

(1982) 10 GUJ CK 0010
In the Gujarat High Court
Case No : Sales Tax Reference No. 24 of 1979

Jai Hind Printing Press

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 12-10-1982

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 2, 2(10), 2(11), 2(4), 22
Central Sales Tax Act, 1956 — Section 10, 10A, 8(4)
Gujarat Sales Tax Act, 1969 — Section 2, 2(10), 2(20), 2(4), 20

Citation : (1983) 52 STC 135

Hon'ble Judges : V.V. Bedarkar, J; P.D. Desai, J

Bench : Division Bench

Advocate : R.D. Pathak, for the Appellant; R.M. Vin, Government Pleader, instructed by H.V. Chhatrapati, of Bhaishanker Kanga and Girdharlal, for the Respondent

Judgement

Desai, J.—The Gujarat Sales Tax Tribunal (hereinafter referred to as "the Tribunal") has referred the following questions of law for the opinion of this Court u/s 69(1) of the Gujarat Sales Tax Act, 1969 :

"(1) Whether, on the facts and in the circumstances of this case, the Tribunal was right in law in holding that the applicant was estopped from contending that it was not a "dealer" in respect of the sales of printing machinery worth Rs. 77,591 on account of the fact that it was registered as a dealer under the Gujarat Sales Tax Act, 1969, and/or on account of the applicant having purchased the disputed machinery by furnishing declarations in form C, in terms of section 8(4)(a) of the Central Sales Tax Act, 1956 ?

(2) Whether, on the facts and in the circumstances of this case, the Tribunal was right in law in holding that the applicant was a "dealer" within the meaning of section 2(10) of the Gujarat Sales Tax Act, 1969, in respect of the aforesaid sales of machinery ?

(3) Whether, on the facts and in the circumstances of this case, the Tribunal was

right in law in holding that in any event the applicant was liable to pay tax on the aforesaid sale of machinery by virtue of the provisions contained in sub-section (6) of section 29 of the Gujarat Sales Tax Act, 1969 ?

2. The assessee is a dealer registered under the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the local Act"), as also under the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act"). The assessee runs a printing press in which the Ahmedabad edition of the Gujarati daily "Jai Hind", which is published from Rajkot, is printed on job-work basis for and on behalf of the owners and publishers of the said newspaper.

3. According to the statement of the case, the assessee had purchased certain printing machinery for being used in its printing press during the course of the accounting period from Kartak Sud 1 to Aso Vad 30 of S.Y. 2028. It is an agreed position before us, however, that this is an apparent error because according to the material on record, the machinery in question was, in fact, purchased during the accounting period from Kartak Sud 1 to Aso Vad 30 of S.Y. 2026. Since the transaction was an inter-State purchase, declarations as required by section 8(4) (a) of the Central Act were made in the prescribed form C and tax at the concessional rate of 3 per cent was paid by the assessee. After having purchased the machinery, instead of using the same in its printing press, the assessee sold the same locally, that is to say, within the State of Gujarat, during the accounting period from Kartak Sud 1 to Aso Vad 30 of S.Y. 2028. In the course of proceedings for the assessee's assessment to sales tax for the said accounting period, the Sales Tax Officer found that out of the total turnover of sales amounting to Rs. 1,67,591, a sum of Rs. 90,000 was relatable to the job-work of printing the newspaper and that the remaining amount of Rs. 77,591 was relatable to the sale of the printing machinery purchased earlier by the assessee. The turnover relatable to the job-work was not subjected to sales tax but the turnover in respect of the transaction of machinery was subjected to sales tax at the rate of 3 per cent of the sale price. The Tribunal has found that the sales tax appeared to have been levied under entry 16(1) of Schedule II, Part A of the local Act.

4. An appeal preferred by the assessee against the said assessment to the Assistant Commissioner of Sales Tax having failed, the assessee carried the matter in second appeal before the Tribunal. Before the Tribunal, the assessee disputed its liability to pay sales tax on the ground that its principal activity was the printing of the Ahmedabad edition of "Jai Hind" on job-work basis for the owners and publishers of the said newspaper, that such activity amounted to "mere service" rendered to the owners and publishers of the newspaper and that it did not constitute "business" within the meaning of section 2(4) of the local Act and that the assessee was, therefore, not a "dealer" within the meaning of section 2(10) of the local Act. According to the assessee, therefore, there was no liability incurred by it to pay any tax under the local Act on the disputed sale. The assessee pleaded that it had erroneously or unnecessarily got itself registered as

a "dealer" under the local Act and that the said circumstance should be ignored and that the question raised by it as to its liability should be examined on merits keeping out of consideration the factum of such registration.

5. The Tribunal held, in the first place, that the assessee could not avoid the legal consequence of its own admission and representation made before the sales tax authorities under the local Act as well as under the Central Act, when it had approached them for registration as a dealer, and that it could not be allowed to blow hot and cold or to approbate and reprobate. Having considered some of the consequences including the benefits which flow from the registration, the Tribunal observed that the assessee wanted to enjoy the benefit as a dealer and its registration as a dealer but did not want to discharge its corresponding legal obligations arising under the law out of those every circumstances. The Tribunal, in substance, held that the assessee was precluded from raising the contention that it was not a "dealer" or that it was wrongly registered as a dealer and that, therefore, it could not be permitted to contend that its activity did not constitute business. The Tribunal however, still proceeded to consider on merits the question whether the assessee was, in fact, a "dealer" within the meaning of section 2(10) of the local Act. In other words, the Tribunal examined on merits the contention of the assessee that its activity consisted of rendering "mere service" to the owners and publishers of the daily newspaper "Jai Hind" and that it did not constitute "business" within the meaning of section 2(4) of the local Act. On the said question, the Tribunal found that it was unable prima facie to accept the submission made on behalf of the assessee. The Tribunal found that the assessee while doing the the business of printing newspaper would be required to purchase printing ink, types, printing machinery, etc., all of which were indispensable for the purpose of carrying on its activity of printing the newspaper. According to the Tribunal, the assessee had purchased the disputed machinery with the intention of using it in the manufacture or processing of the newspaper for sale. The purchase of the machinery, therefore, was an integral part of the assessee's business and the assessee was prima facie liable to pay sales tax on the sale of such machinery. Having recorded the above finding on the prima facie view of the matter, the Tribunal proceeded to make the following further observations :

