

(2000) 11 KAR CK 0039

In the Karnataka High Court

Case No : Writ Petition No. 20572 of 1999 (GM-KSFC)

Eco Ceramics, Belgaum

APPELLANT

Vs

Karnataka State Financial Corporation, Bangalore and
another

RESPONDENT

Date of Decision : 28-11-2000

Acts Referred:

Citation : AIR 2001 Kar 167 : (2001) 3 CivCC 656 : (2001) 4 KarLJ 463 : (2002) 2 RCR(Civil) 252

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sri Vighneshwar S. Shastri, for the Appellant; Ms. K. Sheela, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhan, Ag. C.J.

1. This order shall dispose of Writ Appeal Nos. 1717--1721 of 1999 arising from the common order passed by the single Judge in Writ Petition Nos. 30955 to 30959 of 1998 and other connected writ petitions dated November 30, 1998 [T.V. Sundaram Iyengar & Sons Ltd. v. State of Karnataka [2000] 117 STC 121 (Kar)] and Writ Appeal Nos. 8191--8193 of 1999 arising from the common order passed in Writ Petition Nos. 28486--28488 of 1999 and other cases dated November 18, 1999 Escorts Mahle Ltd. Vs. State of Karnataka and Another, The appeals are taken up together for disposal as some of the points raised in both the sets of appeals are common and relate to the validity of the notification dated September 23, 1998 and the applicability of the Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1979 (for short "the Entry Tax Act") to certain areas. They were argued together before us at the same time. The facts giving rise to the additional points raised in W.A. Nos. 8191--93 of 1999 would be referred to in the latter part of the judgment.

Facts in W.A. Nos. 1717--1721 of 1999 :

2. The appellants are dealers registered under the provisions of the Karnataka Entry Tax Act, 1979. During the period April 1, 1994 to January 6, 1998, the appellants, among other goods, caused the entry of machinery and its parts and accessories thereof, packing materials and raw materials from outside the State of Karnataka into their respective local areas for use and consumption. The appellants also caused the entry of the abovementioned goods into their respective local areas from places outside the local area but from within the State of Karnataka for use and consumption.

3. Under the provisions of the Act, Section 3(1) of the said Act is the charging section which reads as under :

"3. Levy of tax.--(1) There shall be levied and collected a tax on entry of any goods specified in the First Schedule into a local area for consumption, use or sale therein, at such rates not exceeding five per cent of the value of the goods as may be specified retrospectively or prospectively by the State Government by notification, from time to time, and different dates and different rates may be specified in respect of different goods or different classes of goods or different local areas."

4. The charging section reproduced above reads as substituted by Karnataka Act 15 of 1992 which is with effect from May 1, 1992, except for the words "retrospectively or prospectively by the State Government by notification and different dates", which came to be substituted by Karnataka Act No. 8 of 1993 which came into effect retrospectively from September 30, 1992. The Government of Karnataka, in exercise of its powers u/s 3(1) of the Act brought out a notification bearing No. FD 112 GET 93(III) dated March 30, 1994, which came into effect from April 1, 1994. The said notification specified the rates of taxes as against the scheduled goods stipulated in the table appended thereto. The said goods were to be subjected to a levy on the entry of goods brought into a local area from any place outside the State for consumption or use therein. Several assesseees filed writ petitions in this Court challenging the notification dated March 30, 1994 on various grounds, some of which were as under :

1. The notification dated March 30, 1994 has been issued in excess of the legislative power delegated to the State Government u/s 3(1) of the Act inasmuch as the State Government as a delegatee was competent to specify the rate or rates "in respect of different goods or different classes of goods" as specified in the Schedule but it could not have specified the rate of tax by dividing the given commodity into further groups thereby levying tax on similar goods fulfilling certain conditions and leaving the remaining out of the taxing net ;

2. The notification dated March 30, 1994 is also constitutionally invalid as offending Article 404(a) of the Constitution since these have resulted in causing discrimination in the matter of levy of entry tax under the Act between similar goods manufactured or produced in the State of Karnataka and those imported

from other States.

5. The writ petitions were admitted and an order of interim stay, staying the operation of notification dated March 30, 1994 was issued. Subsequently, the single Judge before whom the petitions came up for hearing referred them to the division Bench. During the pendency of the writ petitions before the division Bench, Government of Karnataka in exercise of its powers u/s 3(1) of the Act read with Section 21 of the Mysore General Clauses Act, 1899, amended the notification dated March 30, 1994, by substituting for the words "from any place outside the State for consumption or use", the words, "where such entry is for consumption or use of such goods and where such goods have not suffered tax under the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957)" with effect from April 1, 1994. The change was brought by issuing Notification No. FD 109 CET 97(8) dated March 31, 1997. Some of the petitioners whose writ petitions were pending before the division Bench filed interlocutory applications with a prayer to permit the petitioners to amend the petitions to challenge the notification dated March 30, 1997. The court permitted the applications for amendment and the petitioners challenged the notification dated March 31, 1997, by incorporating the following ground, among other grounds :

"The notification dated March 31, 1997 to the extent its operation has been retrospective with effect from April 1, 1994 is ultra vires the powers of the State Government since the expressions "retrospectively" which came to be inserted by Karnataka Act No. 8 of 1993 was unenforceable for want of Presidential assent as was required under the proviso to Article 404(b) of the Constitution of India."

6. The division Bench after hearing the arguments addressed at length on behalf of the writ petitioners as well as the respondents, rendered its judgment on August 4, 1997 [Aviny] Polymers Pvt. Ltd. v. State of Karnataka [1998] 109 STC 26 (Kar)] quashing both the notifications, viz., Notification No. FD 112 CET 93(III) dated March 30, 1994 as well as Notification No. FD 109 CET 97(8) dated March 31, 1997 as ultra vires the powers of the State Government both on the ground of causing discrimination in terms of Article 404(a) of the Constitution of India as also on the ground of exceeding the legislative delegation made in its favour u/s 3(1) of the Act. However, with regard to the third contention advanced on behalf of the petitioners that the notification dated March 31, 1997 to the extent its operation has been retrospective with effect from April 1, 1994 as ultra vires the powers of the State Government since the expressions "retrospectively or prospectively" which came to be inserted by Karnataka Act No. 8 of 1993 which itself is with retrospective effect from September 30, 1992, is unenforceable for want of Presidential assent as was required under the proviso to Article 404(b) of the Constitution of India, was negated by the division Bench. It was held that since the entire amount of entry tax collected in the State (subject to deduction of levy and collection expenses) was being made over to the local authorities for providing municipal and civil amenities, the tax in

question was compensatory in nature and therefore, did not require the previous sanction or assent of the President of India and accordingly held that Karnataka Act No. 8 of 1993 bringing about the amendments to the Act cannot be held as not having come into force for want of President's assent.

7. The division Bench decision came to be rendered in the case of Avinyl Polymers Pvt. Ltd. v. State of Karnataka. The same is reported as [1998] 109 STC 26 (Kar).

8. The State of Karnataka, feeling aggrieved by the order dated August 4, 1997 passed by the High Court approached the Supreme Court by filing special leave petitions questioning the correctness of the decision rendered by the division Bench. Special leave was granted and the appeals were registered as Civil Appeals Nos. 7569--7575 of 1997. The applications for stay of operation of the judgment of the High Court filed by the State of Karnataka were declined, but instead the Supreme Court passed an interim order directing the State of Karnataka not to refund any amount already collected under the impugned notifications, pending disposal of the appeals.

