
(1993) 04 MAD CK 0057

In the Madras High Court

Case No : Writ Petitions No"s. 6448, 6463, 6464, 6485, 6586, 6877, 7128 to 7132, 8026, 8613, 8741, 10092, 10093, 10482, 10933, 10985 to 10987, 11622, 11623, 12860, 13464, 13468, 13469, 16620, 16925 and 17158 of 1991 and 140, 840, 857, 867, 1244, 1737, 2144, 2860,

Engine Valves Limited

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 06-04-1993

Acts Referred:

Central Sales Tax Act, 1956 — Section 2, 3, 6(1A), 8, 8(2)
Tamil Nadu General Sales Tax Act, 1959 — Section 21A

Citation : (1993) 43 ECC 159

Hon'ble Judges : Raju, J;Abdul Hadi, J

Bench : Division Bench

Advocate : C. Natarajan, A.C. Muthanna and S.V. Subramaniam, s, R.L. Ramani, N. Ganapathi and P.S. Janarthana Raja, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader, for the Respondent

Judgement

Raju, J.—The above batch of writ petitions involve the interpretation of the scope of section 8(2-A) and section 8(2)(b) of the Central Sales Tax Act, 1956, hereinafter referred to as "the Central Act" and more particularly as to whether the additional sales tax and surcharge levied under the Tamil Nadu Additional Sales Tax Act, 1970 (Act 14 of 1970) and the Tamil Nadu Sales Tax (Surcharge) Act, 1971 (Act 24 of 1971) hereinafter referred to as "the Additional Sales Tax Act" and "the Surcharge Act" respectively are attracted and become leviable in respect of turnover not covered by "C" and "D" forms and assessable to tax under the Central Act. The majority of the petitioners have come up before this Court challenging the show cause notice issued by the concerned assessing officers to bring to assessment, either afresh or by way of reassessment the turnover relating to inter-State sales not covered by the "C" or "D" forms at the rates inclusive of additional sales tax and surcharge in addition to the rates of such taxation that was and has to be levied in the light of the Central Act read

with the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as the "local sales tax law". Some of the writ petitions have been filed challenging the final orders of assessment on the above basis, contending that the normal statutory remedies provided are neither effective nor appropriate.

2. The petitioners are all assesseees under the Central Sales Tax Act, 1956 and dealers in different commodities in the course of inter-State trade and commerce. In the majority of cases filed, the petitioners were earlier assessed finally to tax under the Central Act. They had different categories of turnover and in these cases, their concern mainly is with reference to the turnover not covered by proper or valid "C" or "D" forms and is, therefore, subject to the general rate to be determined applying section 8(2)(b) of the Central Act. The grievance of the petitioners is that the Special Commissioner and Commissioner of Commercial Taxes, Madras, has clarified as late as November, 1989, that there is no liability of surcharge and additional tax in respect of inter-State sales, but yet on account of a clarification said to have been issued by the Government of India that wherever there is provision for levy of additional sales tax and surcharge, they also have to be determined and included in arriving at the rate of tax to be calculated in terms of section 8(2)(b) of the Central Act, the office of the Commissioner of Commercial Taxes, Madras, issued revised instructions to include both the additional tax and surcharge leviable on the sale or purchase of goods under the State Act for determining the rate of Central sales tax and proceeded with reassessment/revision of assessment even by reopening past assessments. In the light of the said revised instructions, the respective assessing authorities have either issued notices or passed final orders after due notice and opportunity by revising the rate of taxation in respect of turnover not covered by valid "C" and "D" forms by adding to the rate of tax, the additional tax as well as the surcharge leviable.

