

(2010) 02 MAD CK 0210

In the Madras High Court

Case No : Writ Petition No"s. 16879 to 16881 of 2009

Diebold Systems (P.) Limited

APPELLANT

Vs

Additional Commercial Tax Officer (IAC) and Others

RESPONDENT

Date of Decision : 24-02-2010

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(1), 8(2), 8(3), 8(4), 8(5)
General Clauses Act, 1897 — Section 21
Pondicherry General Sales Tax Act, 1967 — Section 13(1), 13(2), 13(3), 34
Tamil Nadu General Sales Tax Act, 1959 — Section 12(2), 12(3)

Citation : (2011) 39 VST 335

Hon'ble Judges : P.P.S. Janarthana Raja, J;D. Murugesan, J

Bench : Division Bench

Advocate : C. Natarajan for N. Inbarajan, for the Appellant; T.P. Manoharan, Special Government Pleader, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The Petitioner has filed the above writ petitions seeking to issue writs of certiorari to call for the records on the file of the first Respondent herein in CST. 9012/2003-04, 89012/2004-05 and 9012/2005-06, respectively, dated July 31, 2009 and quash the same.

2. The Petitioner is a company registered under the Companies Act, 1956. The Assessee-Petitioner is engaged in the trading of goods like automatic teller machines (ATMs), UPS and software, collectively referred to as information technology products. The Assessee-Petitioner set up a warehouse and place of business in the Union Territory of Pondicherry and assessed to the Pondicherry General Sales Tax Act, 1967 and the Central Sales Tax Act, 1956. The Petitioner is the Assessee on the file of the Additional Commercial Tax Officer, the abovementioned first Respondent. The assessment years involved are 2003-04, 2004-05 and 2005-06. The Assessee has effected inter-State sales on information technology7 products and were charged only two per cent of the Central sales tax in accordance with the notification issued u/s 8(5) of the CST Act. The returns were also filed in accordance with the rate charged to the

buyers. The said returns filed were duly accepted resulting in an assessment u/s 13(1) of the Pondicherry General Sales Tax Act. For the assessment year 2003-04, the assessing officer issued a notice dated August 28, 2008 alleging that there were defects and therefore the accounts and returns could not be accepted as correct and complete. Hence, the assessing officer proposed to reject the same as incorrect and incomplete and also proposed to determine the total taxable turnover of Rs. 7,26,61,770 to the best judgment for the year 2003-04 under the CST Act, 1956. Then on September 17, 2008, the assessing officer/first Respondent issued revised pre-assessment notice in CST No. 9012/2003-04 dated August 28, 2008 directing the Petitioner to file a return to the proposal. The Petitioner has also filed their objection by letter dated October 24, 2008. For the subsequent years 2004-05 and 2005-06, notices were issued by the assessing officer calling for the objections and the Petitioner has also filed objection. After considering the objections, the assessing officer completed the assessments. For the assessment year 2003-04, the Assessee filed a return on total taxable turnover at Rs. 7,86,12,824. The assessing officer determined the total taxable turnover at Rs. 7,86,12,824 and levied tax on sale of software, automatic teller machine (ATM) and UPS at ten per cent without form C and also levied 12 per cent on air-conditioners without form C. While completing the assessment, the assessing officer levied penalty u/s 13(3) of the Pondicherry General Sales Tax Act at Rs. 92,44,055. For the assessment year 2004-05, the Assessee has returned total taxable turnover at Rs. 57,36,05,138.94 and the assessing officer also determined the total taxable turnover of Rs. 57,36,05,138.94. While completing the assessment, the assessing officer levied ten per cent tax on sale of software, automatic teller machine (ATM) and UPS at ten per cent and also 12 per cent on air-conditioners without form C. While levying tax, the assessing officer also levied penalty u/s 13(3) of the Act at Rs. 5,89,47,704. For the assessment year 2005-06, the Assessee reported the total taxable turnover of Rs. 41,60,50,716 and the assessing officer has determined the total taxable turnover at Rs. 41,60,50,716. While completing the assessment, the assessing officer levied ten per cent tax on sale of software, automatic teller machine (ATM) and UPS at ten per cent without form C and also 12 per cent on air-conditioners without form C. While levying tax, the assessing officer also levied penalty u/s 13(3) of the Act at Rs. 4,86,25,434. These assessments were made on the ground that any inter-State trade or commerce without the support of declaration form C or D is liable to tax at ten per cent. Aggrieved by the order passed by the first Respondent, the Petitioner challenged the assessments passed for the above assessment year on the ground that the Assessee is entitled to the relief as per the notification dated October 1, 2001 in G. O. Ms. No. 37/2001/F2. The said notification reduced the rate of tax to two per cent without form C in respect of inter-State sale of computer, information technology products, their spares and accessories. The above notification states that the information technology product should be taxable only at two per cent without form C. Hence, the present writ petitions.

