

(1981) 03 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No's. 16614 to 16631 of 1979 and 5375 to 5377 and 8579 of 1976

Gurusiddappa Nurandappa Uppin and etc.

APPELLANT

Vs

State of Karnataka and Another etc.

RESPONDENT

Date of Decision : 24-03-1981

Acts Referred:

Karnataka Forest Act, 1963 — Section 98 A, 98 A (1), 98 A (2), 98 B (2)
Karnataka Forest Rules, 1969 — Rule 102, 85, 89

Citation : AIR 1981 Kar 216

Hon'ble Judges : M.K. Srinivas Iyengar, J;M. Rama Jois, J

Bench : Division Bench

Advocate : S.S. Ujjannavar, A. Jayaram and T.S. Pai, for the Appellant; S.G. Doddakalegowda, Govt. Pleader, for the Respondent

Judgement

Rama Jois, J.—In this batch of 22 writ petitions filed by the Forest Contractors, the following questions of law, arise for consideration:

(i) Whether Section 98A of the Karnataka Forest Act, 1963 (hereinafter referred to as "the Act") inserted into it by the Karnataka Forest (Amendment) Act, 1976 with effect from 24-12-1975, which imposes a tax called forest development tax on the consideration paid for the forest produce disposed of by the State Government, is unconstitutional?

(ii) Whether the tax imposed by Section 98A of the Act which came into force from 24-12-1975 is leviable on the balance of the amount of consideration due and paid after that date, in respect of the sale of forest produce concluded before 24-12-1975?

2. M Section 93A was introduced into the Act by the Karnataka Forest (Amendment) Ordinance, 1975 promulgated by the Governor, in the first instance. Subsequently, the Ordinance was replaced by the Amendment Act 15 of 1976. Section 98A reads as follows:-

"98A. Levy of Forest Development Tax.-(1) Notwithstanding anything contained in this Act, in respect of forest produce disposed of by the State Government by sale or otherwise, there shall be levied and paid to the State Government a tax at the rate of five per cent on the amount of consideration paid there for.

(2) The said tax shall be collected along with such consideration.

(3) It is hereby declared that the said tax shall be in addition to and not in lieu of any tax payable in respect of such produce under any other law in force."

Rate of tax was increased from five percent to eight per cent by an amendment made to Section 98A(1), by Act, 14 of 1980.

(ii) The petitioners, who are forest contractors, have been called upon" to pay the tax on the amount of consideration payable by them to the State Government towards the forest produce disposed of in their favour at the rate prescribed in the above section,

(iii) In W. P. Nos. 16614 to 16631 of 1979, the contracts for the disposal of forest produce have been entered into by the petitioners on dates subsequent to the date of introduction of Section 98A. The contracts entered into for the same purpose by the petitioners in other petitions were earlier to the insertion of Section 98A into the Act. The petitioners in the first batch of writ petitions were called upon to pay tax u/s 98A of the Act at the rate prescribed in the said section on the whole of the consideration amount. In the other writ petitions in which the contracts were entered into, prior to 24-12-1975, the petitioners were called upon to pay tax u/s 98A on the balance of the consideration which was payable after 24-12-1975.

3. Shri S. S. Ujjannavar, learned Counsel appearing for the petitioners in the first batch of writ petitions submitted that Section 98-A of the Act was unconstitutional and therefore it should be declared invalid and made unenforceable. In support of this submission he raised the following contentions:

(i) Section 98-A of the Act is invalid for want of legislative competence:

(ii) The said section suffers from the vice of double taxation and therefore invalid;

(iii) The impost u/s 98-A is in the nature of fee or compensatory tax and it is invalid for want of quid pro quo.

(iv) The levy u/s 98-A is in substance an excise duty and therefore it was not competent for the State legislature to enact the section;

(v) Section 98-A lacks essential ingredients of tax law, namely, provision for levy and assessment of tax as also the designation of the authority to collect the tax are not provided for and therefore, the section is invalid; and

(vi) Section 98-A is violative of Article 14 of the Constitution as the tax is required to be paid only on the forest produce purchased from the State and not on the forest produce purchased from private individuals.

Shri Tukaram Pai and Shri Jayaram, learned counsel for petitioner in other petitions supported the above contentions urged for the petitioners in the first batch of writ petitions and in addition they urged the following contention:

The levy u/s 98-A is not applicable to the contracts concluded prior to "24-12-1975 "and just because some Instalments of the sale price were payable after that date, the transaction could not be termed as -sales to that extent, effected after the coming into force of Section" 98-A and no tax could be demanded on such amount payable after 24-12-1915.

4. In support of the first contention the submission made by the learned counsel is as follows : In the scheme of distribution and conferment of legislative power under the Constitution, a tax can be imposed by the State Legislature if only a specific power is conferred on it. This position is clear from the decisions of the Supreme Court in *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, Entry 54 of List II on which the State relies, confers the power on the State Legislature to levy tax on sale-or purchase of goods. The levy u/s 98-A is not only on sales but also on disposal of forest produce otherwise than by sale. Disposal of forest produce made by the State in favour of the petitioners was not by sale, but it was either a licence for exploitation of forest produce or in the nature of grant of privileges which is specifically adverted to in Section 26 of the Act. Therefore Section 98-A is invalid for want of legislative competence.

5. The substance of the submission made on behalf of the petitioners is that, if the disposal of forest produce contemplated u/s 98A is only by. sale, subject to the other contentions urged for the petitioners, the Legislature has competence by virtue of Entry 54 of List II to enact. Section 98A. But they submitted that Section 98A imposes tax on the amount of consideration for which the forest produce is disposed of otherwise than by sale and, therefore, it "is invalid. They also submitted that the disposal of forest produce in their favour was by way of grant of licences and privileges and, therefore, the levy is unconstitutional. Therefore, it is appropriate to deal with the submission made for the petitioners that the disposals of forest produce in their favour by the State Government were not sales, in the first instance.

6. In support of the submission that the disposal of forest produce under the contracts entered into between the petitioner and the Government were not sales, learned counsel for the petitioners relied on Rule 89 of the Karnataka Forest Rules, 1969 (hereinafter referred" to as "the Rules") as also on the terms and conditions incorporated in the contract. Rule 89 reads as follows:

"89. Sale Notification.- The sale notification and conditions of sale should refer among other points to-

(i) Situation and area to be leased out.

(ii) Description and quantity of produce that will be exposed for sale; and in case of minor forest produce the several items of minor forest produce included in the

lease.

(iii) The period of lease,

(iv) Particulars of areas and produce, if any, reserved and hence excluded from the sale.

(v) The place where, and the date and time when the sale is to be held.

(vi) The necessity or otherwise for the production of solvency certificate or Income Tax or sales tax clearance certificate by the intending purchasers.

(vii) The amount of earnest money that should be deposited or tendered by each intending bidder or tenderer.

(viii) The time within which the purchase money should be paid and the produce removed.

(ix) The amount of security deposit to be paid.

(x) Agreements, if any, to be executed.

(xi) The penalty for non-payment for, or non-removal of . the produce within the notified time.

(xii) The non-liability of the officer holding the sale or confirming the sale to accept the highest or any bid or tender.

(xiii) The power of " the officer holding the "gale to stop it at any period if he thinks that there is any combination among bidders.

