

(2018) 12 UK CK 0068

In the Uttarakhand High Court

Case No : Special Appeal No. 52, 249 Of 2013

Chandra Kattha Industries Pvt. Ltd And Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 18-12-2018

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 4B, 4B(1)
Central Sales Tax Act, 1956 — Section 2(g), 3, 3(a), 3(b), 4, 4(1), 4(2), 4(2)(a), 8, 8(1), 8(3), 8(4), 8(5)
Sales Of Goods Act, 1930 — Section 19(3), 20, 21, 22, 23, 24, 64, 64(2)
Uttar Pradesh Trade Tax Rules, 1948 — Rule 25B(1), 4B(1)© Indian Contract Act, 1872 — Section 72
Central Sales Tax (Registration And Turnover) Rules, 1957 — Rule 12(1)
Constitution Of India, 1950 — Article 38, 39, 92A, 246, 265, 269, 286, 286(2)(3)

Citation : (2018) 12 UK CK 0068

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Singh, J

Bench : Division Bench

Advocate : S.K. Posti, Mohit Maulkehi, V.K. Kapruwan

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. These two appeals, one by the writ petitioner-dealer and the other by the State of Uttarakhand, are preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No. 2511 of 2007 dated 01.11.2012. While Special Appeal No. 52 of 2013 is preferred by the writ petitioner-dealer, Special Appeal No. 249 of 2013 is preferred by the State of Uttarakhand. Parties shall, hereinafter, be referred to as they are arrayed in the writ petition.

2. Facts, to the extent necessary, are that the petitioner, a private limited company having its registered office at Kotwali Road, Najibabad, District-Bijnor in the State of Uttar Pradesh, carries on business in the manufacture and sale of "kathha", and "cutch" which is a type of tenin and is a by-product of kathha. The raw material for manufacture of kathha is khair wood, and the petitioner was

hitherto purchasing khair wood from the U.P. Forest Corporation. The petitioner is also a registered dealer under the U.P. Trade Tax Act, 1948 (hereinafter referred to as the "1948 Act") and the Central Sales Tax Act, 1956 (hereinafter referred to as the "CST Act"). They applied for a recognition certificate under Section 4-B of the 1948 Act and the assessing authority, vide order dated 07.06.1994, granted them a recognition certificate, as a result of which the petitioner was entitled to purchase raw material at a concessional rate of tax. This recognition certificate was, by order dated 09.09.1997, made applicable for the lifetime of the company. Prior to the bifurcation of the State of Uttar Pradesh, and the State of Uttarakhand coming into being on 09.11.2000, the petitioner's manufacturing unit, and the source of its procurement from the U.P. Forest Corporation, were both located within the State of Uttar Pradesh. After the creation of the State of Uttarakhand, while the petitioner's unit continued to remain in the State of Uttar Pradesh, it was required to procure khair wood from the Corporation located in the State of Uttarakhand.

3. It is the petitioner's case that an amicable settlement was arrived at between the State of Uttarakhand and the State of Uttar Pradesh to resolve this problem, and both the States issued notifications giving the benefit of concessional rate of tax for purchase of raw material, to persons who had a recognition certificate under Section 4-B of the 1948 Act before bifurcation of the State of Uttar Pradesh. A gazette notification dated 26.12.2000 was issued by the State of Uttarakhand giving the benefit of concessional rate of tax to these manufacturers on their furnishing Form-C in accordance with the provisions of Section 8(4) of the CST Act. While this gazette notification also prescribes a few other conditions, we shall refer to them later in this judgment. A similar notification was issued by the State of Uttar Pradesh on 23.11.2000. On purchase of khair wood from the Uttarakhand Forest Development Corporation (hereinafter referred to as the "Corporation"), the petitioner claims to have furnished Form-C to the Corporation which, they claim, refused to accept it, to have denied them the benefit of concessional rate of tax, and instead to have imposed tax at 15% on the purchase price of khair wood.

4. It is the petitioner's case that, since the Corporation issued bills in their favour and provided them a transit pass to transport khair wood from their Chiriyapur Depot in the State of Uttarakhand to the petitioner's address at Nazibabad in the State of Uttar Pradesh, it was evident that the goods moved from the State of Uttarakhand to the State of Uttar Pradesh; after introduction of the Value Added Tax Act, the Corporation issued invoices to the petitioner charging them 12.5% Trade Tax which is the scheduled rate of tax; they used to submit Form-3B to the Corporation, (before the notification dated 26.12.2000 was issued), seeking the benefit of concessional rate of tax, which was also refused to them; and thereafter they made a representation to the Divisional Marketing Manager of the Corporation on 09.02.2007 seeking extension of the benefit of concessional rate of tax at 2.5% on furnishing Form-C.

5. The petitioner claims to have paid Trade Tax ever since the assessment year 2001-02 to 2007-08 at the regular rate of tax, and that they have been charged Rs. 1,61,26,132/- in excess as tax than what the State of Uttarakhand was entitled to. They invoked the jurisdiction of this Court seeking a mandamus directing the respondents not to realize Trade Tax at more than 2.5% from them; a mandamus directing the respondents to give them the benefit of the recognition certificate, and to comply with the provisions of the notification dated 26.12.2000 issued by the State of Uttarakhand; and a mandamus directing the respondents to refund Rs. 1,61,26,132/-, with interest, which was illegally realized from them.

6. In the counter affidavit filed on behalf of the second respondent, by the Deputy Commissioner, Commercial Tax, Haridwar, it is stated that a dealer is entitled to pay tax, at a concessional rate, on furnishing Form-C only in the case of an inter-State sale; if the sale is completed within one State, then Form-C cannot be issued, as such a sale cannot be considered an inter-State sale; the sale of khair wood had concluded within the State of Uttarakhand, and as the petitioner had purchased it in an open auction, he was free to move the goods purchased by him from one place to another either within the State of Uttarakhand or outside the State; the Corporation was created after the State of Uttarakhand came into being; consequently, the question of submitting Form-3B to the Corporation did not arise; after creation of the State of Uttarakhand, the relevance of Form-3B came to an end; purchase of khair wood, in an open auction held by the Corporation, is not pursuant to an inter-State sale, but is an outright sale and purchase of khair wood at the depot of the Corporation; the sale was completed within the State of Uttarakhand; consequently Trade Tax or Value Added Tax, at the full scheduled rate, became applicable; the benefit of the notification could only have been given to the petitioner in the case of an inter-State sale; and since the subject sale was an intra-State sale, the petitioner was not entitled to the benefit of concessional rate of tax available under the notification.

7. In the counter affidavit, filed on behalf of the third respondent-Corporation, it is stated that the Corporation is also a dealer; they collect tax on behalf of the commercial tax department, and deposit the amount of tax collected with them; as the petitioner, a company situated in the State of Uttar Pradesh, purchased khair wood from the Corporation in an open auction, the sale of khair wood concluded within the State of Uttarakhand, and the purchaser was free to move the same anywhere; in the bills/invoices issued by the Corporation to the petitioner, trade tax, at the full scheduled rate of tax, was charged; the question of submission of Form-3B to the Corporation does not arise as it was created on 01.04.2001; after the creation of the State of Uttarakhand, the relevance of Form-3B came to an end; the petitioner purchased khair wood in an open auction held by the Corporation within the State of Uttarakhand; it was not a case of an inter-State sale but was an outright sale and purchase of khair wood at the depot of the Uttarakhand Forest Development Corporation; as the sale was completed

within the State of Uttarakhand, Trade Tax or Value Added Tax became payable at the full scheduled rate; and the benefit of the notification is available only in the case of an inter-State sale.