9. One of the petitioner in the batch of cases that came to be disposed of by the division Bench in Avinyl Polymers case [1998] 109 STC 26 (Kar) filed a SLP to the Supreme Court questioning the correctness of the decision rendered by the division Bench in Avinyl Polymers case [1998] 109 STC 26 (Kar) to the extent the same pertained to negating the third contention of the assessee canvassed before the High Court. The SLP filed by the assessee (Sharavathy Petro Chemicals Pvt. Ltd., who was appellant in W.P. No. 41966 of 1995) also came to be admitted by the Supreme Court and the same was registered as SLP (C) No. 22552 of 1997.

10. It seems as the Supreme Court of India had declined to stay the operation of the judgment of the division Bench in Avinyl Polymers case [1998] 109 STC 26 (Kar). The Government of Karnataka in compliance with the judgment of the High Court in Avinyl's case [1998] 109 STC 26 (Kar), issued notification dated January 7, 1998 which provided rate of tax on entry of goods into a local area for consumption, use or sale therein. The notification was brought in consonance with the judgment given by this Court and the notification remained in force from January 7, 1998 to March 31, 1998. On March 31, 1998, another notification was issued providing levy of tax on entry of goods into a local area for consumption, use or sale therein. These notifications were prospective in operation. Government of Karnataka brought out another Notification No. FD 173 CET 98 dated September 23, 1998 (hereinafter referred to as "the impugned notification") which was effective for the period from April 1, 1994 and up to January 6, 1998 by prescribing different rates of taxes for goods enumerated in the table appended to the notification which purported to levy tax on entry of goods brought into a local area from outside for consumption, use or sale therein. Government of Karnataka issued fourth Notification No. FD 225 GET 98 dated November 9, 1998, for amending the impugned notification. This

notification was in the nature of clarification which would be referred to when the point is taken up for consideration in the later portion of the judgment.

11. The appellants being aggrieved filed the writ petitions challenging the impugned notifications dated January 7, 1998, March 31, 1998, September 23, 1998 and November 9, 1998 on various grounds. The writ petitions were dismissed by the single Judge before whom the matters were listed for hearing by making the following observations :

"1. The provisions of Section 3(1) of the Act are not ultra vires of the Constitution of India on the ground that no guidelines for prescribing rate of tax has been given and the provisions are compensatory in nature and do not require the assent of the, President of India.

2. Notifications dated March 31, 1998 and January 7, 1998 are valid piece of legislation.

3. Notification dated September 23, 1998 has not been issued u/s 4-B of the Act, but has been issued u/s 3(1) and as such retrospective effect could have been given.

4. Notification dated September 23, 1998 cannot be considered to be invalid on the ground that it was not in force on the date of issue "and was made applicable for past transactions only.

5. Notification dated September 23, 1998 is a valid piece of legislation. It is however declared that tax shall not be levied or collected for the period from April 1, 1994 to January 6, 1998 for entry of goods in local area when the goods are brought from other areas of the State of Karnataka and also when the goods have been imported from outside the State of Karnataka and are meant for sale.

6. Entry 2-A by notification dated November 9, 1998 prescribing rate of tax at 8 per cent from April 1, 1995 is ultra vires the power of Section 3(1) of the Act.

7. In cases where assessments were already framed, the assessee would be free to file appeals within four weeks and where notice alone has been issued, they may submit objections within the aforesaid period."

12. A reading of the conclusions arrived at by the single Judge would show that excepting for the observations made to the effect that "it is however declared that tax shall not be levied or collected for the period from April 1, 1994 to January 6, 1998 for entry of goods in local area when the goods are brought from other areas of the State of Karnataka and also when the goods have been imported from outside the State of Karnataka and are meant for sale", in observation No. 5, and the observation made at No. 6, all other observations have been held against the appellants. The appellants did not challenge the first notification levying the tax prospectively with effect from January 7, 1998. Their grievance was with regard to the levy of entry tax with retrospective effect by the impugned notification.

13. Aggrieved by the order passed by the single Judge, the dealers-appellants filed the appeals. The same were admitted, but the interim stay of the order of the single Judge was declined. State did not file any appeals.

14. The appeals filed by the State of Karnataka and some of the assesseees in the Supreme Court against the judgment of the Division Bench in Avinyl Polymers Pvt. Ltd. case [1998] 109 STC 26 (Kar) came up for hearing before a Bench of the Supreme Court on July 18, 2000. The appeals filed by the State of Karnataka as well as the assesseees were disposed of by passing a common order which reads thus :

"C.A. No. 3958 of 1998 and Nos. 1819--1848 of 2000 be delinked and listed separately.

Leave granted in SLP (C) No. 134 of 1998.

Counsel for the parties agree that the appeals filed by the State of Karnataka have become infructuous. These appeals arise out of judgment of the Karnataka High Court before whom the respondents had challenged the notification dated March 30, 1994 and the amendment made on March 31, 1997 pertaining to entry tax. The said notification was quashed but while quashing the same the High Court had accepted the contention of the State of Karnataka that the entry tax was compensatory in nature.

We are now informed that the aforesaid notifications on March 30, 1994 and March 31, 1997 has been superseded by notification dated January 7, 1998 and notification on September 23, 1998, which are retrospective in character. The later notifications are subject-matter of challenge before the Karnataka High Court. As far as the State of Karnataka is concerned, it is not seeking to realise any tax under the earlier notification dated March 30, 1994 and March 31, 1997. This being so, the appeals filed by the State of Karnataka have become academic and nothing more survives.

As far as the appeals filed by the respondents are concerned, the same relate to the finding of the High Court to the effect that the entry tax was compensatory in nature. Learned Advocate-General agrees that without going into the merits this finding may be set aside and the High Court will be at liberty to go into this question afresh while deciding the writ petition which have been filed challenging the subsequent notifications.

Ordered accordingly. The High Court while deciding the fresh writ petitions will not be bound by its earlier decision. The appeals are disposed of. No order as to costs."

15. Though before the single Judge a number of points were raised, but before us the counsel appearing for the appellants have confined their challenge to a few points which are enumerated below. The findings recorded by the single Judge on other points were not challenged before us. The contention raised by the counsel for the appellants may be summarised as under :

1. Since, the impugned notification operates with effect from April 1, 1994 and up to January 6, 1998, the same is ultra vires the powers of the State Government and is unenforceable for the reason that the amendment brought about to Section 3(1) of the Act by the Bill which culminated into Karnataka Act No. 8 of 1993 which itself is with retrospective from September 30, 1992 by inserting the words "retrospectively or prospectively by the State Government by notification and different dates" did not receive the assent of the President of India as was required by the proviso to Article 404(b) of the Constitution of India ; nor did the amendment Act receive the assent of the President of India subsequently in accordance with Article 255 of the Constitution of India.

2. The impugned notification has been issued in excess of the delegated powers vested in it u/s 3(1) of the Act and therefore the impugned notification is ultra vires the Act. The Legislature u/s 3(1) has delegated the power to the Government to bring out a notification by picking from out of the basket of goods specified in the First Schedule appended to the Act for consumption, use or sale therein, at such rates not exceeding 5 per cent of the value of goods as may be specified retrospectively or prospectively by specifying different dates and different rates in respect of different goods or different classes of goods or different local areas. The impugned notification is not traceable to Section 3(1) of the Act for the reason that the powers so available to the rule making authority is to issue a notification either prospectively or retrospectively. But this power cannot be construed by the rule making authority, as an absolute power to bring out notifications to fill in a hiatus by specifying that the notification shall come into effect from April 1, 1994 and up to January 6, 1998. Such a notification cannot be traced to Section 3(1) of the Act for the reason that the said notification has neither been issued retrospectively or prospectively. The State Government has not been empowered to bring out a notification to levy tax for the past periods. For a notification to be said to have been validly issued, it is necessary for the rule making authority to see that the notification issued is effective as on the date of issuance.