(xiv) The continuance of the sale on the following days if it is not close on the day when it was commenced.

(xv) The obligation on the part of the buyers to inspect the produce or the area of the coupe before bidding or tendering.

(xvi) The liability of, the bidder in auction sales to sign the notice of the" sale implying thereby their acceptance to" its terms before they make their offers".

Learned counsel pointed out that R, 39 (i) specifically provides that a sale notification should refer to the situation and area to be leased out while sub-rule (iii) provides for the specification of the period of lease. Reference was also made to Section 26 of the Act which confers power on the State Government to grant privileges to any individual, in reserved forests and it was pointed out that in the terms of the agreement there was specific reference to the grant of privileges. There is no dispute that the agreements entered into between all the petitioners and the Government are in prescribed form and similar. Reliance was placed on Para IV of the agreement to show that they were in the nature of grant of privileges and licence and not sales, which reads:

"IV And in consideration of the premises the Governor does hereby agree with

the contractor that if he shall, well and duly perform this contract, he shall enjoy for and within the period and subject to the restrictions and conditions herein before stipulated the following privileges viz.-

(a) the privilege of removing from the coupe for his own use, advantage and profit timber, firewood and other things specified in Item (a) of the Schedule hereto annexed, and

(b) the privilege of manufacturing charcoal, within the coupe and of removing the same there from for his own use, advantage and profit."

"The other portions of the agreement on which reliance was placed were as follows:

"The contractor shall before commencing cutting operations clear all undergrowth and shrubs He should fell all trees and shrubs in the coupe except reserved trees He should fell such trees and shrubs in regular order by sub-coupe or by any other method as prescribed by the Divisional Forest Officer He should cut the stools level with the ground, trim and dress them properly at once to the satisfaction of the Divisional Forest Officer. All standing trees must be felled whether the contractor wants them or not and no stumps should be allowed to be more than 1 foot in height. from ground level He shall immediately on felling a tree, arrange to clear away the branches and shall arrange in stacks of such dimension as the Divisional Forest Officer directs He should remove from the coupe not later than the dates specified in the agreement all the material to which he is entitled and shall stamp all timber pieces with his private property mark before they leave the coupe. The period of the contract for all the coupes shall be worked out serially. and no works shall be begun in the next sub-coupe until the works in the previously taken sub-coupe are completed in all respects Specification of the period during which the" felling and removal should take place The area so cleared felled, burnt and reburnt shall not be less than the area prescribed by the department The patches and/or rabs shall be closely packed to give good and even bum to the soil The contractor shall "give clear chisel numbers serially on stumps of timber yielding trees felled He shall only remove material after it is duly checked and stamped by a responsible Forest Officer No material shall be removed from the contract area unless it is covered by the transit passHe should maintain a register, the pages of which shall be sealed and numbered in the respective Range Forest Officer, showing clearly the quantity and sizes of timber removed from each sub-coupe: No extension to the contract period will be given except under very special circumstances He should utilise the services of the Kamgar Officials He should submit from time to time to the Divisional Forest Officer, the name, age and address of every person whom he may propose to employ in superintending the working of the contract The contractor should provide on or near the work-site adequate housing accommodation as may be approved by the Divisional Forest . officer. He should maintain a register of payment of daily wages etc., made to the labourers and

produce them for checking before the Forest and Revenue Officers. If any of the reserved trees are or broken during the course of felling, the contractor shall be liable to pay value at the market rates assessed by the Divisional Forest Officer In the case of wanton felling of the "reserved trees, fine will be imposed in addition to the value as calculated Before removing Matti Babul, timber from the coupes, the contractor should meet the requirements of Rohits and such other people of the locality to be estimated by the Range Forest Officer in charge" of the coupe Subletting permitted subject to the written permission of the Divisional Forest officer and subject to the condition that the contractor shall be responsible for the acts and Omission of the sub-contractors Any material remaining within the coupe after the day before which the contractor is required to remove, shall become the property of the Government He should pay all such expenses as the Divisional Forest Officer may determine to be necessary for, or to have been incurred In the execution of any work which he has bound himself to perform in terms of the agreement The Divisional "Forest Officer was given power to suspend the operation of the agreement if there was any violation of the condition in the agreement

6-A. On the basis of the contents of the agreement, it was contended for the petitioners that the disposal of forest produce by the State Government in their favour as evidenced by the agreements was not in the nature of sale of forest produce, but was-in the nature of a licence given and privileges granted to the petitioners for entering the forest and adding various acts including the right to cut and remove timber and also to manufacture charcoal on the specified forest area. On this basis, it was contended that the impost u/s 98-A of the Act was not on sale or purchase of goods in respect of which the State Legislature was competent to impose tax by virtue of the powers given to it under Entry 54 of List II of the VII Schedule to the Constitution. In support of -this contention, reliance was placed o4 the decision of the Supreme Court in Board of Revenue and Others Vs. A.M. Ansari and Others,

7. Shri S. G. Doddakalegowda, learned Government Advocate appearing for the State submitted that the disposal of forest produce in favour of the petitioners was by way of sale and several conditions which have, been incorporated in the agreement were necessary having regard to the nature of the goods disposed of and the locality in which the goods are situated, but on that account the transaction does not cease to be a sale. In particular, he invited our attention to Rule 85 of the Rules framed under the Act witch specifically provides for the disposal of forest produce only by sale. The said rule reads:

"85. Methods of selling forest produce.- (1) No forest produce shall as sold by any method other than the following:

- (i) Sale by auction or tender or tender-cum-auction.
- (ii) Sale at the sanctioned schedule-of rates in depots.

(iii) Sale by issue of licences at the sanctioned seigniorage rates;

Provided that any other method may be resorted to with the previous sanction of Government whenever the Chief Conservator of Forests considers it desirable to do so in the interest of the Department,

(2) The rates referred to in CL (ii) of sub-rule (1) shall be the schedule of rates sanctioned by the chief Conservator of Forests from time to time,

(3) The rates referred to in Clause (iii) of sub-rule (1) shall be those specified in Rule 83 (4) all important sales of timber and other forest produce shall generally be held by open public auction, tender or tender-cum-auction;

Provided that the Chief Conservator of Forests may accept individual offers at his discretion in the interest of the Department".

The learned Government Advocate pointed out, that there were three methods of sale which could be adopted by the Forest Department as specified in Clauses (I) to (III) of sub-rule (1) of Rule 85, and in the present case, the method adopted was as prescribed in Clause (I). He submitted that any other method that could be adopted under the proviso to sub-rule (1) also any other method of sale of forest produce and not any method other than sale. In support of his contention, he relied on the decision of the Supreme Court in *State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd.*, . He submitted that the forest "contract which was the subject-matter of Interpretation in the above said decision was of similar nature and under those contracts, the concerned contractors, during the period of contract, were given the right to" cut bamboo and salai wood from the forest belonging to that State Government on payment of annual royalty as prescribed under the terms of the contract or on the basis of the exploitation of the bamboo and salai wood, and though the contract was described a lease, the Supreme Court looking into the substance of the contract, held that the transaction, which was the subject matter of the said agreement, was sale and, therefore, sales tax was leviable under the Madhya Pradesh General Sales Tax Act. Mr. Kalegowda submitted that the terms of the contract in the present" case being similar, the ratio of the said decision is clearly applicable.