3. Mr. C. Natarajan, one of the learned counsel appearing for the petitioners, spearheaded the challenge and contended that the additional tax and surcharge leviable under the respective enactments are levies for special categories of dealers or places of transaction and consequently they ceased to be a tax to which the goods are subjected to generally. It is the contention of the learned counsel that having regard to the language of section 8(2-A) of the Central Act with particular reference to the words "tax generally", the levy under Additional Sales Tax Act or Surcharge Act cannot be said to be such "tax generally" levied and, therefore, there is no scope for including the same in the rate of tax leviable under the Central Act. The learned counsel also contended that the additional sales tax is not a tax levied on the goods as a rate and is really one levied on categories of dealers depending upon the quantum of their turnover and likewise the surcharge levied is not a sales tax levied as the rates on the goods but at any rate up to September 5, 1991 (the date of coming into force of the Tamil Nadu Act 36 of 1991), it was nothing but a percentage of tax under the principal Act depending upon the place of sales or the locality concerned with reference to the place of residence of dealer. Argued the learned counsel further that the disability

created and restriction in passing of the said rates to the purchaser militates against those levies being held to be general tax under the law relating to the levy of sales tax.

4. M/s. A. C. Muthanna, S. V. Subramaniam, learned senior counsel and M/s. R. L. Ramani, N. Ganapathi and P. S. Janarthana Raja, learned counsel adopted the submissions made by Mr. C. Natarajan in addition to highlighting one or other special features of the cases in which they were appearing. Mr. R. L. Ramani, learned counsel, contended, that the authorities cannot go behind the circular orders earlier issued that the additional sales tax and surcharge will not be taken into account for purposes of levy under the Central Sales Tax Act and that the show cause notice issued and the final order that was passed pursuant thereto differed and varied in W.P. No. 7131 of 1991 in that what was not proposed was also dealt with to the detriment of the assessee denying him an opportunity to show cause against such proposals. Mr. S. V. Subramaniam, learned senior counsel, contended that some of the assessees acted on the representations of the circulars and did not collect the tax at all and that, therefore, the department cannot go behind the same and proceed to reassess contrary to the earlier instructions. Mr. N. Ganapathi, learned counsel, contended that the levy of additional sales tax and surcharge are contingent liabilities with graded scales and if allowed to be included in the rate of taxation for purposes of levy under the Central Act, will lead to invidious discrimination among persons who are not equals. Mr. Janarthana Raja, learned counsel, contended that apart from the general issues, some of the cases in which he is appearing involve other issues and there is no controversy before us that such issues could be agitated before the authorities constituted under the Act. Mr. A. C. Muthanna, learned senior counsel, also contended that in cases of assessees represented by him also issues other than the ambit and relative scope of section 8(2-A) and section 8(2) (b) of the Central Act are involved for consideration.

5. Mrs. Chitra Venkataraman, learned Additional Government Pleader (Taxes), contended that the decision of the apex Court in *Deputy Commissioner of Sales Tax v. Aysha Hosiery Factory (P) Ltd.* [1992] 85 STC 106 squarely applies to the cases on hand and answers the points raised, against the assessees and that the distinctions sought to be made by the learned counsel appearing for the petitioners are of no substance and do not render inapplicable the ratio of the said decision of the apex Court to the cases on hand. While relying upon the decision in *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Assistant Commissioner of Sales Tax* [1974] 33 STC 219 of the apex Court, it is contended for the respondents, that there was nothing wrong in section 8(2)(b) of the Central Act providing for adoption of State rate of tax on intra-State sales to inter-State sales if it is higher than 10 per cent since section 8(2)(b) was enacted with a view to prevent evasion of payment of Central sales tax and that the rate of Central sales tax should be not less than the rate of local sales tax in the appropriate State. Reliance was also placed on section 2(i) of the Central Act to contend that the Additional Sales Tax Act and Surcharge Act would answer the

description of sales tax law providing for the levy of taxes on the sale or purchase of goods generally.

6. The relevant provisions of the Central Act may be noticed before advertng to a consideration of the various submissions made.

"Section 2(i) : "Sales tax law" means any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf and "general sales tax law" means the law for the time being in force in any State or part thereof which provides for the levy of tax on the sale or purchase of goods generally."

"Section 8 : Rate of tax on sales in the course of inter-State trade or commerce.
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(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1) -

.....

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher;

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law."

"Section 8(2-A) : Notwithstanding anything contained in sub-section (1-A) of section 6 or sub-section (1) or clause (b) of sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation. - For the purposes of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State, if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods."