8. In the rejoinder affidavit, filed on behalf of the petitioner, it is stated that they tried to furnish Form-C to the respondents at the time of purchase of khair wood, but the respondents refused to accept Form-C, and denied them the benefit of concessional rate of tax as provided by the notification issued by the State Government; the sale was not completed within the State of Uttarakhand; the Corporation has issued sale bills/invoices in favour of the petitioner at Najibabad, District Bijnor in the State of Uttar Pradesh; it also issued a transit pass from Chiriyapur Depot in the State of Uttarakhand to Najibabad, District Bijnor in the State of Uttar Pradesh; it is pursuant to the purchase made by the petitioner that the goods moved to the State of Uttar Pradesh; it was, therefore, an inter-State sale and not an intra-State sale; before the notification dated 26.12.2000 was issued, the petitioner had submitted Form-3B to the Forest Department; and as the sale bills/invoices were issued in their name at their address in the State of Uttar Pradesh, and the goods moved from the State of Uttarakhand to the State of Uttar Pradesh, it is an inter-State sale and not an intra-State sale within the State of Uttarakhand.

9. Sri S.K. Posti, learned counsel for the petitioner, would submit that the benefit of the notification is available to the petitioner as the sale, in the present case, is an inter-State sale; the terms and conditions of the sale show that the sale did not take place at the drop of a hammer; the sale was required to be intimated by the competent authority by registered post; approval of the competent authority is also required thereunder; it is evident, therefore, that the sale took place long after the auction; the very fact that invoices were issued in the name of the petitioner in the State of Uttar Pradesh, and a transit pass was issued to them for transportation of the goods from the State of Uttarakhand to the State of Uttar Pradesh, shows that it is an inter-State sale; movement of goods from one State to another is occasioned by purchase/sale in the present case; Section 3(a) does not depend on any covenant in the contract; and, therefore, the respondents had erred in not extending to the petitioner the benefit of concessional rate of tax in terms of the notification dated 26.12.2000, more so as the petitioner had furnished Form-C to the authorities concerned, and it is the respondents who refused to accept it. Learned counsel would rely on *Consolidated Coffee Ltd. and another vs. Coffee Board, Bangalore* (1980) 3 SCC 358; *State of Orissa and another vs. K.B. Saha and Sons Industries Pvt. Ltd. and others* (2007) 7 VST 214 (SC); *A & G Projects and Technologies Limited vs. State of Karnataka* (2009) 2 SCC 326; and *Commissioner of Commercial Taxes vs. Bhag Singh Milkha Singh* (1974) 34 STC 535 (Pat).

10. On the other hand Sri Mohit Maulekhi, learned Brief Holder appearing on behalf of the State of Uttarakhand, would submit that the sale of khair wood by way of public auction is completed on the fall of the hammer; the period

prescribed, thereafter, is only for completion of formalities; the sale, in the present case, is clearly an intra-State sale; the terms and conditions required the bidders to participate in an auction at the depot of the Corporation; after purchase of khair wood, it was open to the petitioner to transport the goods anywhere, both within and outside the State; the movement of goods, in the present case, was occasioned not as result of sale or purchase, but on the purchaser's own volition; there is no covenant either in the terms and conditions nor can it be said that the movement of goods is an incident of sale; it is because an invoice is required to be issued on the sale of khair wood, was the name of dealer and his address reflected therein; a transit pass was issued to enable movement of the goods from the depot to the dealer's premises; mere issuance of an invoice and a transit pass would not justify an intra-State sale being treated as an inter-State sale; and the benefit of the notification dated 26.12.2000 is unavailable since the sale is an intra-State sale, and not an inter-State sale. Learned Brief Holder would rely on Section 64 of the Sales of Goods Act, 1930; on *Balabhagas Hulaschand vs. State of Orissa* (1976) 2 SCC 44; *M.M. Traders vs. State of M.P. and others* (2010) 4 M.P.L.J. 515; *Karnataka Soaps and Detergents Ltd. vs. District Forest Officer, Sathyamangalam Division and others* (2005) 140 STC 112 (Mad); and *Similipahar Forest Development Corporation Limited vs. State of Orissa* (1995) 96 STC 627.

I. RELEVANT STATUTORY PROVISIONS:

11. Before examining the rival contentions, it is useful to refer to the relevant provisions of the CST Act, other relevant enactments, and the scope of Section 3(a) of the CST Act which requires a sale to be deemed as an inter-State sale if the sale or purchase of goods occasioned its movement from one State to another. Section 8 of the CST Act related to the rates of tax on sales in the course of inter-State trade or commerce. Under sub-section (1) thereof, every dealer, who in the course of inter-State trade or commerce, had sold to a registered dealer, goods of the description referred to in Section 8(3), was liable to pay tax under the CST Act, which was to be a prescribed percentage of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever was lower. Section 8(4) stipulated that the provisions of sub-section (1) shall not apply to any sale, in the course of inter-State trade or commerce, unless the dealer selling the goods furnishes to the prescribed authority, in the prescribed manner, a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority.

12. Rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957 (hereinafter referred to as the "CST Rules") prescribed that the declaration, and the certificate, referred to in Section 8(4) should be in Forms 'C' and 'D'. Section 8(5) of the CST Act stipulated that, notwithstanding anything contained in Section 8, the State Government may, on the fulfillment of the requirements laid

down in Section 8(4) by the dealer, if it was satisfied that it was necessary so to do in the public interest, by notification in the Official Gazette, and subject to such conditions as may be specified therein, direct that (a) no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, to a registered dealer, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) as may be mentioned in the notification; (b) in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made in the course of inter-State trade or commerce to a registered dealer, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification. No tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) as may be mentioned in the notification. The power, conferred under clauses (a) and (b) of Section 8(5) of the CST Act, is to exempt a dealer from paying tax, or for calculation of tax at a rate lower than those specified in Section 8(1), on a notification being issued in this regard.

II. NOTIFICATION DATED 26.12.2000: ITS CONTENTS:

13. The Notification dated 26.12.2000, on which reliance is placed by Mr. S.K. Posti, learned counsel for the petitioner, reads thus:

"51/Vitta Vyapar Kar/2000

Dated: Dehradun: December 26, 2000

(Gazette dt. 26.12.2000)

Whereas, the State Government is satisfied that it is necessary so to do in public interest;

Now, Therefore, in exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Act no.74 of 1956), the Governor is pleased to direct that with effect from the date of publication of this notification in the official Gazette, the tax payable under sub-section (1) of the said section by any dealer having his place of business in the State of Uttaranchal in respect of the sales by him, in the course of inter-state trade or commerce, from any such place of business, of any raw material, processing material, consumable stores, spare-parts, accessories, components, fuel or lubricants and packing material to the dealer having his place of business in the State of Uttar Pradesh and possessing recognition certificate issued under section 4-B of the Uttar Pradesh Trade Tax Act, 1948 (Act no. XV of 1948), whose validity commences prior to November 9, 2000, for the use in the manufacture of goods or in the packing of goods manufactured by him, shall be calculated at such rate as would have been leviable on such sales against Form 3-B prescribed under the said U.P. Act No. XV

of 1948, subject to the condition that the dealer selling the goods furnishes the declaration in Form 'C', or, as the case may be, the certificate in Form 'D' in accordance with the provisions of sub-section (4) of section 8 of the said Act no. 74 of 1956."

