

(1990) 12 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 3541, 5532, 5533 and 7315 of 1990

Delta Paper Mills Limited , Coastal Chemicals Ltd., Costal Agro Industrial Complex (P) Ltd., Southern Magnesium and Chemicals Ltd. APPELLANT

Vs

Oil and Natural Gas Commission and Others RESPONDENT

Date of Decision : 19-12-1990

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 39, 5, 5A, 5B, 5B(1)
Central Sales Tax Act, 1956 — Section 8(3)

Citation : (1991) 81 STC 339

Hon'ble Judges : P.L.N. Sarma, J;M. Jagannadha Rao, J

Bench : Division Bench

Advocate : S. Venkata Reddy, S. Dasaratharama Reddi and P. Venugopal, for the Appellant; Government Pleader for Commercial Tax and K. Venkata Rao, for the Respondent

Judgement

Jagannadha Rao, J.—All these four writ petitions raise a question relating to section 5-B of the Andhra Pradesh General Sales Tax Act, 1957 and the Rules made in exercise of the powers u/s 39 of the said Act. In particular, the meaning of the word "consumables" in section 5-B falls for consideration.

2. In W.P. No. 3541 of 1990, the petitioner is a paper mills. The petitioner in W.P. No. 5532 of 1990 is the Coastal Chemicals Ltd. (pulp and paper division). The petitioner in W.P. No. 5533 of 1990 is the Costal Agro Industrial Complex (P) Ltd., Tanuku, which manufactures rice bran, straw board, waste paper, bagasse, etc. In W.P. No. 7315 of 1990 the petitioner is the Southern Magnesium and Chemicals Ltd., which manufactures magnesium metal. So far as the petitioner in W.P. No. 3541 of 1990 is concerned, it purchases natural gas from the Oil and Natural Gas Commission within the State. So far as the petitioner in W.P. No. 5532 of 1990 which also manufactures paper and pulp, it purchases gas and diesel from local dealers in Andhra Pradesh. Again, the petitioner in W.P. No. 5533 of 1990 purchases gas and diesel, coal, husk, bamboo dust, grease,

lubricant oil, HCL lime, caustic soda flakes and used driger screen from within the State. The petitioner in W.P. No. 7315 of 1990, which manufactures magnesium metals, purchases natural gas from Oil and Natural Gas Commission within the State. These purchases are made at the concessional rate of 4 per cent of tax and the claim of the petitioners is that the said percentage is applicable to them in view of section 5-B of the A.P. General Sales Tax Act, 1957, hereinafter referred to as "the Act".

3. In the counter-affidavit filed in W.P. Nos. 5532 and 5533 of 1990, it is pointed out that the natural gas is taxable at 10 per cent under entry 118 of the First Schedule of the Act, that the Oil and Natural Gas Commission was paying at that rate on their sales made to the customers till January, 1989, but that they suddenly started paying at the reduced rate of 4.17 per cent from February 1, 1989, onwards and also adjusted unilaterally certain amounts alleged to be refundable to them treating earlier sales of natural gas taxable at 4.17 per cent from January 21, 1989. On noticing the above aspects, the Commercial Tax Officer, Alcot Gardens, Rajahmundry, issued show cause notice to the Oil and Natural Gas Commission dated February 19, 1990 proposing provisional assessment on the sales of fuel gas by the Oil and Natural Gas Commission at 10 per cent instead of 4.17 per cent paid by the said dealer. After examining the objections raised by the Oil and Natural Gas Commission, the Commercial Tax Officer, Alcot Gardens, Rajahmundry, confirmed the provisional assessment on the sales of fuel gas at 10 per cent plus 1 1/2 per cent additional tax plus 10 per cent surcharge. It appears that the Oil and Natural Gas Commission claimed that the petitioners submitted declarations in form-G by virtue of the G-2 registration certificate issued by the Commercial Tax Officer, Bhimavaram and requested the Oil and Natural Gas Commission to charge concessional rate of tax at 4 per cent u/s 5-B of the Act instead of at 10 per cent. This contention was not accepted by the Commercial Tax Officer stating that the concessional rate was not applicable to fuel gas and other gases mentioned in entry 118 of the First Schedule to the Act, inasmuch as neither they formed ingredients nor component parts in finished or end-products. Thereupon, the Oil and Natural Gas Commission demand the differential rate of tax from the paper mills. Aggrieved by the abovesaid situation, the paper mills have filed the present writ petitions in this Court praying to declare the action of the Oil and Natural Gas Commission calling upon the petitioners to pay the differential tax on the sales effected by the Oil and Natural Gas Commission to the writ petitioners from 27th March, 1989 to 31st August, 1989, as being unjust and unreasonable. The petitioners felt that the Oil and Natural Gas Commission should have filed appeals to the appellate authority against the provisional assessment orders of the Commercial Tax Officer before insisting upon the writ petitioners to pay tax at 14.48 per cent on the natural gas sold to the petitioners by the Oil and Natural Gas Commission. According to them, the Oil and Natural Gas Commission could collect at 4.17 per cent as provided in section 5-B. The writ petitioners' contention is that the word "consumables" used in section 5-B applies not only to such goods which become