"29. But we do not propose to go into those cases or to decide in this case the meaning or scope of the expression "mere service" or the phrase "in the nature of mere service" which the legislature has used in section 2(4) of the local Act while defining the term "business". We say so because any such discussion or decision would merely be of an academic character so far as the facts and circumstances of this case are concerned as above-noted. In our view, even if we assume for the sake of argument that as a matter of fact, the appellant was rendering "mere service" as alleged on its behalf, that would not help the appellant out of the disputed tax liability in the present case. That is because, as we have already stated earlier, the appellant had not disputed before us the fact recorded by the learned Assistant Commissioner in his order that the appellant

was a "dealer" registered under the provisions of the local Act as well as under the provisions of the Central Act. If that is so, and the learned chartered accountant for the appellant had not controverted that fact before us, we are of the opinion that the appellant would be hit by the provisions of sub-section (6) of section 29 of the local Act. The substance of the sub-section is that if any person has been registered as a dealer upon an application made by him and if thereafter, it was found that he ought not to have been registered either because he is not a dealer or because he is not liable to pay tax, he shall be liable to pay tax on his sales or purchases made during the period commencing on the date on which his registration certificate took effect and ending with its cancellation, notwithstanding that he may not be liable to pay tax under the provisions of this Act.

30. Therefore, even if the appellant was not a "dealer" within the meaning of section 2(10) of the local Act or was not doing "business" within the meaning of section 2(4), as was strenuously urged on behalf of the appellant before us, the undisputed facts remain that the appellant had got itself registered as a dealer u/s 29 of the local Act and therefore the appellant is bound to face the legal consequences of its own acts or representations as above made, while it sought to register itself as a dealer according to law. Therefore, we find that the appellant is now estopped from pleading that it was not a dealer or that it was not liable to tax on the disputed sale of machinery, which sale was admittedly made during the continuance of the appellant's registration certificate. As a matter of fact, even till today the appellant's registration certificate continues to be effective and was not cancelled as admitted by the learned chartered accountant on behalf of the appellant before us."

6. The Tribunal ultimately held that the assessee was rightly taxed on the sale of the machinery by the revenue authorities and dismissed the appeal, so far as it pertained to the tax liability arising out of the sale of the machinery. At the instance of the assessee, however, the Tribunal referred the questions set out at the commencement of the judgment for the opinion of this Court.

7. The reference reached hearing before the Division Bench of this Court consisting of B. K. Mehta, J., and one of us (myself) on 12th January, 1982. Having heard the reference for some time, the Division Bench felt that in the absence of a definite and unequivocal finding on the question as to whether the assessee was a "dealer" within the meaning of section 2(10) of the local Act, so far as the disputed sale of printing machinery is concerned, it would not be possible to answer the questions referred for the opinion of this Court. This was so because, in the first place, question No. (2) proceeded on the assumption that the Tribunal had, in fact, recorded a clear finding that the assessee was a "dealer" in respect of the machinery in question. In point of fact, however, the Tribunal had not recorded any such finding in definite and unequivocal terms and in terms it had observed that it was not deciding the question. Question No. (2) was, therefore, not possible to be answered on the case stated to this Court. The

Division Bench found in the next place, that it might be difficult even to answer questions Nos. (1) and (3) in the absence of a clear and precise finding on the issue covered by question No. (2), because for the resolution of those questions also a clear finding on the issue covered by question No. (2) might become necessary. Under the circumstances, the Division Bench referred the case back to the Tribunal in exercise of the powers conferred by section 69(3) of the local Act with a direction that it should submit an additional statement of the case containing the Tribunal's conclusion and finding in clear and certain terms on the question whether the assessee was a dealer as also a registered dealer within the meaning of the relevant provisions of the local Act in respect of the activity of purchase and sale of the printing machinery. The reference was directed to be notified for hearing after the supplementary statement was received from the Tribunal.

8. The Tribunal has now submitted a supplementary statement of the case after hearing the parties. In the course of the supplementary statement, the Tribunal has recorded a clear and specific finding that since the activity of the assessee was confined to executing the job-work of printing of the Ahmedabad edition of the daily newspaper "Jai Hind" for and on behalf of the owners and publishers of the said newspaper on payment of charges, the activity was clearly in the nature of "mere service" and that it did not constitute "business" within the meaning of the relevant provisions of the local Act. The Tribunal has recorded a further finding that since, under the relevant provisions of the local Act, only those purchases and sales which are made by a person in connection with his "business" can have the effect of bringing such person within the ambit of the expression "dealer" in regard to such purchases and sales, the assessee herein, who was not carrying on any "business" within the meaning of the relevant provisions of the local Act, could not be held to be a "dealer" merely on account of its having effected purchase and sale of the printing machinery in question. The Tribunal has, in terms recorded the following finding :

"On the question, therefore, whether M/s. Jai Hind Printing Press is a dealer as contemplated in sub-section (10) of section 2 of the said Act, we come to the finding that it is not a dealer."

9. On the further question whether the assessee was a "registered dealer", the Tribunal found that the assessee had, as a matter of fact, made an application for being registered as a dealer under the local Act as well as under the Central Act and that it was registered under both the Acts after holding the necessary inquiry. Under the circumstances, the assessee was a "registered dealer" in respect of the activity of purchase and sale of printing machinery since this was one of the activities specified in its application for registration as a dealer. The Tribunal, having recorded the aforesaid findings, proceeded to observe as follows :

"Our findings, as stated above, would appear to involve a contradiction, viz., that while we have found that M/s. Jai Hind Printing Press was not a "dealer" it was

nevertheless a "registered dealer". This contradiction arises out of the fact that M/s. Jai Hind Printing Press applied for voluntary registration u/s 30 of the said Act although it did not, in fact, conform to the definitions of "business" and "dealer" contained in section 2(4) and section 2(10) of the said Act respectively, and the Sales Tax Officer too did not make an inquiry in this respect as he was led away by the fact that M/s. Jai Hindi Printing Press was already registered at Rajkot and stated so in its application for voluntary registration at Ahmedabad u/s 30 of the said Act."