8. The crucial question which arises for consideration in these petitions is whether the disposals of forest produce in favour of the petitioner was or was not by "way of sale ? We shall first refer to the provisions of the Act and Rules framed thereunder which are relevant to the said question. Section 24 of the Act prohibits various kinds of acts which might be committed by individuals in reserved forest and in particular Clause 4e) a Section 24, inter alia, prohibits felling and cutting of trees. But Clause (e) of -Section 25 provides that nothing in Section 24 shall be deemed to prohibit any act done with the permission in writing of a Forest Officer duly empowered to grant such permission or under any rule made by the State Government. A combined reading of these two sections indicates that cutting of trees in reserved forests could be undertaken by any individual in terms of the permission granted by the Forest Officer and in terms

of any rule made by the State Government. Rule 85 of the Rules extracted above clearly provides for the sale of, forest produce. According to the said rule, the sale could be conducted either by way of auction or tender-cum-auction or by direct sale of forest produce at the rates prescribed in the Schedule in depots or by sale at seigniorage rates by issue of licences. Rule 83 of the Rules prescribed the seigniorage rates to be charged for each kind of tree or other forest produce sold by way of issue of licences. All the three methods which are permitted by rule 85 are different methods of sale forest produce and the proviso to sub-rule (1) of Rule 85 however enables the Chief Conservator to adopt any other method of sale with the previous sanction of the Government. Rule 89 on which, the learned counsel for the petitioners placed reliance to indicate that disposals of forest produce in their favour was in the nature of lease, itself clearly provides that a sale notification should be issued specifying the conditions subject to which the sale of forest produce could be effected by the department. Sub-rule (ii) of Rule 89 provides before the description and quantity of produce that would be exposed for sale. On a reading of all the clauses of Rule 89, it gives no room for doubt that the notification required to be issued under that Rule is for the purpose of effecting sales of forest produce in one of the methods specified in Rule 85 and not to dispose of forest produce by way of lease. Rule 102 of the Rules specifies the category of officers, and the extent of their powers regarding sale of forest produce. The notifications were issued in all these cases under R. 89 of the Rules and by the officers who were competent to issue the sale notifications under Rule 102. All the transactions involved in these cases were disposal all forest produce by sale by adopting the method of tender-cum-auction.

9. Learned counsel for the petitioners placed, strong reliance on the word "privilege" used in the agreement. Section 26 of the Act provides that the Government may grant privileges in the reserved forests. It was contended for the petitioners that what was granted to them under the agreement in question was to be privilege to exploit forest produce on payment of the amounts specified in the agreement and was not in the nature of sale. It appears to us that the privileges contemplated by Section 26 of the Act had nothing to do with the disposal of the forest produce which is contemplated u/s 98A of the Act. , This is evident from Rule 84 of the Rules which specifies various kinds of privileges that could be granted in favour of individuals, The said rule reads as follows:

"84. Privileges. - The Government may grant privileges in reserved, protected and district forests to the following categories of persons in respect of removal or usage of forest produce for purposes specified therein:

(i) Cultivating raiyats:

(a) wood for agricultural implements,

(b) grass for fodder and thatching,

(c) earth, stones, sand, etc., for bona fide requirement,

- (d) climbers, creepers, canes and karve for agricultural, purposes,
- (e) thorns, brushwood and bamboos for fencing,
- (f) fallen leaves and green leaves for manure,
- (g) dead wood for burning as firewood,
- (h) palms for water-courses,
- (i) sinking of manure pits and silo pits In forests adjoining cultivation,
- (j) use of water sources in forest area for cultivation, and
- (k) hunting of certain wild animals in the forests adjoining cultivation for preservation of crop and cattle;
- (ii) Villagers:
 - (a) wood and bamboos for construction and repairs of houses,
 - (b) leaves and grass for thatching,
 - (c) grazing of cattle in open forest areas,
 - (d) certain minor forest products for their bona fide domestic use,
 - (e) kamara leaves during famine, and
 - (f) privilege of way in forests;
- (iii) Cultivators and village inhabitants³ Grant of strips in forests adjoining cultivation and habitation in the interest of public health. and protection from wild animals with the attendant privileges;
- (iv) Gardeners of Arecanut gardens: Grant of privileges attached to Bettaland;
- (v) Cultivators of wet lands.- Grant of privileges attached to Kumki landsi
- (vi) Artisans engaged in- handicraft;
 - (a) bamboos at concessional rates,
 - (b) woods of certain kinds useful for their craft free or at concessional. rates,
 - (c) leaves and grass for mat-making,
 - (d) barks and fruits, of certain trees for tanning purposes;
- (vii) Poor people whose houses have been destroyed by accidental fire, flood or any other natural calamities., Wood, bamboos and other forest produce for reconstruction of houses;
- (viii) Members of Scheduled Castes, Scheduled Tribes, Nomadic and Semi-No medic Tribes, Hill Tribes and new settlers who are too poor to purchase wood. Wood bamboos and other forest produce for construction of dwelling houses;

(ix) Villages infected with plague; Wood and bamboos for prompt evacuation of villages;. And

(x) General public

(a) to open roads in forests,

(b) to plant fruit trees in forest areas and to obtain sanads in respect of such trees and also to obtain land from forest areas under suitable sanads for cultivation of fruit trees,"

Rule 24 provides for the grant of privileges which is similar to those referred to in Rule 84 in district forests and similarly Rule 28 provides for the grant of privileges in protected forests. These rules provide for the grant of various concessions and benefits to the inhabitants of the locality in the vicinity and has nothing to do with disposal of forest produce on commercial basis. Therefore, it appears to us that the use of the word "privilege" in the agreement was inappropriate and such use does not alter the nature of the transaction, which in substance is sale of forest produce by one of the methods specified in Rule 85. In fact, even the contents of the, agreement also give clear indication that the transaction was in the nature of sale. In the opening para of the agreement, the contract as described, is for-

"the felling and removal and purchase of timber firewood and other things, specified in item (a) of the schedule hereto annexed"

Then again at another place in the agreement it is stated as follows:

"Contractors purchasing the coupe or coupes shall, before removing Matti Babul timber from the coupes "

The agreement also describes the amount payable by the contractor and further there is a specific clause to the effect that the said amount should be paid in instalments and along with the first installment itself, the contractor should pay sales tax that may be payable on the whole of the. consideration amount. If the agreement in question was not in the nature of sale, there was no question of the petitioners agreeing to pay the sales tax under the provisions of the Sales Tax Act. In our view, the decision of the Supreme Court in State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., is on all fours, applicable to the facts of these cases. In the said case, the Supreme Court laid down that one should not look into the inaccurate terms or inaccurate forms used in the agreement, but should look into the substance of the document, and if in substance the transaction amounts to sale, the provisions of the Sales Tax Act would be attracted. The relevant portions of the judgment are contained in paragraphs 19 and 23 which read:

"19. What is authorised under the deed is the "exclusive liberty", to enter upon the leased area to fell, cut or extract bamboos and salai wood and to remove. store and utilise the same for meeting the full requirements of the Paper Mills.