part and parcel of the ultimate product but also such goods which are used during the process of manufacture or for running the machines, etc., and which are integrally so concerned. In W.P. No. 3541 of 1990 an additional counter-affidavit was filed stating that the writ petitioner not being a party to the assessment against the Oil and Natural Gas Commission he could not file the writ petition.

4. The main contention of the learned counsel for the writ petitioners, Sri S. Darsaratharama Reddi, Sri S. Venkata Reddy and Sri P. Venugopal, is that the writ petitioners are manufacturers in the State of Andhra Pradesh of various finished goods and that they purchase gas and diesel oil and the various commodities referred to above from local dealers in Andhra Pradesh. Such commodities purchased by the manufacturers, which are of the nature of raw material, component part, sub-assembly part, intermediate part, consumables and packing material which are intended to be used in the manufacture of other goods are to be taxed at the concessional rate as mentioned in section 5-B of the Act. The submission is that the words "used as consumables to manufacture goods inside the State" would mean that the goods need not necessarily become part and parcel of the end-product or finished product. It is sufficient if these goods are necessary for the manufacture of the finished products and it did not matter whether they were used for working the machinery which produced finished goods or during the process of producing the finished goods. Reliance for this purpose is mainly placed by the learned counsel for the petitioners on several rulings of the Supreme Court given in connection with the language in section 8(3)(b) of the Central Sales Tax Act, 1956, read with rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

5. For the purpose of appreciating the abovesaid point, it is necessary to refer to some of the important provisions of the A.P. General Sales Tax Act. Section 5 deals with levy of tax on sales or purchases of goods. It states that save as otherwise provided in the Act, every dealer shall pay a tax under the Act for each year on every rupee of his turnover of sales or purchase of goods in each year irrespective of the quantum of his turnover at the rates of tax and at the points of levy specified in the Schedules. Section 5-A deals with levy of additional tax on turnover. It states that every dealer who is liable to pay tax under sections 5, 5-C, 5-E, 6, 6-A and 6-C shall, in addition to the tax payable under those sections, pay for each year a tax on his turnover liable to tax at the rates mentioned in sub-clauses (a), (b) and (c). Then comes the important provision in section 5-B with which we are concerned. The heading of the section is "Levy of concessional rate of tax in respect of certain goods". The second reads as follows :

"Section 5-B(1). Notwithstanding anything in this Act, every dealer shall pay, in respect of any sale of goods to another dealer for use by the latter as raw material, component part, sub-assembly part, intermediate part, consumables and packing material of any other goods which he intends to manufacture inside

the State, a tax at the rate of four paise in the rupee or the rates specified in sections 5, 5-A and 6-B in respect of goods other than declared goods, or sections 6, 6-A and 6-B in respect of declared goods, whichever is lower on the turnover relating to such sale :

Provided that the provisions of this sub-section shall not apply to any sale unless the dealer selling the goods furnished to the assessing authority in the prescribed manner a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in the prescribed form obtained from the prescribed authority on payment of prescribed fee."

6. The other sub-clauses of section 5-B deal with the penalties for acting contrary to the declaration, and also furnish the procedure in respect of maintenance of accounts and the consequences of non-maintenance of accounts as prescribed. There is an important explanation to section 5-B at the end of all sub-sections, which reads thus :

"Explanation. - For the purpose of this section, -

(i) the words "raw material" mean any material from which another product can be made through the process of manufacture either by itself or in combination with other raw materials;

(ii) the words "component part", "sub-assembly part" and "intermediate part" mean the article which forms an identifiable constituent of the finished product and which along with other goods make up the finished product."

