
(2010) 02 DEL CK 0376

In the Delhi High Court

Case No : Writ Petition (C) No. 16142 of 2006 and C.M. No. 13143 of 2006

Infrastructure Leasing and Financial Services Ltd.

APPELLANT

Vs

Commissioner of Value Added Tax and Others

RESPONDENT

Date of Decision : 05-02-2010

Acts Referred:

Constitution of India, 1950 — Article 366, 366(29A)

Delhi Sales Tax on Right to Use Goods Act, 2002 — Section 2, 3

Delhi Value Added Tax Act, 2004 — Section 106, 106(2)

Citation : (2010) 29 VST 346

Hon'ble Judges : Siddharth Mridul, J; A.K. Sikri, J

Bench : Division Bench

Advocate : Randhir Chawla and Renu Sangal, for the Appellant; Prag P. Tripathi, A.S.G., H.L. Taneja and Amey Nargolkar, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The petitioner is carrying on the business of leasing of machinery and vehicles all over the country. It leases goods required by the lessee for specified period, namely, 24, 36 and 48 months against lease rentals payable each month of the tenure of the lease. Admittedly such a transaction was not exigible to sales tax under the Delhi Sales Tax Act as it was not treated as "sale of goods" as understood in the Sale of Goods Act. The traditional concept of "sales tax" has undergone a drastic change by amending Article 366 of the Constitution and inserting Clause (29A) therein. The scope for the levy of sales tax has been expanded thereby inasmuch as Clause (29A) provides that sale and purchase of goods would include, besides other transactions, the transfer of the right to use goods. Clause (29A) reads as under:

(29A) "tax on the sale or purchase of goods" includes--

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made.

2. After the said amendment, the sale and purchase of goods, by fiction of law would, include transfer of the right to use goods irrespective of the fact that in leasing transactions, there is no ownership of goods passing from the seller to the buyer. As a result of the Constitutional amendment, the powers of the States were enlarged for making a law for levy of tax on such deeming sales referred to in Article 366(29A). Most of the States exercised their powers and amended the respective Sales Tax Acts by extending the scope of the definition of the term "sale" so as to include lease transactions in which transfer of the right to use goods alone has been given. The Delhi State enacted a separate Act known as the Delhi Sales Tax on Right to Use Goods Act, 2002 (hereinafter called as the "Act 2002") which was notified and came into operation with effect from September 15, 2004. After the enactment of the Act 2002, all lease transactions in which the transfer of the right to use goods had been effected became liable to sales tax.

3. This enactment, namely, the Act 2002 was repealed by the Delhi Value Added Tax Act, 2004 (hereinafter called as, "the DVAT Act") which has been enforced on April 1, 2005. Section 106 of the DVAT Act makes this repealing provisions. Sub-section (2) of Section 106, however, provides that the repeal shall not affect the previous operation of the Act, or any right, title, entitlement, obligation or liability, already acquired, accrued or incurred, thereunder.

4. It is clear from the aforesaid that the Act 2002 remained in operation from September 15, 2004 to April 30, 2005. All lease transaction agreement entered into during this period would be liable for the tax under this Act. The petitioner

herein had, however, entered into various lease agreements prior to September 15, 2004. The duration of these agreements was 24/36/48 months. Obviously, therefore, such agreements, though entered prior to September 15, 2004 continue to exist even after September, 2004 and instalments by the lessees were paid after September, 2004 as well, which were received by the petitioner as the lessor under those agreement.

5. The question that has arisen is as to whether the petitioner would be liable to pay tax under the Act 2002 in respect of the amount towards the instalments received after September 15, 2004 though the agreements were entered prior to September 15, 2004.

6. The case of the petitioner is that prior to coming into force of this enactment, there was no law or any provision in the existing Sales Tax Act providing for a levy of tax on lease transactions and it was for the first time that law was made for levy of tax on lease transaction by the Legislating Act, 2002. However, Section 3 of the Act 2002, which is the charging section and provides for incidence of tax, inter alia, lays down that the tax shall be leviable on the turnover of sale in respect of the transfer of the right to use goods accrued to before the appointed date but the right to use goods is exercised on or after the appointed date. The said Section 3 reads as under:

3. Incidence of tax.--Subject to the provisions contained in this Act and the rules made thereunder, a tax shall be leviable on the turnover of sales in respect of--

(a) the transfer of the right to use any goods agreed to before the appointed day but the right to use the goods is exercised on or after the appointed day;

(b) the transfer of the right to use any goods agreed to prior to the appointed day, and wherein the right to use has been continued after the appointed day, to the extent of the sale price received or receivable in respect of such use on or after the appointed day; and

(c) the transfer of the right to use any goods agreed to on or after the appointed day.