10. In fine, the Tribunal recorded in the supplementary statement the finding that the assessee was not a "dealer" u/s 2(10) of the local Act but was a "registered dealer" u/s 30 of the local Act and that its benefits and obligations in the capacity of a registered dealer would extend to the activities of purchase and sale of the printing machinery.

11. After the receipt of the supplementary statement, the matter was posted for hearing and it has reached hearing before us. In view of the fact that in the course of the supplementary statement the Tribunal has clearly found that the assessee was not a "dealer" within the meaning of the relevant provisions of the local Act, we have, at the joint request of the parties, reframed question No. (2) as follows :

"Q. (2) Whether, on the facts in the circumstances of this case, the Tribunal was right in law in holding that the applicant was not a "dealer" within the meaning of section 2(10) of the Gujarat Sales Tax Act, 1969, in respect of the aforesaid sale of machinery ?"

Re : Question No. (1) : The question need not detain us long because the answer is concluded by the decision in *State of Gujarat v. Premier Auto Electric Ltd.* [1980] 45 STC 220. The assessee-company in that case was a dealer in automobile parts, and automobile batteries and accessories. The assessee purchased during the period from 1st July, 1965, to 30th September, 1966, scrap batteries from certain dealers within the State of Gujarat and sold them outside the State. At the time of its assessment, the assessee claimed under rule 43 of the Bombay Sales Tax Rules, 1959, a set-off of the sales tax recovered at the rate of 10 per cent on the sale of scrap batteries effected in its favour. The sales tax authorities, on the view that scrap batteries were liable to sales tax at the rate of 6 per cent under the residuary entry 22 of Schedule E to the Bombay Sales Tax Act, 1959 (as applicable to the State of Gujarat), allowed a set-off to that extent only. The Tribunal, on an interpretation of the expression "recovered" in rule 43, held that whatever might have been the tax legally recoverable on the sales of scrap batteries, the assessee was entitled to claim set-off of the whole amount which had been recovered from it by the selling dealer. The Tribunal remanded the case to record a finding on the question as to what was the amount of sale tax recovered by the selling dealers from the assessee. In the reference made at the instance of the revenue, the Tribunal was directed to precisely determine the question as to what was the correct rate of sales tax

chargeable in respect of sales of scrap batteries effected in favour of the assessee by its vendors. When the matter went back to the Tribunal pursuant to the said direction, the assessee produced certificates of several vendors showing that the Sales Tax Officers had charged tax at the rate of 10 per cent under entry 42B of Schedule C on the sales of scrap batteries by the vendors in favour of the assessee. The Tribunal, therefore, without deciding the question directed by the High Court, held that it was not open for the department to hold that the batteries sold to the assessee were liable to tax at the rate of 6 per cent when actually sales tax at the rate of 10 per cent had been realised from the vendors of the assessee. The Tribunal accordingly allowed a set-off of 10 per cent in those cases where certificates had been produced by the assessee and allowed a set-off of only 6 per cent in other cases. Upon the matter being referred to the High Court again pursuant to the decision of the Tribunal, the question which fell for consideration was whether the Tribunal has erred in law in invoking, in substance, the principle of approbate and reprobate and in placing a bar of estoppel against the revenue. After referring to the decisions of the Supreme Court in *Commissioner of Income Tax, Madras Vs. V. Mr. P. Firm, Muar*, *Commissioner of Income Tax, West Bengal II Vs. Durga Prasad More*, and *Mathra Prashad and Sons Vs. State of Punjab*, the following observations were made in the course of the judgment :

"These decisions clearly lay down the principle that the doctrine of estoppel has no place in assessment proceedings because equity is out of place in a tax law and that, therefore, a particular sale is either exigible to tax under the taxing statute at a certain rate or it is not and that the Sales Tax Officer has no power to impose tax on the transaction of sale at a rate different than that which appropriately applies to such transaction. On the facts and in the circumstances of the present case, therefore, the Tribunal could not have placed the bar of estoppel in the way of the revenue and, on the basis, it could not have refused to determine, independently of the facts of this case, as to what was the true rate of tax leviable on the sales of scrap batteries effected in favour of the assessee on the basis whether those scrap batteries were covered either by entry 42B of Schedule C or entry 22 of Schedule E."

12. The settled legal position, therefore, is that the doctrine of estoppel cannot be invoked in assessment proceedings and that, therefore, the tax liability has to be adjudged under the taxing statute de hors equitable considerations and without invoking the principle of estoppel.

13. In the light of the settled legal position as aforesaid, the Tribunal was not right in law in invoking the doctrine of estoppel against the assessee. In view of the fact that under the relevant provisions of the Act sales tax is recoverable from a "dealer" and a "dealer" means any person who buys or sells goods in connection with his "business", which terms does not include any activity in the nature of "mere service", it was open to the assessee to contend that it was not a dealer because its activity of doing the job-work of printing the Ahmedabad

edition of the daily newspaper in question amounted to tendering "mere service" and such a contention could not have been shut out by invoking in aid the doctrine of estoppel. The Tribunal was, therefore, in error in holding that the assessee could not be allowed to blow hot and cold or to approbate and reprobate at the same time, as and when it suited it and that the assessee had to take the legal consequence of its own admission and representation made before the sales tax authorities under the local Act and the Central Act when it approached them for registration as a dealer. In other words, the finding of the Tribunal that the assessee was estopped from pleading that it was not a dealer or that it was not liable to pay sales tax on the sale of printing machinery in question, since it had got itself registered as a dealer and purchased the machinery by furnishing declarations in form C in terms of section 8(4)(a) of the Central Act, is erroneous in law. The first question will, therefore, have to be answered in the negative :

Re : Question No. (2) : In order to answer this question, it would be necessary to produce the relevant provisions of the local Act. Section 2(10) defines the expression "dealer", and in so far as it is relevant for the present purposes, "dealer" means "any person who buys or sells goods in connection with his business". The expression "business" is defined in sub-section (4) of section 2 as including :

"(i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and

(ii) any transaction of buying, selling or supplying plant, machinery, raw materials, processing materials, packing materials, empties, consumable stores, waste products, or such other goods, or waste or scrap of any of them which is ancillary or incidental to or resulting from such trade, commerce, manufacture, adventure or concern;

but does not include any activity in the nature of mere service or profession."