7. The effect of the above sub-clause (1) of section 5-B, therefore, is that if a manufacturer who is a dealer, purchases raw material, component part, sub-assembly part, intermediate part, consumables and packing material in order to manufacture other goods inside the State and if the above purchases are made from dealers within the State, the concessional rate of tax of 4 per cent will be attracted as mentioned in the provision. The proviso to section 5-B states that the dealer who is selling these types of goods to the manufacturers, is to furnish to the assessing authority in the prescribed manner a declaration duly filled in and signed by the dealer to whom the goods are sold, containing the prescribed particulars in the prescribed form obtained from the prescribed authority. These rules are contained in the A.P. General Sales Tax Rules, 1957, made by the State Government in exercise of the powers u/s 39. Rule 30-A as amended by the Notification in G.O. Ms. Nos. 868, Revenue (C.T. II) dated 29th August, 1989, shows that the existing rule 30-A is substituted by a new rule which reads as follows :

"Rule 30-A(1) : Every manufacturer who intends to purchase raw materials, component parts, sub-assembly parts, intermediate parts, consumables and packing materials for use in the manufacture of any other goods inside the State shall submit an application in form G-1 to the assessing authority for registration as a manufacturer. Where the manufacturer has more than one place of

manufacture a single application may be submitted for registration of all such places of manufacture :

Provided that every manufacturer who has been manufacturing goods prior to the date of publication of this rule shall submit an application in form G-1 to the assessing authority within thirty days from the date of publication of this rule.

(2) The assessing authority receiving the application shall, if he is satisfied after making such enquiry as he considers necessary that the application is bona fide and the particulars contained therein are correct and complete, register the manufacturer and shall issue a certificate to the manufacturer in form G-2 within 30 days from the date of application. Where the manufacturer has more than one place of manufacture a copy of such certificate for every place of manufacture within the State shall be issued.

(3) to (8)"

"30-B(1)(a). Every manufacturer shall prepare a declaration in form G in triplicate and issue the original and duplicate thereof to the dealer from whom he purchases raw materials, component parts, sub-assembly parts, intermediate parts, consumables and packing materials at the concessional rate of tax :

Provided that the manufacturer may issue declarations in form G (revised) to the selling dealers for all the purchases of goods mentioned in the certificate of registration on and from 21st January, 1989 and used in the manufacture of goods mentioned in the certificate of registration on and from 21st January, 1989.

(b)

(c) The manufacturer shall use or consume the goods so purchased for manufacturing goods specified in the certificate of registration issued under rule 30-A of the Rules.

(d) to (g)

(h) The raw materials, component parts, sub-assembly parts, intermediate parts, consumables and packing materials purchased at the concessional rate of tax on issue of form G shall be used in the manufacture of goods within 12 months from the date of purchase. (As per the errata published to the rule in A.P. General Sales Tax Act, Vol. 10, page 12)."

8. From G as set out at the end of the revised rules uses the words in clause 4 "goods purchased for use in the manufacture of goods". Form G1 and from G2 also use the words "in the manufacture of goods".

9. From the aforesaid provisions of the Act and the Rules, it will be noticed that while section 5-B uses the words "to manufacture", rule 30-B(1)(c) uses the words "for manufacturing", rule 30-A(1) and clause (h) and forms G, G1 and G2 use the words "in the manufacture of". That would mean that the draftsman is using the words "to manufacture", "for manufacturing" and "in the manufacture"

to mean the same process so far as this Act and the Rules are concerned.

10. It is the contention of the learned counsel for the petitioners that the abovesaid provisions in section 5-B and rule 30-A have been introduced in the Act with effect from 21st January, 1989 (A.P. Amending Act 4 of 1989) on account of several representations made to the authorities so that these articles, raw materials, components parts, sub-assembly parts, intermediate parts, consumables and packing materials, if purchased by the manufacturer from a dealer within the State of Andhra Pradesh, the concessional rate of tax would be levied, thereby encouraging both the local sellers and local purchasing manufacturers. This was the object of the amendment that is sought to be impressed on us with reference to the preamble to the Amending Act as set out in [1989] 74 STC Statutes 67. The preamble to the L.A. Bill No. 10 of 1989 contains the Statement of Objects and Reasons and reads as follows :

"After considering the various problems of trade, commerce and industry and the representations given by several associations, the Government have decided to grant certain concessions among which the following three required amendments to the Andhra Pradesh General Sales Tax Act, 1957, namely :-

(1) to simplify the scheme u/s 5-B of the Sales Tax Act to avoid any delay in extending the benefits of the scheme to all eligible manufacturing industries in the State;

(2) to liberalise the condition of prepayment of tax on appeals, while however insisting on deposit of the admitted tax for appealing;

(3) to provide that the rate of interest on delayed payments will be the same as Bank rate."