3. The learned Counsel appearing for the Petitioner submitted that the order passed by the first Respondent is wrong, illegal, without basis and also against the provisions of section 8(5) of the CST Act. Further, he has submitted that section 8(5) of the CST Act does not take away the power of the State to exempt or reduce the Central sales tax rate in respect of sales to non-dealers or Government Departments and accordingly, the notified rate of two per cent continued to operate in respect of sales to non-dealers like banks. He further submitted that the non obstante clause in section 8(5) is categorical that the power is available even in certain categories of transactions falling u/s 8(2) (non-dealers), while fettering the power in respect of the sales u/s 8(1) being sales to dealers. He further submitted that the assessing officer misconstrued the Finance Act (20 of 2002), which has not made a change in respect of the sales to non-dealers and accordingly, the Government had reduced the Central sales tax rate to two per cent in public interest on such sales. He further stated that the assessing officer ought to have considered that compliance with the requirement of section 8(4) referred in section 8(5) and it is impossible to fulfil when the buyers across the State are consumers and users, and not dealers carrying on business of buying and selling goods dealt with u/s 8(3) read with section 8(1) of the CST Act. He also submitted that even after the amendment of the Central Sales Tax Act u/s 8(5)(b), the State Government is empowered to exercise the power of exemption of the tax payable "to any person or such class of persons" as may be specified in the clause and the State Government by a notification, can so order even if the sales fall under Sub-section (2) of section 8. He further submitted that this specific clause 8(5)(2)(b) "to any person or to such class or persons" which includes dealers other than the registered dealer and therefore, the State Government has got power u/s 8(5) for reducing the rate of tax. Even after the amendment, the State Government can notify u/s 8(5)(b) in respect of sales to non-dealers such as charitable institutions, scientific research bodies, educational institutions, service providers as being sales to "any person or to such class of persons". Therefore, they are persons who cannot fulfil the requirement of Sub-section (4) of section 8 of the Act. Therefore, the State Government has all the power to exempt or reduce the tax. He further submitted that the earlier notification in G. O. Ms. No. 37/2001/F2 dated October 1, 2001 issued u/s 8(5) of the CST Act is only partially modified by G. O. Ms. No. 89/F2/2003 dated October 29, 2003. The said subsequent Government Order, while maintaining the earlier Government Order, operates as a proviso to registered dealers and Government have to comply with section 8(4). The proviso does not affect sales to non-dealers governed by main part. The learned Counsel further relied on various circulars issued by the Commissioner of Commercial Taxes, Pondicherry, the second Respondent herein, viz., (a) No. 6362/CTD/B1/2001 dated November 23, 2001, (b) No. 6134/2002/B1/CTD dated December 27, 2002, (c) No. 5704/CTD/B1/2005 dated November 21, 2005, (d) No. 6964/CTD/B1/2005 dated February 8, 2006, (e) No. 6973/CTD/B1/2005 dated February 8, 2006, (f) No. 3315/CTD/B1/2006, dated March 26, 2007, (g) No. 2655/CTD/B1/2007 dated June 28, 2007 in support his proposition and a decision of the

learned single judge of this Court in W. P. Nos. 16154, 16155 and 16512 of 2008 dated January 7, 2009 Technomed Electronics and Another Vs. Commercial Tax Officer and Others, . It is further submitted that the assessing officer was wrong in levying penalty u/s 13(3) of the Pondicherry General Sales Tax Act, 1967 read with section 9(2) of the Central Sales Tax Act. The penalty can be levied only when there is non-disclosure of turnover. In the present case, the Assessee filed a return and the same was adopted by the assessing officer. So there is no non-disclosure of the turnover by the Assessee. Therefore, levying of penalty by the first Respondent is wrong and hence, the order passed by the first Respondent has to be quashed.