7. The learned counsel appearing for the petitioners and the Revenue referred to some of the decided cases both of the Supreme Court of India and some of the High Courts, and it would be appropriate to refer to them before advertng to the

actual consideration of the issues raised for our determination. The decision reported in Deputy Commissioner of Sales Tax Vs. Aysha Hosiery Factory (P) Ltd. and Others, directly dealt with an identical issue of the nature before us, except that it was with respect to the Central Act and the Kerala General Sales Tax Act, 1963. In that case also, the assessee questioned the inclusion of the additional sales tax levied in respect of their inter-State sales on the ground that the levy under the Kerala Additional Sales Tax Act is not and could not be considered as a levy "under the sales tax law of the appropriate State" within the meaning of section 8(2-A) of the Central Act and for the purpose of levying tax in view of the said section 8(2-A) only the rate of tax as per the Kerala General Sales Tax Act, shall be taken into account. While repelling the said challenge, the apex Court held as hereunder :

"In all these appeals the inter-State sales in question which are sought to be taxed admittedly do not fall under sub-section (1) or clause (a) of sub-section (2) of section 8 of the Central Sales Tax Act. The sales were of goods other than the declared goods, therefore, under clause (b) of sub-section (2) of section 8 the tax payable by the dealer on his turnover shall be calculated at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods inside the State whichever is higher. However, sub-section (2-A) of this section states that notwithstanding anything contained in clause (b) of sub-section (2) the tax payable under the Central Sales Tax Act by the dealer where the intra-State sale of the same under the "sales tax law" of the State is "exempt from tax generally or subject to tax generally at a rate which is lower than four per cent shall be nil or, as the case may be, shall be calculated at the lower rate". Thus if an intra-State sale by the dealer is exempt then his inter-State sale also will be exempt. If the intra-State sale is taxed at a rate which is lower than four per cent, then his inter-State sale of the same commodity shall also have to be taxed at the lower rate applicable in the State. But where the rate of tax applicable to intra-State sale was more than four per cent then the rate applicable for inter-State sale will be 10 per cent or the rate applicable for the local sale whichever is higher. The question for consideration is as to whether the additional tax levied under the Kerala Additional Sales Tax Act is also to be considered as sales tax under the "sales tax law" of the State. The question could not have arisen but for the fact that this additional levy came to be imposed under a separate Act. Had the additional sales tax been imposed by simply amending the rates in the original Act the question would not have arisen. But we are of the view that this makes no difference and it is merely a matter of style of legislation. The additional sales tax levied under the Additional Sales Tax Act is also sales tax of the same category as in the original Act. The Kerala Additional Sales Tax Act provides that "The tax payable under the Kerala General Sales Tax Act, 1963 (15 of 1963) (hereinafter referred to as "the State Act") for every financial year commencing from the financial year 1978-79 shall be increased by 10 per cent of such tax". Instead of increasing the rate of tax for each of the commodities which are covered by the Kerala General Sales Tax Act by one comprehensive

