

(1958) 05 CAL CK 0021
In the Calcutta High Court
Case No : Matter No. 161 of 1955

Indian Standard Wagon Co. Ltd.	Vs	APPELLANT
Commercial Tax Officer etc.		RESPONDENT

Date of Decision : 29-05-1958

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : AIR 1960 Cal 25 : (1958) 9 STC 553

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Advocate : P.P. Ginwala, for the Appellant;

Judgement

D.N. Sinha, J.—This application and a number of other applications involve the question of inter-State trade and commerce and the imposition of sales- tax in respect thereof by the State. They all involve a further question about the applicability to such transactions of a Central Act, namely, the Sales-tax Laws Validation Act, 1956 being Act No. VII of 1956. These cases have been heard together and common sets of argument were advanced. This particular case, however, has some special features inasmuch as (1) it is not an instance of what has been called an "explanation sale", and (2) no point has been taken herein about any violation of the petitioner's fundamental rights under Article 19(1)(g) of the Constitution. It will be convenient, therefore, to deal with this case separately, but decide herein also the common questions of law involved. So far as the other matters are concerned, they are all instances of "explanation sales". They also involve the point of an infraction of Article 19(1)(g) of the Constitution. These additional points will be dealt with in separate judgments, but it will not be necessary therein to decide once again the common points of law.

2. The facts in the present case are briefly as follows :

3. The petitioner in this case is the Indian Standard Wagon Co. Ltd., a company incorporated under the Indian Companies Act. This company and Messrs. Burn

and Co. Ltd. are well-known companies, having their registered offices situate in Calcutta and having a common managing agent, namely, Messrs. Martin Burn Ltd. Both these companies manufacture railway rolling stock including wagons, and have been doing so for a long number of years. On or about July 2, 1951 the Railway Board placed an order with Messrs. Martin Burn Ltd. as managing agents of the two companies mentioned above, for 3500 Indian Railway Standard Broad Gauge 4-wheeled covered wagons "C. R." type, against its programme for the year 1952-53. A copy of tin"s order is Ex. "A" to the petition. The following terms in the order are of importance :

"(4). Delivery F.O.R. Your work siding is required to be completed by 31-3-53.

(6) Accounting and payments : The F. A. and C. A. O., E. I. Rly. will maintain accounts and arrange all payments. It may, however, be noted that no payments against this order will be made before 1-4-1952.

(8) If and when sales tax becomes payable, such payment when made will not be on your account."

4. There was a request that the acceptance of the order might be communicated to the Railway Board, New Delhi, at an early date. This order placed by the Railway Board was accepted by Messrs. Martin Burn Ltd. by their letter dated July 28, 1951. This letter starts by thanking the Director, Railway Board, for the formal orders, inter alia, of 3,500 "C. R." type wagons, and intimates the acceptance of the terms and conditions. Certain special points have been made clear in the letter, but it is nobody"s case that the terms were not agreed upon. In the letter it has been stated that the "C. R." type wagons have been allocated between Messrs. Burn and Co., Ltd. and Messrs. J. S. W. Co. Ltd., the former being entrusted with the manufacture of 1,700 wagons and the latter with 1,800 wagons. In the present case, we are concerned with 1,800 wagons which were allocated to the petitioner company. It is not disputed that the letter of acceptance was posted in Calcutta.

5. The next letter is from the General Manager, Western Railway to Messrs. Burn and Co. Ltd., dated July 25, 1952 giving particulars of the markings that are to be put on wagons intended for the Western Railway.

6. The next letter is by the Joint Director, Mechanical Engineering Railway Board and is addressed to Messrs. Martin Burn and Co. and several other manufacturers in Calcutta, in respect of rolling stock ordered against the 1952-53 programme of the Railway Board. In the original order it had been stated that the item numbers, which appear to be the particulars of allocation to different railways in India, would be given later on. With this letter was enclosed a statement of the item numbers, showing the distribution to railways of rolling stock ordered against the 1952-53 programme on Messrs. Martin Burn Ltd. Calcutta. It shows that with regard to 3,500 B.G. covered wagons, "C. R." type, the allocation was made between three railways. 300 wagons were allotted to E. F. Railway, 900 to the E. I. Railway and the balance of 2,300 wagons to the

Western Railway. By a note append-ed at the foot of the statement it was explained that 2,300 wagons consisted of 500 to be manufactured by Messrs. Burn and Co. Ltd. and 1,800 to be manufactured by Messrs. I. S. W. Co., Ltd.