4. The learned Counsel appearing for the Revenue submitted that the writ petitions filed by the Petitioner are pre-matured one. Against the orders, there is efficacious alternative remedy provided u/s 34 of the Pondicherry General Sales Tax Act before the Appellate Assistant Commissioner for the relief. He further submitted that originally, the Government of Pondicherry passed notification dated October 1, 2001 reducing the rate of tax to two per cent without form C in respect of inter-State sale of computers, information technology products, their spares and accessories and by virtue of the Government Order, the Assessee was subjected to tax of two per cent without form C in respect of inter-State sale to non-dealers. Subsequently, after amendment, in exercise of the powers conferred by Sub-section (5) of section 8 of the Central Sales Tax Act, 1956, the Government of Pondicherry issued another notification dated November 29, 2003 in G. O. Ms. No. 89/F2/2003, which partially modified the earlier notification dated October 1, 2001. No concession is available after October 1, 2002 unless the sales are made to registered dealer or Government against declaration in form C or D as prescribed under Sub-section (4) of section 8 of the said Act. In view of the subsequent notification, no concessional rate is available unless the Assessee produces form C or D. Therefore, the assessing officer has correctly levied tax on information technology products at ten per cent without form C. It is also further submitted that whenever the Government wants to grant exemption u/s 8(5)(b) of the Act, the State Government can issue notification specifying "to any person or to such class of persons". In the present case, no such notification is issued by the State. Therefore, the Petitioner is not entitled to any benefit of concessional rate of tax. It is also submitted that the assessing officer has correctly levied penalty u/s 13(3) read with 9(2) of the Central Sales Tax Act and therefore, the order passed by the assessing officer is in conformity with law. The Assessee is not entitled for concessional rate of tax. The learned Counsel appearing for Respondents 1 to 3 also filed counter stating that the claim of the Petitioner is without basis and justification and hence, the order passed by the . Tribunal has to be confirmed and these writ petitions have to be dismissed.

5. Heard the learned senior counsel Mr. C. Natarajan, appearing for the Petitioner and Mr. T. P. Manoharan, learned Special Government Pleader (Pondy) appearing for the Respondents and perused the materials available on record.

6. In the present case, there is no dispute regarding the nature of the product involved, i.e., information technology product. The assessing officer himself held that the goods involved is information technology product. The issues for our consideration are as follows:

(1) Whether the assessing officer is correct in levying tax on I. T. product at ten per cent on software, ATM and UPS without form C ?

(2) Whether the penalty is leviable u/s 13(3) of the Pondicherry General Sales Tax Act, 1967 read with section 9(2) of the Central Sales Tax Act ?

(3) Whether u/s 8(5)(b) of the Central Sales Tax Act, 1956 the Government still has power to issue notification without the require`ment of form C in respect of sales "to any persons or class of persons, who are non-dealers.

7. In respect of the first issue, the dispute relates to levying of tax at ten per cent of Central sales tax. The present writ petitions are filed challenging the order of the impugned assessment orders. There is an effective efficacious remedy of appeal provided u/s 34 of the Pondicherry General Sales Tax Act. If the Petitioner is aggrieved, he ought to have filed an appeal before the Appellate Assistant Commissioner in accordance with law and also we do not find any material to interfere with in respect of levying of tax by the first Respondent and we entirely agree with the Special Government Pleader appearing for the Respondents that there is an effective efficacious remedy available in the statute. In these circumstances, the Petitioner ought to have filed an appeal u/s 34 of the Tamil Nadu General Sales Tax Act. Accordingly, we direct the Petitioner to file an appeal before the appellate forum within a period of three weeks from the date of receipt of a copy of this order. The Respondents are also directed not to take any coercive or further proceeding against the Petitioner till that time. The first issue is answered accordingly.

8. The second issue relates to the levy of penalty u/s 13(3) of the Pondicherry General Sales Tax Act, 1967 read with section 9(2) of the CST Act. It reads as follows:

13. Procedure to be followed by the assessing authority.--(1) The assessment of a dealer shall be on the basis of the prescribed return relating to his turnover submitted in the prescribed manner within the prescribed period:

....

(2) If no return is submitted by the dealer under Sub-section (1) within the prescribed period, or if the return, submitted by him appears to the assessing authority to be incomplete or incorrect, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment:

Provided that before taking action under this Sub-section the dealer shall be given a reasonable opportunity of proving the correctness or completeness of

any return submitted by him.

(3) When making any assessment under Sub-section (2), the assessing authority may also direct the dealer to pay in addition to the tax assessed, a penalty not exceeding one and a half times the amount of tax due on the turnover that was not disclosed by the dealer in his return or, in the case of failure to submit a return, one and a half times the tax assessed, as the case may be.