provision, the tax is increased by 10 per cent over the rate provided under the original Act in respect of all the commodities the sale or purchase of which are taxable. Both take the form of sales tax and in the case of assessment of local sales it makes no difference whether it is called tax and additional tax or one higher percentage of tax. In truth and effect it is a levy of tax on the sales or purchases of the dealers. However, it was contended on behalf of the assesseees that the words "under the sales tax law of the appropriate State" in section 8(2-A) of the Central Sales Tax Act refers to only the General Sales Tax Act provisions and not the Additional Sales Tax Act provisions. Section 2(i) of the Central Sales Tax Act defines "sales tax law" as meaning "any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf, and "general sales tax law" means the law for the time being in force in any State or part thereof which provides for the levy of tax on the sale or purchase of goods generally". The definition does not say that the sales tax law or the general sales tax law which levies taxes on sale or purchase of goods shall be under a single enactment. What is relevant is whether the tax partakes the character of sales tax or purchase tax. Any other construction would restrict the applicability of section 8(2-A) of the Central Sales Tax Act to the sales tax law that was in force in 1956 when the Central Sales Tax Act came into force and any amendment to the local law would not have any effect on the applicability of that provision. We do not see any logic or reason for such a construction. What is relevant is if a particular intra-State sale transaction in a particular assessment year is subjected to a particular rate of tax that automatically gets reflected in and had to be taken into consideration for finding the rate and the applicability of section 8(2-A) or section 8(2)(b) of the Central Sales Tax Act. As already stated if instead of an Additional Sales Tax Act the Legislature has simply amended the Kerala General Sales Tax Act by varying the rate automatically that will come in for consideration and application of the provisions of section 8(2)(b) and 8(2-A) of the Central Sales Tax Act. For this purpose amendment of the State Act is not considered as an amendment of the Central Sales Tax Act. But since the rate applicable to the intra-State sales at a particular point of time is a relevant consideration for finding out the rate of tax on inter-State sale the amendment of the State Act automatically has the effect of changing the rate provided u/s 8 of the Central Sales Tax Act. That is not to say that the Central Act is amended by the State Legislature. The rates of tax in certain cases under the Central Act are linked to the rates fixed under the local Acts and that is how the amendment of the local Acts affects the rates under the Central Act. It is still the Central Act that is applied but only for purposes of fixing the rate of tax leviable under the Central Sales Tax Act the provisions of the local Act are looked into. So construed we have no doubt that in all cases where the rate of tax under the local law is less than four per cent that will be the rate applicable to the inter-State sale of the same commodity if the provisions of section 8(2-A) of the Central Sales Tax Act are applicable. The dealer undoubtedly would be paying at the rate as enhanced by the Additional Sales Tax Act and therefore that will be the rate, that

is including the additional tax, that is to be taken into consideration for finding out the applicability of section 8(2-A) of the Central Sales Tax Act and the rate of tax in respect of his inter-State sales turnover. There could be, therefore, no doubt that the assessee-respondents in all these cases are liable to pay sales tax at the rate including the additional sales tax in respect of their inter-State sale under the Central sales tax assessment orders."

8. The above decision of the apex Court was from the decision of a Division Bench of the Kerala High Court in *Assistant Commissioner (Assessment), Sales Tax v. Janatha Expeller Company* [1987] 64 STC 435 and the decision of the Kerala High Court was reversed by the apex Court. Even earlier to that, a Division Bench of the Gujarat High Court differed from the decision of the Kerala High Court in the decision in *State of Gujarat v. Meghdoot Laminard Ltd.* [1992] 86 STC 295 and came to the conclusion that the additional sales tax would also be included notwithstanding the fact that a specific provision excluded additional tax from the definition of "tax". A Division Bench of the Andhra Pradesh High Court also held in *Sree Satyanarayana Spinning Mills Ltd. v. Commercial Tax Officer* [1988] 68 STC 95 that additional sales tax and surcharge must be taken into account while determining the rate of tax payable u/s 8(2-A) and section 8(2)(b) of the Central Act. In coming to such a conclusion, the Andhra Pradesh High Court not only dissented from the decision in *State of Karnataka v. P.K.P. Abdul Hakeem & Co.* [1985] 59 STC 203, but also distinguished the decision of the Kerala High Court reported in [1987] 64 STC 435 [*Assistant Commissioner (Assessment), Sales Tax v. Janatha Expeller Company*]. The decision in *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, was referred to for the purpose of bringing to our notice the observation that the definition of "gross turnover" in section 2(g) of the Central Act was adopted not for the purpose of bringing to surcharge inter-State sales or outside sales or sales in the course of import into or export of goods out of the territory of India, but is only for the purpose of classifying dealers within the State and to identify the class of dealers liable to pay such surcharge and for the purpose of classifying those who have the capacity to bear the burden of additional sales tax. The decision in *Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others*, , was referred to for highlighting the stand that unlike a machinery provision, a charging provision has to be construed strictly.