7. It is not disputed that the transactions between the Railway Board and the Calcutta manufacturers including the petitioner are of a long standing. A letter has been disclosed and annexed to the affidavit of Dhirendra Nath Banerji which shows that Messrs. Burn and Co. Ltd. had tender-ed for the supply of wagons for the period 1946-47-48 which tender was accepted by the Railway Board. There also, in the letter of acceptance it was stated that the distribution of the wagons to different railways and the procedure for accounting thereof will be intimated to the manufacturing company in due course. In the annexures to the petition we find copies of letters in respect of transactions subsequent to the period 1952-53, in respect of the Railway Board's programme for 1953-54 and 1954-55. Sometimes we find a slight variation, in the sense that the company makes a tender first. But in all cases, an order is placed by the Railway Board and it is accepted by the manufacturers, either directly or through their managing agents. What happened in the 1953-54 and 1954-55 programmes is that the Railway Board gave an advance intimation to the manufacturers of the rolling stock which they were expected to manufacture. It was stated that the formal orders and all payments will follow the normal Government pattern and will be arranged on a financial yearly basis when the programmes are finally approved. This advance intimation was given to facilitate arrangements for materials and planning capacity. In these cases also, the particulars were given later on, showing the allocation between the several railways, whose affairs are administered by the Railway Board.

8. Thus, we find that so far as the manufacture of the 1,800 wagons of "C. R." types, are concerned, the order was placed by the Railway Board from New Delhi and was accepted by a letter posted in Calcutta. It was stipulated that all payments should be made in Calcutta and the wagons should be delivered F.O.R. at the manufacturing company's work siding which of course is situate in West Bengal. The wagons were meant for the Western Railway which is situated wholly outside the State of West Bengal, having its headquarters at Ajmer.

9. Between December 10, 1952 and November 27, 1953, the petitioner company duly delivered the said 1,800 wagons at its work siding at Burnpur. Thereafter the petitioner sent its bills to the Eastern Railway, Calcutta. On or about May 23, 1953 certain bills were sent back on the ground that they related to goods meant for consumption outside West Bengal, and, therefore, no sales-tax was payable, but the matter had to await the decision of the West Bengal Sales-tax Authorities. Similar intimations were received by the petitioner from the Financial Adviser and Chief Accounting , Officer, Eastern Railway. The return of sales-tax of the petitioner for the year ending On March 31, 1953 was made on or about June 1, 1953. In the return, the petitioner showed a gross turnover of Rs. 2,74,44,544/-, out of which, a deduction was made for Rs. 84,90,470/- under

the heading "Sales to railways for consumption outside West Bengal". This represented the value of 803 wagons which were sold and delivered within the accounting year, that is, up to March 31, 1953 to the Western Railway.

10. On or about January 20, 1955 the Commercial Tax Officer, Esplanade Charge (respondent No. 2), rejected the above-mentioned deduction and imposed sales-tax to the extent of Rs. 3,87,343/3/6. On or about March 30, 1955 a penalty of Rs. 25,000/- was imposed for non-payment of the sales-tax. On or about April 16, 1955 the petitioner preferred an appeal before respondent No. 4. On or about July 29, 1955 the order of penalty was set aside, but otherwise the appeal was dismissed. Meanwhile, on June 24, 1954 the petitioner submitted a return of sales-tax for the year ending March 31, 1954. In the return, the petitioner deducted from the gross turnover the sum of Rs. 1,34,48,084/- being the value of 997 wagons sold and delivered during the accounting period ending on March 31, 1954. The value of 183 wagons and 30 steel coaches supplied in West Bengal is mentioned as also of a sum of Rs. 66,492/- deducted in respect of sales prior to March 31, 1949, but nothing was heard in the argument with regard to this item, and I need not deal with them. In all these returns the deductions were claimed to be on the ground that the sale was of goods required for consumption outside the State of West Bengal. The deductions were however disallowed. Thereafter, certain proceedings were commenced for realisation of the tax.

11. This Rule was issued on or about September 8, 1955 and is directed against the assessment orders whereby the deductions claimed as aforesaid have been disallowed.

12. Briefly put, the argument advanced on behalf of the petitioner company is that the transaction constituting the sale of 1,800 wagons by the petitioner company is in the nature of inter-State sales and, therefore, is not amenable to sales-tax under the Bengal Finance (Sales Tax) Act, which is a State Act.