14. In Sales Tax Reference No. 17 of 1978 decided on 10th August, 1982 (Mehsana District Shanker-4 Seeds Produce and Sale Co-operative Society Ltd. v. State of Gujarat [1982] 51 STC 289), a Division Bench of this Court consisting of B. K. Mehta, J., and one of us (myself) had an occasion to consider the true meaning and effect of the term "business" as defined in sub-section (4) of section 2. The assessee in that case was a society registered under the Bombay Co-operative Societies Act, 1925, with the object, inter alia, of producing, multiplying and selling Shanker-4 cotton-seeds for the use of the members as well as non-members. The society was formed in order to implement the scheme of distribution and multiplication of hybrid quality cotton-seeds, popularly known as "Shanker-4" cotton, formulated by the Planning Commissioner. Out of the two

assessment periods involved in reference, the assessee was not a dealer registered under the local Act during the one period but during the other period, the assessee was a registered dealer. During both the assessment periods the assessee was supplied Shanker-4 cotton-seeds by the State Government for its members at at Rs. 25 per kg. The assessee, while supplying the seeds to each of its members, collected Rs. 5 per kilogram for transport and miscellaneous charges. Similarly, at the time of selling cotton-seeds separated from the cotton produced by each member, the assessee recovered Rs. 5.90 per kilogram as supervision and administrative charges and to meet with other expenses such as grading, ginning and insurance charges. The recovery of the sum of Rs. 5 per kg. from each member at the time of the distribution of cotton-seeds and Re. 1 (out of Rs. 5.90 per kg.) as administrative expenses at the time of effecting the sale of cotton-seeds was shown in the books of the assessee as commission received from its members. After defraying the expenses under various heads from the total amount recovered as aforesaid, the surplus was treated as profit of the assessee in its books.

15. In the course of its assessment to sales tax for the relevant accounting periods, the assessee contended that the primary object underlying its formation was to implement the scheme formulated by the Planning Commissioner for the betterment of the quality of cotton by distribution and multiplication of hybrid cotton-seeds (Shanker-4 cotton) and that if, in the course of achieving the said purpose, he assessee had carried on activities of sale and purchases of seeds and other related goods and recovered charges to meet with the administrative and incidental expenses, it could not be held to have been carrying on business and that, therefore, it was not liable as a dealer to pay sales tax on such turnover. The Sales Tax Officer rejected the contention, and on appeal, the Assistant Commissioner of Sales Tax concurred with the decision of the Sales Tax Officer. On further appeal, the Tribunal confirmed the decision of the sales tax authorities. In the reference made at the instance of the assessee, one of the questions which arose for consideration was whether the activity which the assessee had undertaken and was carrying on was in the nature of "mere service" rendered to its members so that it could not be held to be a "dealer" within the meaning of sub-section (10) of section 2 of the local Act.

16. This Court considered, in the first place, the decisions of the Supreme Court in *State of Gujarat Vs. Raipur Manufacturing Company Ltd.*, *Director of Supplies and Disposals, Calcutta Vs. Member, Board of Revenue, West Bengal, Calcutta*, *Deputy Commercial Tax Officer, Saidapet and Another Vs. Enfield India Ltd., Co-operative Canteen Ltd.*, as well as the decision of the Bombay High Court in *State of Bombay v. Ahmedabad Education Society* [1956] 7 STC 497 and the decisions of this High Court in *State of Gujarat v. Shri Surat Panjarapole* [1969] 23 STC 57 and in *Commissioner of Sales Tax, Gujarat v. Anil Co-operative Credit Society* [1969] 24 STC 180 in order to ascertain the true legal position obtaining under the Bombay Sales Tax Act, 1959, as applied to the State of Gujarat, prior to the enactment of the local Act. It was found that the legal position as then obtaining

was that the existence of two elements was prerequisite in order to constitute "business"; first, there must be a systematic or organised course of activity or conduct and secondly, such activity must be pursued with a set purpose of making profit. It is only if these elements co-exist that a person can be said to be carrying on business within the meaning of the definition of the term "dealer" contained in sub-section (11) of section 2 of the Bombay Sales Tax Act, 1959.

17. This Court then proceeded to examine the definition of the terms "dealer" and "business" in sub-sections (10) and (4) respectively of section 2 of the local Act and pointed out that the term "dealer" was redefined and the term "business" was defined for the first time in the local Act so as to meet with the situation emerging from the different decisions. It was observed that exception II to section 2(10) sought to incorporate the principles enunciated by this Court in *Surat Panjarapole's case* [1969] 23 STC 57 and that the definition of the term "business" was an attempt to neutralise the effect of the decision of the Supreme Court in *State of Gujarat Vs. Raipur Manufacturing Company Ltd.*, . It is in the light of these legislative changes that this Court proceeded to examine the question which had arisen for its consideration.

18. Since the principal question which this Court was called upon to decide was whether the activity of the assessee in that case was in the nature of "mere service" so that it would not constitute "business" as per section 2(4), an attempt was made to ascertain the true import of the word "service". Extensive reference was made to the discussion about the true meaning of the word "service" or "services" found at pages 1139 to 1143 of Volume 79 of *Corpus Juris Secundum* and to the discussion found at pages 575-576 of Volume 53 of *Corpus Juris Secundum* on the real ambit of the word "service" in the context of sales tax statutes and it was observed that the said word has multiple and variety of meanings and different significations. In order to appreciate the true sense in which the said word was used in the local Act, reference was next made to the report of the Select Committee on the Gujarat Sales Tax Bill which was ultimately placed on the statute book as the local Act. It was pointed out that the Select Committee had observed in the course of its report that the definition of the term "business" as contained in clause 2(4) of the Bill was "rather too wide" and that it "requires to be restricted so that isolated transactions which are not closely connected with the business of a dealer are not made subject to payment of tax". It was further pointed out that the report showed that the committee had redrafted clause 2(4) so as to make it clear that "the institutions and organisations which carry on activities in the nature of mere service or profession, such as banking company, non-professional service associations should not also be brought within the scope of the definition". It was observed that the report of the Select Committee gave the perspective of the legislative intent thought it could not be allowed to unduly influence the court in ascertaining the true meaning of the words "mere service".