III. NOTIFICATIONS, PROVIDING CONCESSIONAL

RATES OF TAX, MUST BE STRICTLY CONSTRUED:

14. Since the Notification dated 26.12.2000 provides for a concessional rate of tax to certain dealers, on their complying with the conditions stipulated therein, the said Notification, like an exemption notification, must be strictly construed. An exemption is freedom from any liability, payment of tax or duty. It may assume different applications in a growing economy such as a provision for a tax holiday to new units or concessional rate of tax on goods or persons for a limited period under specific conditions. The eligibility clause, in relation to an exemption notification, is to be given strict meaning and the notification has to be interpreted in terms of its language.

[State of Jharkhand and others vs. La Opala R.G. Limited (2014) 15 SCC 136;

Union of India & others v. M/s Wood Papers Ltd. & another(1990) 4 SCC 256. An exemption provision is like an exception and, on the normal principle of construction or interpretation of statutes, it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. [M/s Wood Papers Ltd.10; La Opala R.G. Limited (2014) 15 SCC 136. An exemption notification should be read literally, and should be construed strictly, which means that the benefit thereof should not be granted to one who is not entitled therefor. A person claiming the benefit of an exemption notification must show that he satisfies the eligibility criteria. [Collector of Customs (Preventive), Amritsar vs. Malwa Industries Limited (2009) 12 SCC 735.

15. It is settled rule of construction of a notification, which grants tax incentives, that, at the outset, a strict approach ought to be adopted in administering whether a dealer/ manufacturer is covered by it at all. [La Opala R.G. Limited (2014) 15 SCC 136. The exemption notification should be construed on the basis of the language used. [La Opala R.G.Limited (2014) 15 SCC 136; CCE, Chandigarh v. Bhalla EnterprisesAIR 2005 SC 2891; Tata Iron & Steel Co. Ltd. v. State of Jharkhand & others (2005) 4 SCC 272; Kartar Rolling Mills v. Commissioner of Central Excise, New Delhi (2006) 4 SCC 772; Eagle Flask Industries Ltd. v. The Commissioner of Central Excise Pune (2004) 7 SCC 377; Govt. of India & others v. Indian Tobacco Association (2005) 7 SCC 396; Malwa Industries Ltd.11; and Commissioner of Central Excise, Trichy v. Rukmani Pakkwell Traders (2004) 11 SCC 801. It should be interpreted in the light of the words employed by it, and not on any other basis. [La Opala R.G. Limited (2014) 15 SCC 136; Gammon India Ltd. v. Commissioner of Customs, Mumbai (2011) 12 SCC 499; Hansraj Gordhandas vs. H.H. Dave, Assistant Collector of Central

Excise and Customs & others (1969) 2 SCR 253. If, on the wording of the notification, the benefit is not available then, by stretching the words of the notification or by adding words to the notification, a benefit cannot be conferred. [La Opala R.G. Limited; Commissioner of Central Excise, Chandigarh vs. Mahaan Dairies(2004) 11 SCC 798.

16. The principle, that in case of ambiguity a taxing statute should be construed in favour of the assessee, does not apply to the construction of an exception or an exempting provision. They have to be construed strictly. A person invoking an exception or an exemption provision, to relieve him of the tax liability, must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason that each such exception/exemption increases the tax burden on other members of the community correspondingly. [La Opala R.G. Limited⁹; Gammon India Ltd.¹⁸; M/s. Novopan India Ltd., Hyderabad vs. Collector of Central Excise and Customs, Hyderabad^[21]; Mangalore Chemicals and Fertilisers Ltd. vs. Deputy Commissioner of Commercial Taxes & others^[22]; Star Industries vs. Commissioner of Customs (Imports), Raigad^[23]; M/s Wood Papers Ltd.¹⁰]. Only if the subject clearly falls within the language contained therein is the exemption to be granted. [Commissioner of Customs, Bangalore vs. GE BE Limited and another^[24]].

17. In case of ambiguity in an exemption notification, or in an exemption clause, the benefit of such ambiguity cannot be extended to the subject/assessee by applying the principle that an obscure and/or ambiguous or doubtful fiscal statute must receive a construction favouring the assessee. Both the situations are different and, while considering an exemption notification, the distinction cannot be ignored. An exemption notification should be interpreted strictly. The burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or the exemption notification. When there is ambiguity in the exemption notification, which is subject to a strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee, and it must be interpreted in favour of the revenue. [Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company and others^[25]].

18. Bearing these principles in mind, let us now take note of the conditions stipulated in the said Notification and, thereafter, examine whether the petitioner has fulfilled those conditions, for it is only if he has, would he then be entitled to claim the benefit of the notification. The conditions to be fulfilled, in terms of the Notification dated 26.12.2000, are (i) the dealer must have his place of business in the State of Uttarakhand in respect of the sales made by him; (ii) such sales must be in the course of inter-state trade or commerce, from such place of business; (iii) the sale must be of (a) any raw material,

(b) processing material, (c) consumable stores, (d) spare-parts, (e) accessories, (f) components, (g) fuel or lubricants and (h) packing material; (iv) the sale

must be to a dealer having his place of business in the State of Uttar Pradesh; (v) the dealer in Uttar Pradesh must possess a recognition certificate issued under Section 4-B of the 1948 Act; (vi) the validity of the recognition certificate must have commenced prior to November 9, 2000 (when the State of Uttarakhand came into being), for the use in (a) the manufacture of goods, and (b) in the packing of goods manufactured by him; (vii) on fulfillment of these conditions, tax shall be calculated at such rates as would have been leviable on such sales against Form 3-B prescribed under the 1948 Act; and (viii) this benefit is subject to the condition that the dealer, selling the goods, furnishes a declaration in Form 'C' or a certificate in Form 'D' in accordance with Section 8(4) of the CST Act.

19. Section 4-B of the 1948 Act related to special relief to certain manufacturers. Rule 25-B(1) of the U.P. Trade Tax Rules, 1948 (hereinafter referred to as the "1948 Rules") stipulated that where a dealer, holding a recognition certificate, purchased any goods referred to in Section 4-B(1)(c) of the 1948 Act, for use as raw material for the purpose of manufacture of any notified goods, he shall, if he wishes, avail of the concession referred to therein, and furnish to the selling dealer a certificate in Form III-B called the "Declaration Form". Form III-B is a certificate to be given by the purchasing dealer to the selling dealer, who may claim exemption from tax or concessional rate of tax under Section 4-B(1) of the 1948 Act.

20. In the present case the dealer, who sold khair wood, is the Corporation which has its place of business in the State of Uttarakhand. The dealer to whom such goods have been sold, i.e. the petitioner, has its place of business in the State of Uttar Pradesh. The petitioner-dealer also carries on business in the manufacture of kathha, for which the raw material is khair wood. The petitioner claims to possess a recognition certificate issued under Section 4-B of the 1948 Act whose validity, they claim, commenced long before 09.11.2000; and the said certificate was for use in the manufacture of goods i.e. kathha.

21. The dispute, in the present case, revolves around the question whether the sale, of khair wood to the petitioner, is in the course of inter-State trade or commerce from the place of business of the Corporation i.e. in the State of Uttarakhand, for it is only in the case of an inter-State sale would Section 8(4) of the CST Act require the petitioner to submit a declaration in Form-C to the Corporation, and for the Corporation in turn to submit the said declaration to the Trade Tax Department. As noted hereinabove, among the conditions stipulated in the notification dated 26.12.2000, is that the sale must be in the course of inter-State trade or commerce. As the Notification dated 26.12.2000 provides for a concessional rate of tax, on fulfillment of the conditions prescribed therein, and such a notification must be strictly construed, it is only if the sale of goods is in the course of inter-State trade or commerce would the benefit of the said notification be available to the petitioner.