11. Apart from the above the learned counsel for the petitioners have also placed reliance on the historical background contained in the book "Scheme for levy of Concessional Tax on Component Parts in Andhra Pradesh" by Sri S. Suri Babu, which reads as follows :

"1 : 0 Historical background :

1 : 1 Most of the intermediates and components required by the manufacturers are scheduled goods and are subjected to higher rates of tax. If those items are purchased from other States they will bear only the incident of Central sales tax which is always lower than the State rate. Since most of the components are of high value and even after meeting transport and other incidental costs it would be cheaper for the manufacturers in Andhra Pradesh to pay their requirements from other States instead of purchasing them locally.

1 : 2 The National Counsel of Applied Economic Research headed by Dr. S. Bhoothalingam appointed by the Government of Andhra Pradesh to review the system of sales tax in Andhra Pradesh recommended in its report that the components purchased by manufacturers to be used for the manufacture of

other items may be subjected to a concessional rate of tax so as to encourage such units to buy their requirements locally instead of purchasing them from other States.

1 : 3 The Government of Andhra Pradesh accepted the aforesaid recommendation and inserted section 5-B by the Andhra Pradesh General Sales Tax (Second Amendment) Act, 1974 (Act No. 5 of 1974). This section came into force with effect from 1st March, 1974 by virtue of the Notification in G.O. Ms. No. 192 Rev. (S) dated 21st February, 1974 published in the Andhra Pradesh Gazette, Extraordinary, Part I, dated 23rd February, 1974."

12. On the basis of the above material, it is contended that the benefit for concessional tax is intended to be given to the manufacturers in Andhra Pradesh in respect of purchases from dealers in Andhra Pradesh, provided such purchases relate to raw materials, components parts, sub-assembly parts, intermediate parts, consumables and packing materials which are used in the production of the ultimate goods. In this context, the learned counsel differentiated between the goods which, after a physical or chemical process becomes part of the ultimate product and also goods which are not directly connected with the end-products but are used during the manufacturing process, that is to say, which are applied or used in the machinery which is involved in manufacturing the products. It is stated that not only these goods such as raw materials, component parts, sub-assembly parts, intermediate parts, consumables and packing materials which can be traced in the ultimate end-product but also such of those items which are used for working the machinery which produces the end-product, must be deemed to fall under the concessional rate of tax u/s 5-B. For this purpose, reliance is placed upon several decisions of the Supreme Court rendered in the context of section 8(3)(b) of the Central Sales Tax Act read with rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

13. Now section 6-A(ii) as well as section 5-B(1) use the word "consumes". It is well-settled that when the same statute uses the same words in different sections or in different parts of the same section, normally the same meaning should be attributed to the words unless any special circumstances exist to give a different meaning to the same words.

14. In the discussion below, what we say with regard to "diesel" and "gas" will be applicable to all the other goods also which according to the writ petitioner's case before the authorities, fall within the meaning of the word "consumables".

15. Before dealing with the rulings cited for the writ petitioners, it is necessary to refer to the decision of the Kerala High Court under the Kerala General Sales Tax Act, 1963 and to the judgment, on appeal therefrom of the Supreme Court which have interpreted the word "consume" and which are strongly relied upon by the learned Government Pleader Sri M. Ramaiah.