7. By virtue of this provision, the tax becomes payable even qua those agreements which were entered into prior to September 15, 2004 but payments under those lease agreements were received after September 15, 2004. It is for this reason that the petitioner feels aggrieved by the provisions of Section 3(b) of the Act 2002 and challenges the validity of the provisions on the ground that it is ultra vires to the provisions of Section 2(n) which defines "sale" in the following terms:

2(n) "Sale" with its grammatical variation and cognate expressions means any transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or any other valuable consideration, and the word "sell" shall be construed accordingly.

8. Since the definitions of "goods" and "turnover of sales" as provided in Section 2(f) and 2(s) of the Act 2002, would be relevant for the discussion it would be apposite to reproduce these provisions also at this stage:

2(f) "goods" includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares, securities or money.

....

2(s) "turnover of sales" means the aggregate of the amounts of sale price received or receivable during a year by a dealer in respect of the transfer of the right to use any goods.

9. Mr. Chawla, the learned Counsel appearing for the petitioner pointed out that Section 2(n) provides that sale means any transfer of the right to use goods for any purposes for cash or for deferred payment. But, Section 3 is the charging section and it provides, firstly, that tax shall be leviable on the turnover of sale in respect of the transfer of the right to use goods agreed to before the appointed day but the right to use goods is exercised on or after the appointed day. The provisions of Section 3 are directly in violation of the provision of Section 2(n), inasmuch as the sale under the enactment means transfer of the right to use the goods for a price. If there is a transfer of the right to use goods, i.e., if the right has been given to the user of the goods then on the day the right has been given it would deem to be a sale and would be liable to sales tax, irrespective of the fact that the goods are subsequently used during the tenure of the agreement and price thereof is received in instalments during the tenure of the agreement which may be even after coming into force of the new enactment. The user of the goods and the receipt of the price are not criteria for determining the situs of sale. Sale in law takes place only once when transfer of the right to use goods is effected. It is at that point of time that taxable event takes place which can be liable to tax. If on the date the transfer is effected there is no law for levy of tax on lease transactions then no tax can be imposed.

10. Giving another twist to the same argument, he submitted that it is the settled principle of law that when a sale is effected then subject to other provisions of the law taxable event takes place which becomes liable to sales tax at the rate prevailing at that point of time. Simply because the consideration is received in instalments through deferred payment relating to the said sale transaction, that by itself would not change either the situs of sale or the rate of tax applicable thereon. The mode of payment and the time of payment have no relevancy either to the levy or to the rate applicable. In case where sale has already taken place and instalments are received subsequently by which point of time the rates have changed then the changed rates do not come into play to calculate the tax payable in respect of the prior completed sale. The rate of tax applicable will always be the rate prevailing at that point of time when the sale was effected.

11. He further pointed out that the rate of tax on leasing transactions was four per cent during the period September 14, 2004 and April 1, 2005. However, after the coming into force of the DVAT Act, 2004, after April 1, 2005 the rate of tax applicable on leasing transactions was the rate prevalent on individual items, namely:

Motor vehicles ... 12.5% Machinery ... 12.5% Furniture ... 12.5%
Computers ... 4%

12. Proceeding on that basis, his argument was that the deeming sale under the Delhi Transfer of the Right to Use Goods takes place as and when the right to use is transferred by virtue of the agreement. The taxable event is the taking place of the sale. As and when the sale and the taxable event takes place the same is liable to tax. The subsequent instalments received spread over in number of months have no relevancy and are immaterial to determine either the sale or the taxable event. It is only a consideration received in deferred instalments. The receiving of the consideration in lumpsum on the same day or deferred or by instalments does not shift the point of sale or the taxable event. The sale is one in the lease transaction and can only be taxed once as and when the sale is effected. It is absurd that each instalment received month after month is by itself an independent sale. Section 3(b) is in excess of powers conferred by entry 54 and therefore, is without authority and is unconstitutional.