22. The respondents claim that, since the Corporation was formed after the State

of Uttarakhand came into being, the question of furnishing the certificate in Form III-B would not arise. It is unnecessary for us to examine this contention, as it is only if the sale of khair wood, by the Corporation to the petitioner, is held to be an inter-State sale, would the petitioner be entitled to claim the benefit of the Notification dated 26.12.2000, and not otherwise.

23. The petitioner claims that the goods moved from the State of Uttarakhand to their factory in the State of Uttar Pradesh. While the respondents claim ignorance of whether the goods were, in fact, so transported to the petitioner's factory in the State of Uttar Pradesh, they admit that transit passes were issued to the petitioner to enable them to transport goods from the State of Uttarakhand to the State of Uttar Pradesh. We shall therefore, for the purpose of this case, proceed on the premise that the subject goods moved from one State to another, i.e. from the State of Uttarakhand to the State of Uttar Pradesh. The question which, however, necessitates examination is whether such movement is pursuant to a sale falling within the ambit of Section 3(a) of the CST Act?

IV. SECTION 3(a) OF THE CST ACT: ITS SCOPE:

24. Before examining this question, it is necessary to note that the CST Act, made in the exercise of the powers conferred on Parliament by Articles 286(2) & (3) read with Article 246 and Entry 92-A of List I of the VII Schedule to the Constitution of India, was an Act to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on the sale of goods in the course of inter-State trade or commerce, to declare certain goods to be of special importance in inter-State trade or commerce; and specify the restrictions and conditions to which State laws, imposing taxes on the sale or purchase of such goods of special importance, shall be subject to.

25. Chapter II of the CST Act formulated the principles for determining when a sale or purchase of goods took place in the course of inter-state trade or commerce or outside a State or in the course of import or export. Section 3, in Chapter II of the CST Act, prescribed when a sale or purchase of goods was said to take place in the course of inter-State trade or commerce. Section 3 created a legal fiction, and required a sale or purchase of goods to be deemed to take place in the course of inter-state trade or commerce only if it fell within clauses (a) & (b) thereof. Section 3(a) stipulated that a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase occasioned the movement of goods from one State to another. Within Section 3(b) were sales in which the property in the goods passed during movement of the goods from one State to another by transfer of documents of title thereto. Section 3(a) covered sales, other than those included in clause (b), in which the movement of goods from one State to another was under the contract of sale, and property in the goods passed in either of the States. A sale which took place under Section 3(a) stood excluded from the purview of Section

3(b) and vice versa. In respect of an inter-State sale, tax was leviable only once, and that indicated that the two clauses of Section 3 were mutually exclusive. The dividing line between sales under Section 3(a) and those falling under Section 3(b) was that, in the former, the movement was under the contract whereas, in the latter, the contract came into existence only after commencement and before termination of the inter-State movement of the goods. [Tata Iron and Steel Co. Ltd., Bombay vs. S.R. Sarkar & others^[26]; A&G Projects and Technologies Limited³].

26. The field of taxation on the sale or purchase of goods, taking place in the course of inter-state trade or commerce, was excluded from the competence of the State Legislature. The situs of the sale or purchase was wholly immaterial as regards inter-state trade or commerce. In view of Section 3(a) of the CST Act, all that had to be ascertained was whether the sale or purchase occasioned the movement of goods from one State to another. If the transaction of sale satisfied this requirement, it was deemed to be a sale or purchase of goods in the course of inter-State trade or commerce and, by virtue of Articles 269 and 286 of the Constitution, was beyond the legislative competence of a State legislature to tax. [State of A.P. and others vs. National Thermal Power Corporation Ltd. and others^[27]; S.R. Sarkar²⁶; 20th Century Finance Corporation Ltd. vs. State of Maharashtra^[28]].

27. Section 4 of the CST Act explained when a sale or purchase of goods was said to take place outside a State. Sub-section (1) thereof stipulated that, subject to the provisions contained in Section 3, when a sale or purchase of goods was determined in accordance with sub-section (2) to take place inside a State, such sale or purchase should be deemed to have taken place outside all other States. Section 4(2) stipulated that a sale or purchase of goods should be deemed to take place inside a State, if the goods were within the State (a) in the case of specific or ascertained goods, at the time the contract of sale was made; and (b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party was prior or subsequent to such appropriation. It is evident from Section 4(1) that the deeming provision in Section 4(2) was subject to the provisions contained in Section 3 of the CST Act. If the sale of goods fell within the ambit of Section 3(a) of the CST Act, it would then be an inter-state sale, notwithstanding that, in terms of Section 4(2)(a), the ascertained goods were within the territorial limits of the State where the goods were at the time the contract of sale was made.

28. Under the CST Act, tax was leviable on the sale of goods, and not because of the movement of the goods. The movement of the goods was only material for the purpose of deciding whether the sale took place in the course of inter-State trade or commerce or whether such a sale was purely an intra-State transaction. The name given to a transaction, by the parties concerned, does not decide the nature of the transaction. In order to make a transaction taxable under the CST

Act, the transaction must be a "sale" as defined in Section 2(g) taking place in the course of inter-State trade or commerce in any of the manner provided for in clause (a) or clause (b) of Section 3 of the CST Act. [A&G Projects and Technologies Limited³]

29. Section 3(a) of the CST Act covered sales in which the movement of goods from one State to another was the result of a covenant or incident of the contract of sale, and property in the goods passed in either State. [K.B. Saha and Sons Industries Pvt. Ltd.²; Commissioner of Sales Tax, U.P. & others vs. Bakhtawar Lal Kailash Chand Areti & others^[29]; Union of India & another vs. K.G. Khosla & Co. Ltd. & others^[30]; S.R. Sarkar²⁶; The Cement Marketing Co. of India Ltd. & others vs. State of Mysore & others^[31]; State Trading Corporation of India Ltd. vs. State of Mysore^[32]; Singareni Collieries Co. Ltd. vs. State of Andhra Pradesh & others^[33]; State of Jammu & Kashmir & others vs. Caltex India Ltd.^[34]; and Oil India Ltd. vs. The Superintendent of Taxes & others^[35]]. If a contract of sale contained a stipulation for the movement of goods from one State to another, the sale would, of course, be an inter-state sale. But it could also be an inter-State sale, even if the contract of sale did not itself provide for the movement of goods from one State to another, but such movement was the result of a covenant in the contract of sale or was an incident of that contract. [The State of Bihar & another vs. Tata Engineering & Locomotive Co. Ltd.^[36]; Oil India Ltd.³⁵; K.B. Saha and Sons Industries Pvt. Ltd.²; The State of Gujarat vs. Bombay Metal Alloys & Mfg. Co. Pvt. Ltd.^[37]].

30. For the purposes of Section 3(a) of the CST Act, and in order that a sale may be regarded as an inter-state sale, it was immaterial whether the property in the goods passed in one State or another.

[Indian Oil Corporation Ltd. & others vs. Union of India & others^[38]; S.R. Sarkar²⁶; Kelvinator of India Ltd. vs. The State of Haryana^[39]; Oil India Ltd.³⁵; Balabhagas Hulaschand⁵; and K.G.

Khosla & Co. Ltd.³⁰]. It was also immaterial whether a completed sale preceded the movement of goods or followed it. What was important was that the movement of goods and the sale should be inseparably connected. If the goods moved from one State to another in pursuance of an agreement of sale, and the sale was completed in the other State, it was an inter-State sale. [K.B. Saha and Sons Industries Pvt. Ltd.²; Bakhtawar Lal Kailash Chand Areti²⁹].