16. The Kerala High Court's decision is reported in Deputy Commissioner of Sales Tax v. Thomas Stephen & Co. Ltd. [1987] 66 STC 34. The dealer there was

a manufacturer in tiles, terra-cotta wares and ceramics. He purchased cashew shells for fuel for the kiln in the factory and lime shells and certain stores described as consumed stores for use in maintenance of the kiln and factory. The assessing authority taxed the purchases u/s 5-A of the Kerala General Sales Tax Act, 1963. The assessee contended that the purchase turnover of cashew shells was exempt from levy of tax u/s 5-A of the Kerala General Sales Tax Act, 1963, by virtue of a notification issued by the Government of Kerala u/s 10 of the Act. The Tribunal held that the cashew shells had been used only as fuel in the kiln for the manufacture of tiles and other goods and hence clause (a) of section 5-A(1) was not satisfied, there being no consumption of the cashew shells in the manufacture of other goods for sale or otherwise. The Tribunal also held that there was no disposal of the lime shells or the consumed stores, which were used up for the maintenance of the factory and kiln and there was also no consumption of those goods in the manufacture of other goods for sale or otherwise. In that view of the matter, the Tribunal declared the purchases of these items as not taxable u/s 5-A of the Act. On a further revision by the State to the High Court, it was held, dismissing the revision, that the consumption in the manufacture of goods was of raw materials or of other components which went into the making of the end-product. The goods used for ancillary purposes like fuel or for maintenance were not comprehended within section 5-A(1)(a) of the Kerala General Sales Tax Act and hence the purchases of the items in question did not attract tax under that section. Against the said decision of the Kerala High Court, an appeal was preferred by the State to the Supreme Court. The judgment of the Supreme Court is reported as *Deputy Commissioner of Sales Tax v. Thomas Stephen & Co. Ltd.* [1988] 69 STC 320. Affirming the decision of the Kerala High Court, the Supreme Court held that since the cashew shells had been used only as fuel and did not get transformed into the end-product and were not used as raw material in the manufacture of other goods, they did not fall within section 5-A(1)(a) of the Kerala General Sales Tax Act and did not attract the tax payable. The same was the position regarding the lime shells and the consumed stores which were only used in the maintenance of the kiln and the factory and were not used in the manufacture of the end-product. "Consumption" as contemplated by section 5-A(1)(a) of the Act must be in the manufacture as raw material or of other components which go into the making of the end-product. Goods used for ancillary purposes, the fuel, in the process of manufacture, do not fall within section 5-A(1)(a) of the Act. The Supreme Court distinguished the observations of the Court made in *Ganesh Prasad Dixit Vs. Commissioner of Sales Tax, Madhya Pradesh*, . They further pointed out that this very contention was negated in *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers*, .

17. In our view, the abovesaid rulings of the Kerala High Court and Supreme Court are applicable. Consumables u/s 5-A of the Kerala Act are liable to tax, if they are used in the manufacture of the end-product provided they get transformed into end-product and are not merely used as raw material in the

manufacture of other goods or for ancillary purposes. It must, therefore, be held in view of the abovesaid decision of the Kerala High Court and the Supreme Court in Deputy Commissioner of Sales Tax v. Thomas Stephen & Co. Ltd. [1987] 66 STC 34, [1988] 69 STC 320, respectively, that the consumables such as diesel oil and gas in the present case must be used directly in the manufacture of end-product by the manufacturer in the sense that the said goods are transformed as part and parcel of the end-product. It is not sufficient if diesel oil and gas are merely used as fuel or for ancillary purposes for running the machinery which produces the end-product. It is, therefore, clear that in respect of gas and diesel oil and the other items claimed as being "consumables" in the present cases, the petitioners cannot claim the concessional rate of tax u/s 5-B of the Andhra Pradesh General Sales Tax Act. Rules 30-A and 30-B must also be read accordingly.

18. The learned counsel for the petitioners, however, placed strong reliance on another line of cases arising under the Central Sales Tax Act. The first case is one reported as Indian Copper Corporation Limited Vs. Commissioner of Commercial Taxes, Bihar and Others, . That case relates to section 8(3)(b) of the Central Sales Tax Act, 1956 and rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957. The Supreme Court had occasion to interpret the words "in the manufacture or processing of goods for sale" occurring in section 8(3)(b) of the Central Sales Tax Act. In that context, it was held that the said expression may ordinarily include not merely the goods used directly for manufacturing the end-product and becoming part and parcel thereof but also the goods which are used for running the machinery and in the manufacturing process. The abovesaid decision was elaborated further in J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, which again arose u/s 8(3)(b) of the Central Sales Tax Act read with rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957. The Supreme Court pointed out in the decision that the expression "in the manufacture of goods" in section 8(3)(b) of the Central Sales Tax Act should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would fall within the expression "in the manufacture of goods". The abovesaid decisions were followed in Member, Board of Revenue, West Bengal Vs. Phelps and Co. (P) Ltd., where it was held that the industrial gloves used by the workers engaged in hot jobs or in handling corrosive substances in the course of manufacture of goods for sale could be said to have been used in the manufacture of goods for sale. This case arose under the Bengal Finance (Sales Tax) Act, 1941. The cases reported as Indra Singh & Sons (P) Ltd. v. Sales Tax Officer [1966] 17 STC 510 (SC) and Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, are also cases where the abovesaid decisions arising under Central Sales Tax Act were followed.