This reads more like a sale of standing timber coupled with a licence to enter and do certain things on another's land.

xx xx xx

23. We are satisfied that despite its description, the deed confers in truth and substance a right to cut and carry timber of specified species. Till the trees are cut, they remain the property of the owner, namely the appellant. Once the trees are severed, the property passes, "Royalty" is a feudalistic euphemism for the "price" of the timber. We may also observe that the question before us is not so much as to what nomenclature would aptly describe the deed but as to whether the deed results in sale of trees after they are cut. The answer to that question, as would appear from the above, has to be in the affirmative."

Nowhere in the agreement, which is the subject-matter of these petitions, there is any reference to the word "lease" which has been inaptly used in Rule 89 of the Rules. On reading of the agreement as a whole there is no escape from the conclusion that what was being done under the agreement was sale of forest produce by the State Government in favour of the petitioners for the price for which they had agreed to purchase, by submitting tenders. However, having regard to the nature of the goods, namely, the standing trees, which were the subject matter of sale and their location i.e., forest, under the terms of contract, out of necessity licence had to be given to the contractors to enter Government land and to various kinds of work, preliminary to the cutting and removing of trees, as also the doing of various other works ancillary thereto. For instance, contractors are given permission to manufacture charcoal on Government land out of the fire wood purchased. Various other conditions found necessary, to keep proper account, to prevent pilferage or smuggling of timber from neighbouring area, as also for the protection of other types of reserved trees which were not allowed to be cut and like have been imposed. Similar conditions meant to protect the interests of local inhabitants and also for the protection of other types of reserved trees which were not allowed to be cut and the like have been imposed. Similar conditions meant to protect interests of local inhabitants and also persons employed by the forest contractors have been imposed and agreed to. In substance, however, the terms of the contract indicate that it is a contract indubitably indicate that it is a contract are similar to the terms of the contracts are similar to the terms of the contracts are similar to the terms of the contracts considered by the supreme Court in Orient paper Mills case. In the circumstances, we are of the opinion that the produce between the agreements entered into between the petitioners in these cases and the Government were for sale of forest produce by the Government in favor of the concerned forest contractor.

10. Learned counsel for the petitioners, however, submitted that the Supreme Court in Board of Revenue and Others Vs. A.M. Ansari and Others, had held that a transaction which is similar to the one concerned in these cases did not amount to sale. We are unable to agree. The two questions which were decided by the

Supreme Court in the said case were:-

(i) Rejecting the contention that stamp duty was leviable on the agreements, the Supreme Court held that the agreement was only a licence and did not amount to lease as under that agreement only forest produce was sold and " no right in immovable property i.e., in land had been transferred.

(ii) As regards the exigibility to tax on the sale turnover of the forest produce, the Supreme Court held that the sale of the forest produce by the Government in favour of the individuals concerned in the said case, was not a sale in the course of the business and the Government of Andhra Pradesh was not a dealer and consequently, the turnover was not exigible to tax.

The Supreme Court did not hold that the transaction did not amount to sale as sought to be made out by the learned counsel for the petitioners. On the other hand the decision was, that the sale was not in the course of the business, and therefore it was not exigible to tax under the Andhra Pradesh Sales Tax Act, which means the transaction was sale though not taxable.

11. Learned counsel for the petitioners contended that in any event as the disposal of forest produce in favour of the petitioners was by the issue of licence, no tax could be levied u/s 98A of the Act. Reliance , was placed on the decision of the Supreme Court in *Firm of Firm Chhotabhai Jethabai Patel and Co. and Others Vs. The State of Madhya Pradesh*, . In that case, contract by which right was acquired to cut and remove timber, pluck and collect tendu leaves and various types of forest produce was held to be a licence. But the question whether the disposal of those goods under the said contract was sale or not was not an issue. The decision is therefore of no assistance to the petitioners.

12. At this stage we may also point out that all along i.e., from the date of commencement of the Act, as in the present case, all contracts for the sale of forest produce of the nature involved in these cases have been entered into in similar prescribed forms in which there has always been a specific condition for the payment of sales tax. The levy of sales tax has not been challenged by any one so far and even the petitioners have not challenged the levy. On the other hand, the petitioners have paid sales tax on the entire consideration amounts for which agreements in question have been entered into. Therefore, it follows that the levy of forest development tax u/s 98A of the Act sought to be recovered from the petitioners is on the purchase amount paid by the petitioners to the Government, the taxing event being the sale of forest produce. Consequently, the levy is covered by Entry 54 of List 11 of the VII Schedule to the Constitution.

13. Learned counsel for the petitioners next contended that Section 98A of the Act imposes tax not only on the consideration of the forest produce disposed of by sale, but also on forest produce disposed of otherwise than by sale and imposition of tax on the latter is not covered by Entry 54 of List 11. Per contra the Government Advocate submitted that Section 98-A contemplates levy tax on disposal. of forest produce only by sale, but the word sale had been used in the

section only to indicate direct sale of forest produce through the depots of Forest Department and the word "otherwise" has been used to cover sales of forest produce by adopting other methods, such as, auction, tender, tender-cum auction, or through licences issued for purchase of forest produce on payment of seigniorage rates, fixed under Rule 84 of the Rules. He admitted that as all these methods were also sales, the use of the word "sale" would have been "sufficient, but, it has been used only in order to avoid any doubt which might be raised that disposal of forest produce by auction or by the issue of licence were not sales. In the alternative, he contended that even if the section were to be interpreted as to cover disposal of forest produce otherwise than by sale, imposition of tax on such transactions is also within the legislative competence in view of Entry 49 of List II which empowers the State to levy tax on land and that the word "land" includes trees standing on the land. In support of this submission learned counsel for the State relied on the decision of the Supreme Court in *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, The relevant portion of the judgment reads:

"Mr. Tarkunde on behalf of the petitioner-company has- urged that under Entry 49 of the State List in the, Seventh Schedule to the Constitution, the State Legislature is empowered to enact a law relating to taxes on lands and buildings. It is submitted that the State Legislature has no competence under the above entry to enact a law for levying tax in respect of the area occupied by the underground supply lines. The word "land" according to the learned counsel, denotes the surface of the land and not the underground strata. We are unable to accede to the above submission. Entry 49 of List II contemplates a levy of tax on lands and buildings or both as units. Such tax is directly imposed on lands and buildings and bears a definite relation to it. Section 129 makes provision for the levy of property tax on buildings and lands. Section 139 merely specifies the persons who would be primarily responsible for the payment of that tax. The word "land" includes not only the face of the earth, but everything under or over it, and has in its legal signification an indefinite extent upward and downward."

14. It is true that the wording " of Section 98-A indicates that the tax imposed by it is. on the consideration for which the forest produce is disposed of by" the State Government not only by sale, but also by adopting methods other than sale. There is, however, considerable force in the construction suggested for the State that Section 98-A provides the imposition of tax on the disposal of forest produce only by sale i.e., either by direct sale by the Forest Department in its depots or by resorting to other methods, such as, auction, tender-combustion and issue of licence for the purchase of forest produce at the sanctioned seigniorage rates and the word "sale" , was intended to mean direct sale and the word "otherwise" was intended to cover sales by those other methods of disposal which are also sales and that it was used to avoid any argument that those methods were not sales. However, it is unnecessary for us to pursue the discussion on this aspect as in our opinion the disposal of forest produce in all the cases before us was by tender-cum-auction method which is certainly a

method of sale. As pointed out earlier, the petitioners have also entered into agreement with the Government with the clear understanding that the transaction was sale and accordingly they have paid sales tax at the rate prescribed u/s 5(1) of the Karnataka Sales Tax Act and have not questioned the said levy. Similarly, we consider it unnecessary to examine the alternative contention urged for the State that even it Section 98-A of the Act provides for the imposition of tax on disposal of forest produce otherwise than by sale the power to impose such tax flows from Entry 49 of List 11.