31. In order to occasion the transportation of goods there must have existed such a bond, between the contract of sale and the actual transportation outside the State, that each link was inextricably connected with the one immediately preceding it. Where the transportation was the result of a sale, the transportation being inextricably linked with the sale so that the bond could not be dissociated without a breach of the mutual understanding between the buyer and seller arising from the nature of the transaction, the sale must be held to be in the course of inter-State trade or commerce. Such a sale meant not only sales taking

place during the activities directed to the end of transportation of the goods outside the territory of the State, but also as a part of or connected with such activities.

[Bhag Singh Milkha Singh⁴; State of Travancore-Cochin & others vs. The Bombay Co. Ltd.^[40]; Ben Gorm Nilgiri Plantations Co. Coonoor (Nilgiris) & others vs. Sales Tax Officer, Special Circle, Ernakulam & others^[41]; and State of Travancore-Cochin & others vs. Shanmugha Vilas Cashew Nut Factory & others^[42]; Shankerjee Raut Gopalji Raut vs. State of Bihar^[43]].

32. A sale would be an inter-State sale in case there was a stipulation, express or implied in the agreement of sale, or the movement of goods was incidental and as a necessary consequence of the sale or purchase. It must be a case of cause and effect; cause being the sale and purchase, and effect being the movement of the goods from one State to another. The sale and movement of goods must be a part of same transaction. [M.M. Traders⁶]. The movement of goods and the sale must have been inseparably connected. In pursuance of the contract of sale, the goods should, in fact, have moved from one State to another. There had to be an integrated activity resulting in the goods being put in movement. [M.M. Traders⁶; K.B. Saha and Sons Industries Pvt. Ltd.²]

33. The question whether the movement of goods, from one State to another, was as the result of a covenant in the contract of sale, or an incident of such contract, depended on the contract. [State Trading Corporation of India Ltd.³²]. To make the sale, one in the course of inter-State trade or commerce, there must be an obligation to transport the goods outside the State. The obligation may be of the seller or the buyer and it may arise by reason of a statute, a contract between the parties, or from mutual understanding or agreement between them or even from the nature of the transaction which linked the sale to such transportation. Such an obligation may be imposed expressly under the contract itself or impliedly by a mutual understanding. It was not necessary that, in all cases, there must be pieces of direct evidence showing such obligation in a written contract or oral agreement. Such obligations were inferable from circumstantial evidence also. (Bhag Singh Milkha Singh⁴; Shankerjee Raut Gopalji Raut⁴³).

34. Where the movement of goods from one State to another is inextricably connected with the sale/purchase, the purchase and transport are but parts of one transaction. They cannot be dissociated, and there is no break between the purchase and the movement of the goods to another State. It is sufficient if the movement of goods is implicit in the sale, and the sale and the movement of goods are not unconnected and dissociated transactions. [Co-operative Sugars (Chittur) Limited Vs. State of Tamil Nadu^[44]]. If, in the course of inter-State movement, the goods move only to reach the buyer in satisfaction of his contract of purchase, and such a nexus is otherwise inexplicable, then the sale ought to be deemed to have been taken place in the course of inter-State trade or commerce, as such a sale occasioned the movement of the goods from one State

to another.

[English Electric Co. of India Ltd. and another vs. The Deputy Commercial Tax Officer and others[45]].

35. It did not matter in which State the property in the goods passed. What was decisive was whether the sale was one which occasioned the movement of goods from one State to another. It was not necessary that the sale must have preceded the inter-State movement in order that the sale may be deemed to have occasioned such movement. [English Electric Co. of India Ltd.⁴⁵; National Thermal Power Corporation Ltd.²⁷; Karnataka Soaps and Detergents Ltd.⁷]. What was important is that the movement of goods and the sale must be inseparably connected. It was not necessary that there should be in existence a contract of sale incorporating the express or implied provision regarding inter-State movement of the goods. [K.B. Saha and Sons Industries Pvt. Ltd.²].

36. In order to make the sale, as one in the course of inter-State trade or commerce, there must be an obligation to transport the goods outside the State. [Shankerjee Raut Gopalji Raut⁴³; Bhag Singh Milkha Singh⁴; Ben Gorm Nilgiri Plantations Co. Coonoor (Nilgiris)⁴¹]. A sale, by definition, being transfer of property became taxable under Section 3(a) if the movement of goods from one State to another was under a covenant, or an incident, of the contract of sale and the property in the goods passed to the purchaser in another State.

[S.R. Sarkar²⁶]. If there was interruption of movement, and the snapping of the inextricable bond that should exist between the inter-State movement and the contract, it was then not an inter-State sale under Section 3(a). [Bharat Heavy Electrical Ltd. vs. Union of India & others[46]]

37. It was not necessary that the contract of sale must expressly provide for the movement of the goods to another State. [Co-operative Sugars (Chittur) Limited⁴⁴; Karnataka Soaps and Detergents Ltd.⁷]. It would suffice if the contract of sale, at least impliedly, provided for the movement of the goods from one State to another. [Karnataka Soaps and Detergents Ltd.⁷; National Thermal Power Corporation Ltd.²⁷]. There should be a relationship in the cause of the sale and the effect of movement. [M.M. Traders⁶].

38. The question whether a sale was an inter-State sale or not depended upon the finding as to whether there had been a movement of goods from one State to another under a contract of sale. If the movement of goods, from one State to another, was independent of the contract of sale, it would then not attract the provisions of Section 3(a) of the CST Act. While such movement from one State to the other may be the result of a covenant of the contract of sale, whether express or implied, or as an incidence of contract itself, but a link must have been established between the movement of goods and the contract of sale. [Similipahar Forest Development Corporation Limited⁸].

39. A sale in the course of inter-State trade had three essential ingredients: (i)

there must be a contract of sale, incorporating a stipulation, express or implied, regarding inter-State movement of goods; (ii) the goods must have actually moved from one State to another, pursuant to such contract of sale, the sale being the proximate cause of movement; and (iii) such movement of goods must be from one State to another State where the sale concluded. It followed, as a necessary corollary, that a movement of goods, which took place independent of a contract of sale, would not fall within the meaning of an inter-State sale. In other words, if there was no contract of sale preceding the movement of goods, obviously the movement could not be attributed to the contract of sale. Similarly, if the transaction of sale stood completed within the State, and the movement of goods took place thereafter, it would obviously be independent of the contract of sale, and necessarily by or on behalf of the purchaser alone. The transaction, therefore, would not have an inter-State element.

[National Thermal Power Corporation Ltd.²⁷; Karnataka Soaps and Detergents Ltd.⁷; English Electric Co. of India Ltd.⁴⁵].

40. The following conditions necessitated being satisfied before a sale could be said to take place in the course of inter-State trade or commerce (i) there was an agreement to sell which contained a stipulation express or implied regarding the movement of the goods from one State to another; (ii) in pursuance of the said contract the goods in fact moved from one State to another; and (iii) ultimately a concluded sale took place in the State where the goods were sent which must be different from the State from which the goods moved.

[Balabhagas Hulaschand⁵]. Each case has to turn on its own facts and the question is whether, applying the settled principles to the facts of the present case, the sale of khair wood, by the Corporation to the petitioner, can be said to be an inter-state sale, for it is only then can the petitioner be held to have fulfilled all the conditions stipulated in the Notification dated 26.12.2000; and, thereby, to be entitled to be extended the concessional rate of tax in terms of the said Notification.