9. From a reading of Sub-section (3) of section 13, it is clear that the assessing authority may direct the dealer to pay in addition to the tax assessed, a penalty not exceeding one and a half times the amount of tax due on the turnover that was not disclosed by the dealer in his return or, in the case of failure to submit a return, one and a half times the tax assessed, as the case may be. In the present case, the Assessee has filed a return and there is no dispute regarding the same. The issue here is whether there is any nondisclosure of the turnover in the return. Unless there is non-disclosure of the same, no penalty can be levied. It is factually seen from the orders of the assessments that whatever the turnover was shown by the Assessee, the same was accepted by the assessing officer. For the assessment year 2003-04, the Petitioner/Assessee reported the total and taxable turnover at Rs. 7,86,12,824 and the assessing officer has also accepted the same and levied tax. For the assessment year 2004-05, the Petitioner/Assessee reported the total and taxable turnover at Rs. 57,36,05,138.94 and the assessing officer has also accepted the same and completed the assessment. For the assessment year 2005-06, the Petitioner/Assessee reported the total and taxable turnover at Rs. 41,60,50,716 and the assessing officer has also accepted the same and completed the assessment. From the above, it is clear that there is no dispute regarding the disclosure of the total taxable turnover in the return. The assessing officer has also accepted the same as disclosed by the Assessee. Once the Assessee discloses the turnover, the assessing officer cannot levy penalty u/s 12(3) of the Act. The finding given by the assessing officer, the first Respondent herein in paragraph 18, of the assessment order levying penalty reads as follows:

18. The dealer in spite of knowing all the developments that is taking place in the matter of requirement of filing declaration form C to avail the concessional rate of tax, deliberately claimed the concessional rate of tax and unduly enriched. The dealer by not disclosing the tax due in the return, evaded the tax and imposing penalty warrant u/s 13(3) of the Pondicherry General Sales Tax Act, 1967 read with section 9(2) of the Central Sales Tax Act, 1956.

10. From a reading of the above finding, it is clear that there is no specific finding given by the assessing officer, the first Respondent herein, that there is non-disclosure of turnover in the return. The only reason given by the assessing officer is that the Assessee claimed concessional rate of tax deliberately and also the Assessee has not disclosed the tax due in the return. These factors are not relevant for levying penalty. Non-disclosure of tax due in the return is not the relevant factor. The assessing officer has completely disregarded the condition

enumerated in section 13(3) of the Pondicherry General Sales Tax Act. This Court also considered the similar provision under the Tamil Nadu General Sales Tax Act in the case of Appollo Saline Pharmaceuticals (P) Ltd. v. Commercial Tax Officer (FAC) reported in (2002) 125 STC 505, wherein in paragraphs 5, 6 and 10, it has been held as follows (pages 508 and 509 in 125 STC):

5. The Supreme Court in the case of State of Madras v. S.G. Jayaraj Nadar & Sons (1971) 28 STC 700, at page 701 after extracting section 12(2) of the Tamil Nadu General Sales Tax Act, 1959 which remains in the same form even now, observed thus:

The question is whether penalty can be levied while making the assessment under Sub-section (2) of the above section merely because an incorrect return has been filed. The High Court was of the view that it is only if the assessment has to be made to the best of the judgment of the assessing authority that penalty can be levied. It seems to us that the High Court came to the correct conclusion because subsections (2) and (3) have to be read together. Sub-section (2) empowers the assessing authority to assess the dealer to the best of its judgment in two events: (i) if no return has been submitted by the dealer under Sub-section (1) within the prescribed period, and (ii) if the return submitted by him appears to be incomplete or incorrect. Sub-section (3) empowers the assessing authority to levy the penalty only when it makes an assessment under Sub-section (2). In other words, when the assessing authority has made the assessment to the best of its judgment, it can levy a penalty. It is well-known that the best judgment assessment has to be on an estimate which the assessing authority has to make not capriciously but on settled and recognised principles of justice. An element of guess-work is bound to be present in best judgment assessment but it must have a reasonable nexus to the available material and the circumstances of each case: (see State of Kerala Vs. C. Velukutty, . Where account books are accepted along with other records there can be no ground for making a best judgment assessment.

6. The law so declared that the best judgment assessment is based on an estimate and is not one based solely on the account books was reiterated by the Supreme Court in the case of The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore, .