13. Article 226 of the Constitution, as it stood at the relevant time, exempted inter-States sales from taxation, and the relevant provisions were as follows :

"286. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place --

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation. -- For the purposes of Sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce :

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirtyfirst day of March, 1951."

14. According to the petitioner, the wagons were delivered for consumption outside the State, that is to say, they were delivered for consumption by the Western Railway which has its headquarters in Ajmer. It is argued that the transaction is either an outside sale as laid down in Article 286(1)(a) read with the Explanation, or an inter-State sale, and that in either case, is exempt from State sales-tax. On the other hand, it is argued on behalf of the respondents that the sale is entirely an intra-State sale inasmuch as the contract was made in West Bengal, the goods were manufactured in that State and delivery was made inside the State, where also payment was or ought to have been received. It is argued that the contract is for delivery at the work siding of the manufacturing company, which is at Burnpur within the State of West Bengal. After delivery, the company was not concerned with what happened subsequently. Of course, if it is an intra-State sale, then there can be no doubt that the State Act applies and sales-tax is payable.

15. Coming to the first question, namely, whether it is an outside sale as contemplated by Article 286(1)(a), I think it can be easily disposed of. The sale of goods is governed by the Sale of Goods Act, but that Act does not deal with the situs of a sale. It provides as to when a contract for sale is complete and such other matters but is silent with regard to the situs of a sale. Therefore, if a sale is completed within a particular State and the delivery made therein, it is difficult to consider it as an outside sale. Then comes the Explanation, in Article 286, which has been incorporated in Section 27(2) of the Bengal Act. It has, however, been held in *Bengal Immunity Co, v. State of Bihar* (S) AIR 1955 SC 601, that the Explanation to Article 286(1) introduces a Fiction and must be strictly complied with. In the present case it cannot be said that the wagons were delivered outside West Bengal for consumption outside West Bengal. As delivery was within West Bengal, the sale cannot be called an "Explanation sale". In my opinion, we are not dealing with an outside sale in this case.

16. We next come to the question as to whether the transactions are, or constitute, inter-State sales. The word "sale" has been variously defined under the Bengal Act. At the relevant time it meant any transfer of property in goods for money consideration and included a transfer of property in goods supplied in the execution of a contract but did not include a mortgage, hypothecation, charge or pledge.

17. Under the Government of India Act, 1935 which was in operation when the Bengal Finance (Sales Tax) Act (Bengal Act VI of 1941) was promulgated, there was no prohibition upon the imposition of taxes on inter-provincial sales. Both under the Government of India Act, 1935 as well as under the Constitution, tax on sale of goods is a provincial or State subject. u/s 297 of the Government of India Act, 1935 the Provincial Legislature was prohibited from imposing restrictions on inter-Provincial trade and also from levying discriminatory taxes on goods manufactured or produced in a different Province, but there was no definite provision dealing with inter-State sales. In other words, in the Government of India Act, 1935, there was no provision restricting the power of the Provincial Legislature to impose taxes on sales and purchases of an inter-Provincial character. Thus, if A in Madras sold goods to B in Bombay and the goods were sent to B in Bombay from Madras, there was no restriction on the part of both Madras and Bombay imposing taxes on the transactions-, since both had a "nexus" or connection therewith. Thus, it led to the same transaction being taxed by several Provinces, and consequently, it caused a great deal of uncertainty as to which Province had power in taxing the sale. It hampered inter-Provincial trade and commerce. It was in order to remedy this evil that the Constitution included provisions for exempting inter-State sales from being taxed by any State. The matter was governed by Article 286 of the Constitution, the relevant part whereof has been set out above.

18. By the 11th Schedule to the Adaptation of Laws Order 1950, there was introduced into the Bengal Act, a new section being Section 27. The relevant part thereof runs as follows :

"27(1). Notwithstanding anything contained in this Act,--

(a) a tax on sale or purchase of goods shall not be imposed under this Act;--

(i)

(ii) where such sale or purchase takes place in the course of import of the goods-into, or export of the goods out of, the territory of India;

(b) tax on the sale or purchase of any goods shall not, after the thirty-first day of March 1951, be imposed where such sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide."

19. The date, March 31, 1951, came to be mentioned because in terms of the proviso to Article 286(2) of the Constitution, the President issued an order known as the "Sales Tax Continuance Order, 1950," to come into operation on the very day that the Constitution came into force. The relevant part of that Order runs as follows :

"Any tax on the sale Or purchase of goods which is being lawfully levied by the Government of any State immediately before the commencement of the Constitution of India shall until the thirty-first day of March 1951 continue to be

levied, notwithstanding that the imposition of such tax is contrary to the provision of Clause (2) of Article 286 of the said Constitution."