19. Viewing the provisions of section 2(4) against the aforesaid background, it

was pointed out that the definition of the expression "business" therein contained indicated that the activity in order to be business must be a commercial activity of buying and selling with or without motive to earn profit. The following pertinent observations were then made to indicate the true scope and effect of section 2(4) :

"If the commercial element is lacking in a given activity and if such activity is in the nature of mere service or profession it would be beyond the sweep of the term "business". The word "mere" qualifies the word "service". The legislature has therefore taken precaution that even if the activity is governed by the main provision but is in the nature of any services it will be out of the purview of the term "business" As defined in the said sub-section, the nature of the activity therefore must be solely or exclusively that of service and if in accordance with that activity there are transactions of buying or selling those transactions will not render the overall activity as that of business activity The two cases which the Select Committee has borne in mind such as banking company or the non-professional service associations are merely illustrative and not exhaustive. It would depend upon the facts and circumstances of each case as to whether an activity is in the nature of business or trading activity or is an activity which is solely or exclusively in the nature of service. When a person produces or buys goods for sale or export, imports or manufactures goods for sale, he indulges in commercial activity avowedly for profit-motive, and therefore, can be said to carry on business or trade as a dealer. If, however, on the other hand, he incidentally buys or sells goods in course of activity which is undertaken solely or exclusively by way of service, such as banking service, religious or charitable service, Government extension service, etc., he cannot be decreed to be a dealer carrying on business."

20. Having made the abovequoted observations, this Court proceeded to precisely indicate the nature of inquiry required to be made if a question arose as to whether an activity was truly "business" or "mere service". The following observations made in that context being pertinent may be quoted :

"What is the precise nature of an activity carried on by an assessee would, therefore, be the crux of the problem whenever a question arises as to whether the assessee is doing business or rendering mere service. The real question is : "Is the given activity commercial in the sense that it is not carried on with an objective of rendering service exclusively ? Such objects or purposes which may render an activity to be service can be, amongst others, helping, aiding or assisting the member, client, customer or a beneficiary, as the case may be. Such activity must be with a view only to serve the client, customer or the beneficiary. Even if the object or the purpose includes, inter alia, the authority to sell or buy articles, it would not detract from its real nature which must be of service only. The fact that some profit is generated out of such activity would not render it a business."

21. The question arising for our consideration in the present case requires to be

answered by applying the tests evolved in the aforesaid decision to the facts herein found by the Tribunal. The Tribunal, as earlier pointed out, has found that the assessee was admittedly carrying on the activity of printing the Ahmedabad edition of the Gujarati daily "Jai Hind" on a job-work basis for and on behalf of the owners and publishers of the said newspaper. The assessee, in other words, carried out the printing work on payment of charges. The entire turnover of sales of the assessee for the assessment period in question consisted of two items : Rs. 90,000 being the charges paid by and recovered from the owners and publishers of the daily newspaper for doing the printing work on job-work basis and Rs. 77,591 being the sale price realised on the sale of the printing machinery. It would thus appear that the sole occupation of the assessee, keeping out of consideration for the present, the activity consisting of the sale of printing machinery, was to aid and assist the the owners and publishers of the daily newspaper by printing its Ahmedabad edition under an arrangement which contemplated payment of charges for performing such an act for their conveyance and benefit. In other words, the assessee was engaged entirely in the activity of furnishing labour - may be, skilled or semi-skilled labour - and rendering service to a valued client or customer. The element of sale, if any, in such an activity, therefore, consisted of sale of service which the department itself has not regarded as taxable since the turnover relatable to the payment received for doing the job-work has not been taken into consideration for the levy of sales tax. It is true that the service was not rendered gratuitously and profit-motive was not absent. However, the mere fact that some profit was generated out of such activity would not render it a business. Even a banking company which renders various kinds of services to its clients recovers charges for the services rendered and such charges may, in all probability, be leaving some surplus. The fact that the Select Committee specifically illustrated the case of a banking company in the context of the words "mere service" would go to show that the recovery of charges and the presence of the element of profit would not render an activity any the less "mere service", if otherwise it qualifies to be regarded as such.

22. The learned Government Pleader strenuously contended that the main activity of the assessee must be regarded as trade or commerce within the meaning of clause (i) of sub-section (4) of section 2 and that it cannot be considered as rendering of "mere service" because it was essentially a commercial activity which involved the purchase and sale of goods and which was carried on with the avowed object of making profit and that, therefore, the sale of the printing machinery which was a transaction forming part of such activity amounted to a trading or commercial activity within the meaning of the said section. It is not possible to accede to this submission. In the first place, as earlier pointed out, we do not think that the expression "mere service" excludes service having an incidental element of commerce, that is, interchange of merchandise, embedded therein. If the activity is carried on with the set purpose and object of rendering only service, the mere fact that it involves as a necessary

and inevitable consequence sale and purchase of goods would not render the activity any the less "mere service". The Tribunal, while dealing with the same submission, correctly pointed out that the mere fact that the assessee had to purchase some articles in order to enable it to carry on its activity of rendering service would not deprive its overall activity of the hue of "mere service" and impress it with the colour of "business". Does not the activity of a banking institution which renders diverse services to its customers have an element of commerce in that sense ? Do not the sales and purchases effected by non-professional service associations or service organisations in the course of services rendered in accordance with their avowed objects have a commercial content view in the light ? Even then, the legislative intent is manifestly clear not to regard such activity as "business" but to treat it as "mere service". In the next place as earlier pointed out, the presence of profit-motive does not disqualify what is essentially a service activity from being treated as such. In one at least out of the two cases illustrated above, namely, banking institutions, the services will not be ordinarily rendered to the clients without generating some profit. Even in the other illustrated case, some surplus may conceivably accrue to the association or organisation concerned. In fact, in *Mehsana District Shanker-4 Seeds Produce and Sale Co-operative Society's case* [1982] 51 STC 289 it was found that the charges recovered from the members to meet with the expenses incurred on administration and supervision and on grading, ginning, insuring and transporting goods were credited in the books of the assessee as commission received from the members and the surplus remaining after meeting all the expenses was treated as profit earned by the assessee. Still, however, having regard to the overall nature of the activity carried on by the assessee in that case, it was found that its activity consisted of rendering "mere service". The two circumstances on which the learned Government Pleader relied are, therefore, of no consequence having regard to the fact that it has been found that the essential nature of the activity carried on by the assessee herein was mere service.