9. The decision of the Supreme Court of India in *S. Kodar v. State of Kerala* [1974] 34 STC 73 which considered and repelled a challenge to the constitutional validity of the additional sales tax levied under the Tamil Nadu Additional Sales Tax Act, 1970, dealt with the nature and character of the said levy and opined as hereunder :

"As regards the contention that the State Legislature has no power to pass the measure, we are of the view that the additional tax is really a tax on the sale of goods. The object of the Act, as is clear from its provisions, is to increase the tax on the sale or purchase of goods imposed by the Tamil Nadu General Sales Tax

Act, 1959, and the fact that the quantum of the additional tax is determined with reference to the sales tax imposed would not alter its character. It may be noted that the additional tax is to be imposed only if the turnover of a dealer exceeds Rs. 10 lakhs. It is in reality a tax on the aggregate of sales effected by a dealer during a year. The additional tax, therefore, is an enhancement in the rate of the sales tax when the turnover of a dealer exceeds Rs. 10 lakhs a year and it is a tax on the aggregate of the sales effected by the dealer during the year."

10. In *Indian Aluminium Cables Ltd. v. State of Haryana* [1976] 38 STC 108, the apex Court held that the words "exempt from tax generally" meant that the goods should be totally exempt from tax before similar exemption from tax under the Central Act can be claimed and where the exemption from taxation is conferred subject to certain conditions or only in certain circumstances, it will not answer the description of "exemption from tax generally". The same view was taken by a Division Bench of this Court in *M. A. Abbas and Co. v. State of Madras* [1962] 13 STC 433 holding that the expression would be satisfied only if the goods are totally exempt and where the exemption from taxation is conferred on conditions such as that the turnover of a dealer under the local sales tax law is below the minimum prescribed or that the tax will attract to a transaction only in certain circumstances, it would not amount to an exemption from tax generally. In *Phipson and Company (Private) Ltd. v. Government of Madras* [1964] 15 STC 740, a Division Bench of this Court which construed section 8(2)(b) of the Central Act, held that the rate of tax applicable as referred to in section 8(2)(b) is the general rate prescribed by section 3 and not the special rate imposed in certain special circumstances. The Division Bench, in coming to such a conclusion noticed the peculiar nature and feature of the levy u/s 21-A of the Tamil Nadu Prohibition Act, 1947 and observed that the provisions of section 21-A of the Prohibition Act does not deal with a sale by one dealer to another dealer or by a wholesaler to a retailer and, therefore, the said levy is a special category of levy imposed in certain special circumstances. In *State of Madras v. N. K. Nataraja Mudaliar* [1968] 22 STC 376, the apex Court held that by virtue of section 9(1) of the Central Act, the Central sales tax has to be levied in the same manner as under the Tamil Nadu General Sales Tax Act and the prevalence of different rates of sales tax in the States which have been adopted by the Central Sales Tax Act for the purpose of levy under the Act is not determinative of the giving of preference or making a discrimination.

11. In *A.V. Fernandez Vs. The State of Kerala*, , the Supreme Court held, that in determining the liability of a subject to tax one must have regard to the strict letter of the law and that no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature. In *Ramnarayan Mor and Another Vs. State of Maharashtra*, , it was held that the primary duty of a court of law is to find out the natural meaning of the words in the context in which they occur, the context including any other phrases in the Act which may throw light on the sense in which the makers of the Act used the words in dispute. The decision in *First Income Tax Officer, Salem Vs. Short Brothers (P) Ltd.*, was relied

upon to emphasise that the legislative history can also be referred to for ascertaining the object of the provision. In *S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others*, the scope and object of an explanation has been declared to be as hereunder :

"(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

In *M. K. Salpekar v. Sunit Kumar Shamsunder Chaudhari* AIR 1988 SC 1841, it was held that an explanation to a clause cannot be so construed as to narrow down the scope of the main provision. A passage at page 148 of *Principles of Statutory Interpretation* by Justice G. P. Singh - 5th Edition, was read to highlight the role of an explanation in a provision. It is stated therein that an explanation normally should be so read as to harmonise with and clear up any ambiguity in the main section and should not be so construed as to widen the ambit of the section. Yet another passage from the same book at page 459 was also read to highlight that if the Legislature fails to express itself clearly and the tax-payer escapes by not being brought within the letter of the law, no question of unjustness as such arises since equitable considerations are not relevant in construing a taxing statute as such as mere logic or reason alone could be of any avail.