20. Thus we find that a tax which was being levied On inter-State sales, would be valid up to thirty-first day of March 1951, but would thereafter be exempted. As I have stated above, the Sale of Goods Act contains no provision for determining the situs of a sale, and the Explanation that was put into Article 286 is an artificial provision, and soon difficulties arose with regard to the interpretation and meaning of the words "inter-State sales" and also with regard to the real meaning of the Explanation appended to Article 286(1) of the Constitution.

21. This controversy culminated in the Supreme Court decision -- The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, . It was held there that Article 286(1)(a), read with the Explanation, prohibits taxation on sales involving inter-State elements, by a State except the State in which the goods are delivered for the purpose of consumption therein. It was further held that the operation of Clause (2) of Article 286 stands excluded as a result of the legal fiction enacted in the Explanation to clause (1), and the State in which the goods are actually delivered for consumption can impose a tax On inter-State sales or purchase, This decision was delivered on March 30, 1953. The result was that individual States started levy ing sales-tax on goods which might have come from outside the State but were delivered inside such a State for consumption therein. This position of affairs continued until September 6, 1955 when the matter again came to be considered by the Supreme Court, in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, . By the majority decision in this case the previous decision in the The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, was disapproved. It was held that the Explanation to clause (1) of Article 286 could not legitimately be extended to clause (2), nor could it be read as curtailing or limiting the ambit of that clause. It was held that except in so far as Parliament may by law provide otherwise, no State could by law impose or authorise the imposition of, any tax on sales when such sales take place in the course of inter-State trade or commerce, irrespective of the fact whether such sales do or do not fall within the Explanation. The result was that during the - period between April 1, 1951 and September 6, 1955, the States had been realising taxes on inter- State sales which came within the Explanation, against the law. Obviously, if nothing was done, enormous amounts which might have already been realised, would have been refunded, and it was apprehended that budgetary provisions made by several States in expectation of realisation of such taxes would be upset and there would be great difficulty experienced by the State Governments. In order to remedy this, the President promulgated the Sales-tax Validation Ordinance No. III of 1956 on January 30, 1956 later on replaced by the Sales-tax Laws Validation Act (No. VII of 1956) which came into force on March 21, 1956. Section 2 of the Act runs as follows :

"Notwithstanding any judgment, decree or order of any Court, no law of a State imposing or authorising the imposition of a tax on the sale or purchase of any goods where such sale or purchase took place in the course of inter-State trade or commerce during the period between the first day of April 1951 and the sixth day of September 1955 shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such sale or purchase took place in the course of inter-State trade or commerce; and all such taxes levied or collected or purporting to have been levied or collected during the aforesaid period shall be deemed always to have been validly levied or collected in accordance with law."

22. Therefore, we have to consider two points : -- first, as to whether the transactions in this case can be called inter-State trade or commerce. If of course they are not inter-State trade or commerce but the transactions are intra-State, then no further question arises. But if they are in course of inter-State trade or commerce, that is to say, if the transactions constitute inter-State sales, then, in the first instance, the transactions would come within the exemption granted by Article 286(2) of the Constitution. But the further question that has to be considered is whether the transactions having been effected between April 1, 1951 and September 6, 1955, the levy of tax is invalidated by the Validating Act (VII of 1956) mentioned above.

23. On the question as to the nature of the transactions, it is necessary to see as to what constitutes inter-State trade or commerce. What is "inter-State trade or commerce" has not been defined in the Constitution or in any Statute. In *State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others*, Patanjali Sastri C. J. mentions that in America, the North Carolina Department of Revenue proposed a Bill providing that no State shall tax the sale in inter-State commerce, of property transported for the purpose of resale by the consignee as a merchant or as manufacturer but that a tax may be levied upon a property in inter-State commerce by the State into which the property is moved for the use and consumption therein in the same manner and to the same extent that taxes are levied upon or measured by sales of property not in inter-State commerce. The learned C. J. noted with interest that the Bill sought to bring about substantially the same result as the combined operation of Article 285, Clause (1)(a) explanation, CI, (2) and Article 304 of the Constitution. In *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, Aiyar J. defined inter-State trade and commerce as follows :