15. In the result, our answer to the first question is that Section 98-A of the Act, which imposes tax on the purchase price of forest produce disposed of by sale by the State Government whatever be the method of sale is within the Legislative competence of the State under Entry 54 of List 11 and is constitutionally valid, We do not express any opinion on the question of the validity of the section, if it is used to levy tax on transactions other than sale.

16. The second contention urged for the petitioners was that Section 98-A was invalid as it suffers from vice of double taxation. Learned counsel argued that the tax has been levied on the sale of forest produce by the State u/s 5(1) of the Sales Tax Act enacted by the State Legislature by virtue of the power given to it under Entry 54 of List 11 and therefore there can be no second taxation on the same transaction and on the same persons and under the same entry. Reliance was placed in support of this submission, on the following passages in Cooley Taxation, IV Edition, Volume 1, under the heading "Double Taxation". The relevant portions read:

At pages 475-476-

"To constitute double taxation objectionable or prohibited, the two or more taxes must be (1) imposed on the same property, (2) by the same State or Government, (3) during the same taxing period and (4) for the same purpose."

At pages 479-483:-

"Double taxation, using the term in its strict legal sense as already defined, is universally condemned by the courts as contrary to the policy of the law. Notwithstanding such condemnation, however, double taxation -is not prohibited by the Federal Constitution, and, where not forbidden by the State Constitution, is generally held to be within the power of the State. The power to tax twice, it is said, is as ample as to tax once.

On the other hand, there are many decisions not only condemning double taxation, using the term in its strict sense, but also declaring that such taxation is illegal or refusing to uphold such taxation without referring to any constitutional provision prohibiting it. Moreover, notwithstanding express declarations of some of the courts that double taxation is not illegal unless prohibited by the Constitution, it is doubtful if any court, at any time except in a few-isolated cases, has refused to uphold an attack on a tax as double taxation,

where the tax is double within the strict meaning of the term, since such a tax would be invalid, it is submitted, if for no other reason, because constituting a taking of property without due process of law. In fact, most of the decisions assume, without discussion, that double taxation, using the terms in its strict legal sense, is invalid, without reference to any constitutional provisions". (Underlining is ours).

17. Learned counsel for the petitioners submitted that though in the cases of Goodyear India Ltd. and Another Vs. The Executive Officer, Panchayat Samiti, Ballabgarh and Another, Dev Kumar singhji Kasturchandji Vs. State of Madhya Pradesh and Others, , Jaldy Paidayya Vs. Jaldy Manikyala Rao, and Cantonment Board, Poona Vs. Western India Theatres Ltd., , the levy of tax for the second time have been upheld by the High Courts of Punjab, Madhya Pradesh, Andhra Pradesh and Bombay, respectively, imposition of a second tax in all those cases, though on the same transaction or person, were under different entries, unlike in the present case in which the imposition of tax both u/s 5(1) of the Sales Tax Act and u/s 98-A of the Act on the same person and on the same event is under the same Entry. The contention In our opinion is devoid of any substance.

18. The extent of power of the Legislatures to make laws including the imposition of tax and restrictions or limitations on the exercise of such legislative power, are to be found in the Constitution itself- There is no provision in the Constitution brought to our notice which prohibits the Legislatures from levying tax on the same event and on the same person more than once. Repelling an argument that the provisions contained in the Income Tax Act levying income tax on, the income of - a firm on the firm and also on partners was bad on the ground of double taxation, the Supreme Court in the case of Jain Bros. and Others Vs. The Union of India (UOI) and Others, held thus:-

"The Constitution does not contain any prohibition against double taxation even if it be assumed that such a taxation is involved in the case of a firm and its partners after the amendment of Section 23(5) by the Act of 1956."

Learned counsel for the petitioners, however, sought to derive support from an observation in the judgment of the Supreme Court in Union of India (UOI) and Others Vs. Tata Iron and Steel Co. Ltd., Jamshedpur, , it reads-

"The High Court rightly held that the contention of the Revenue fails on two broad grounds. First, there cannot be double taxation on the same article."

Reliance placed on the above observation to support an attack on the ground of double taxation is, in our opinion, . misconceived. In making that observation, was Supreme Court did not lay down any such law. In the said case, the contention of the respondent was that under the provisions of the Central Excises and Salt Act and the Rules framed thereunder, excise duty was leviable on ingots, moulds and bottom stools manufactured from pig iron for its use in steel melting. shops only once and no duty was leviable when those very ingots and moulds after they became unfit for further use, were scrapped into pieces and

remelted in the steel melting shops along with other non duty paid scraps and hot metals in the manufacture of steel ingots. In other words, the contention of the respondents therein was that it was not liable to pay excise duty to the extent duty paid pig iron was used in the manufacture of steel ingots. This contention was upheld by the High Court on the ground that the rules did not provide for the levy of excise duty on the very material which had already been subjected to excise duty once. Para 15 of the judgment makes this clear. It reads:-

"The respondent challenged the orders in the High Court, The High Court quashed the orders of the Revenue Authorities. The High Court held that the Revenue Authorities fell into the error of interpreting Notification No. 30/60 by confining exemption to steel ingots in which entirely, exclusively or only" duty-paid iron is used. The High Court held that the words "entirely, exclusively or only" were not used in the notification. The notification exempted steel ingot in which duty-paid pig iron was used. The High Court also held that the notification would have to be interpreted in a manner that the statute would not cast a burden twice over for payment of tax on the taxpayer unless the language of the statute is so compellingly certain to that effect."

The observation in para 23 of the judgment of the Supreme Court only approved the above view taken by the High Court. The view taken was that unless the imposition of excise duty for a second time on goods which had already suffered excise duty was specifically intended by the relevant provisions of the statute it should not be interpreted as authorising the imposition of tax more than once, on the same person or article, The above reasoning, on the other hand, indicates if the statute specifically provides for imposition of tax more than once such collection cannot" be prevented. Therefore, we reject the second contention also.