13. He argued that though Section 2(n) was in line with Clause (d) of Article 366(29A), Section 3(b) was in excess of the powers conferred by roping in subsequent payments of instalments to tax by treating them as independent sales."

14. The learned Counsel also relied upon the judgment of the Supreme Court in 20th Century Finance Corpn. Ltd. v. State of Maharashtra [2000] 119 STC 182 wherein it has been held as under (at page 202 of STC):

27. Article 366(29A)(d) further shows that levy of tax is not on use of goods but on the transfer of the right to use goods. The right to use goods accrues only on account of the transfer of right. In other words, right to use arises only on the transfer of such a right and unless there is transfer of right, the right to use does not arise. Therefore, it is the transfer which is sine qua non for the right to use any goods. If the goods are available, the transfer of the right to use takes place when the contract in respect thereof is executed. As soon as the contract is executed, the right is vested in the lessee. Thus, the situs of taxable event of such a tax would be the transfer which legally transfers the right to use goods. In other words, if the goods are available irrespective of the fact where the goods are located and a written contract is entered into between the parties, the taxable event on such a deemed sale would be the execution of the contract for the transfer of right to use goods. But in case of an oral or implied transfer of the right to use goods it may be effected by the delivery of the goods.

28. No authority of this Court has been shown on behalf of respondents that

there would be no completed transfer of right to use goods unless the goods are delivered. Thus, the delivery of goods cannot constitute a basis for levy of tax on the transfer of right to use any goods. We are, therefore, of the view that where the goods are in existence, the taxable event on the transfer of the right to use goods occurs when a contract is executed between the lessor and the lessee and situs of sale of such a deemed sale would be the place where the contract in respect thereof is executed. Thus, where goods to be transferred are available and a written contract is executed between the parties, it is at that point situs of taxable event on the transfer of right to use goods would occur and situs of sale of such a transaction would be the place where the contract is executed.

(emphasis supplied).

15. His argument based on the aforesaid observations, was that first there has to be "sale" and then the question of "situs of sale" arises. He argued that the exigibility to tax arises at the stage of "sale" and transaction of sale/deemed sale even in case of transfer of right to use goods has to be treated as on the date of entering into agreement.

16. Mr. Prag P. Tripathi, learned Additional Solicitor-General appeared on behalf of the respondents refuted the aforesaid submissions of the learned Counsel for the petitioner. He challenged the very foundation of the case laid by the petitioner and submitted that one provision of the Act cannot be treated as ultra vires the other provisions of the same Act. On merits, his arguments was that by the 46th Amendment to the Constitution and insertion of Clause (29A) of Article 366 thereof, the very scope of taxation was enlarged by the Parliament. The said amendment was not limited to the scope of "sale" but conceptually redefined the realm of "taxation". It was by this amendment, that the deeming provision was introduced, treating certain transactions as amenable to sales tax which transactions in traditional sense were not treated as "sale". The leasing transactions were to be taken into consideration in the light of this spirit behind the aforesaid amendment, was the submission of the learned Additional Solicitor-General. Examining in this backdrop, rentals paid were not to be treated as "deferred payment" but it amounted to "sale" every month when rental was paid, inasmuch as the right to use the equipment leased would arise only on payment of the lease rentals every month. It is on the payment of lease rentals every month that the right to use is perfected, for failure to pay lease rentals in a particular month, the lessor (petitioner in the instant case), had right to recover back the leased article. The submission, thus, was that taxability is on the event of payment as the Legislature was not taxing "sale" but payment received in case of right to use. In this scenario, the principle of "sale" as applicable in case of goods had no relevance, relating to the leased transactions. He argued that the structure of a lease agreement/contract was different from that of "contract of sale". When the sale of goods is effected, the property passed on to the purchaser immediately and even if there is default in making the payment, the seller cannot recover back the goods but is entitled to the price of the goods or

damages. On the contrary, in the case of a lease agreement, which are treated as "deemed sale" for the purpose of taxation, no right in the goods passes. There is only a right to use and that right also accrues to the lessee every month on faithfully payment of lease rentals every month. Thus, in case of default, when the payment of lease rental is not made in a particular month, the right accrues in favour of the lessor/transferor to get back the goods leased. Therefore, it follows that each month is a separate transaction of deemed sale and each instalment of lease rental is "sale price".