23. The learned Government Pleader next submitted that even if the main activity of the assessee could not be regarded as "business", the transaction of the sale of the printing machinery was nevertheless required to be so regarded in view of the wide ambit of clause (ii) of sub-section (4) of section 2 as well as the commercial nature of the transaction which is shown to have yielded profit. Now, sub-clause (ii) of section 2(4) will be attracted if it is shown that the transaction of buying, selling, etc., was "ancillary or incidental to or resulting from such trade, commerce, manufacture, adventure or concern". The word "such" in sub-clause (ii) refers to the trade, etc., mentioned in sub-clause (i). The true purport and effect of sub-clause (ii) is to bring within the net of the expression "business" any transaction of the nature therein described, which ancillary or incidental to or results from the trade, etc., falling within sub-clause (i), although the transaction by itself may not have the characteristics of business as understood in ordinary parlance. That this is the true interpretation of sub-clause

(ii) is borne out by the decisions of the Supreme Court in *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*, and *State of Tamil Nadu Vs. Binny Ltd., Madras*, . Therefore, before sub-clause (ii) can be invoked, it will have to be established that the assessee was carrying on an activity which fell within the ambit of sub-clause (i), that is to say, which amounted to "trade, etc." and that sub-clause (ii) was attracted because the transaction in question was ancillary or incidental to or resulted from such trade, etc. If the main activity carried on by the assessee itself could not be brought within the net of sub-clause (i), it would be impermissible to invoke sub-clause (ii) in relation to any transaction of buying, selling, etc., which is ancillary or incidental to or results from such main activity. The sale of printing machinery, in the instant case, was ancillary or incidental to the activity of printing which amounted to rendering "mere service" and since such activity is not "business" within the meaning of sub-clause (i), it would not be permissible to invoke sub-clause (ii) in order to bring the isolated transaction of the sale of machinery within the net of the expression "business".

24. The learned Government Pleader again fell back upon sub-clause (i) of sub-section (4) of section 2 and contended that the transaction of sale of the printing machinery was an "adventure in the nature of trade" and that, therefore, the assessee must be held to be carrying on business within the meaning of the said sub-clause when it sold the printing machinery in question. In *G. Venkataswami Naidu and Co. Vs. The Commissioner of Income Tax*, the expression "in the nature of trade" appearing in the definition of the word "business" in section 2(4) of the Indian Income Tax Act, 1922, fell for construction before the Supreme Court. It was there pointed out that the expression "adventure in the nature of trade" clearly suggests that the transaction in question must be such as cannot properly be regarded as trade or business. It is characterised by some of the essential features that make up trade or business but not by all of them; and so, even an isolated transaction can satisfy the description of an adventure in the nature of trade. However, at least some of the essential features of trade must be present in the isolated or single transaction. In other words, the expression "adventure in the nature of trade" obviously refers to transactions which individually cannot themselves be described as trade or business but essentially are of such a similar character that they are treated as in the nature of trade. Generally, it would not be difficult to decide whether a given transaction is an adventure in the nature of trade or not. It is the cases on the border line that cause difficulty. The following further observations which indicates the tests to be applied were then made at pages 609-610 :

"In deciding the character of such transactions several factors are treated as relevant. Was the purchaser a trader and were the purchase of the commodity and its resale allied to his usual trade or business or incidental to it ? Affirmative answers to these questions may furnish relevant data for determining the character of the transaction. What is the nature of the commodity purchased and resold and in what quantity was it purchased and resold ? If the commodity

purchased is generally the subject-matter of trade, and if it is purchased in very large quantities, it would tend to eliminate the possibility of investment for personal use, possession or enjoyment. Did the purchaser by any act subsequent to the purchase improve the quality of the commodity purchased and thereby made it more readily resaleable ? What were the incidents associated with the purchase and resale ? Were they similar to the operations usually associated with trade or business ? Are the transactions of purchase and sale repeated ? In regard to the purchase of the commodity and its subsequent possession by the purchaser, does not element of pride of possession come into the picture ?

Was the purchase made with the intention to resell it at a profit ? It is often said that a transaction of purchase followed by resale can either be an investment or an adventure in the nature of trade. There is no middle course and no half-way house. This statement may be broadly true; and so some judicial decisions apply the test of the initial intention to resell in distinguishing adventures in the nature of trade from transactions of investment. Even in the application of this test distinction will have to be made between initial intention to resell at a profit which is present but not dominant or sole; Cases may, however, arise where the purchase has been made solely and exclusively with the intention to resell at a profit and the purchaser has no intention of holding the property for himself or otherwise enjoying or using it. The presence of such an intention is no doubt a relevant factor and unless it is offset by the presence of other factors it would raise a strong presumption that the transaction is an adventure in the nature of trade. Even so, the presumption is not conclusive; and it is conceivable that, on considering all the facts and circumstances in the case, the court may, despite the said initial intention, be inclined to hold that the transaction was not an adventure in the nature of trade. We thus come back to the same position and that is that the decision about the character of a transaction in the context cannot be based solely on the application of any abstract rule, principle or test and must in every case depend upon all the relevant facts and circumstances."

25. Now, profit-motive cannot any longer be regarded as an essential constituent of the expression "adventure in the nature of trade", in view of the definition contained in sub-clause (i). What we must still consider is whether the other factors which are treated as relevant are present in deciding on the character of the transaction of sale of the printing machinery.

26. The learned Government Pleader invoked in aid the following facts and circumstances in order to bring home the submission that the transaction was an adventure in the nature of trade :

- (1) The purchase was made on 14th April, 1970, and the sale was effected on 28th February, 1972, that is to say, after almost about two years;
- (2) The purchase was made with the avowed intention of using the machinery in

the manufacture of goods for sale because declaration in form C was furnished but eventually the machinery was sold after a long interval without so using it and even without unpacking it;

(3) No circumstances were brought on record of the assessment proceedings to indicate as to why such a course of action was adopted;

(4) The transaction of sale was in respect of an item which was connected with or used in or for carrying out of the usual activity of the assessee; and

(5) The sale was in favour of a total stranger.