19. The third contention urged for the petitioners was that the impost u/s 98-A was either in the nature of fee or was in the nature of compensatory tax and there being no quid pro quo between the quantum of levy and the amount required for the purpose for which it is levied, the imposition is bad. Elaborating this contention, learned counsel for the petitioners submitted as follows:-

The levy of tax u/s 98-A was for the specific purpose of raising of forest plantation and for such purposes as are ancillary thereto as is specifically provided for in sub-section (4) of Section 98-B of the Act. Under sub-section (2) of Section 98-B of the Act, it is provided that the tax levied and collected u/s 98-A should first be credited to the Consolidated Fund of the State and thereafter it should be entered into and transferred to the Karnataka Forest Development Fund under appropriation duly made by law in this behalf. Therefore, the levy was in the nature of fee or in any event it was in the nature of compensatory taxation. There is no quid pro quo between the levy and the sum required for the specific purpose. Reliance was placed on the decision of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, and *The Automobile Transport*

(Rajasthan) Ltd. Vs. The State of Rajasthan and Others, . In the judgment of the Supreme Court in L. T. Swamiar's case the Supreme Court expounded the distinction between a tax and a fee. Applying those tests, it is not possible to accede to the contention urged for the petitioners that the levy u/s 98A of the Act is in the nature of fee. The levy under that section is not intended to cover the expenses for rendering service to any person or class of persons from whom the amount is collected. Similarly, the levy is not in the nature of compensatory tax as found in the Automobile Transport's case. In the said case the tax levied by the Rajasthan State on motor vehicles carrying goods and passengers was challenged by the petitioners therein on the ground that it was violative of Article 301 of the Constitution which provides that trade, commerce and intercourse throughout the country shall be free from all restrictions. The contention was negatived by the Supreme Court holding that the tax was compensatory in nature in that it was meant to compensate the State in respect of the money required to be expended for construction and maintenance of roads and bridges which were being used by the petitioners and others for the purpose of trade, commerce and intercourse. The levy u/s 98A of the Act is a compulsory exaction of money for public purpose and answers the description of tax. It is neither compensatory nor regulatory in nature. In an event, it is not shown how existence of quid pro quo is necessary to impart validity to the levy even if it is compensatory and/or regulatory in nature when the levy is a tax and not a fee. Hence, the third contention is devoid of any substance.

20. The fourth contention urged for the petitioners was that the levy was in the nature of excise duty and, therefore, it was not within the competence of the State Legislature to enact Section 98-A. The learned counsel for the petitioners argued that an excise duty was always in the nature of an indirect tax which can be passed on to consumers and as the levy u/s 98A was also in the nature of indirect tax which could be passed on to the consumers, it was in the nature of excise duty, levy of which is beyond the competence of State Legislature. Reliance was placed in this behalf on a decision under Australian Constitution in *Commonwealth v. South Australia* (1926) 38 Comm. LR 408. In that case a State Act enacted by the State of South Australia imposing a tax on the income of Vendors of motor spirit was held to be not an Income Tax (a direct tax) but was an indirect tax which the vendor could pass on to the purchasers and therefore it was in the nature of a duty of excise as that term was used in the Australian Constitution and, therefore, the Act was devoid of Legislative competence of the State as the power of levy of excise duty was exclusively conferred on the Australian Parliament u/s 90 of the Commonwealth of Australia Constitution Act, (See: Nicholas *The Australian Constitution* 1952, page 144). It is true that under our Constitution also excise duty can be imposed by Parliament only, in view of Entry 84 of List I. But excise duty which the Parliament is empowered to impose is a tax on manufacture or production of goods and not on sale (See-, *Union of India (UOI) Vs. Delhi Cloth and General Mills*, , *A.K. Roy and Another Vs. Voltas Limited*, . Entry 54 of List II specifically empowers the State

Legislature to levy tax on sale or purchase of goods. The levy u/s 98-A is neither on manufacture nor production of goods, but is a levy on sale or purchase of goods, Both excise duty as also sales tax or in-direct taxes which a manufacturer and a seller or merely a seller as the case may be could pass on to the buyers. Parliament is competent to impose the former and State Legislature the latter and this power is only subject to other provisions of the Constitution. Hence we reject the fourth contention.

21. The levy of Forest Development Tax lacks the essential ingredients of a Tax Law, namely, a provision for levy, a provision for assessment and a provision for collection and consequently invalid and unenforceable was the fifth contention urged for the petitioners, Support was sought for this submission from the Full Bench decision of the Kerala High Court in *Manattillath Krishnan Thangal and Others Vs. The State of Kerala and Others*, . There is no merit in this contention also.

22. Sub-section (1) of Section 98-A itself not only imposes a tax, but also quantifies the tax at 8 per cent on the amount of consideration paid for forest produce and, therefore, it covers the two essential aspects, namely, the levy and the assessment. Sub-section (2) of Section 98A provides that the said tax shall be collected along with such consideration which means the authority competent to collect the consideration for the sale of forest produce is also the authority empowered to collect the forest development tax at the rate prescribed under sub-section (1) of Section 98-A. Rule 102 framed under the Act prescribes the category of officers who could exercise power regarding the sale of forest produce by specifying the officers by designation and also the extent of their powers to effect sales by specifying the maximum amount of consideration up to which each category of officer has the power to effect sale of forest produce. The fifth contention, therefore, fails and the same is rejected.

23. The sixth contention urged for the petitioners was that S , 0ction 98-A was violative of Article 14 of the Constitution. Learned counsel for the petitioners argued that Section 98-A levies tax only on the sale of forest produce by the State Government and no such levy is imposed on the sale of forest produce effected by private individuals owning forests. This contention is also devoid of any merit. u/s 98-A Forest Development Tax is imposed on the sale of forest produce by the State Government who owns most of the forests in the State. The State, having regard to its position under the Constitution and its obligation to the people of the State stands entirely on different footing and a class by itself, when compared to private individuals. Further the object of the tax as is discernible from Section 98-B of the Act is to collect resources for raising forest plantations which could obviously be raised only on Government land and therefore the levy has a nexus to the object sought to be achieved. However, it should be observed that the right to equality guaranteed under Article 14 does not compel the State to impose tax on everything, object or persons. As held by the Supreme Court in *Income Tax Officer, Shillong and Others Vs. R. Takin Roy*

Rymbai and Others, while Taxation Laws cannot claim immunity from the equality clause of the Constitution in view of the intrinsic complexity of fiscal adjustments of diverse elements there is considerably wide discretion in the matter of classification for taxation purposes. If the classification by a taxing statute is a reasonable one, it is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some income or objects and not others. (See also M. Nagappa and Others Vs. Income Tax Officer, Central Circle I, Bangalore and Others, Hence, we reject this contention also.

24. The last contention which is urged for the petitioners in W. P. No. 8579 of 1976 and petitioners in W. P. Nos. 5375 to 5377 of 1976 is that even if the disposal of forest produce in their favour was by way of sale as it had taken place prior to 24-12-1975 i.e... the date of coming into force of Section 98-A, it was not competent for the respondents to collect any tax under the section on the consideration for these sales just because a portion of the sale consideration was in terms of the agreement payable after 24-12-1975.

25. Learned Advocate General appearing for the State on the contrary contended that as in terms of the agreement the petitioners were entitled to remove the forest produce only after the payment of each instalment, the levy u/s 98-A is attracted and therefore the department was right in demanding the payment of tax. It is these rival contentions which have given rise to the second question set out in the first paragraph

26. Section 98-A came into force on 24-12-1975. No retrospective effect is given to the said section. The levy of forest development tax under that section is on the purchaser, and the tax is to be computed on the consideration paid. Therefore, the levy is applicable only to purchases i.e., sale of forest produce taking place on or after 24-12-1975. The submission made on behalf of the petitioners is that contract of sale was completed prior to 24-12-1975 and therefore no levy was permissible u/s 98-A of the Act on the said transaction. The stand of the State is that tax is leviable on the amount of instalments payable on or after 24-12-1975 which is obviously on the premise that taxing event occurs i.e., the sale to that extent takes place on the date of payment of every instalment if such instalment is payable after 24-12-1975. The answer to the controversy depends on the facts and circumstances of each case which are as follows:-

W. P. No. 8579 of 1976:- The petitioner had submitted his tender for the purchase of forest produce to the Conservator of Forests, Dharwad. A communication dated 27-6-1975 was sent to him accepting his tender.- It reads;

"To

Shri V. D. Sawkar,

Forest Contractor,

Aversa (Ankola).