41. Let us now examine whether or not the sale of khair wood, by the Corporation to the petitioner, was an inter-state sale. In the present case, the participants in the public auction, including the petitioner, were informed by the Divisional Sales Manager of the Corporation, vide letter dated 13.12.2000, to be present at 11:00 a.m. on 30.12.2000 when the auction would be held for a total quantity of 93.0867 cubic meters of khair wood lying at the Raiwala Depot I, II and III in Dehradun Sales Division. Among the bidders, to whom the said letter was addressed, included several of whom were carrying on business in the State of Uttar Pradesh, while a few others were carrying on business within the State of Uttarakhand. The petitioner's name figured at Serial No. 2, in the list of persons to whom this communication was sent, and their address was shown therein as Kotwali Road, Nazibabad, which is in the State of Uttar Pradesh. The petitioner was informed, vide letter dated 23.01.2001, that they had purchased khair wood in the auction held on 30.12.2000 for certain lots; the approval date

was 23.01.2001; they should deposit the bank draft; the last date of cash discount was 01.02.2001; without late fee, sale price deposit last date was 15.02.2001; the last date with late fee sale price deposit was 22.02.2001; without plot rent, lift of the timber last date was 08.03.2001; with plot rent, lift of timber last date was 23.03.2001; they should deposit the bank draft in the concerned depot in favour of Van Nigam, and obtain money receipt; the sale bill would be issued after deposit of income tax and the sale price; and the draft of the sale price should be in favour of the Managing Director, Uttarakhand Forest Development Corporation, payable at Dehradun.

Thereafter, invoices were issued to the petitioner wherein their address was reflected as Kotwali Road, Nazibabad, Bijnor. Transit passes were also issued to the petitioner's vehicle, and the place, where the forest produce was to be transported, was shown therein as Nazibabad (which is in the State of Uttar Pradesh).

V. IMPORTANT TERMS AND CONDITIONS OF AUCTION:

42. In order to determine whether the sale of khair wood by the Corporation to the petitioner is a inter-State sale or an intra-State sale, it is necessary to refer to the relevant terms and conditions of sale prescribed by the Corporation which culminated in the sale of khair wood by the Corporation, and its purchase by the petitioner. They are:-

"Important Terms and Conditions of the Auction:

1. All intending purchaser have to deposit 5,000/- (Rupees five thousand only) as gate money. Only those persons / purchaser who will deposit Gate Money will be able to submit bid in their names. No relaxation will be permissible in this regard.
2. Although utmost care has been taken to mention correct number and measurement of material of the lots in the Sale List, yet the purchasers are requested to inspect the materials where they are lying before the auction and in case any doubt in the Nag measurement lots (except Jalauni), re-measurement can be requested in writing to Auctioneer on depositing 1% of the highest bid amount or Rs. 200/-. In case the variation comes more than 2 percent, the auction of such lot shall be cancelled and the entire money deposited by the purchaser in respect of such lot(s) shall be refunded but if the variation comes less than 2%, the sale shall be considered to be valid and the security money shall not be refunded.
3. Purchasers are requested to offer their bid according to the grade of wood. No complaint regarding the grade of wood / Lots will be entertained after the lot is sold.
4. Auction of lots will generally be finalized on the basis of highest bid but the Forest Corporation will not be bound to accept the highest or any bid. The Corporation reserves the right to accept or reject the bids without assigning any reason whatsoever. The highest purchaser, whose bid is accepted by the

Corporation, shall deposit 10% of the auctioned value in the form of security money. The security money will be deposited in cash or demand draft in favour of Managing Director, U.P. Forest Corporation payable in any nationalized bank. However, the bank collection charges for the demand draft will not be demanded from the purchaser. These charges will be borne by the Forest Corporation. Failure to deposit security money will result in cancelling the accepted bids for lots and forfeiting of Gate Money.

5. Once the competent Authority sanctions the bid, the successful purchaser will be intimated by Approval Letter to be sent through registered post. The successful purchaser shall be required to deposit the payable amount mentioned in the approval letter within 24 days following the receipt of intimation letter (excluding the date of dispatch of letter but before lifting the goods). In case the intimation letter is given to the purchaser by hand, then he shall have to deposit the payable amount mentioned in the intimation letter within 21 days following the receipt of intimation letter (excluding the date of dispatch of letter but before lifting the goods). This money will be deposited at the Depot Office in the form of demand draft in favour of Managing Director, U.P. Forest Corporation payable in any nationalized bank. Even if the demand draft is received in the office after 3 days from the date mentioned in the demand draft, it will be deemed to be received on the date mentioned therein. Balance amount of the sale value will not be received either by cash or bank pay-in slips.

6. Once the bid is approved, the Purchaser will deposit the bid value along with consolidated amount of income tax, trade tax, Mandi Fee and transit fee charges applicable as per rules either at the time of transporting wood / forest produce or before. In future other Central, State and local taxes or revised taxes, if any, that may be levied shall be payable by the successful Purchaser.

6A. On presentation of certificate regarding trade tax exemption, by party or purchaser, clearance (Nikasi) will be permitted to the place where the business of the purchaser is registered.

7. In all cases of auction sale of the lots, maximum period of sanction / approval will be 40 days (excluding the date of Auction). In case the sanction is not declared within the prescribed 40 days and Approval letter is not sent to the purchaser by registered post, the purchaser can refuse buying the lots and under such a circumstance, the security money of such lot can be refunded to the purchaser on demand.

8. In case the purchaser deposits the entire sale value within 10 days following the date of dispatch of bill (excluding the date of dispatch) (15 days for coniferous species in hill areas) and in case of hand delivery, within 7 days following the date of receipt of bill, then rebate of 1 percent of the value of lot will be granted in plain areas.

9. In case the successful purchaser fails to deposit the balance amount payable within 24 days from the date of dispatch of bill (excluding the date of dispatch)

and within 21 days in case of hand delivery of bill, then late fee at the rate of 0.25% per day shall be levied for the next 7 days. If the purchaser fails to deposit the amount payable even after 7 days with late fee, the entire deposit amount as security made by the purchaser shall be forfeited by the Authorised Officer without any notice and the auction of lots shall stand cancelled.

10. Permission for lifting the Timber (partly or wholly) shall be given to the purchaser only on receipt of balance payments along with statutory taxes & duties from the purchaser.

11. In the context of payment, receipts duly signed and sealed by the Depot Officer / Depot Accountant shall be valid only.

12. The purchaser shall lift the purchased woods within 45 days from the date of dispatch of bill (42 days in case the bill has been given by hand) positively. However, in case the purchaser fails to lift the entire quantity due to any reason, permission of lifting the remaining goods shall be given against plot rent (rate of plot rent will be 0.25 percent of the remaining quantity kept in the Depot on per day basis) and the goods may be allowed to be kept in the Depot up to 15 days. In case the purchaser fails to lift this wood within the period specified above, clearance (Nikasi) permission can be given by the concerned Regional Manager for the next 7 days and by the concerned General Manager for the next 15 days. Rate of plot rent for the aforesaid extended period will be 0.50% of the value of remaining quantity of the lot.

A. The total money deposited by the purchaser for that Lot shall stand forfeited in favour of the Forest Corporation.

B. The entire quantity of forest produce shall thereupon become the property of the Van Nigam and the Van Nigam shall be at liberty to dispose of the property by way of either auction or other methods without giving any intimation / information to the purchaser and the purchaser shall not be entitled to claim any compensation or damages whatsoever.