"A sale can be said to be in the course of inter-State trade only if two conditions occur; (1) a sale of goods, and (2) a transport of those goods from one State to another under the contract of sale. Unless both these conditions are satisfied there can be no sale in the course of inter-State sale." The learned Judge gave two illustrations. If X a merchant in State A goes to State B and purchases goods there and transports them into State A, there is a movement of goods but it is not under any contract of sale and is not protected. Secondly, if X after transporting goods into State A sells them, there is no sale in the course of inter-

State sale although there is sale and also movement of goods from one State to another. The learned Judge quotes Rottschaefer on Constitutional Law (1939 Edn.) wherein a sale in the course of inter-State commerce is thus defined :

"The activity of buying and selling constitutes inter-State commerce if the contracts therefore contemplate or necessarily involve movement of goods in inter-State commerce."

It will be noticed that while Aiyar J. relies on the definition of inter-State trade and commerce as given by Rottachaefer his actual definition is somewhat abbreviated. I think, however, that the intention was to accept the definition as laid down by Rottachaefer and not to deviate from it. When the learned Judge speaks about the transport of goods under the contract of sale, he undoubtedly means a contract which contemplates or necessarily involves such a movement. It will be observed that in Article 286(2) the words used are, "In the course of interstate trade or commerce". The words, "in the course of have been explained in several cases. In the case of State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others, it was held by a majority of Judges that the words "in the course of etymo-logically denote movement from one point to another and the expression "in the course of" not only im plies a period of time during which the movement is in progress but it postulates also a connected relation. According to Das, J. (as he then was) the word "course" conveys the idea of a gradual and continuous flow, an advance, a journey, a passage of progress from one place to another. Etymologi-cally it means and implies motion, a forward movement. The phrase "In the course of" clearly has reference to a period of time during which the movement is in progress. In The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, Bose, J. has pointed out that even when the whole transaction of sale is constituted in one State in the sense that every essential ingredient necessary to constitute a sale takes place there, (that is to say, even when the explanation is not called into play) the sale would, given other considerations, be in the course of inter-State trade or commerce. The learned Judge has given an illustration which is as follows :

24. A, a Bombay dealer, sells goods to B, a dealer in Madras for consumption in Madras. Even if the delivery is made to B himself in Bombay, he carrying the goods across in person that would be in the course of inter-State commerce if it can be proved that it was the normal way in which trade and commerce in that particular line of goods flowed across the boundary. Ordinarily, the goods of this nature are delivered to a carrier, but so long as the ban imposed by Clause (2) remains, the situs of the sale and the place of delivery are not material provided the sale is caught up in the vortex of inter-State trade and commerce.

25. Applying the principle mentioned above, let us see how the matter stands in the present case. We have to remember that the exemption that is granted under Article 286(2) is not merely to inter-State trade or commerce, but to a transaction "in the course of inter-State trade and commerce. Here, the

purchaser and the seller who happens to be also the manufacturer, are in different States. Mr. Mu-kherjee, appearing on behalf of the respondents, has contended that it was not known to the seller as to where the goods were to be consumed and in any event since the goods were to be delivered in West Bengal the seller did not care about the place of consumption. In my view, this is taking too narrow a view of the transactions with which we are dealing. In view of all the facts and circumstances mentioned above, it would be wholly unreal to think that the seller did not know that the goods were meant for consumption outside the State, or that the transaction was likely to cause movement of goods between two States. The petitioner as well as the other manufacturers of wagons for the railways, have been in the habit of supplying rolling stocks to the railways for a large number of years. The contracts for the sale of such goods were effected in various ways. At one point of time the manufacturer submitted tenders which were either accepted by the Railway Board or on the basis of which an order was placed. Or we find that orders placed by the Railway Board were accepted by the manufacturer. Or else, we find the Railway Board indicating in advance its requirements, on the basis of which orders were placed, which were accepted by the manufacturer. In each case however the manufacturer was fully aware that rolling stock was required for use in different railways in different parts of India. The course of dealing makes it amply clear that in the first instance what was given out was the specification of wagons and the number that would be required in a given year as well as the rates to be allowed to the manufacturers. These orders having been accepted, were allotted by the managing agents to various companies run by them. It is only at a late stage that the Railway Board intimated to the manufacturers as to the allocation between the several railways in India. So far as the railways are concerned, none of them are confined to one single State. How does a Railway consume wagons? Certainly by using them, that is to say, by utilising them for transport of goods from one point of the railway to another. Since the railways are all inter-State, can it be said that it was the intention to consume the wagons in any particular State? Let us look at it from another point of view. The Railway Board administers a number of railways in India. These railways have head-quarters in different States but they are all inter-State railways. For the purpose of providing rolling stock for use in the various railways, the Railway Board places orders with manufacturers who are themselves situated all over India. First of all, an estimate is made of the requirements on an All-India basis, and the total requirements are divided amongst several manufacturers. At this stage no information is given as to the allocation of wagons to the various railways, but it is perfectly known that these goods are to be allocated between the various Railways in different parts of India. During the course of manufacture, an intimation is given of the allocation. In the present case, the wagons were all intended for the Western Railway having its head-quarters at Ajmer. As soon as the allocation was made the picture became complete, and the Western Railway entered into direct correspondence asking that the wagons may be marked in a particular fashion. In my opinion, therefore, although the goods were