....

10. In respect of assessments which were properly made by way of best judgment assessment, and in which penalty has been levied, it was submitted that the authority has failed to consider the bona fides of the Petitioner. It was submitted that the turnover had been disclosed in full, but a part of it had not been regarded as part of the taxable turnover by reason of bona fide belief that the Assessee had entertained having regard to the earlier judgments of this Court, and therefore, penalty levied was wholly unwarranted. The levy of penalty without considering the bona fides of the Petitioner cannot be sustained.

11. The above judgment relied on by the Petitioner-Assessee squarely applies to the facts of the present case. Both legally and factually the assessing officer is not justified in levying penalty, which amounts to non-application of mind. In these circumstances, we set aside the order of levying penalty by the assessing officer and remit the matter with a direction to re-hear the matter afresh and dispose of the same, in accordance with law, after giving opportunity to the Petitioner. The second issue is disposed of accordingly.

12. In respect of the last issue, whether u/s 8(5)(b) of the Central Sales Tax Act, 1956 the State Government has power to issue any notification in respect of inter-State sales without requirement of form C, we have to consider the notification and also amended provision of section 8(5) of the Central Sales Tax Act. Earlier, the Government of Pondicherry has issued a notification dated October 1, 2001 in G. O. Ms. No. 37/2001/ F2 granting concessional rate of tax of two per cent without form C in respect of inter-State sale of computers, information technology products and accessories, which reads as follows:

In exercise of the powers conferred by Sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956), read with the Notification No. F.2/4/71-UTL, dated the December 9, 1971 of the Government of India, Ministry of Home Affairs, New Delhi, the Lieutenant Governor, Pondicherry, being satisfied that it is necessary so to do in the public interest is pleased to reduce the rate of tax to two per cent without form C in respect of inter-State sale of computers, information technology products, their spares and accessories.

2. This notification shall come into force with immediate effect.

13. From a reading of the above, it is clear that any inter-State sale made relating to information technology product is subjected to two per cent tax without form C. The Petitioner/Assessee has availed of the benefit as per the notification and there is no dispute regarding the same. Later the Parliament amended the provision of section 8(5) of the CST Act. The said provision was introduced by the Finance Act, 2002 with effect from May 11, 2002. The said amended provision reads as follows:

Notwithstanding anything contained in this section, the State Government may, on the fulfilment of the requirements laid down in Sub-section (4) by the dealer, if it is satisfied that it is 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,--

(a) that 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 or the Government 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) or Sub-section (2) as may be mentioned in the notification,

(b) that 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 or the Government by any dealer having his place of business in the State or 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) or Sub-section (2) as may be mentioned in the notification....

14. Clause 145 of the notes on clauses reads as follows:

Clause 145 seeks to amend section 8 of the Central Sales Tax Act, 1956 so as to--

(i) provide that Central sales tax does not become greater than local sales tax in case of sale of goods to the Government and registered dealers;

(ii) provide for exemption from Central sales tax in cases where goods are exempt from local sales tax;

(iii) make furnishing of form C compulsory by the dealer except in respect of exempted goods;

(iv) include "telecommunication network" in the category of goods which can be specified in certificate of registration for the purposes of levy of tax, etc.;

(v) withdraw powers of the State Government to waive the requirement of C form.

15. Relying on the above amended provision and also the note on clause, the learned Special Government Pleader (Pondicherry) appearing for the Respondents submitted that the State Government has no power to grant concessional rates of tax without form C and by mainly relying on insertion of word on the fulfilment of the requirement laid down in Sub-section by the dealer. Sub-section (1) and Sub-section (4) are applicable to sales made by dealer to registered dealer or Government and the dealer is also directed to comply with certain requirements as prescribed under the section. Therefore, insertion of the word as mentioned is applicable only to the inter-State sale made by dealer to the registered dealer or Government. Therefore, unless and until there is fulfilment of the requirement, they are not entitled to concessional rate of tax without producing form C. The conditions or requirements are confined to its applicability only to such person as capable of fulfilling it. It is relevant to consider section 8(5)(b) of the Act. It contemplates two categories of dealers or persons--(i) registered dealer or Government; (ii) by "any person" or "to such class of persons" as may be specified in the notification. Therefore, the latter category to any person or any such class of person cannot be "registered dealer" or "the Government". Certainly, they are different and distinct persons and we have to give different meaning to the same. We are conscious of the principle that in construing a provision or rule, every word occurring therein must be given its proper meaning and weight. When the dealer makes sale in the course of