3. The impugned notification is bad for the reason that the entry pertaining to raw materials, etc., in the said notification is ultra vires the entry stipulated in the First Schedule appended to the Act inasmuch as the wordings employed by the Legislature at entry No. 80 of the First Schedule appended to the Act is different from the language employed at item No. 4 of the impugned notification.

4. That the impugned notification to the extent it seeks to impose fresh taxes with effect from retrospective effect, i.e., August 4, 1997 to January 6, 1998 is violative of Articles 14 to 19(1)(g).

5. That the notification dated September 23, 1998 has become ultra vires of Article 404(a) of the Constitution of India having regard to the declaration made by the learned single Judge at para 32(5) (at page 140 of 117 STC) of the order impugned in the appeals.

6. Without prejudice to the other contentions tax cannot be levied for a period from August 4, 1997 to January 6, 1998 since it causes great hardship to the dealers and it is inequitable to do so.

16. Before examining the validity of the various contentions raised, a brief legislative history of the Act may be noticed.

17. The State of Karnataka came into being on November 1, 1956 pursuant to the reorganisation of the States in India. Municipal laws prevailing in different areas of the new State provided for imposition of tax called octroi. With effect from April 1, 1965 uniform taxation on various items under the Municipalities Act was brought into force.

18. Considerable debate is going on in the country regarding the justification of charging the octroi by the municipal committees. The octroi was being criticised as archaic and obnoxious impeding the free flow of trade creating bottlenecks. State of Karnataka was the first State to abolish octroi with effect from April 1, 1979. In order to compensate the loss, Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1979, was passed. The Act was enacted under the legislative powers derived from Article 246 of the Constitution of India read with entry 52, List II of the Seventh Schedule to the Constitution. It received the assent of the President of India on May 17, 1979. Originally the tax was levied on three items, namely, textiles, tobacco and its products and sugar. Subsequently there have been changes and the position as it now stands is that tax could be levied on any items specified in the First Schedule from items 1 to 103. Item No. 103 is a residuary clause and confers power on the State Government to levy tax on :

"Goods other than those specified in any entries in this Schedule, but excluding those specified in the Second Schedule."

19. In Avinyl Polymers case [1998] 109 STC 26 (Kar), the division Bench held that the tax levied was compensatory in nature. The Supreme Court on a concession made by the Advocate-General of the State set aside the finding regarding the tax being compensatory in nature and permitted the High Court to go into this question afresh while deciding the present writ petitions in which subsequent notification has been challenged.

20. Mr. R.V. Prasad, learned counsel for the appellant, did not challenge the imposition of tax being compensatory or otherwise and has taken up altogether a different argument. According to him, Act No. 8 of 1993 which introduced the words "retrospectively or prospectively by the State Government by notification on different dates" is neither reasonable nor in public interest, and in any event, even if the restriction could be said to be reasonable and in public interest, the amending Act No. 8 of 1993 not having been introduced or moved in the Legislature with the previous sanction of the President and not having also subsequently received the assent of the President is unconstitutional and void.

21. Part XIII of the Constitution of India deals with trade, commerce and intercourse within the territory of India. Article 401 provides that subject to the other provisions of Part XIII, trade, commerce and intercourse throughout the territory of India shall be free. Article 402 deals with the powers of the Parliament to impose restrictions on the freedom of trade, commerce or intercourse. Article 403 deals with the legislative powers of the Union and the State Government with regard to the trade and commerce. Article 404 provides that notwithstanding anything in Articles 301 and 303, the Legislature of the State may by law :

(a) impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced ;

Clause (b) authorises State Legislature to impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest :

Proviso to Article 404 provides that no Bill or amendment for the purposes of Clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President. Article 255 provides that the provision in the Act would not be invalid by the reason only that some recommendation or previous sanction required by this Constitution was not given, if, assent to that Act is given subsequently by the President of India or the Governor, of the State as the case may be. Submission of the counsel for the appellant is that the amending Act No. 8 of 1993 was neither introduced with the previous consent of the President nor assented to by him later and therefore Act No. 8 of 1993 was bad in law.

22. To substantiate the argument that the Act required the assent of the President either under Article 404(b) or Article 255 of the Constitution, counsel for the appellant relied upon the division Bench judgment of this Court in *Jyothi Home Industries v. State of Karnataka* [1987] 64 STC 254 (Kar) (App.).

23. In the said case the provisions of the Act providing of tax for entry of goods into local areas for consumption, use or sale therein were challenged. As noticed above, earlier the tax was imposed only on 3 items. By Karnataka Act No. 13 of 1982 it introduced new items Nos. 4 to 16 into the Schedule and expanded the definition of "local area". Argument raised was that the introduction of the new items and change in the definition of local area resulted in imposition of the tax which is non-compensatory and has direct and had the immediate effect of impeding free-flow of trade and thus violative of Article 401. At all events, even if the additional restrictions can be said to be reasonable and in public interest, the legislative measure by which the additional restrictions were imposed not having been introduced or moved in the Legislature with the previous sanction of the President and not having also subsequently received the assent of the President,

is unconstitutional and void. It was held by the division Bench that Karnataka Act No. 13 of 1982 was a piece of composite legislation. It brought about amendments to several taxation laws, including the "Principal Act". Taxation laws are not outside Part XIII of the Constitution. The words of Article 401, are wide and unambiguous and a taxing law which impedes the freeflow of trade and commerce clearly falls within it. Reliance was placed on the judgment of the Supreme Court in *State of Karnataka and Another Vs. Hansa Corporation*, in which it was held :

".....To the extent the impugned tax is levied on the entry of goods in a local area it cannot be gainsaid that its immediate impact would be on movement of goods and the measure would fall within the inhibition of Article 401....."

24. After detailed discussion on the point, it was held that provisions of Section 7(1)(a) and 7(15) of the amending Act No. 13 of 1982 impose additional restrictions on the freedom of trade and commerce under Article 401 and even if these additional restrictions can be held to be reasonable and in public interest the legislative measure would attract and require compliance with Article 404(b). That there having been no such compliance with Article 404(b) of the Constitution the provisions of Section 7(1)(a) and 7(15) of the amending Act No. 13 of 1982 are unenforceable until such compliance is shown.

25. The counsel for the appellant fairly brought to our notice another division Bench judgment of this Court reported in *Ferro Concrete Company of India (Steels) Limited and Another Vs. State of Karnataka and Another*, in which it was held that where the President of India gives assent to a subsequent amending Act then it must be assumed that the President must have examined the whole Act including the earlier amendments made before. The Constitutional effect would be as if the President had given his assent to the earlier amendment Act as well. The charging Section 3 of the Karnataka Tax on Entry of Goods into Local Areas Act, 1979 as it stood originally did not empower the Government to issue notifications from a date anterior to the date of publication of the notification or to give them retrospectivity. Section 3 was amended by Act No. 3 of 1981 and empowered the State to issue notifications either prospectively or retrospectively. (The amendment was similar to the one which has been introduced by Act No. 8 of 1993. This amendment was later on deleted and that is why it was reintroduced by Act No. 8 of 1993). The Act No. 3 of 1981 was not moved in the Legislature with the prior permission of the President of India nor had it received the assent of the President under Article 255. It was challenged on the ground that it violated the provisions of Article 404(b) of the Constitution of India and therefore bad in law. The arguments raised on behalf of the respondents was that the Act in question was again amended by an Act of 1984. The President of India having given his assent to the subsequent Act of 1984, it could be assumed that the President of India after due application of mind had given his assent to the amending Act No. 3 of 1981 as well. Reliance was placed

upon Venkata Rao Esajirao Limbekar and Others Vs. The State of Bombay and Others, wherein it was held as under :

"Similarly when Bombay Act XXXII of 1958 which was meant for amending Hyderabad Act XXI of 1950 was enacted the assent of the President had been given. If the assent of the President had been accorded to the amending Acts, it would be difficult to hold that the President had never assented to the parent Act, namely, Hyderabad Act XXI of 1950. Even if such assent had not been accorded earlier it must be taken to have been granted when amending Act III of 1954 was assented to."