12. Reference has also been made to some of the dictionaries to highlight the meaning of certain words such as "general" and "special". The *New Lexicon - Webster's Dictionary*, of the English language defines the word "general" to mean pertaining to a whole or to most of its parts, not particular, not local; and the word "special" to mean - particular in kind; serving a particular purpose; The *Law Lexicon* - by P. Ramanatha Iyer defines the word "general" to mean : principal; universal; common to all or to the greatest number; relating to a genus or kind; pertaining to a whole class or order. In the book *"Words and Phrases"* (Permanent Edition), Volume 18, the word "generally" is stated to mean "in a general manner"; collectively; as a whole; without omissions; universally;

It is also stated to mean "For the most part; commonly; extensively, though not universally"; It is also mentioned that the use of the word "generally" imports the existence of exceptions. In the book - Corpus Juris Secundum - Volume 38 - "general tax" is referred to as distinguished from "special tax". In Black's Law Dictionary - our attention has been invited to a passage in which it is stated that a statute is general when it operates uniformly on all persons and things of a class and such classification is natural, reasonable and appropriate to the purpose sought to be accomplished.

13. The decision in *Byram Pestonji Gariwala Vs. Union Bank of India and others*, was cited for the position that law should be altered deliberately rather than casually and that Legislature does not make radical changes in law by a side wind but only by measured and considered provisions. The decision in *Additional District Magistrate, Jabalpur Vs. Shivakant Shukla*, and particularly paras 546 and 547 were referred to for the position that when observations in a judgment are taken up for consideration, care must be taken to relate the observations to the precise issue before the court unless it is made clear that the intended remarks were of wide ambit.

14. We have carefully considered the submissions of the learned counsel appearing on either side and in our view, the decisions of the apex Court reported in [1992] 85 STC 106 [*Deputy Commissioner of Sales Tax v. Aysha Hosiery Factory (P.) Ltd.*] and [1974] 34 STC 73 (*S. Kodar v. State of Kerala*) squarely answer the issue and the subtle differences and distinguishing features sought to be made out to exclude their application to the cases before us are neither substantial nor genuine and relevant. They are too technical and do not constitute any marked difference in substance or spirit so as to warrant a different consideration and treatment. Having regard to the object as well as the provisions themselves governing the levy of additional sales tax, and the further fact that it was also held to be a tax on the turnover relating to sale of goods, the plea now made for the petitioners to the contra does not merit acceptance. The fact that such levy is imposed by a separate enactment and not as part of the general sales tax law of the appropriate State was also held to be wholly irrelevant. The levy of surcharge is also part of and partakes the character of a levy of sales tax on the turnover relating to sale of goods. The mere fact that the measure or computation of the tax has been declared to be made with reference to a particular percentage of the tax payable by a dealer or of a percentage of the taxable turnover does not alter the character of the levy and make it any the less a levy of sales tax on the turnover relating to sale or purchase of goods. We are, therefore, of the view that the ratio of the above two decisions of the apex Court squarely govern the issue, in this regard, in favour of the Revenue and it is futile for the petitioners to contend that the additional sales tax and surcharge levied cannot be included in the computation of the rates of tax under the Central Sales Tax Act, 1956. The claim that additional sales tax and surcharge would not fall under "rate" or "tax" generally, envisaged u/s 8(2)(b) and section 8(2-A) of the Central Act, therefore, has no substance whatsoever and does not

merit our acceptance. Even that apart, the words "sales tax law" of the appropriate State, in our view, will encompass or take within its fold any law providing for the levy of sales tax and not necessarily the general sales tax law only. The definition in clause 2(i) of the Central Act and the clarification made in section 8(2-A) of the Central Act to include any rate, whether called tax or fee or by any other name make this position not only clear, but places it beyond doubt or controversy. As opined by the apex Court what is relevant is whether the tax partakes the character of sales tax or purchase tax and in our view there can be no controversy or doubt whatsoever of the additional sales tax and surcharge being one such.