Sir,

Ref: Your tender dated 17-6-1975.

I have to inform you that your tender for the below mentioned coups has been accepted and sanctioned by the Conservator of Forests, K. C., Dharwad, under his No. B-3/CR-6/SFC/75-76 dated 23-6-1975 on behalf of Governor of Karnataka subject to the condition of the tender notice dated 1-6-1975 and subject to the following conditions-

(i) That you shall furnish necessary declaration as per condition No. 5 (b) of the Tender Notice

(ii) That you shall. furnish (a) Sales Tax Clearance Certificates and (b) Income-tax Clearance Certificate in original or the certified copies duly verified with the original as required by conditions Nos. 6 (b) (H) and (iii) of the Tender Notice.

Range Block and Coupe/B No.

Village Area in Hectres Highest amount offered and Sanctioned Biregitti

XI. 23 XII.23 Kadkol-Brahmar Yolwalli 47-47 27-52 Rs.4,49,789.00

You are therefore requested to remit Rs. 1,56,418-66 as worked out below, into any Government Treasury

in the Karnataka State only and sign the agreement in this office within 30 days of communication of the

receipted treasury chalan for the above amount. Further you are requested to produce the National

Savings Certificate for the amount shown below at item Nos. 1 and 2.

1. Security Deposit 44979-00	2. Security Deposit for running firewood depot at Gokan and Gangawali for 1976. 1000-00	3. Ist instalment 112448-00	4. Sales tax on the entire sum 17991-56	_____	Total 176418-56
_____ Deduct Rs. 1. Amount kept with thereunder 20000-00				2. Amount kept with the rejected tender retained or adjustment	
_____ 20000-00				_____	Not payable 156418-56

You are required to produce the certificates as mentioned in para 2 above before signing the agreement.

If you fail to sign the agreement within 30 days as mentioned in para 3 above on production of the receipted treasury chalan for Rs. 156418-56 and declaration and sales tax and Income Tax clearance certificates action will be taken as per terms and conditions of the Tender Notice issued for the purpose.

You are, therefore, requested to note that the purchase money for the above coups is divided into four instalments to be paid by the due dates as under:-

Ist instalments before signing the agreement 12448-00 II instalment by 30-11-75. 12447-00 III instalment by 31-1-76. 112447-00 TV instalment by 25-3-76, 112447-00 _____ Total 449789-00 _____

Note: as per the agreement conditions, non-payment of the instalments by the due dates will be subject to levy or interest at 9 % per annum for the period of entire delay as per rules."

The contents of the communication, indicates that the offer of the petitioner for the purchase of forest produce in the concerned coupe was accepted for Rs, 4,49,789/-. The petitioner was required to pay the same in four equal instalment Further, thp petitioner was required to pay sales tax on the entire purchase consideration and the amount of sales tax specified was Rs. 17,991-56. The petitioner was called upon to execute an agreement within 30 days from the date of receipt of the said communication. Accordingly, the petitioner entered into an agreement with the department on 23rd July, 1975. The first condition in the agreement reads as follows:-

"1. The Contractor shall perform the following duties and acts, that is to say:-

(a) he shall pay to the Divisional Forest Officer, or should he so direct to some person duly authorised by him "in writing to receive the same, the total amount due by him under this agreement as under, viz.

(i) First instalment equal to 1/4th price of the coupe viz, Rs. 112448-00 (One lakh twelve thousand four hundred and fortyeight only) plus the sales tax according to statutory rates in force in one lump sum on the entire price of the coupe within 30 days of the intimation of the acceptance of the tender or signing the agreement before whichever is earlier. The amount of sales tax payable on the entire price of the coupe shall be R-Q. 17,991-56 (Rupees seventeen thousand nine hundred ninety one and paise fifty six only) on the basis that the coupe yields 40 of timber and 60% of firewood,

(ii) Second instalment equal to 1/4th price of the coupe viz., Rs. 1,12,447-00 (One lakh twelve thousand four hundred and forty seven only) on or before 30-11-75, or before the removal of the material from sub-coupe No. I whichever is earlier,

(iii) Third instalment equal to 1/4th price of the coupe viz., Rs. 1,12,447-00 (One lakh twelve thousand four hundred and forty seven only) on or before 31st January 1976, or before removal of the material from sub-coupe No. II whichever is earlier,

(iv) Fourth instalment equal to 1/4th price of the coupe viz., Rs. 1,12,447-00 (Rupees One lakh twelve thousand four hundred and forty seven only) on or before 25th March 1976 or before removal of the material from sub-coupe No.III whichever is earlier;

(b) he shall pay the full amount of the contract sum plus sales tax whether the

whole of the material contract sum plus sales tax whether the whole of the material contracted for is removed by him from the coupe or not."

Note:- The payment made in any. of the Government Treasury in Karnataka State will be taken cognizance of only on receipt of the triplicate challan from the treasuries direct and as such delay of about a week or so is likely to take place for the release of the material on receipt of the original challan from the contractor:

Provided always that if the contractor shall at any time make default in the payment of any of the said instalments on the dates here in before provided for payment hereof he shall pay compound interest at the rate of 9 per cent per annum on the said instalments or such part of them as shall remain unpaid on the dates aforesaid up to 90 days and thereafter at penal rate of 13 % the interest being calculated from the said date to the date of the payment or recovery: In case of failure to pay the said amount with interest the same may be recovered in accordance with Section 109 of the said Act or as an arrear of land revenue in accordance with Section 109 of the said Act or in both such ways;

The contents of the agreement also indicate that the contract of sale was complete though under the terms of the contract the petitioner was permitted to pay the purchase consideration in instalments.

Writ Petition No. 5375 of 1976: A communication dated 17-7-1975 (Exhibit B) was sent to the petitioner informing him that his tender for the concerned coupe at Rs. 160505/- was accepted. He was called upon to pay the 1/4th of the price amount as first instalment and was also called upon to pay the entire amount of sales tax payable on the sale consideration and was called upon to enter into an agreement with the Government. The conditions were all similar to those in the earlier writ petitions. No forest development tax is demanded, and it could not have been demanded, on the first instalment, as Section 98-A was inserted into the Act subsequently. But it is demanded on subsequent instalments. There was another tender submitted by the petitioner. The acceptance of the same was communicated by letter dated 21-7-1975.(Exhibit D). The tender was accepted for Rs. 2,55,805/-, the rest of the conditions being similar i.e. as in the earlier case. In respect of the said transaction also forest development tax was demanded as per communication dated 23-1-1976 (Exhibit-B) on the subsequent instalments.