17. The learned Additional Solicitor-General referred to the lease agreement executed by the petitioner and particularly paragraphs 21 and 22 thereof which are to the following effect:

21. Events of default:

An event of default shall occur hereunder if the lessee:

21.1 Fails to pay any of the lease rentals or part thereof or other payment required hereunder when due and such failure continues for a period of.... days after written notice to the lessee; or

21.2 to 21.9

22. Remedies:

22.1 On the occurrence of any of the events of default pursuant to what is stated hereinabove:

(a) The lessor shall, without any notice, be entitled to remove the equipment and for that purpose by itself, its servants or agents enter upon any land, building or premises where the equipment is situated or is reasonably believed by the lessor to be situated for the time being, and detach and dismantle the same and the lessor shall not be responsible for any damage which may be caused by any such detachment or removal of the equipment.

(b) Without prejudice to and in addition to the lessor's rights provided hereinabove, the lessor shall also be entitled to recover from the lessee and the lessee shall be bound to pay to the lessor the following amounts, viz:....

18. He also sought to draw sustenance from the judgment of the Supreme Court in the case of Bharat Sanchar Nigam Ltd. v. Union of India [2006] 3 VST 95 : [2006] 146 STC 91 wherein this aspect of the matter is highlighted by the Supreme Court in the following words (at page 133 of 3 VST):

98. To constitute a transaction for the transfer of the right to use the goods the transaction must have the following attributes:

(a) There must be goods available for delivery;

(b) There must be a consensus ad idem as to the identity of the goods;

(c) The transferee should have a legal right to use the goods--consequently all legal consequences of such use including any permissions or licences required therefore should be available to the transferee;

(d) For the period during which the transferee has such legal right, it has to be the exclusion to the transferor--this is the necessary concomitant of the plain language of the statute--viz., a "transfer of the right to use", and not merely a licence to use the goods;

(e) Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others.

19. He specifically pointed to attribute at (c) where the court emphasized that the transferee should have a legal right to use the goods and submitted that such legal right to use the goods arises only when the payment of instalment is made regularly.

20. Further submission of the learned Additional Solicitor General was that the petitioner had not challenged the legislative competence in enacting the provisions like Section 3(b) of the Act which was a charging section. Therefore, no case was made out for declaring the said provisions as ultra vires the Constitution.

21. He also submitted that reliance placed by the petitioner on the decision of the Supreme Court in 20th Century Finance Corporation. Ltd. [2000] 119 STC 182 was misplaced because in that case the Supreme Court was concerned with the situs of the deemed sale in respect of transfer of right to use and its relation to sales which are effected outside the State. According to him, the question posed in the present case, on the contrary, is altogether different and the said judgment has no relation to the controversy in question. He also referred to a single Bench judgment of the Madhya Pradesh High Court entitled Arihant Hire Purchase Company Limited v. State of Madhya Pradesh [2007] 5 VST 593 as per which a similar petition had been dismissed.

22. We have considered the submission made by the learned Counsel on the either side. In order to appreciate the respective contentions, the *raison d'être* behind introduction of Article 366(29A) is to be understood. This exercise is already carried out by the apex court in Bharat Sanchar Nigam Ltd. [2006] 3 VST 95 : [2006] 146 STC 91 and 20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra, which make our task simple, as we are required nothing to take note of the discussion contained in these judgments on this aspect.

23. Realizing that by virtue of locus classicus decision in the case of The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., does not permit a composite contract of both goods and services (viz., a works contract) to be taxed as sale of goods and does not permit serving of the contract for the value of goods to be culled out from the same, the need was felt to amend the Constitution to widen the definition of "sale" form that as was traditionally

understood and which meant an agreement to transfer title, payment of consideration, and, transfer of title in the goods. Three proposals were mooted by the Law Commission in its report of 1974 to give the power to the State to tax goods included in works contracts, hire purchase transaction and transfer of controlled commodities by virtue of statutory orders. The Law Commission noted that there can be three actions, one of amending entry 54 of the State List, second of adding a fresh entry in the State List or thirdly of inserting in Article 366 a wider definition of "sale" so as to include works contract. The Law Commission preferred the last alternative and, therefore, the Constitution came to be amended by the Forty-sixth Amendment Act, 1982 to add Sub-article (29A), which included six sub-clauses. Each of the sub-clauses served to bring transactions where one or more essential ingredients of sale were absent so that it fell within the ambit of sale and purchase for the purpose of levy of sales tax.