19. In our view, the abovesaid decisions arising under the Central Sales Tax Act

are not in point. It is true that in the said decisions the Supreme Court had occasion to interpret the words goods used "in the manufacture or processing of goods for sale". In that context, the Supreme Court held that the wider meaning is to be given to the said words rather than a restricted meaning. It is true that the Supreme Court pointed out that not merely the goods which get transformed into end-products but also goods which were used for running the machinery which produces the end-product, being integrally connected with the process of manufacture, would come within the meaning of the abovesaid expression in section 8(3)(b) of the Central Sales Tax Act and rule 13 of the Central Sales Tax Rules. But the abovesaid decisions do not consider the meaning of the words "consumables" or "consumes" which arise for interpretation in the cases before us. These words "consumables" or "consumes" have on the contrary been specifically interpreted in a restricted manner by the Supreme Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon, , as already referred to above while affirming the decision of the Kerala High Court reported as Deputy Commissioner of Sales Tax v. Thomas Stephen & Co. Ltd. [1987] 66 STC 34. In our view, these latter decisions have given a restricted meaning to the word "consumables" or "consumes" and are, in our opinion, applicable to the cases before us. It is true that section 5-B of the Andhra Pradesh General Sales Tax Act and rule 30-A of Andhra Pradesh General Sales Tax Rules and the forms G, G-1, and G-2 also used the words "to manufacture", "in the manufacture of", "in manufacturing", etc. But on that ground alone it will not be permissible to apply the decision of the Supreme Court rendered in connection with section 8(3)(b) of the Central Sales Tax Act. We respectfully follow the decision of the Supreme Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon, , and hold that diesel oil and gas and other goods used by the petitioners for running the machinery which produces end-product do not fall within the meaning of the word "consumables" occurring in section 5-B of the Andhra Pradesh General Sales Tax Act. It is not the case of the petitioners that the gas and diesel oil and other items in dispute used by them would get converted as part and parcel of the end-product.

20. We have earlier referred to the other argument based on the preamble to the amending Act and also based on the historical background referred to by the petitioners' counsel. We do not think that the preamble to the amending Act as set out in the Bill No. 10 of 1989 and the historical background referred to by the petitioners' counsel afford any assistance in the interpretation of the word "consumable" in view of the clear meaning attributed to the said word by the Supreme Court.

21. Learned counsel for the petitioners raised a new contention after the judgment was reserved and at the time of pronouncing judgment. It is pointed out that long before the amendment in 1989, the Act was amended by the Third Amendment Act (A.P. Act 21 of 1987) and it was at that time section 5-B was amended by introducing the words "raw material, component part, sub-assembly

part, intermediate part, consumables and packing materials" in the place of the word "component part". It is contended that between 1987 and 1989 certain specific schemes were brought into force to attract the concessional levy u/s 5-B and that it is possible that some of those schemes might have included "gas" and "diesel oil" as goods attracting concessional tax. On that assumption it is argued that if "gas" and "diesel oil" were already included in the specific schemes and during 1987-89, the replacement of the provisions introduced in 1987 by the provisions introduced in 1989 would indicate that the Legislature treated "gas" and "diesel oil" as consumables. Learned counsel wanted the learned Government Pleader to look into the schemes and find out if this was the factual position. We may state that there was no such pleading in the writ petition nor can the petitioners throw this burden on the respondent. Further, when the Supreme Court has interpreted the word "consumes" clearly in the Kerala case, it will not be permissible to accept the above contention particularly in the absence of the material showing "gas" and "diesel oil" as having been included in some schemes between 1987 and 1989.

22. For the aforesaid reasons, all the writ petitions are dismissed, but in the circumstances, without costs. Advocate's fee Rs. 250 in each.

23. Writ petitions dismissed.