26. Relying upon this judgment the division Bench held that since the President of India had given his assent to the later amendment Act of 1984, which was later in point of time, it would be assumed that the President had given his assent to the earlier amending Act No. 3 of 1981 as well. It was observed :

"The 1984 Act, which is a later Act, had received the assent of the President is not in dispute. Before giving his assent to a later amending Act, as the 1984 Act, we must assume that the President had examined the whole Act, all the earlier amendments made before and their Constitutional effect also and on being fully satisfied with the requirements of the Constitution would have given his assent to the same. Without being satisfied with the earlier amendments, it is even inconceivable to hold that the President would give his assent to a later amendment. If this is the true position, then it follows, the President in law had given his assent to the earlier amendments made to the Act and in particular to the 1981 Act with which only we are concerned. Any other construction would not be in consonance with the high constitutional position of the President under our Constitution. Even otherwise, this conclusion of ours is set at rest by the Supreme Court."

27. Coming to the facts of the present case, Act No. 8 of 1993 was neither introduced with the prior approval of the President of India as provided under Article 404(b) nor was it assented to by the President of India under Article 255 of the Constitution of India. But Act No. 45 of 1994 amending certain provisions of the Act was given assent to by the President on October 19, 1994. Similarly Act No. 3 of 1995 amending certain provisions of the parent Act was also given assent to by the President of India. In view of the assent given by the President of India to Act Nos. 45 of 1994 and 3 of 1995, it would be assumed as if the President of India had given his assent to Act No. 8 of 1993 as well. Following the law laid down in *Ferro Concrete Company of India (Steels) Limited and Another Vs. State of Karnataka and Another*, it is held that President of India would be deemed to have been given assent to Act No. 8 of 1993 while giving assent to the subsequent Acts Nos. 45 of 1994 and 3 of 1995. The challenge put by the appellants on the ground that Act No. 8 of 1993 had not been assented to by the President of India as was required by proviso to Article 404(b) or Article 255 of the Constitution of India has no force.

28. It was then contended by the counsel for the appellant that Act No. 1 of 1996 omitted Section 28 of the Act with effect from April 1, 1995 and therefore the deemed assent given by the President to Act No. 8 of 1993 would be deemed to have lapsed. Section 28 dealing with exemptions was omitted by Act No. 1 of 1996. It was given assent to by the Governor of the State. Section 28 of the Act providing exemption to a person other than a dealer in goods was omitted in view of the judgment of this Court in W.P. No. 27773 of 1997 and other connected matters wherein the High Court has held that exemption u/s 28 was equally available to an importer of motor vehicles under Chapter II-A. It was contended by the counsel for the appellant that with the deletion of Section 28 any assent or deemed assent given by the President of India to Act No. 8 of 1993 would be deemed to have been withdrawn or lapsed. We do not find any substance in this submission. Omission of Section 28 by Act No. 1 of 1996 would not amount to withdrawing or lapsing of the deemed assent given by the President of India to Act No. 8 of 1993. The arguments raised is neither supported by any statutory provision or by any precedent. The same is rejected.

29. The second contention raised on behalf of the appellant is that the impugned notification is not traceable to Section 3(1) of the Act as the power given is to issue notification either prospectively or retrospectively, but this power could not be construed to mean that the rule-making authority could bring out a notification for filling up a hiatus specifying that the notification would be operated for a fixed period between April 1, 1994 to January 6, 1998. The State Government is not empowered to issue notification to levy tax for the past periods. For a notification said to have been validly issued, it is necessary for the rule-making authority to see that the notification is effective as on the date of issuance.

30. The legislative power conferred on the appropriate Legislatures to enact law in respect of topics covered in three Lists can be exercised both prospectively and retrospectively. When the Legislature enacts a valid law it may provide not only for the prospective operation of the provision of the Act, but it can also provide for the retrospective operation of the said provisions. It is also well-established that the legislative power conferred on Legislature includes the power to validate the laws which have been struck down or invalidated by the courts being not in conformity with the provisions of the Constitution. It is competent for the appropriate Legislature to cure the infirmity pointed out by the courts and pass valid law effective from the date when it was passed.

31. u/s 3 of the Act, the State Government is authorised to impose taxes retrospectively or prospectively by issuing notifications on different dates at different rates in respect of different goods or different classes of goods or different local areas. The Government had issued a notification imposing tax on the goods brought in a local area for consumption or use which was challenged by filing the writ petitions. The petitioners successfully challenged the notifications and the same came to be struck down by this Court in Avinyl

Polymers" case [1998] 109 STC 26 (Kar) on August 4, 1997. Against the order of the division Bench the State filed a SLP which was granted. The Supreme Court did not stay the operation of the order of the division Bench. As the Supreme Court had refused to stay the operation of the order of the division Bench in Avinyl Polymers case [1998] 109 STC 26 (Kar), the State Government was faced with the situation of validating the laws operative for the period between April 1, 1994 to August 4, 1997, i.e., up to the date of the judgment of the Division Bench for which period earlier notifications were in operation and between August 5, 1997 to January 6, 1998 during which period no notification was in operation and for the prospective period starting from January 7, 1998 onwards by bringing the notification in conformity with the observation made by the division Bench in its judgment. The Government issued the notification on January 7, 1998 making the operation of the notification prospectively. The defects pointed out in Avinyl Polymers case [1998] 109 STC 26 (Kar) were taken note of and rectified. For the previous period the State Government issued the notification on September 23, 1998 imposing tax from April 1, 1994 to January 6, 1998. The earlier notification had remained in operation between April 1, 1997 till the pronouncement of judgment on August 4, 1997. For the period between August 5, 1997 to January 6, 1998 the notifications were not in operation. To cover up the period from April 1, 1994 to January 6, 1998 the impugned notification dated September 23, 1998 was issued. As pointed out earlier the Legislature had empowered the State Government to impose tax by issuing a notification either retrospectively or prospectively. If the Legislature is empowered to make a law with retrospective effect it is appropriate to make the law effective for such anterior period as it thinks appropriate. It cannot be said that unless the levy is kept alive on the date the law is enacted, such a levy would be incompetent. It would amount to laying a principle unknown to law and create a fetter on the Legislature for which there is no basis in principle. The Legislature accepted the law declared by this Court and accordingly enacted the laws bringing it in conformity with the judgment of this Court. The contention raised by the counsel for the appellant that the State Government could not issue a notification to levy tax for the past period cannot be accepted. The power to enact laws retrospectively would include the power to enact laws for a fixed past period as well and especially when it is done for validating the laws which were declared to be invalid by a judgment of the court by bringing the laws in conformity with the law so pronounced.

32. In *Rai Ramkrishna and Others Vs. The State of Bihar*, the Supreme Court examined a contention whether the period covered by the retroactive operation of the Act between the April 1, 1950 and September 25, 1961, should be held to be unreasonable, and so, the Act should be struck down in regard to its retrospective operation. On this submission the Supreme Court in para 17 observed as under :.