manufactured in West Bengal and delivered therein, it was intended under the contract and it was well known between the contracting parties that the goods would be the subject of movement over the State boundary. Perhaps if the goods were allocated to the Eastern Railway which has its head-Quarters at Calcutta, something might have been said, but the particular goods we are dealing with were earmarked for the Western Railway. After all, to whom is the delivery made? Here, the common carriers themselves are the purchasers.

26. To summarise, the position is as follows : The purchaser and the seller are in two different States. The purchaser places an order which is accepted by the seller who is also the manufacturer. The special point that is to be considered in order to determine whether it is an inter-State sale or an intra-State sale is as to whether the contract of sale provided for movement over the border, or contemplated such a movement. In my opinion, the contract did contemplate a movement over the border, and the mere fact that delivery was to be at the manufacturer's siding is not enough in the case of manufacture and supply of railway rolling stock, to constitute an intra-State sale. In short, the contract, in my opinion, contemplated that rolling stock would be manufactured and moved to various parts of India beyond the boundaries of the State, and therefore the transaction constitutes an inter-State and not an intra-State trade or commerce. The principle of exemption of taxation upon inter-State trade or commerce is more or less borrowed from the American Law. The definition of inter-State commerce under the American Law is very wide. It has been held that whenever there is a traffic or commercial intercourse between a person in one State and a person in another State, or a movement of goods between one State and another, there is an inter-State Commerce: *The Lottery case* (1903) 188 US 321. Where a manufacturer in one State buys goods in another State even though he may change his mind and never move the goods to his factory, inter-State commerce has begun: *Dahnke-Walkler Mill Co. v. Bondurant* (1921) 257 US 282. The test is neither passing of title nor termination by a carrier of liability. (See *Willis on Constitutional Law of the United States*, Ch. V) Inter-State commerce begins where there is a sale of a tangible or intangible goods by a person in one State to a person in another State, or where the same is manufactured by a person in one State for a person in another State: *Kehrer v. Steward*, (1925) 197 US 60. Where there is a sale or purchase of goods for transportation from one State to another there is inter-State commerce: *Robbins v. Taxing District of Shelby County* (1887) 120 US 480.

27. Since I have held that the transaction in this case is in course of inter-State trade and commerce such transaction would have been exempted under the provisions of Article 286(2) of the Constitution. The question that next arises is as to whether the present case is covered, that is to say, comes within the ambit of the Sales Tax Laws Validation Act 1958 (Act VII of 1956) hereinafter referred to as the "Validation Act". Mr. Das argues that the Validation Act has not affected the position because what has been validated is the law of the State imposing or authorising the imposition of tax in respect of the sale or purchase of any goods

in the course of inter-State trade or commerce, during a specified period. It is argued that in so far as the State of West Bengal is concerned, there was in existence no such law at the relevant time. As has been mentioned above, prior to the Constitution there was no provision for exempting taxation on inter-State sales. Taxation on sale of goods was a provincial subject and the province was within its rights to impose taxation on a sale provided that it was concerned or had any nexus with the transaction. This however led to various provinces simultaneously taxing the same transaction. The Constitution by Article 286, prohibited such taxation and exempted inter-State trade and commerce from the imposition of taxes by any state. Section 27 was introduced into the Bengal Act to bring it in line with the Constitution. Thus, the matter might come within the definition of sale under the Bengal Act, but read with Section 27, it would be excluded. In oilier words, the definition of sale in the Bengal Act is wide, but Section 27 imposes a restriction upon taxation of inter-State trade and commerce, bringing it in line with the Constitution. Learned counsel argues that what we should consider is the net result of the definition, read with the exclusion, and it cannot therefore be said that at the relevant time there was any law in operation in the State which enabled taxation to be imposed upon a transaction concern- ing inter-State trade or commerce. In other words, the argument is as follows : Under the definition of sale in the Bengal Act, it will include any transfer of property in goods for valuable consideration, including a transfer of property in goods involved in the execution of a contract. The "sale price" means the amount payable to a dealer as valuable consideration for the carrying out of any contract. If the matter stood there, then the present transaction may be declared to be a sale and the sale price is subject to taxation. Section 27 however, has brought the subject in line with Article 286 of the Constitution, and exempts inter-State sales. The argument is that you must read the definition and the charging section, together with the exemption. Thus read, it is argued that the law does not permit taxation of inter-State sales but prohibits it. The very same argument has been advanced in various States in order to defeat the application of the Validating Act to the State Acts concerning taxation in respect of the sale of goods. The cases may be divided into two groups.

