposition of tax on extra-state

sales -- a prohibition which is already to be found enacted in Article 245. While Article 245 is positive in its terms, Article 286(1) is negative.

The Explanation then steps in and provides that for the purpose of Article 286(1)(a) a sale must be considered to take place in that State in which

the goods are actually delivered for consumption. The effect of this Explanation is to remove the limitation imposed by Article 245 and Article

286(1) on the power of a State to enact extra-territorial legislation and permit the State to levy sales tax on an extra-state sale, provided goods

thereunder are delivered within the State. The Explanation should accordingly be construed as not taking away the positive powers of taxation

conferred under Article 246 and Entry No. 54 but as enlarging those powers in

cases falling within the Explanation. This conclusion is reinforced by a reference to the circumstance under which the Explanation came to be incorporated in the Article. It was not originally in the Bill and it came to be inserted at the last stage out of deference to the representations made on behalf of certain States that the Law as it stood would prevent them from taxing commodities which would be used in the State and that a power to tax such transactions should be conferred on them. Read in the light of this background, the language of the Explanation is also significant. It applies only when the goods have been delivered for the purpose of consumption in that State. It is really what is termed in American Legislation as "use tax" which though functionally allied to sales tax, is different in its operation. In -- "McLeod v. Dilworth Co.", (1944) 322 U S 327: 88 Law Ed 1304, the difference between the two kinds of tax was thus explained:

A sales tax and a use tax in many instances may bring about the same result. But they are different in conception, are assessments upon different transactions, and in the inter-lacings of the two legislative authorities within our federation may have to justify themselves on different constitutional grounds. A sales tax is a tax on the freedom of purchase. A use tax is a tax on the enjoyment of that which was purchased.

We are not concerned with the constitutional problem as it presented itself for solution in that case; because under the Constitution the States enjoy both a power under Entry 54 to tax sale and purchase of goods and a power under Entry 52 to tax goods on their entry into a local area, subject only to the limitations contained in Article 286. But the observations quoted above are sufficient to show that there is no conflict between the power of States to tax sales under Entry 54 and the power to impose taxes on the use of goods to which the Explanation relates.

30. This interpretation further gives a clue to the correct meaning of the words ""actual delivery"" in the Explanation. In the context it can mean only physical delivery and not constructive delivery such as by transfer of documents of title to the goods. The whole object of the Explanation is to give a power of taxation in respect of goods actually entering the State for the purpose of use therein and it will defeat such a purpose if notional delivery of goods as by transfer of documents of title to the goods within the

State is held to give the state a power to tax, when the goods are actually delivered in another State.

31. The result may be thus summed up:

1. The State has plenary powers of taxation over intra-state sales.
2. The State has no power to impose a tax on extra-state sales.
3. In respect of inter-state sales, the State in which the contract is concluded is the only State which has the power to impose a tax.
4. Where goods are delivered for consumption in a particular State, that State has the power to impose a use tax or a purchase tax thereon notwithstanding that the transaction of sale is extra-state.

32. In the light of the above discussion it is necessary to examine whether on the facts established in the present case the petitioners are entitled to

exemption from tax in respect of hides and skins purchased in Calcutta and Cawnpore. The affidavit in support of the petition does not give

particulars as to where the contract was concluded or where the delivery was made. In a statement filed on behalf of the respondent it is stated that

in respect of the purchases made in Calcutta the documents of title were received by post in Madras. In the view taken by us that would not be

sufficient to confer on the State a power to tax the sales. If the contracts in respect of these sales were concluded in Calcutta, they will be extra-

state sales not liable for taxation under the Madras General Sales Tax Act.

It would appear, however, that the goods were actually delivered in Madras and if so, that will confer on the State of Madras a power to tax the

goods under the Explanation to Article 286(1)(a) which has become incorporated in the Madras General Sales Tax Act by the Adaptation of

Laws (Fourth Amendment) Order, 1952, which by virtue of Section 1 (2) shall be deemed to have come into force on the 26th January, 1950.

With reference to the purchases made in Cawnpore also it is stated on behalf of the respondent that the prices were paid to the banks in

Madras against delivery of documents of title. This circumstance would not be sufficient to clothe the State of Madras with authority to impose a

tax on these sales, though property in the goods might pass in Madras, as in the view expressed by us, the locus of the contract is not where the

property passes, but where the agreement is concluded. But if the goods were

delivered in Madras, as appears from the statement on behalf of the respondent, the Madras State would have jurisdiction to impose tax under the Explanation to Article 286(1)(a).

33. We must mention that on the construction of the Explanation to Article 286(1) (a) Mr. K. Kajan Ayyar argued that the word "consumption"

occurring therein should be understood in the limited sense of eating and not in the wider sense of using. He relied on the language of Entry 52 in

schedule 2 where both "consumption" and "use" are used disjunctively. But Entry 53 speaks of taxes on the consumption or sale of electricity; and

obviously consumption here can mean only use. Reference was made to the Dictionary meaning of the word "consumption". But that gives both a

popular sense and an economic sense. It is the latter that we are concerned with, and that is given in Webster's New International Dictionary, Vol

I, page 483, as follows:

Consumption.--(3) Economics. -- The use of (economic) goods resulting in the diminution or destruction of their utilities; opposed to production.

Consumption may consist in the active use of goods in such a manner as to accomplish their direct and immediate destruction, as in eating food,

wearing clothes or burning fuel; or it may consist in the mere keeping, and enjoying the presence or prospect of, a thing, which is destroyed only by

the gradual processes of natural decay, as in the maintenance of a picture gallery. Generally, it may be said that consumption means using things,

and production means adapting them for use.

In the Oxford New English Dictionary, Vol. II, page 888, consumption is defined as:

(1) The action or fact of consuming or destroying; destruction. (7) Pol. Econ. The destructive employment or utilisation of the products of industry.

There is no substance in this contention.

34. (4) The fourth contention of the petitioners is that the power of the State to impose sales tax has undergone a material change by the operation

of Article 286, that taxes which would be lawful prior to the Constitution have now been rendered illegal; that the Turnover and Assessment Rules

which were framed before the Constitution have mixed up what would not now be taxable with what is taxable; and that therefore they should be

declared void in their entirety as the turnover under the Act is one and indivisible. We are unable to agree with this contention. As already

mentioned, Article 236 is now part of the Madras General Sales Tax Act, by virtue of the Adaptation of Laws (Fourth Amendment) Order, 1952;

and if the assessment is to any extent not authorised by the Statute the assessee is entitled to be relieved from the imposition to that extent. They

cannot claim further that they should be freed altogether from liability even to the extent that they are liable under the Act. As was observed by

Holmes; J., in --"New York Ex. Eel. Hatch v. Edward Reardon", (1907) 204 U S 152: 51 Law Ed 415,

with regard to taxes, especially perhaps it might be assumed that the Legislature meant them to be valid to whatever extent they could be

sustained.

35. The result of the findings is that the sum of Rs. 1,04,595-4-6 representing the price paid by the petitioners for the hides and skins purchased in

Dacca, should be excluded from their assessable turnover; and that in respect of the purchases made in Calcutta, Cawnpore and locally amounting

to Rs. 7,61,617-3-7 they are liable for sales tax.

36. The learned Advocate-General agrees that the taxing authorities will revise the assessments in accordance with the conclusions expressed

herein..

37. There will be no order as to costs.

Rajamannar, C.J.

38. I agree.