"We do not think that such a mechanical test can be applied in determining the validity of the retrospective operation of the Act. It is conceivable that cases may

arise in which the retrospective operation of a taxing or other statute may introduce such an element of unreasonableness that the restrictions imposed by it may be open to serious challenge as unconstitutional ; but the test of the length of time covered by the retrospective operation cannot, by itself, necessarily be a decisive test. We may have a statute whose retrospective operation covers a comparatively short period and yet it is possible that the nature of the restriction imposed by it may be of such a character as to introduce a serious infirmity in the retrospective operation. On the other hand, we may get cases where the period covered by the retrospective operation of the statute, though long, will not introduce any such infirmity. Take the case of a Validating Act. If a statute passed by the Legislature is challenged in proceedings before a court and the challenge is ultimately sustained and the statute is struck down, it is not unlikely that the judicial proceedings may occupy a fairly long period and the Legislature may well decide to await the final decision in said proceedings before it uses its legislative power to cure the alleged infirmity in the earlier Act. In such a case, if after the final judicial verdict is pronounced in the matter the Legislature passes a validating Act, it may well cover a long period taken by the judicial proceedings in court and yet it would be inappropriate to hold that because the retrospective operation covers a long period, therefore, the restriction imposed by it is unreasonable. That is why we think the test of the length of time covered by the retrospective operation cannot by itself be treated as a decisive test."

33. In the present case as well from the facts it is seen that the notification issued by the Government was challenged and the proceedings were pending in the courts of law. The challenge was ultimately sustained and the statute was struck down. The valid statute was brought in operation to cover up the periods for which the earlier notification had been issued from April 1, 1994 to August 4, 1997 and for a short duration of 5 months when no notification was in operation and for the prospective period the notification dated January 7, 1998 was issued to levy taxes for the future period. It would be inappropriate to hold that retrospective operation cover a long period, therefore the law is bad or unreasonable cannot be accepted.

34. Supreme Court of India in *Indian Aluminium Co. etc. etc. Vs. State of Kerala and others*, , while examining the question regarding validity of the validating Act after considering the various judgments observed in paragraph 56 that the following principles emerged :

"(1) The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transactions and require the court to give effect to them ;

(2) The Constitution delineated delicate balance in the exercise of the sovereign power by the Legislature, Executive and Judiciary ;

(3) In a democracy governed by rule of law, the Legislature exercises the power

under Articles 245 and 246 and other companion articles read with the entries in the respective Lists in the Seventh Schedule to make the law which includes power to amend the law ;

(4) Courts in their concern and endeavour to preserve judicial power equally must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries. In order that rule of law permeates to fulfil constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free-play in their joints so that the march of social progress and order remain unimpeded. The smooth balance built with delicacy must always be maintained ;

(5) In its anxiety to safeguard judicial power, it is unnecessary to be over-zealous and conjure up incursion into the judicial preserve invalidating the valid law competently made ;

(6) The court, therefore, need to carefully scan the law to find out : (a) whether the vice pointed out by the court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements ; (b) whether the Legislature has competence to validate the law ; (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution.

(7) The court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the Legislature. Therefore, they are not the encroachment on judicial power.

(8) In exercising legislative power, the Legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decisions would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date. The Legislature can change the character of the tax or duty from impermissible to permissible tax but the tax or levy should answer such character and the Legislature is competent to recover the invalid tax validating such a tax or removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the Legislature to enact the law with retrospective effect and authorise its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the court or the direction given for recovery thereof.

(9) The consistent thread that runs through all the decisions of this Court is that the Legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the

base on which the decision was rendered, consistent with the law of the Constitution and the Legislature must have competence to do the same."

35. The Supreme Court in *P. Kannadasan etc, etc. Vs. State of Tamil Nadu and others [OVERRULED]*, , examined the position whether the Legislature had the power to validate the laws to protect the taxes already collected or could it enact law with retrospective effect to recover the taxes which were payable but could not be covered under the notifications which were invalidated by the courts. It was held that the Legislature had the power to enact laws with retrospective effect, to recover the taxes that had not been recovered under the earlier notification ; after the revalidation of the law. It was observed as under :

"The third contention which has been urged by every counsel appearing for appellants-petitioners with great vehemence is this : the impugned Act is designed to and provides only for validating the taxes and cesses already recovered under the relevant provisions of the enactment mentioned in the Schedule. The impugned Act does not, however, empower or authorise the Parliament or its agencies to recover taxes and cesses which are payable under the said provisions but have not been recovered on or before 4th day of April, 1991,"

"Once the provisions, which create the levy, are deemed to have been enacted by Parliament, the levy is very much there with retrospective effect. Once there is a valid levy, not only the taxes already collected need not be refunded but the taxes and cesses which have not already been collected can also be collected. It is impossible to see any distinction in principle between both. Merely because Sub-section (2), inter alia, states that "cesses or other taxes on minerals realised under any such laws shall be deemed to have been validly.....realised.....as if this section had been in force at all material times when such.....cesses or other taxes were realised", it does not mean that the taxes which were levied but not collected cannot be collected. The said words in Subsection (2) are not words of limitation ; they are words of validation and put in by way of abundant caution in view of the judgments and orders of the courts. On the language of Section 2 which enacts with retrospective effect, the relevant provisions levying cesses and taxes on minerals and also validates the rules and notifications issued thereunder, we find it impossible to say that the levy is validated only for the limited purpose of saving the taxes already collected, i.e., to stay the refund of taxes already collected. Indeed, if the section were so construed, it would lead to discriminatory consequences. Take two persons "A" and "B". Both are equally liable to pay the cess on minerals levied by, say the Madras Legislature. One pays the tax according to law and the other does not. If the argument of appellants-petitioners is to be accepted, the man who paid will be worse-off than the person who did not pay because no tax can now be collected from the person who did not pay. No such unreasonable intention can be attributed to Parliament. It would not be reasonable to assume that the Parliament intended such

discriminatory treatment between two similarly placed persons and for no reason, Some of the counsel for appellants-petitioners sought to argue that the above situation cannot be described as discriminatory. According to them, there is a reasonable classification between the person who does not pay, comes to the court and succeeds in his challenge and the person who does not come to the court but quietly pays the tax and sits at home. This illustration proceeds on the assumption that only a person not paying the tax comes to the court. That may not always be true. A person may pay the tax demanded and then come to court challenging the demand and collection. There may also be a situation, where tax is collected from him even before he comes to court. It is also possible that in a given case, stay is not granted by the court and he is obliged to pay. There may also be a situation where both "A" and "B" in the above illustration may not come to court. We are, therefore, of the clear opinion that once the levy is created or validated, as the case may be, no distinction can be drawn between the person who has paid and the person who has not paid. We are also unable to find any words in Section 2 or anywhere else in the impugned enactment limiting the levy only to the extent of the taxes/cases already collected on or before 4th day of April, 1991. Nor are we satisfied that absence of a clause or words corresponding to Clause (c) in Section 3(1) of the Sugarcane Cess (Validation) Act makes any difference. The said clause merely sets out the consequence flowing from the validation contained in the main limb of Section 3(1), by way of abundant caution. It cannot be treated as a substantive provision. Sri K. Parasaran then submitted that the words "imposition and collection" in the preamble do evidence the intention to confine the imposition to amounts already collected. It is not possible to agree. By reading them conjunctively, their meaning cannot be cut down. On the contrary, the said words indicate the intention to validate the imposition as well as collection. "Collection" does not mean what is already collected alone. It means future collection as well. Neither the preamble nor Section 2 say that what is already collected alone is validated. This contention too accordingly fails."