27. Mr. R. D. Pathak, the learned Advocate appearing on behalf of the assessee, contended, on the other hand, that the following factors emerging from the record clearly point in the direction that the transaction was not an adventure in the nature of trade :

(1) The unequivocal terms in which the declarations was made in form C showed that the initial intention at the time of the purchase of the machinery was not to resell it;

(2) In the penalty proceedings initiated u/s 10(b) read with section 10A of the Central Act, no penalty was ultimately levied because it was held that the failure to make use of the machinery for declared purposes was not without reasonable excuse;

(3) The machinery was sold without doing anything to the same, that is to say, without improving the quality and without making it readily resaleable;

(4) The transaction was not similar to the operations usually associated with the printing line and it is not shown that the assessee has carried on such transactions frequently;

(5) The transaction was on no loss no profit basis although the investment was blocked up for a period of nearly two years; and

(6) The machinery, which was purchased through the State Trading Corporation for being used in the process of printing upon the recommendation of the Director of Industries against the actual user's licence, was sold after obtaining the Director's permission because it was not found to be useful in the process of printing.

28. It might be stated at this stage that with the consent of the parties we have taken on record as annexure 4 a copy of the appellate order dated 8th March, 1976 (together with an English translation thereof), passed by the Assistant Commissioner of Sales Tax in the penalty proceedings whereunder the penalty imposed upon the assessee by the Sales Tax Officer in proceedings u/s 10(d) read with section 10A of the Central Act was vacated as it was found that the assessee, instead of using the machinery for the manufacture of goods for resale, was required to sell the same under the aforementioned circumstances

and the failure to use the machinery for such purpose was, therefore, not without reasonable excuse.

29. Having considered the diverse factors bearing upon the transaction in question and keeping in view the principles which are relevant for determining whether the transaction can be characterised as an adventure in the nature of trade, we are of the view that the transaction, in the instant case, cannot be regarded as an adventure. The factors which have weighed with us in arriving at the aforesaid conclusion are : (1) that the purchase of the machinery was avowedly not made with the intention to resell it; (2) that the sale had to be effected because the machinery was not found useful; (3) that the resale was made after a period of about two years during which the investment was locked up; (4) that the sales tax authorities have themselves found in the course of the penalty proceedings that the failure to use the machinery for the purpose mentioned in form C was not without reasonable excuse; (5) that the assessee is not shown to have indulged in any such transaction of resale in past and this is an isolated transaction in regard to a single piece of machinery; and (6) that there were no incidents associated with the purchase and resale which are similar to operations associated with trade or business. These factors far out weigh the circumstances upon which the learned Government Pleader has relied. The fact that after purchase the machinery was not used in the process of printing and that it was sold away without being so used or even without being unpacked cannot be regarded as of any significance in view of the explanation offered and found to be acceptable by the department itself in the penalty proceedings. Under the circumstances, it is not possible to accept the submission made on behalf of the revenue that the transaction in question was an adventure in the nature of trade.

30. The foregoing discussion would show that the second question as reframed by us will have to be answered in the affirmative.

Re : Question No. (3) :- The answer to the question depends upon the true construction of sub-section (6) of section 29 of the local Act. The relevant portion of section 29, as in force at the relevant time, read as follows :

"(1) No dealer shall, while being liable to pay tax u/s 3 or under sub-section (6) of section 26, carry on business as a dealer, unless he possesses a valid certificate of registration as provided by this Act :

Provided that the provisions of this sub-section shall not be deemed to have been contravened if the dealer having applied for such registration as in this section provided, within the prescribed time or, as the case may be, within the period specified in sub-section (6) of section 26, carries on such business.

(2) Every dealer, required by sub-section (1) to possess a certificate of registration, shall apply in the prescribed manner to the prescribed authority.

(3) If the prescribed authority is satisfied that an application for registration is in

order, it shall register the applicant and issue to him a certificate of registration in the prescribed form.

(4)

(5)

(6) If any person upon an application made by him has been registered as a dealer under this section, and thereafter it is found that he ought not to have been so registered under the provisions of this section, either because he is not a dealer or because he is not liable to pay, tax, he shall be liable to pay tax on his sales or purchases made during the period commencing on the date on which his registration certificate took effect and ending with its cancellation, notwithstanding that he may not be liable to pay tax under the provisions of this Act.

(7) Where -

(a) any business, in respect of which a certificate of registration has been issued under this section, has been discontinued or transferred, or

(b) neither the turnover of sales nor the turnover of purchases of a dealer has during the preceding year exceeded the relevant limit specified in sub-section (4) of section 3,

and the dealer applies in the prescribed manner for cancellation of his registration, the prescribed authority shall cancel the registration with effect from such date as it may fix in accordance with the rules :

Provided that, where the Commissioner is satisfied that any business in respect of which a certificate has been issued under this section, has been discontinued and the dealer has failed to apply as aforesaid for cancellation of registration, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, cancel the registration with effect from such date as he may fix to be the date from which the business has been discontinued :

Provided further that, the cancellation of a certificate of registration on an application of the dealer or otherwise, shall not affect the liability of the dealer to pay the tax (including any penalty) due for any period prior to the date of cancellation whether such tax (including any penalty) is assessed before the date of cancellation but remain unpaid, or is assessed thereafter or his liability to pay tax as provided in section 20."

31. Before we take up for consideration the question of construction of sub-section (6), it would be pertinent to point out that the Bombay Sales Tax Act, 1959 (hereinafter referred to as "the Bombay Act"), which was in force before the enactment of the local Act, contained analogous, though not identical, provisions in section 22. Sub-sections (1), (2) and (3) of section 22 of the Bombay Act were in pari materia with sub-sections (1), (2) and (3) of section 29 of the local Act. Section 22 was amended and sub-section (5A) was introduced

therein on and with effect from 12th August, 1962, by Gujarat Act 25 of 1962. The said sub-section read as follows :

"(5A) If any person upon an application made by him has been registered as a dealer under this section, and thereafter it is found that he ought not to have been so registered under the provisions of this section, he shall be liable to pay tax on his sales or purchases made during the period commencing on the date on which his registration certificate took effect and ending with its cancellation, notwithstanding that he may not be liable to pay tax u/s 3"

Sub-section (6) of section 22 of the Bombay Act is analogous to sub-section (7) of section 29 of the local Act, though the two sub-sections are not exactly identical.