inter-State trade to a person other than a registered dealer or the Government, viz., to educational institutions, hospitals and bank, the State Government, in the public interest, can issue notification in respect of inter-State sales provided notification specifying "to any person or to such class of persons". In the present case, the first Respondent filed a counter and stated in paragraph 5 that the Government of Puducherry has not issued any notification specifically for the grant of any exemption or concession in the rate of tax for sales to any person or class of persons as the buyer u/s 8(5)(b) of the CST Act. Therefore, it was contended that the Assessee is not entitled to any concessional rate of tax. The learned Special Government Pleader (Pondicherry) appearing for the Respondents also brought to our notice the notification issued by the other States u/s 8(5)(b) of the CST Act granting concessional rate of tax to non-dealers like banks, educational and medical institutions. The Government of Himachal Pradesh issued a notification dated June 30, 2005 granting concessional rate of tax to non-dealers like banks, educational and medical institutions subject to certain conditions and the said notification reads as follows:

Whereas the Governor of Himachal Pradesh is satisfied that it is necessary in the public interest to do so:

2. Now, therefore, in exercise of the powers conferred by Clause (b) of Sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Central Act, No. 74 of 1956), the Governor of Himachal Pradesh is pleased to direct that tax payable under Sub-section (2) of section 8 of the aforesaid Act on the sale of goods made in the course of inter-State trade or commerce by the industrial units manufacturing information technology and bio-technology goods to the non-dealers like banks, educational and medical institutions, autonomous bodies, etc., shall be calculated at 1% subject to furnishing of following declaration in form CC by the purchaser, with immediate effect in the public interest.

FORM CC

Certified that we have purchased following goods from M/s. ...holding registration certificate No. ...under the Central Sales Tax Act, 1956 for our official use:

Description of goods

Quantity

Sale price

No. and date of cash-memo or bill issued by the seller

(1)

(2)

(3)

(4)

I undertake to:

- (i) Comply with the provisions of the Central Sales Tax Act, 1956, the Rules framed and the notifications issued thereunder ; and
- (ii) utilise the goods so purchased for the purpose of which the same have been purchased.

16. The Government of Uttaranchal Shasan Vitta Vibhag also issued notification dated January 9, 2006 after amendment of section 8(5) of the Central Sales Tax Act, 1956, which reads as follows:

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), read with section 21 of the General Clauses Act, 1897 (Act No. 10 of 1897), the Governor is pleased to direct in the public interest that with effect from the date of publication of this notification, the tax payable under Sub-section (2) of section 8 of the said Act by any manufacturer having his place of business in Uttaranchal, in respect of the sales by him from any such place of business in the course of inter-State trade or commerce, of information technology goods as specified in annexure A, to non-dealer institutions specified in annexure B, shall, subject to the conditions and restrictions referred to in Sub-section (5) of section 8 of the said Act and also the conditions specified in this notifications, and on furnishing the declaration in form DD as per annexure C, be calculated at the rate of one per cent for a period of five years from the date of commencement of commercial production by the unit.

CONDITIONS

- (i) The unit is registered under the Uttaranchal Value Added Tax Act, 2005 and the Central Sales Tax Act, 1956, and complies with provisions of the said Acts and Rules framed and the notification issued thereunder;
- (ii) The unit starts commercial production on or after January 7, 2003 but not later than March 31, 2007;
- (iii) The unit compulsorily makes available at least 70 per cent of its total manpower employment to the people of State of Uttranchal;
- (iv) The unit actually continues production for a period of at least three years after the concession/incentive period is over and in the event of default, the concession availed of shall be forthwith paid back to the Government and the assets created by it will stand forfeited to the Government;
- (v) The concession to the unit will be available only when the goods manufactured are sold by them and it shall not be available for finished goods purchased or acquired by the unit for sale.

17. From a reading of the above notification issued by the other States, we are of the view that the State Government still has the power to issue specified notification, if it is necessary to do so in the public interest during the relevant

period as law stands. The third issue is answered accordingly.

18. It is needless to say that the observations made in the judgment are only for the purpose of disposal of the writ petitions and the authorities shall consider the issues on their own merits without being influenced by these observations. These writ petitions are disposed of accordingly. No costs. Consequently, M. P. Nos. 1 to 1 of 2009 are closed.