36. The next submission of the counsel for the appellant is that Clause 4 of the impugned notification is contrary to the express provisions of Section 3(6) of the Entry Tax Act read with entry 80 of Schedule I to the Act. Section 3(6) provides :

"No tax shall be levied under this Act on any goods specified in the Second Schedule mentioned in the Schedule on its entry into a local area for consumption, use or sale therein."

Entry 80 of the First Schedule reads :

"Raw materials, component parts and inputs which are used in the manufacture of an intermediate or finished product other than those specified in the Second Schedule."

37. Clause 4 of the notification reads :

"Raw materials, component parts and inputs which are used in the manufacture

of an intermediate or finished product."

38. The submission is that Clause 4 of the impugned notification was ultra vires the entry to the Act inasmuch as the wording employed by the Legislature at entry 80 of the First Schedule appended to the Act is different from the language employed in Clause 4 of the impugned notification.

39. The words "other than those specified in the Second Schedule" in entry 80 of the First Schedule do not find mention in Clause 4 of the impugned notification dated September 23, 1998. It is argued that by virtue of Clause 4 of the impugned notification the State Government has tried to tax the goods mentioned in the Second Schedule which is prohibited by Section 3(6) of the Act as well as entry 80 of the First Schedule. As per Section 3(6) and entry 80 tax on the raw materials, component parts or inputs which were used in the manufacture of an intermediate or finished products mentioned in the Second Schedule cannot be levied.

40. There is no force in this submission. Explanation I to the notification dated September 23, 1998 read as under :

"Explanation I.--The words "raw materials, component parts and any other inputs" do not include exempted goods which are specified in the Schedule, horticultural produce, cereals, pulses, oil-seeds including copra and cotton seeds, timber or wood of any species, newsprint, silk cocoons, raw, thrown or twisted silk, tobacco (whether raw or cured), and blended yarn, man-made filament yarn, man-made fibre yarn, man-made fibre, woollen yarn and woollen blended yarn, washed cotton seed oil, non-refined edible oil, rice bran and oil cake and such other goods as may be notified by the State Government from time to time."

41. It is clear from the reading of the Explanation I that the "raw materials, component parts and any other inputs" do not include exempted goods which are specified in the Schedule. The words Second Schedule was not used in the Explanation. The Government issued another notification on November 9, 1998 clarifying that in Explanation I, for the word "Schedule" the words "Second Schedule" shall be deemed to have been substituted. The notification dated November 9, 1998 should remove any misapprehension in the minds of the assesseees that that entry tax could be imposed on the goods mentioned in the Second Schedule. The fear or apprehension expressed on behalf of the appellants that by impugned notification dated September 23, 1998, the State Government intended to charge entry tax on the items mentioned in the Second Schedule is misplaced. Whatever apprehensions may have been there in the minds of the assesseees have been removed by issuing the subsequent notification dated November 9, 1998. The Government Advocate appearing for the respondent made it clear that the Legislature did not intend to charge entry tax on any of the goods mentioned in the Second Schedule and it may be recorded that entry tax would not be charged on the raw materials, components or inputs which are used in the manufacture of intermediate or finished products mentioned in the Second

Schedule of the Act.

42. It was next contended on behalf of the appellants that the impugned notification to the extent it seeks to impose tax on entry of goods from August 4, 1997 to January 6, 1998 during which period the notifications were not in operation is violative of Articles 14 and 19(1)(g) of the Constitution of India. Similar contention was examined by a division Bench of this Court in W.A. No. 2000 of 1997 and other connected matters dated September 2, 1999 where the contentions were rejected by recording the following reasons :

"The purpose of framing this legislation, i.e., 5(1-A) was to levy the tax on every sale and to give a set-off of the tax paid on previous sale. This Court has taken the interpretation that the set-off of the tax paid also on the previous sale is permissible. By the amendment it is sought to be made clear that set-off to the extent of tax paid will not be permissible. It cannot be disputed that the Legislature has preliminary powers to define the turnover or the taxable turnover or even the computation thereof. The constitutional provision authorises levy of tax on sales as well as purchases. Tax could be levied on sale at single point, multiple point or last point. Even in a case of multiple point of taxation, the Legislature may give the credit of the tax amount already paid or may not give. The provisions of Section 5(1-A) therefore do not suffer from any incompetency in the State Legislature. Once it is considered that the Legislature is competent then that proviso can be made prospectively or retrospectively as held in *Aher Maya Visa and others Vs. State of Gujarat*, and various other decisions of the apex Court. Even the question that an assessee cannot pass over the burden is not relevant for a retrospective legislation. The amendment was brought because of the interpretation of this Court and if retrospective effect is given it cannot be considered a fresh levy. In *Ujagar Prints v. Union of India* : [1989]179ITR317(SC) , the definition of manufacture was amended in the Central Excises and Salt Act and Additional Duties of Excise (Amendment) Act, 1980 with retrospective effect so as to include processing. It was held that it is not an unreasonable restriction on the fundamental right of the processor under Article 19(1)(g) of the Constitution. It is not a case of fresh taxation. Retrospectivity has not been given before the insertion of the provision. The validating proviso by this amendment is only to validate the assessment after removing the defect and lacuna which was pointed out by this Court. The validating Act has validated the actions taken by the assessing authority in framing the assessment. The retrospective operation of the validating Act was within the legislative competence. Whether the exemption should have been given from the date of the decision of this Court till the date the validating Act came into force was the matter of legislative discretion and the courts have no say and as observed above in view of the law laid down by the apex Court, there is bound to be some gap and if the tax is levied for that period it cannot be considered to be beyond the competence of the Legislature. It was because of the judgment given by this Court it had become necessary for the Legislature to intervene and remove the defect pointed out and simply because there was no

proviso in force during the period August 18, 1993 to March 5, 1996 the provisions of Section 5(1-A) cannot be considered to be ultra vires the Constitution.

Appeals are accordingly dismissed."

43. The Supreme Court in para 27 in P. Kannadasan etc, etc. Vs. State of Tamil Nadu and others [OVERRULED], has also taken the same view. This contention is rejected. The notification is to fill in the gap of a short duration and the same cannot be considered to be beyond the competence of the Legislature or violative of Article 14 of the Constitution.

44. Mr. B.V. Acharya, Senior Advocate appearing for one of the appellants, contended that in view of the declaration made by single Judge in para 32(5) (at page 140 of 117 STC) that tax shall not be levied or collected for the period from April 1, 1994 to January 6, 1998 for entry of goods in local area when the goods are brought from other areas of the State of Karnataka and also when the goods have been imported from outside the State of Karnataka and are meant for sale, the notification dated September 23, 1998 becomes ultra vires of Article 404(a) of the Constitution of India and the law declared by this Court in Avinyl Polymers case [1998] 109 STC 26 (Kar) comes into force. In the earlier notification tax was imposed on goods meant for consumption or use. One of the defects pointed out by the division Bench in Avinyl Polymers case [1998] 109 STC 26 (Kar), was that the notifications issued were discriminatory in nature as on the raw materials brought from outside the State of Karnataka tax was levied for entry of goods into the local area whereas for the similar goods produced in the State, no tax had been prescribed. That there was a clear discrimination between the two and therefore it offended the provision of Article 404(a) of the Constitution of India. With the subsequent notification this defect was removed. The learned single Judge in order to remove the hardship has said that the tax shall not be levied or collected for the period from April 1, 1994 to January 6, 1998 for entry of goods in local area which are meant for sale and brought from other areas of the State of Karnataka and also when the goods have been imported from outside the State of Karnataka. Discrimination pointed out by the division Bench was removed by issuing the subsequent notification. But since the appellants had not collected the tax on the goods which were meant for sale, the single Judge in order to remove the hardship held that since the appellants had not collected the tax on the goods meant for sale the tax be not levied or collected for the period from April 1, 1994 to January 6, 1998 for entry of goods in local area on the goods which are brought in the local areas from the other parts of the State and also goods which are imported from outside the State of Karnataka. On the giving of relief the appellants cannot turn around and say that since relief was given by the single Judge, the notification dated September 23, 1998 would be deemed to have been struck down to that extent and therefore the defects which were pointed out by the division Bench in Avinyl Polymers" case [1998] 109 STC 26 (Kar) would come into force cannot be accepted. The single Judge did not

strike down the notification dated September 23, 1998 ; rather he has held that the notification dated September 23, 1998 is a valid piece of legislation. Relief was given regarding collection of tax on goods meant for sale for the said period. It did not amount to the striking down of the notification as contended by the counsel for the appellant.