In one group, which is headed by a Bombay decision it lias been held that the Validation Act has validated taxation in respect of such sales, even though they may constitute inter-State trade or commerce. In the second group, headed by a Madras and several decisions of Travancore-Cochin, it has been held that the Validation Act has not validated such sales. When this application was first heard, both these groups of cases were cited before me, and although I was inclined to follow the Bombay group, both parties requested me to defer delivery of judgment because a similar matter was pending before the Supreme Court, and the question was expected to be decided by the Supreme Court finally. The judgment has now been delivered by the Supreme Court in *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, . The majority judgment

in the case was delivered by Aiyar J. who has dealt with the matter exhaustively. He has accepted the view stated in the decision in the Bombay group of cases and has rejected the interpretation contained in the Madras and Travancore-Cochin group of cases. It is argued that the decision of Aiyar J. is really confined to "explanation sales", that is to say, sales of the nature described in the explanation to "Art. 286(1)(a) of the Constitution. Although it is true that the particular cases which were dealt with in the judgment were explanation sales the general principles applicable have been exhaustively investigated and the point that we have to deal with here has been finally determined. The very point's that have been argued by learned counsel here were considered in the judgment and the view was upheld, namely, that the law enabling taxation on sales such as we have in the present case, was there in existence, but because of the exemption in Article 286(2) of the Constitution the application thereof was suspended. The Parliament had the power of lifting the ban, and this is exactly what has been done by the Validation Act. Thus, the ban having been lifted, there is now no impediment to the levy of taxation on inter-State sales, during the period covered by the Validation Act. As the Supreme Court judgment has exhaustively dealt with all the case-law it is unnecessary for me to repeat it here. I shall, however, briefly refer to the same. In the Bombay decision *Dialdas Parmanand Vs. P.S. Talwalkar and Others*, , Chagla, C. J. had to consider the effect of the Validation Act upon the Bombay Sales Tax Act so far as inter-State sales are concerned. The Bombay Sales Tax Act (III of 1953) approximates closely to our own Act and the definition of sale is almost the same. Just as Section 27 was introduced into the Bengal Act, Section 46 was introduced into the Bombay Act, to bring it in line with the Constitution. It was argued that Article 286(2) contains a condition precedent and the ban should first be lifted before the State legislature could pass a law taxing or enabling taxation of inter-State sales. It was urged that this process could not be reversed. The learned Chief Justice, however, held that it was a mistake to look upon the provision of Article 286(2) as containing a condition precedent. If the State legislature were to pass a law containing a provision for taxing inter-State sales, the law could not be charged on the ground of want of competence but what the Constitution has done is to have placed a limitation or restriction upon the State legislature and once the restriction is removed the competency is unquestioned and undisputed. Therefore, if the Parliament could remove the restriction antecedent to the State legislation, equally so it could remove the ban retrospectively, and validate a law which is only invalid because the ban had not been lifted and the restriction had not been removed,

28. The next case to be considered is a Madras case, *Mettur Industries Ltd. Vs. The State of Madras*, . In this case, the point directly arose for decision as to whether Section 22 of the Madras Act did in fact levy a tax on the explanation sales so as to fall within the protection of the Sales Tax Laws Validation Act. It was held that explanation of Section 22 had the effect of rendering the sale as one inside the State so as to fall within the definition of that word in Section