13. The purchaser will be permitted to lift the wood from the depot between sunrise and sunset only.

14. Measurement of each item of each lot should be printed on the item. All the lots will be sold on the basis of volume and not on the basis of weight.

15. Disputes arising out of execution of these terms and conditions shall be referred to the Arbitration of concerned Regional Manager, U.P. Forest Corporation whose decision shall be final and binding on both parties."

43. For a sale to be an inter-State sale, falling within the ambit of Section 3(a) of the CST Act, the movement of goods from one State to another should be as a result of a covenant or incident of the contract of sale. The stipulation, for movement of goods from one State to another, need not be expressly stated in the contract of sale itself, and it would suffice if such movement is as a result of

a covenant in the contract of sale or is an incident of that contract. The movement of goods, and the sale, should be inextricably connected, and the goods should move from one State to another pursuant to an agreement of sale. There must exist such a bond, between the contract of sale and the actual transportation outside the State, that each link is inextricably connected with the one immediately preceding it; and the bond should be such that it cannot be disassociated without a breach of the mutual understanding between the buyer and the seller. There must be a cause and effect, the cause being the sale and purchase, and effect being the movement of goods from one State to another. The sale and movement of the goods must be a part of the same transaction. There must be an integrated activity of the contract of sale resulting in the goods being put in movement to reach another State.

44. There must be an obligation, under the contract, to transport goods outside the State. If, in the course of inter-State movement, the goods move only to reach the buyer in satisfaction of his contract of purchase, and such a nexus is otherwise inexplicable, then the sale would be deemed to have taken place in the course of inter-State trade as such a sale had occasioned the movement of goods from one State to another. The obligation to transport the goods outside the State must have arisen by reason of a statute, a contract between the parties, or from mutual understanding or agreement between them or even from the nature of the transaction which links the sale to such transportation. If there is an interruption in the movement, and a snapping of the inextricable bond that should exist between the inter-State movement and the contract of sale, it would then not be an inter-State sale under Section 3(a) of the CST Act. Unless a link is established, between the movement of the goods and the contract of sale, it would not be an inter-State sale falling within the ambit of Section 3(a) of the CST Act.

45. The terms and conditions of auction, as noted hereinabove, stipulated that auction of lots would, generally, be finalized on the basis of the highest bid. However the Corporation was not bound to accept the highest or any bid as it had reserved to itself the right to accept or reject the bids without assigning any reason. The highest purchaser, whose bid was accepted by the Corporation, was required to deposit 10% of the auctioned value in the form of security money, and his failure to deposit the security money was to result in cancelling the accepted bids for the lots, and in forfeiture of the Gate Money. Clause 5 stipulated that, once the competent Authority sanctioned the bid, the successful purchaser would be intimated by approval letter to be sent through registered post. The successful purchaser was required to deposit the payable amount, mentioned in the approval letter, within 24 days following receipt of the intimation letter. Clause 6 required the purchaser, once the bid was approved, to deposit the bid value along with the consolidated amount of income tax, trade tax, mandi fee, transit fee etc. either at the time of transporting wood or forest produce or before. Clause 10 stipulated that permission to lift the Timber (partly or wholly) would be given to the purchaser only on receipt of the balance

payment, along with statutory taxes & duties, from the purchaser. Clause 11 provided that only receipts, duly signed and sealed by the Depot Officer / Depot Accountant, would be valid as proof of payment. Clause 12 obligated the purchaser to lift the purchased wood within 45 days from the date of dispatch of the bill, and if he failed to lift the entire quantity, then there was an increase in the payment to be made. Clause 14 stipulated that all the lots would be sold on the basis of volume, and not on the basis of weight.

VI. AUCTION SALE: SECTIONS 64(2) AND 20 OF THE SALE OF GOODS ACT, 1930:

46. Section 64 of the Sale of Goods Act relates to an auction sale and, under Sub-section (2) thereof, in the case of a sale by auction, the sale is complete when the auctioneer announces its completion by the fall of hammer or in other customary manner; and until such announcement is made, any bidder may retract his bid. An auction sale may be conditional or unconditional and, if it is the latter, then, by virtue of the goods being specific and in a deliverable state, the property in the goods knocked down passes at the fall of hammer by reason of the concerned provision relating to the passing of the property. [Consolidated Coffee Ltd.1]. Section 64(2) of the Sale of Goods Act does not deal with the question of passing of the property at an auction sale. If the auction sale of chattels is unconditional, is in respect of specific ascertained goods, and nothing remains to be done to the goods for putting them in a condition ready for delivery, the property in the goods would pass to the purchaser upon the acceptance of the bid, but that would not be because of Section 64(2) but because of Section 20. [Consolidated Coffee Ltd.1].

47. Section 20 of the Sale of Goods Act, 1930 relates to specific goods in a deliverable state. Thereunder, when there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made; and it is immaterial if the time of payment of the price, or the time of delivery of the goods, is postponed.

48. Normally in an auction sale at the fall of the hammer a completion of the contract of sale takes place, and until such time the bidder may retract his bid but, if the auction sale happens to be an unconditional sale in respect of specific and ascertained goods, the title to the property passes simultaneously at the fall of the hammer by reason of the operation of Section 20 of the Sale of Goods Act.

[Consolidated Coffee Ltd.1]

49. Section 19(3) of the Sale of Goods Act stipulates that the rules contained in Sections 20 to 24 (in the present case, Section 20) are the rules for ascertaining the intention of the parties at the time at which property in the goods is to pass to the buyer, unless a different intention appears. The exercise of examining whether there is anything, either in the terms of the contract or in the conduct of the parties or in the circumstances of the case, which indicates a contrary intention, must be undertaken to give effect to the opening words, namely, "Unless a different intention appears" occurring in Section 50.

51. [A.V. Thomas and Co. Ltd. v. Deputy Commissioner of 19(3). The intention of the parties is the decisive factor as to when the property in the goods passes to the purchaser. If the contract is silent, intention has to be gathered from the conduct and circumstances of the case. [Agricultural Produce Market Committee vs. Biotor Industries Ltd. & others[47]; Hoe Kim Seing vs. Maung Ba Chit[48];

Agricultural Market Committee vs. Shalimar Chemical Works Limited[49]].

50. The auctioneer can prescribe terms and conditions on the basis of which the property is exposed to sale by auction. Acceptance of any bid, as well as the passing of the property in the goods sold thereat, would be governed by those terms and conditions.

[Consolidated Coffee Ltd.1]. In an auction sale, as soon as the hammer falls, the title in the goods, ordinarily, passes to the buyer if the goods are specific goods i.e. goods which are auctioned in full lots.

Agricultural Income Tax[50]; Consolidated Coffee Ltd.1]. It is by virtue of the goods being specific, and in a deliverable state, that, under Section 20 of the Sale of Goods Act, the property in such goods passes to the buyer at the completion of the contract at the fall of the hammer at such sale. [A.V. Thomas and Co. Ltd.50; Consolidated Coffee Ltd.1].

51. In the present case, the subject goods are ascertained goods and in a deliverable state. The contract came into existence when the competent authority sanctioned the bid, and intimated the petitioner by registered post. On a contract of sale having come into existence, on approval by the competent authority, the title to the goods passed on to the petitioner even though the time for payment was, on the stipulated terms and conditions being fulfilled, postponed till the date on which the subject goods were lifted. In view of Section 4(2)(a) of the CST Act, sale of Khair wood by the Corporation should be deemed to have taken place within the State of Uttarakhand as the said goods, which were specific and ascertained goods, were within the State of Uttarakhand at the time the contract of sale was made. The subject contract between the Corporation and the petitioner is for sale of Khair wood, and the terms and conditions of sale disclose that the sale took place, and the property in the goods passed to the petitioner, within the State of Uttarakhand, on the bid being sanctioned by the competent authority located within the said State.