45. Relying upon the judgment of the Supreme Court in *British Physical Lab India Ltd. Vs. State of Karnataka and Another*, and the judgment of the High Court of A.P. in *Coromandel Fertilisers Ltd. v. Commercial Tax Officer, Company Circle* [1992] 85 STC 212, it was contended by the counsel appearing for the appellants that without prejudice to the other contentions that tax could not be levied or collected for a period from August 4, 1997 to January 6, 1998 as it causes great hardship to the dealers and it is inequitable to do so. After quashing of the notification by this Court on August 4, 1997 the dealers would be put to great hardship if they are required to pay the tax for the period for which the tax was not collected. The Supreme Court in *British Physical Lab India Ltd. Vs. State of Karnataka and Another*, and the A.P. High Court in *Coromandel Fertilisers Ltd. case* [1992] 85 STC 212 SC no doubt has directed the State Government not to collect taxes as it would cause undue hardship. But in the present case none of the petitioners have stated that they had stopped collecting the tax immediately after the striking down of the earlier notification by this Court on August 4, 1997. In the absence of any such averment and in view of the subsequent notification issued, it cannot be assumed that the dealers did not collect the taxes. Intention of the State to charge the tax was clear and immediately after the rendering of the judgment by this Court, the State had filed S.L.Ps along with the application to stay the operation of the order impugned before the Supreme Court. On the refusal to stay the operation of the order of the High Court by the Supreme Court, the Legislature issued the notification on January 7, 1998 levying the tax with prospective effect. In order to recover the tax from April 1, 1994 to August 4, 1997 and from August 5, 1997 to January 6, 1998 the notifications were issued seeking to recover the tax for the period from April 1, 1994 to January 6, 1998. It was sought to be done to recover the tax from April 1, 1994 to August 4, 1997 during which period the notifications which were quashed by the High Court were in operation by rectifying the mistakes pointed out by the High Court and to recover the tax from August 5, 1997 to January 5, 1998 during which period no notification was in operation. This was done to fill in the gap.

46. All contentions raised on behalf of the appellants are negated.

Additional points raised in W.A. Nos. 8191--93 of 1999 :

47. The appellants are having their manufacturing units inside the industrial areas formed by the Karnataka Industrial Area Development Board (for short "KIADB"). The Karnataka Tax on Entry of Goods Act, 1979 (for short, "the Entry Tax Act") is to provide tax on the entry of goods into local areas for consumption, use or sale therein.

48. Section 2(A)(5) of the Entry Tax Act defines local area as follows :

" "Local area" means an area within the limits of a city under the Karnataka Municipal Corporations Act, 1976 (Karnataka Act 14 of 1977), a municipality under the Karnataka Municipalities Act, 1964 (Karnataka Act 22 of 1964), a Notified Area Committee, a Town Board, a Sanitary Board or a Cantonment Board constituted or continued under any law for the time being in force and a Mandal under the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (Karnataka Act 20 of 1985) and panchayat area under the Karnataka Panchayat Raj Act, 1993 (Karnataka Act 14 of 1993)."

49. Section 7(1) of the Entry Tax Act requires every dealer to file monthly returns of turnover and pay in advance the full amount of entry tax on the basis of the goods brought into the local area during the preceding month. Section 7(3) provides that if the return filed u/s 7(1) appears to the assessing authority to be incorrect or incomplete, he may assess the dealer provisionally for that month to the best of his judgment, recording the reasons for such assessment and proceed to demand and collect the tax on the basis of such assessment.

50. According to the appellants as the unit is situated within an industrial area declared u/s 3 of the KIAD Act, the Entry Tax Act is inapplicable to them, They therefore did not file the return as required u/s 7 of the Entry Tax Act. The assessing authority issued notices dated May 22, 1999 u/s 7(3) of the Act proposing to complete the provisional assessment for the period April 1, 1999 to April 30, 1999. In response to the said notice the appellants filed their reply dated May 20, 1999, June 7, 1999 and June 14, 1999 showing the return of the turnover. It was asserted that the appellants were not liable to pay the tax under the Entry Tax Act. The plea taken by the appellants was that as the unit is situated in an industrial area, the same would not fall within the definition of local area as defined under the Entry Tax Act.

51. Elaborating further it was argued the "industrial area" in which the appellant is carrying on its manufacturing and business activities having not been included in the definition of "local area" under Clause (5) of Section 2(A) of the Entry Tax Act, no tax on entry of raw materials and other scheduled goods into the appellant's area can be levied with tax under Entry Tax Act. As the contention raised by the appellant was not accepted, writ petitions were filed seeking a declaration that the industrial areas wherein their units are situated are not local areas for the purposes of Entry Tax Act and therefore the said Act was not applicable to them. Consequential prayer seeking quashing of the proposition notices/provisional assessment orders/final orders of assessment, issued and passed were made in their respective cases.

52. The appellants as well as the respondents agreed before the single Judge that the matter was covered by the decision of the Division Bench in Samyuktha Karnataka Vs. State of Karnataka and others, The only question that arose for

consideration before the single Judge was whether the division Bench in Samyuktha Karnataka Vs. State of Karnataka and others, held that the Entry Tax Act is inapplicable (as contended by appellants) or applicable (as contended by respondents) to the petitioners whose units are situated in KIADB industrial areas, The learned single Judge after examining the judgment in Samyuktha Karnataka Vs. State of Karnataka and others, case thoroughly came to the conclusion that the division Bench had held that the entry of goods in KIADB industrial area is exigible to tax as the said industrial areas fall within the limits of municipal corporation or municipal area or other areas defined as local areas u/s 2(A)(5) of Entry Tax Act.

53. Aggrieved by the order passed by the single Judge these appeals have been filed. In these appeals apart from the points raised which have already been dealt with the two additional points raised are :

1. That the assesseees whose individual units are located in industrial areas declared u/s 3 of the Karnataka Industrial Areas Development Boards Act cannot be subjected to tax under the Entry Tax Act.

2. If the KIADB area which is declared to be an industrial area u/s 3 of the KIADB Act, then any other enactment which covers the larger area within which the KIADB area falls, then the provision of larger area would not be applicable to KIADB area.

54. Both these points are inter related, and therefore the same are taken up together for consideration.

55. As was contended before the learned single Judge, similarly, before us, counsel appearing for the appellants as well as the respondent are agreed that the matter is covered by the decision of the division Bench in Samyuktha Karnataka Vs. State of Karnataka and others, Counsel appearing for both the parties seek to derive support from the judgment of the division Bench in Samyuktha Karnataka Vs. State of Karnataka and others,

56. To settle the controversy, the background in which the matter came up for consideration before the division Bench in Samyuktha Karnataka Vs. State of Karnataka and others, requires to be noticed.