24. We have already reproduced these sub-clauses reading thereof indicates that the traditional concept of levy of tax only on the "sale" of goods has been totally transformed and by fiction of law even transfer of right to use goods is treated as "sale". Thus, where there is no actual sale, but only right to use the goods is transferred, that is also treated as "sale" and tax can be imposed thereupon.

25. In the present case, there is no dispute that right to use goods has been transferred in the leasing transaction even when no ownership of goods passed from the seller to the buyer. Up to this stage, there is no quarrel between the parties.

26. However, submission of the petitioner is that on the day when lease agreement is entered into, there is a transfer of right to use goods. Therefore, it would be deemed to be a "sale" and would be liable to sales tax, irrespective of the fact that goods are subsequently used during the tenure of the agreement and price thereof is received in instalments during the tenure of the agreement, which may be even after coming into force of the new enactment. While arguing this, the petitioner cannot ignore the statutory provision. The submission is contrary to the plain language of Section 3 of the Act. Section 3 of the said Act, which is a charging section, inter alia, provides that tax would be paid on that component of sale price, which is received or receivable and in respect of such use even after the appointed date. This section, thus, provides, in no uncertain terms, that when the rentals in respect of lease agreements are received in future after entering into the agreement, the tax would be paid as and when such rentals are received. This would be the meaning attributed to the provisions on their plain reading.

27. The petitioner is aware of this consequence created by Section 3 of the Act. Reading this, the petitioner pleads that Section 3(b) of the Act, 2002 be declared ultra vires.

28. Competence of the Legislature to enact this provision is not question. What is argued is that this provision is ultra vires Section 2(n) of the Act, 2002, which

defines "sale". We are afraid such a plea cannot be accepted. Mr. Tripathi, learned Additional Solicitor-General is right in his submission that one provision of an enactment cannot be ultra vires to another provision of the same enactment. The expression "ultra vires" consists of two words: "ultra" and "vires". "Ultra" means beyond and "vires" means powers. Thus the expression ultra vires means an act done outside the scope of the conferred power. This doctrine cannot be applied to adjudicate upon the effects of inter-play of two different provisions of the same statute as both of them draw their legal sanctity from a very single transaction of the passing of that statute by the Legislature. One must borne in mind that to plead doctrine of ultra vires there must be pre-existence of the broad contours of the conferred authority in pursuant to which or otherwise, some act has been done, which was beyond the spectrum of the conferred power. In other words, essence lies in the time interval and an Act can be held ultra vires to a pre-existing higher legal authority. The submission that Section 3(b) of the Delhi Sales Tax on Right to Use Goods Act, 2002 is ultra vires to Section 2(n) of the same Act indirectly means that Section 3(b) of the Act could not have been enacted as that was beyond the power of the Legislature because of the operational effect of the pre-existing Section 2(n). This line of reasoning leads to legally absurd conclusions. Therefore, having been enacted and came into effect at the same time and by a single transaction, the doctrine of ultra vires cannot be resorted to press the petition. At max, what the petitioner can plead is that there is inconsistency between Section 3(b) and Section 2(n) of the Delhi Sales Tax on Right to Use Goods Act, 2002.

29. What would be the position when there appears to be some contradiction of the two provisions of the same Act? As per the settled law of interpretation, courts have to make an attempt to reconcile both the provisions, viz., they are to be interpreted in a manner that they are harmoniously construed. This cardinal rule of construction was incorporated by the Supreme Court in its judgment in the case of *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, in the following words:

Crawford in *Statutory Construction* stated the principle in the following words: "Hence, the court should, when it seeks the legislative intent, construe all the constituent parts of the statute together and seek to ascertain the legislative intention from the whole Act, considering every provision thereof in the light of the general purpose and object of the Act itself and endeavouring to make every part effective, harmonize and sensible." It clearly establishes that the court should avoid absurd consequences in any part of the statute and refuse to regard any word, phrase, clause or sentence superfluous, unless such a result is clearly unavoidable.