15. The contention raised for the petitioners that u/s 8(2)(b) as well as section 8(2-A) of the Central Act, the rate applicable should be with reference to goods sold and that the additional sales tax and surcharge do not conform to such requirement, though ingenuously put in an attractive manner has no substance or merit whatsoever. Such a plea merely proceeds upon an assumption or hypothesis that the additional sales tax and surcharge are not levies on the sale of goods. As noticed earlier, the mere fact that the measure of additional sales tax and surcharge are expressed to be with reference to the tax payable or turnover of the dealer concerned, they do not cease to be a levy on sales of goods and it cannot be ignored that such turnover or tax payable is itself only in respect of the sale or purchase of goods by a dealer and not otherwise. The decisions relied upon for the petitioners, including the one reported in [1964] 15 STC 740 [Phipson and Company (Private) Ltd. v. Government of Madras] of a Division Bench of this Court, are not directly on point and at any rate cannot be pressed into service in their favour after the categorical pronouncement of the apex Court reported in [1992] 85 STC 106 [Deputy Commissioner of Sales Tax v. Aysha Hosiery Factory (P.) Ltd.]. Except the difference in the language employed by the draftsman of the Kerala Acts and the Tamil Nadu Acts, we do not see any basic or substantial difference in the purport or character of the levy or its incidence and, therefore, the levy of additional sales tax and surcharge under the Tamil Nadu Acts appear to be, in our view, a levy on the sale of goods only and not of anything else. The tax liability under the Act is attracted on all sales of goods and the turnover determined for computing the tax liability is nothing but an aggregate of the sale prices received and receivable in respect of sale of goods in the course of inter-State trade or commerce. Viewed thus, in our view, there is no meaning or merit in the so-called difference attempted to be made out for the petitioners in order to exclude the application of the ratio laid down in the decision reported in [1992] 85 STC 106 [Deputy Commissioner of Sales Tax v. Aysha Hosiery Factory (P.) Ltd.]. The emphasis that the surcharge is levied depending upon the place of sale or the place of business of the assessee concerned is equally bereft of any significance or substance in view of the basic and essential character of the levy itself. Classification of dealers on the basis of their turnover as well as the geographical situation, is meant to make the burden of the tax heavier in proportion to the increase in business or business prospects

and that does not by itself affect or alter the character of the levy as such.

16. The contentions based upon the plea of estoppel has no meaning whatsoever. The clarifications or instructions issued on the administrative side particularly not in exercise of any statutory power or provision as such, cannot be said to operate as any bar or disabling factor to levy or collect the tax otherwise due, in accordance with law, by the competent assessing authority. The plea of estoppel has been often held not to prevent the Government from acting in discharge of its duties under the law or against the exercise of legislative power of the State. When the statute, as it stands entitled the State to levy and collect the tax it is no answer in law to contend that some authority has given instructions that a particular transaction which was taxable does not attract tax. There can be no estoppel against statute and the clear mandate of the statute.

17. The contention that the inclusion of the rate of additional sales tax and the surcharge for the purpose of determining the rate of tax under the Central Act would result in discrimination and varying burden and liability being placed on different dealers is wholly untenable and is devoid of merit. The further plea that there cannot be an indirect and non-passable tax levy under the Central Act is equally not of any merit. These aspects have often been raised and repelled by court including the apex Court and except referring to some of those decisions, the submissions before us in this regard do not call for any consideration at length or in greater detail. The object and the idea behind section 8(2-A) has been held to be to ensure uniformity between the tax charged and levied under the Central Act as well as the local sales tax law and between an intra-State sale and inter-State sale. The very challenge to the levy of additional tax on the ground of alleged violation of article 14 of the Constitution of India has been repelled in the decision reported in [1974] 34 STC 73 (S. Kodar v. State of Kerala) by the apex Court. The fact that the levy is on a graded sales does not render it arbitrary or unreasonable, particularly having regard to the fact that such classification has been always held to be valid in law. It is all the more so when the pattern and manner of levy itself has been upheld by the apex Court, as indicated supra by repelling the very plea of discrimination. Even that apart, the prevalence of different rates of taxation on account of the adoption of the rates under the local sales tax law has been held not to be discriminatory (vide State of Madras Vs. N.K. Nataraja Mudaliar, . The difference in the incidence of taxation due to the inclusion of the additional sales tax and surcharge, is purely on account of the difference in the magnitude of business or the place of business depending upon which those rates get attracted and the slab or gradation of levy provided under the Additional Sales Tax Act and Surcharge Act. We find nothing unreasonable or arbitrary in the exercise of the discretion by the Legislature which had indisputably the power to select persons, transactions and objects and apply different methods or different rates of taxation to deal with different situations. Though even fiscal statutes are not immune from a challenge based on article 14 of the Constitution of India, it is by now well-settled that a greater amount of latitude is vested with the Legislature in picking and choosing