57. The appellants were having their industries in the industrial area at Hosur, Bangalore. The said area is developed and administered by the Karnataka Industrial Area Development Board as declared u/s 3 of the Karnataka Industrial Areas Development Act, 1966. The appellants' goods entered into the Karnataka industrial area. The controversy between the parties was that since the factories located were covered by the Karnataka Industrial Areas Development Act, the same did not fall within the definition of the "local areas" as defined u/s 2(5) of the Entry Tax Act. Alternatively, that, if the KIADB area which is defined as industrial area u/s 3 of the KIAD Act, within which the KIADB area falls then the larger area would not be applicable to the KIADB area. As the contention raised

by the appellants were not accepted by the authorities some of the dealers filed writ petitions which were disposed of by the single Judge in *Falma Laboratories Pvt. Ltd. Vs. State of Karnataka and others*, . It was held that KIADB area is not a "local authority" or a "local board" but all the same since that area falls within the local area as defined u/s 2(5) of the Entry Tax Act, the appellants are liable to pay the tax. The learned single Judge rejected the contention of the dealers on the following reasoning :

"Section 2 of the Act defines the expression "local area". Immediately after the words "local area", the Legislature uses the expression "means" and says area within the limits of city under the Municipal Corporations Act, a municipality under the Municipalities Act, so on and so forth. The expression "means" in a definition clause renders the definition exhaustive of the matter defined. As pointed out in *Craies on Statute law*, where an interpretation clause defines a word to mean a particular thing, the definition is explanatory and prima facie restrictive. In that view of the matter, the words "local area" in the definition can take only what is defined therein, and it cannot take in its fold any other "local body" or local authority administering a particular area. In that view of the matter, it cannot be said KIADB is a local area but the area administered by the Board may come within the limits of a city, a municipality, a mandal or a local panchayat. It is the case of the respondents that KIADB layout in Hosakote is within local limits of Doddaballapur Grama Panchayat, which is a panchayat area under the Panchayat Raj Act. The entry of scheduled goods into panchayat area would definitely attract charging section under the Act. Therefore, the contention of learned counsel for the petitioner that causing entry of scheduled goods into "area" managed by Karnataka Industrial Areas Development Board would not attract levy under Entry Tax Act cannot be accepted."

58. The petitions were rejected as a consequence of the rejection of the contentions. The above decision of the single Judge was a subject-matter of several appeals. Appeals were disposed of by the division Bench and the main judgment was rendered in *Samyuktha Karnataka Vs. State of Karnataka and others*, The division Bench after referring to the decision of the Supreme Court in *Housing Board of Haryana Vs. Haryana Housing Board Employees Union and others*, and the decision in *Union of India (UOI) and Others Vs. Shri R.C. Jain and Others*, and the provisions of the KIAD Act, held that the KIADB could not be held to be a "Local Authority" or "Local Board". But the contention of the appellants therein that the provisions of the Act did not apply to industrial units situated in KIADB industrial areas was rejected with the following observations :

"Therefore, it is held that "industrial area" declared under the Industrial Areas Act is not a "local area" and therefore, its non-inclusion in the definition of "local area" under Clause (5) of Section 2(A) of the Act is of no consequence. It is further held that the appellants are liable to be taxed on entry of goods in the local areas as defined under the said clause."

59. The division Bench summed up the decision on several points and allowed

the appeals in part. The same is extracted below :

"(i) the impugned three notifications did not cease to be operative because of the expiry of the Karnataka Ordinance No. 10 of 1992 by efflux of time postulated under Article 213(2)(a) of the Constitution of India ;

(ii) the second notification cannot be held to be ab initio void or still born for having failed to specify the rate of tax ;

(iii) the issuance of the third notification being corrigendum to the second notification is justifiable under the delegation conferred on the State Government u/s 3 of the Act but only prospectively that is with effect from August 19, 1992 ;

(iv) no tax can be levied on the entry of raw materials in a local area which are meant for use in the manufacture of an intermediate or finished product which is specified in the Second Schedule to the Act ;

(v) the laying clause contained in Section 31 of the Act is directory in nature and its non-compliance does not touch upon the enforceability of the impugned notifications ;

(vi) an "industrial area" declared u/s 3 of the Karnataka Industrial Areas Development Act, 1966 is not a "local area" for the purpose of entry 52 of List II (State List) of the Seventh Schedule to the Constitution of India."

60. In the result, the appeals were allowed in part to the extent indicated above. The authorities under the Act were directed to act in accordance with the law laid down therein. The appellants were permitted to file their objections to the proposition notices, if any, issued against them within two weeks. In case the assessment had been completed, they could prefer appeals within the said period of two weeks with an application for condonation of delay which the appellate authority was directed to dispose of by keeping in view the pendency of the writ petitions and appeals filed before the court.

61. On a careful examination of the judgment we are of the view that the judgment of the division Bench in Samyuktha Karnataka Vs. State of Karnataka and others, is of no assistance to the appellants. The said judgment concludes the points raised in these appeals against the appellants. What the division Bench has held is that industrial areas declared under the industrial areas are not local authorities, but since the industrial area fell within the local area as defined under the Entry Tax Act, the dealers doing their business in the said area were liable to be taxed under the Entry Tax Act. The division Bench first considered the question whether KIADB was a "local authority" and whether the industrial areas established and administered by KIADB was a "local area". The contentions were rejected and it was held that though the industrial area declared under the Industrial Areas Act is not a "local area" but its non-inclusion within the definition of "local area" u/s 2(A)(5) of the Act was of no consequence. Specific finding was recorded that appellants were liable to be taxed on entry of goods into the local areas as defined under the said clause.

62. Whether an "industrial area" is a "local area" as defined under the Entry Tax Act or not is of no consequence. Irrespective of the fact whether an "industrial area" was by itself a "local area" or not, if the industrial area formed part of a municipal corporation area or a municipal area or a panchayat area or other local area as defined u/s 2(A) of the Act, then, any goods brought for consumption, use or sale to the industrial area would become exigible to payment of tax under the Entry Tax Act. If the industrial areas are situated within the municipal area as/ panchayat/local area as defined u/s 2(A), they become exigible to pay the tax as the tax is on the causation of entry of goods into the local area. If the goods are carried after their entry into a local area to a place or an industry which is situated in an industrial area then they do not get exemption from payment of tax simply because goods are taken to an industrial area for consumption, use or sale. The tax becomes exigible as soon as the goods meant for consumption use or sale enter the local area. The appellants could not deny the fact that they did bring the goods into a local area for consumption, use or sale therein. If that be the case, then the appellants become liable to pay the tax. The Division Bench had clearly stated that "it is further held that the appellants are liable to be taxed on entry of goods in the local areas as defined under the said clause", thereby affirming the finding of the learned single Judge. Had that not been the case, the division Bench would not have stated that the appellants were liable to be taxed on entry of goods in a local area as defined under the Entry Tax Act.

63. For the reasons stated above, we do not find any merit in either of the submissions made by the appellants in these set of appeals as well.

64. For the reasons recorded above, we do not find any merit in these appeals and dismiss them with no order as to costs.

65. The appellants who filed the writ petitions on the issuance of proposition notices are permitted to file their objections, if any, against the proposition notices within a period of four weeks from today. In cases where the writ petitions were preferred against the orders of assessment without preferring the appeals provided under the statute, the appellants are permitted to file their appeals within a period of four weeks before the respective appellate authorities. In case objections/appeals are filed within four weeks as directed, then the concerned authorities are directed to dispose them of on merit treating them to be within limitation. This has been done keeping in view the pendency of W.Ps./ W.As in this Court during this period.