30. To summarize the principle of harmonize construction following parameters are to be kept in mind:

1. The effect is to be given to both the provisions. Thus, a construction that reduces one of the provisions to a "useless lumber" or "dead letter" is to be

avoided, as that is not harmonious construction. To harmonise is not to destroy.

2. A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific. The question as to the relative nature of the provisions general or special has to be determined with reference to the area and extent of their application either generally or specially in particular situations. The principle is expressed in the maxims *generalia specialibus non derogant*, and *generalibus specialia derogant*.

3. The meaning of some words in a statute may be enlarged or restricted in order to harmonize them with the legislative intent of the entire statute. It is the spirit of the statute which should govern over the literal meaning.

4. It should not be lightly assumed that "parliament had given with one hand what it took away with the other". The provisions of one section of a statute cannot be sued to defeat those of another "unless it is impossible to effect reconciliation between them".

5. The courts have to take help from the preamble, objects, the scheme of the Act, its historical background, the purpose of enacting the provision, the mischief, if any which existed, which is sought to be eliminated (see *Joginder Kumar Singla v. Government of N.C.T. of Delhi* AIR 2005 Delhi 258).

31. In the present case, Section 2(n) defines "sale" means any transfer of the right to use any goods for any purpose. No doubt, it would be treated as "sale" even if "deferred payment" is made. Likewise, Section 2(s) which defines "turnover of sales" to mean the aggregate amounts of sale price received or receivable during a year. On the other hand, Section 3 of the Act, 2002 makes tax payable as and when the price is received, i.e., deferred payment received. If we accept the contention raised by the learned Counsel for the petitioner, Section 3(b) would be rendered nugatory and otiose. On the other hand, we can harmonise the two sections, viz., Section 3(b) of Section 2(n) by reading down Section 2(n) in the following manner:

"Sale" as defined in Section 2(n) means any transfer of rights to use any goods to any purpose, consideration therefore has to be deferred payment or any other valuable consideration. Deferred payment here would mean that the consideration for transfer of right to use goods has been fixed, but down-payment has not been made which is allowed to be staggered. Once this restricted meaning is given to the expression "deferred payment", it would not pose any difficulty in examining the cases of lease rentals. Here in such cases, goods are given on lease and rent is payable every month during the tenancy of the lease. Even as per the terms of the agreement, right to use accrues in favour of the lessee only when he pays the said rentals regularly, each month. Therefore, in such cases, deemed sale, i.e., transfer of right to use goods would accrue every month on payment. That is the import of Section 3 of the Act as rightly contended by the learned Additional Solicitor-General.

32. As pointed out above, we have to keep in mind the purpose with which Clause (29A) was inserted to Article 366. The entire concept of "sale" has undergone drastic change for the purpose of taxation. It has conceptually redefined realm of taxation by introduction fictional concept of "sale". When the amendment makes certain transaction as "sale" by deeming provision, this concept can be pressed into service for the purpose of taxation as well, viz., at what point of time "sale" is to be inferred for the purpose of taxation. It is this fiction, which has created Section 3(b) as well. According to us, this is the only harmonious construction, which can be given to the two provisions so that both the provisions are given due importance. Arguments of the learned Counsel for the petitioner are predicated on the traditional concept of "sale", which was the position prior to the constitutional amendment. We may reiterate that the scope of this writ petition is to challenge the vires of Section 3(b) of the Act, 2002. This challenge is made only on the ground that it is ultra vires the provision of Section 2(n) which, pointed out above, is not permissible. Therefore, once the two provisions, viz., Section 2(n) defining "sale" on the one hand and Section 3(b) [which is a charging section] on the other hand, remain in the statute book and we are above to place them harmoniously, most of the arguments made by the learned Counsel for the petitioner lose their force.

33. In these circumstances, we have no hesitation to hold that this petition is devoid of any merits. We accordingly discharge the rule and dismiss the writ petition. However, in the facts of this case, we leave the parties to bear their own respective costs.