52. The terms and conditions of auction did not obligate Khair wood, purchased by the petitioner, to be transported outside the State. It was open to those, to whom Khair wood was sold, to sell them either within the State of Uttarakhand or outside, or to use it for manufacture of other goods either within the State of Uttarakhand or outside the State. There is no link between the sale of Khair wood by the Corporation to the petitioner, and its transportation outside the State. The terms and conditions did not obligate the Corporation to sell the goods for it to be transported, outside the State of Uttarakhand, to the State of Uttar Pradesh. Transportation of Khair wood by the petitioner, from the depot of

the Corporation to their manufacturing unit in Uttar Pradesh, is at their volition and not under the contract of sale.

53. On offers being made by dealers located both inside and outside the State of Uttarakhand, and on their expressing their interest in submitting bids for the purchase of Khair wood from the Corporation, letters were sent by the Corporation to their respective addresses, some of which were within the State of Uttar Pradesh (outside the State of Uttarakhand). Similarly, on the sale of Khair wood, invoices were raised on the highest bidder, and his address was shown as the place where he was carrying on business. The fact that letters were addressed to, and invoices were raised on, the petitioner at their address in the State of Uttar Pradesh would not, by itself and without anything more, make an intra-State sale an inter-State sale. As noted hereinabove, a sale would be held to be an inter-State sale, falling within the ambit of Section 3(a) of the CST Act, only if there is an inextricable link between the contract of sale and the movement of goods from one State to another. Letters being addressed and invoices being raised, as was done in the present case, does not disclose an inextricable link between the contract of sale and the movement of goods from the State of Uttarakhand to the State of Uttar Pradesh.

54. Transit passes were issued, in the present case, for the convenience of dealers, and the mere fact that a transit pass was issued to the petitioner's vehicle, enabling Khair wood to be transported from within the State of Uttarakhand, outside to the State of Uttar Pradesh, would not make an intra-State sale as an inter-State sale. [M.M. Traders⁶]

55. There is no integral link between the contract of sale and the movement of goods (Khair wood) from the State of Uttarakhand to the State of Uttar Pradesh. Sale of goods (i.e. Khair wood), in the present case, cannot therefore be said to be an inter-State sale falling within the ambit of Section 3(a) of the CST Act. The order under appeal, to the extent the learned Single Judge held it to be an inter-State sale falling within the ambit of Section 3(a) of the CST Act, must be and is, accordingly, set aside. Special Appeal No. 249 of 2013, preferred by the State of Uttarakhand, is allowed; and the order under appeal, holding the subject sale to be an inter-State sale falling within the ambit of Section 3(a) of the CST Act, is set aside.

VII. Doctrine of Unjust Enrichment: Its application to the petitioner's claim for refund of arrears of tax:

56. Sri S.K. Posti, learned counsel for the petitioner, would submit that the learned Single Judge had erred in not granting the petitioner the benefit of refund, erroneously applying the doctrine of unjust enrichment; the said doctrine has no application to the facts of the present case; it is only if the goods were sold as they are to any other dealer, and tax was passed on to them, would the said doctrine apply; in the present case, the khair wood purchased from the State of Uttarakhand was used for the manufacture of kattha, and was not sold

as it is to any other dealer; and, as such, the learned Single Judge had erred, to the limited extent, he had denied the petitioner the benefit of refund applying the doctrine of unjust enrichment. Learned counsel would rely on Bhadrachalam Paperboards Ltd. and another vs. Government of Andhra Pradesh and others[51]; M/s Vam Organic Chemicals Ltd. vs. State of U.P. and others[52]; Mafatlal Industries Ltd. vs. Union of India and others[53]; and Asstt. Commr., Income Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Ltd.[54]].

57. On the other hand Sri Mohit Maulekhi, learned Brief Holder, would further submit that the learned Single Judge had denied refund to the writ petitioner as there was a possibility of the khair wood being sold by the petitioner as it is, and in its not being used for the manufacture of another product; and the address of the dealer is reflected in the invoice as they had participated in the auction, the bid had been knocked down in their favour, the sale was complete, and their name and address is required to be reflected in the sales invoice.

58. The very collection and/or retention of tax, without authority of law, entitles the person, from whom it is collected, to claim its refund. A corresponding obligation upon the State to refund can also be said to flow from it. This can be called the right to refund arising under and by virtue of the constitutional provisions, viz., Article 265. But, it does not follow from this that refund follows automatically. [Mafatlal Industries Ltd.53]. Article 265 cannot be read in isolation. It must be read in the light of the concepts of economic and social justice envisaged in the Preamble and the guiding principles of State Policy adumbrated in Articles 38 and 39. Whether the right to refund of taxes, paid under an unconstitutional provision of law, is treated as a constitutional right flowing from Article 265 or as a statutory right/equitable right affirmed by Section 72 of the Contract Act, the result is the same - there is no automatic or unconditional right to refund. [Mafatlal Industries Ltd.53].

59. In Bhadrachalam Paperboards Ltd.51, the Supreme Court held that the appellants had reimbursed a tax liability which was on the Forest Department; the appellants had consumed the goods for manufacturing paper boards, etc; therefore, the question of the appellants passing on the tax liability to the consumer did not arise; and, consequently, the appellants were entitled for refund of the tax collected from them, not for the entire period but for the period commencing three years prior to the date of filing of the Writ Petition.

60. Following Bhadrachalam Paperboards Ltd.51, the Supreme Court, in M/s Vam Organic Chemicals Ltd.52, held that the whole controversy was whether what was sold is not the original goods, but some other goods which was manufactured from the original goods, then whether the principle of unjust enrichment is applicable; in other words, whether the principle of unjust enrichment can be extended to a case where what is sold is not the original goods but some other goods manufactured from the original goods; in Bhadrachalam Paperboards Ltd.51, the original goods were bamboo and hardwood, which were consumed by the appellant for manufacturing paper

boards; in that context, the Supreme Court had observed that there was no question of the appellant passing on the tax liability to the consumer; this indicated that the Supreme Court was of the view that the principle of unjust enrichment was not applicable to a case where the goods had not been sold as such, and was instead captively consumed for manufacturing some other goods; and what was sold was the new product.

61. We, therefore, find considerable force in the submission of Sri S.K. Posti, learned counsel for the petitioner, that the doctrine of unjust enrichment has no application, in the facts and circumstances of the present case, as Khair wood purchased by the petitioner was not sold as they were, but were used as inputs for the manufacture of kattha.

62. This question is, however, academic since the question of refund of the arrears of tax, paid by the petitioner earlier under the Uttarakhand Sales Tax laws, would arise only if the sale of Khairwood by the Corporation to the petitioner is held to be an inter-State sale falling within the ambit of Section 3(a) of the CST Act. Since we have opined otherwise, and have held that the subject sale is an intra-State sale liable to tax under the Uttarakhand Sales Tax laws, and not under the CST Act, the question of refund of the arrears of tax, collected by the Corporation from the petitioner, does not arise.

VIII. CONCLUSION:

63. As a result, Special Appeal No. 249 of 2013 preferred by the State of Uttarakhand is allowed, and Special Appeal No. 52 of 2013 preferred by the assessee-dealer is dismissed. However, in the circumstances, without costs.