Writ Petition No. 5376 of 1976: The tender submitted by the petitioner was accented and a communication to this effect was given as per letter dated 23-7-1975 (Exhibit-F). The tender was accepted for Rs. 2,08,105/- and the rest of the conditions were all similar. He was also called upon to pay forest development tax by notice dated 23-1-1976 on the subsequent instalment amounts.

Writ Petition No. 5377 of 1976: By communication dated 18-8-1975, (Exhibit H) the petitioner was informed that his tender for the concerned coupe was

accepted for Rs. 1,87,999/-. The rest of the conditions in the communication were similar. There was another tender which had been submitted by this petitioner and the acceptance of the same was also communicated as per letter dated 18-8-1975 (Exhibit J). The tender was for Rs, 2,21,999/- and the rest of the conditions were similar. No individual communication calling upon him to pay forest development tax was issued. He has challenged the validity of the general direction dated 3-1-1976 (Exhibit K) issued by the State Government directing the collection of forest development tax on all subsequent instalments even if the contract were entered into prior to 24-12-1975.

27. The facts set out above indicate that the contract was for the sale of standing trees. It is not disputed that they are goods within the meaning of that word as defined u/s 2(7) of the Sale of Goods Act. The petitioners agreed under the contract to sever the trees and to remove the same from the forest. They were also permitted to convert firewood into charcoal on the Government land. The terms of the agreement clearly indicate that it was not merely an agreement to sell but a completed contract of sale in terms of Section 4(3) of the Sale of Goods Act. The title to the trees in the concerned coupe and which were the subject matter of contract stood transferred to the petitioners on their depositing the first instalment of sale price, and signing the agreement. The mere fact that under the contract, sale price was payable in instalments and the goods could be removed periodically after payment of subsequent instalment did not in any way affect the finality of the sale. This position is also clear from sub-section (1) of Section 5 of the Sale of Goods Act. It reads:-

"A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed."

(Underlining by us)

Though under the terms of the agreement the petitioners were permitted to pay the purchase price in instalments, the fact remains that there was a completed contract of sale. This is also further strengthened by the collection of sales tax on the whole of the consideration. Further though under Clause (1) it is provided that the Contractor has to pay the second instalment before removing the material from sub-coupe No. I and third instalment before removing the material from sub-coupe No. 11 and fourth instalment before removing the material from sub-coupe No. III, proviso, to the said clause specifically provides that if the contractor committed any default in the payment of any of the instalments he was liable to pay compound interest at the rate of 9 per cent per annum on the said instalment or such part of them as shall remain unpaid on the dates aforesaid up to go days thereafter he was liable to pay penal interest at the rate of 13 per cent per annum calculated from the said date to the date of the payment or recovery. The proviso definitely indicates that the contract of sale

was complete and the concerned contractor was entitled to lift the goods and the delay in payment of instalment did not come in the way of lifting the goods. though the contractor had to pay interest at the rates prescribed in the said proviso.

28. Having regard to the facts set out above as also the terms of the contract, in our view, the contract of sale in each case was, one and indivisible. Provision for payment of sale consideration in instalments did not have the effect of splitting the contract into as many sales as there were instalments. Section 98-A of the Act came into force on 24-12-1975 and has not been given retrospective effect. Under these circumstances, the contention of the State that forest development tax is payable on instalments outstanding on or after 24-12-1975 even in respect of contracts of sale entered into earlier to that date is untenable.

29. On behalf of the State it was however contended that the State was entitled to collect forest development tax in view of Section 64-A of the Sale of Goods Act and the decision of the Supreme Court in State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., covers the point in their favour. In our opinion, the submission has no substance.

30. In Madhya Pradesh case the agreement for the cutting and removing of bamboo and salai was entered into by Orient Paper Mills with the former State of Vindhya Pradesh on 4-8-1956. It became part of Madhya Pradesh State with effect from 1-11-1956. Madhya Pradesh General Sales Tax Act came into force on 1-4-1950. The forest department was exempted from payment, of sales tax up to 2-11-1962. Thereafter, the sales tax was demanded by the forest department from the Orient Paper Mills on sale consideration of Bamboo and Salai for the period subsequent to 3-11-1962. Madhya Pradesh High Court held, on the interpretation of the agreement, that the transaction was a sale and further though the agreement was for a long period, the transaction was annual. The relevant portion of the judgment reads:-

"It is true that the term of lease is a long one spreading over many years but, as shown, in effect it operated every year only on two coupes, one of bamboos and another of salai wood, earmarked and allotted by the forest department for the purpose of extraction of ripe material. For all these reasons, we are of the view that the transaction in this case was one of sale of goods."

The only contention urged on behalf of the Orient Paper Mills was that the tax was not payable as there was no clause in the contract to that effect. This is clear from the following portion of the judgment at page 539:

"Another arguement against the demand for sales tax is, that the petitioner is not required to pay any such tax under the terms of the lease deed dated 4th August, 1956."

This submission was negatived by relying on Section 64-A of the Sale of Goods Act. The reason for rejecting the contention was that even though there was no

clause in the agreement to pay sales tax the Forest Department was entitled to recover the tax payable from the Orient Paper Mills, in view of Section 64-A of the Sale of Goods Act. However, Madhya Pradesh High Court even having held that the agreement was sale and sales-tax was also leviable on and after 3-11-1962 had allowed the petition only on, the ground that forest department; was not a dealer and the sale was not in the course of business. This judgment was reversed by the Supreme Court in the light of a subsequent amendment to the Madhya Pradesh Sales Tax Act according to which Forest Department became a dealer -and got it registered as-such and the sale of the forest produce effected, by the forest department, whether in the course, of business or not it was made liable to tax, Once the Forest Department, i.e., seller became liable to pay sales tax on the sale of forest produce effected in favour of Orient Paper Mills it could seek reimbursement from the latter, in view of Section 64-A of the Sale of Goods Act even in the absence of a clause to that effect in the contract. Thus It -may , be seen in the Madhya Pradesh case, though Orient Paper Mills contended that the transaction by which forest produce was, disposed of in its favour was not sales, no contention was raised to the effect that even if it were held to be a sale no tax was leviable under the Madhya, Pradesh Sales Tax Act. In the present, case, the contention of the petitioners is that even if the disposal of forest produce under the contracts in their favour is interpreted as sale, in respect of sales which took place prior to 24-12-1975 no tax is leviable u/s 98-A of the Act and we have accepted the contention as well founded. Therefore neither" the decision in State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., nor Section 64-A of the sales of Goods Act is of any assistance to the State Government, is no question of reimbursement arises in the absence of any liability to tax u/s 98A of the Act on the sales effected by the, State Government prior to 24-12-1975. Therefore, the contention urged for the State in this behalf must fall.

31. In the result, we make the following order:-

(i) W. P. Nos. 16614 to 16631 of 1979 Rule discharged. Petitions dismissed, No costs.

(ii) W. Ps. Nos. 5375 to 5377 and 8579 of 1976:-

Writ Petitions partly allowed. A writ in the nature of mandamus. shall issue forest development tax u/s 98-A of the Karnataka Forest Act, 1963 in respect of sales under contract which are the subject matters of these writ petitions and to refund, if any tax has already been collected from any of the petitioners. No costs.

The Government Advocate is permitted to file his memo of appearance in writ petitions Nos. 16614 to 16631 of 1979 within two weeks from today.

32. Ordered accordingly.