the objects as well as methods and even rates of taxation, so long as it appears to be a reasonable exercise of power. The petitioners have not substantiated before us that the exercise of power in the instant case is unreasonable except inviting our attention to the difference in the rates of taxation which each one of them may have to pay. The grievance voiced overlooks the inherent differences among them which have often been held to be sufficient to treat them differently for purposes of taxation. Consequently, we do not see any merit in the plea of discrimination as well.

18. So far as the other issues on individual merits said to be involved in respect of the peculiar facts and circumstances of some of the cases are concerned, we desist from going into any one of them since they involve verification and determination of the facts relating to the assessee with particular reference to the individual assessment records and that such questions have to be more appropriately agitated before and gone into by the authorities constituted under the Act.

19. So far as W.P. No. 7131 of 1991 is concerned, the individual issue raised is a peculiar one and deserves to be sustained without relegating the adjudication of the grievance to the authorities. Mr. R. L. Ramani, learned counsel appearing for the petitioner, invited our attention to the pre-assessment notice dated December 20, 1990 and the final order of assessment dated March 27, 1991, made in respect of the petitioner for the assessment year 1989-90 under the Central Sales Tax Act. It could be seen that the ultimate assessment order passed is not only different from the proposals contained in the pre-assessment notice with reference to the rates of tax, but specifically by overwritings the assessing officer included additional sales tax, surcharge and additional surcharge. A cursory perusal of the said order of assessment disclose that the grievance of denial of an effective opportunity and violation of the principles of natural justice in this regard is well merited and deserves to be sustained even by us in these proceedings. So far as the writ petition referred to above is concerned, we are of the view, that the impugned order of assessment dated March 27, 1991, is liable to be and is hereby quashed with liberty, of course, to the assessing officer concerned to proceed in the matter afresh after properly disclosing the proposals with due opportunity to the assessee to show-cause against the same and to proceed in the matter thereafter in accordance with law. W.P. No. 7131 of 1991 is, therefore, partly allowed for the reasons stated above with liberty to the assessing officer to proceed in the matter afresh in accordance with law.

20. As far as the other writ petitions are concerned which involve the consideration of the individual merits of the claims, we are of the view, that the issue of certain directions in the matter would sufficiently take care of the rights of the assessee as well as the department. On an overall consideration in the matter, we are of the view that wherever the petitioners have approached this Court at the stage of show-cause notice, they will have six weeks" time from this

date to make their representations against such show-cause notices, raising all such grounds as are available to them in law and the assessing officers concerned shall be at liberty to proceed in the matter further in accordance with law and in the light of our decision in the present batch of cases. So far as the cases in which the writ petitions have been filed against final orders are concerned, we direct that the period of limitation for filing statutory appeals or invoking other remedies under the Act against such impugned orders to commence running against the petitioners only from this date and the respective petitioners shall be at liberty to pursue their remedies in respect of such other issues as are not dealt with by us and the concerned statutory authorities shall consider the claims of the petitioners on their own merits and in accordance with law.

21. For all the reasons stated above, the above writ petitions, except W.P. No. 7131 of 1991, shall stand dismissed subject to the directions and liberties granted to the assesseees to file their objections/representations against the show-cause notice in vindication of their rights and pursue statutory remedies under the Act in respect of issues not dealt with or considered by us in this Order. W.P. No. 7131 of 1991 is partly allowed with liberty to the assessing officer concerned to proceed in the matter afresh in accordance with law and in the light of our directions in this order. No costs.

22. W.P. No. 7131 of 1991 partly allowed and other writ petitions dismissed.