22(h), and that it was taxable. It will be observed that the matter turned on the definition of "sale" in, and upon the provisions generally of the Madras Sales Tax Act, the provisions whereof are to a certain extent different from the Bengal and the Bombay Acts. In *Government of Andhra Vs. Nooney Govindarajulu*, the above mentioned Madras decision was dissented from. It was held there that Section 22 of the Madras General Sales Tax Act did not create a liability to tax. Therefore, there was no pre-existing State law imposing or authorising the imposition of a tax on inter-State sales and consequently the Validation Act did not apply. This case also turned upon the special provisions of the Madras Act. As a matter of fact, the Bombay decision was distinguished on the ground that the provision of the Madras Act differed from the Bombay Act. In *The Mysore Spinning and Manufacturing Co. Ltd., Bangalore City and Others Vs. The Deputy Commercial Tax Officer, Madras and Another*, it was held by a Division Bench of the Madras High Court that an unconstitutional law has a factual existence but was frozen and was incapable of enforcement by reason of its contravening the constitution. When, however, the constitutional ban ceased to operate the fetters whose existence rendered that law moribund were removed and the law which theretofore was so to speak in a state of hybernation springs into activity because the superimposed shackles are removed. It was held that the view in *Mettur Industries Ltd. Vs. The State of Madras*, was correct and Section 22 of the Madras Act had the effect of imposing a tax on the explanation sales. In *Tobacco Manufacturers (India) Ltd. Vs. Commissioner of Sales Tax and Another*, Ramaswami C. J. of the Patna High Court, pointed out, that if the matter came within the scope of Article 286(2) alone then the Validation Act was effective but if the matter be brought within the explanation of Article 286(1)(a) then neither the President's continuance order nor the Validation Act was effective because they do not control the provisions of Article 286(1)(a) or the explanation thereto. In *Cochin Coal Co. Ltd. v. State of Travancore Cochin* 1956 7 STC 731 sc the various decisions of the several High Courts in India were not cited or discussed. AH that was said was that the Travancore Cochin General Sales Tax Act of 1925 contained Section 26 (corresponding to Section 27 of our Act) and therefore it was not possible to say that the said Act contained any provision for the imposition of a tax on sales or purchases in the course of inter-State trade or commerce and consequently the Validation Act did not apply. In *Mathew v. Travancore Cochin Board of Revenue* AIR 1937 TC 300, the same view was accepted. The Bombay view has been adopted by the Madhya Bharat High Court in *F. and C. Oslar (India) Ltd. and Another Vs. State of Madhya Bharat and Others*, as also in (S) AIR 1957 Mad 368. Coming back to the Supreme Court case, we find that Aiyar J. has held that the law had been correctly laid down in 1956-7 STC 675: (AIR 1957-Bom 71) (supra) and *Mettur Industries Ltd. Vs. The State of Madras*, and that the decision in AIR 1957 TC 300 (supra) : 1956 7 STC 731 (TC.) (supra) and *Government of Andhra Vs. Nooney Govindarajulu*, were not correctly decided. It is quite true that the decision of Aiyar J. was directly concerned with sales which we may call explanation sales, and further that what was considered was the Madras Act. But the principles which were investigated

and declared, apply with full force to the present case. I have held that the sales are inter- State sales. The question is whether they, being sales within a particular period covered by the Validation Act, came within its mischief. The ground that has been advanced is the same as has been advanced in practically all the cases mentioned above. It is said that the Act as it stands contains no provision for taxing or authorising taxation of inter-State sales, and consequently the Validation Act in its own terms cannot apply, because what it has validated is the existing law. That is one view of the matter. But the other view which has ultimately been accepted by the Supreme Court is that the law enabling the taxation of sales including interstate sales was there, provided of course the matter came within the definition of "sale" as given in the Act. Section 27 has not totally taken away or obliterated the provision, but in line with the Constitution, has imposed a ban. As soon as the ban was lifted, such provision came into force and enabled taxation of sales, even though they constituted inter-State sales, that is to say, sales in course of inter-State trade and commerce. Applying this principle to the facts of the present case, I hold that the sales do come under the definition of "sale" as given in the Act, although if Section 27 was in full force then the taxation of inter-State sales would be excluded and the present transactions could not be the subject matter of State taxation. Section 27 imposed a ban on the power of taxation in respect of such sales, thus bringing the matter in line with the constitution. The Validation Act has now removed that ban, and therefore the power of the State to tax such sales within the period covered by the Act, has revived. In my opinion, therefore, the respondents were within their rights in imposing sales tax upon the transactions in question, and that no case has been made out for interference by this Court. Consequently this application fails and must be dismissed. The Rule is discharged, all interim orders vacated but there will be no order as to costs.