32. The provisions of sub-section (5A) of section 22 of the Bombay Act fell for construction in *Commissioner of Sales Tax v. Anil Co-operative Credit Society* [1969] 24 STC 180. The case was initially heard by a Division bench consisting of Divan, J. (as he then was), and Mehta, J., and upon a difference between the two learned Judges, it came on for hearing and was decided by Bhagwati, C.J., (as he then was). Two questions were referred for the opinion of this Court in that case; first, whether on the facts and in the circumstances of the case, in respect of the sales effected by the canteen during the relevant periods, the assessee-society was a "dealer" within the meaning of the definition of the term "dealer" in clause (11) of section 2 of the Bombay Act and, second, if the assessee-society was not a dealer, whether on the facts and in the circumstances of the case, it was still liable to pay tax during the period it held registration certificate by virtue of sub-section (5A) of section 22 of the Bombay Act. So far as the first question is concerned, all the three learned Judges were agreed that in the absence of the element of profit-motive in the activity of running the canteen, the assessee-society could not be regarded as carrying on business so as to attract the main part of the definition of "dealer" in section 2(11). Divan, J., was, however, of the view that since the assessee being a society had sold goods to its members, it fell within the second inclusive clause of the definition and that, therefore, it was a "dealer" within the meaning of section 2(11). Accordingly, Divan, J., held that the first question was required to be answered in favour of the revenue. Bhagwati, C.J., and Mehta, J., however, took the view that the second inclusive clause in which the case of the assessee-society was sought to be brought did not dispense with the requirement of sale of goods in the course of business and that its only function was to clarify that even a society, club or other association of persons, which buys goods from or sells goods to its members in the course of business, would be within the ambit of the main part of the definition. Since the profit-motive was absent in the activity of the assessee-society, however, it could not be regarded as a dealer within the meaning of section 2(11) by invoking the second inclusive clause in the said sub-section. Under these circumstances, the first question was answered in the negative. As regards the second question, the view of Divan, J., was that the said question was liable to be answered in favour

of the revenue since the conditions specified in sub-section (5A) of section 22 were satisfied. In this connection, Divan, J., expressed his view in the following words at page 201 :

"The reason for making this provision is clear, viz., that a registered dealer under the scheme of the Sales Tax Act has not to pay tax on his sales or his purchases during the period for which the registration is in existence. Cancellation has been provided for u/s 22(6) and until the cancellation takes effect by virtue of the registration as a dealer, any person who ought not to have been so registered u/s 22 but has in fact been so registered enjoys the benefit of exemption of his sales or purchases made to or from registered dealers from sales tax and purchase tax. Under these circumstances, what is sought to be done by the legislature is to collect the tax from such a person who could have avoided levy because of the existence of registration certificate. Section 22(5A) of the Act does not deal with a "dealer" at all. It deals with a person whose purchases and sales have escaped taxation because of registration when in fact he ought not to have been registered at all u/s 22. It is in this exceptional case that section 22(5A) comes into play."

Mehta, J.

however, held that section 22(5A) had no application since the assessee was not a dealer and the certificate of registration even if granted was non est. On this point, Mehta, J., expressed himself in the following words at page 218 :

"If a person was not a dealer at all, there could be no question of a registration certificate legally taking any effect, as the certificate if issued on the basis of such sales would be no certificate within the eye of law and would be non est. It would never require any cancellation and therefore no question could arise of that person being liable on the strength of the registration certificate by resorting to section 22(5A). The distinction between nullity and invalidity must be borne in mind while interpreting such provisions like section 22(5A). In fact qua these sales the society would not be a registered dealer at all, and there would be no question of its liability to pay tax qua these sales. There can be no estoppel against a statute as pointed out by their Lordships in the aforesaid decision in Kalidas Dhanjibhai Vs. The State of Bombay, . In fact, the assessee must succeed on the short ground on this question that it was not a registered dealer qua the sales in the canteen, and therefore, it was not taxable at all."

Bhagwati, C.J.

agreed with the conclusion of Mehta, J., and he too held that sub-section (5A) of section 22 had no application on the facts and in the circumstances of the case. However, he reached the said conclusion by a different process of reasoning, as would be evident from the following relevant observations at page 230 :

"The sub-section is intended to provide for a case where a person was not liable to pay tax u/s 3 either by reason of the fact that he was not a dealer or his

turnover did not exceed the relevant limit and was therefore not liable to be registered and yet was registered at his own instance on an application made by him. In such a case, when it is found that he was not liable to pay tax and ought not therefore to have been registered, he cannot contend that he was not liable to pay. Since the registration certificate was issued to him on his own application, he must be held liable to pay tax during the period that the registration certificate was operative. No such situation obtains in the present case. No authority has found that the assessee ought not to have been registered or that his registration should be cancelled. Here the question is entirely different. The assessee is admittedly a dealer in respect of other transactions carried on by it and it is properly registered as a dealer in respect of those transactions. The only question is in regard to sales effected by the assessee to its members in the canteen and so far as this activity is concerned, the assessee contends that it is not carrying on business and therefore those sales are not liable to tax. That contention is not met by anything in section 22, sub-section (5A), and for reasons which I have given above, it must be accepted as correct."

33. Under the circumstances, the second question was answered in the negative.

34. We have adverted to sub-section (5A) of section 22 of the Bombay Act and to the decision in *Anil Co-operative Credit Society's case* [1969] 24 STC 180 to indicate the legal position obtaining before the enactment of sub-section (6) of section 29. It is settled law that in order properly to interpret any statute, it is necessary to consider how the law stood when the statute to be construed, was passed, what the mischief was for which the old law did not provide and the remedy provided by the statute to cure that mischief.

35. Now sub-section (6) of section 29 of the local Act is not a mere reproduction of sub-section (5A) of section 22 of the Bombay Act. It has introduced certain changes which are material and which, in our opinion, have sought to bring about a modification so as to suppress the mischief and advance the remedy. Be it noted in this connection that the decision of Bhagwati, C.J., in *Anil Co-operative Credit Society's case* [1969] 24 STC 180 was rendered on 11th November, 1968; that prior thereto the State Government had appointed a Committee in June, 1967, to thoroughly examine and review the existing system of sales tax; that the Committee made its recommendation and after carefully considering these recommendations it was decided to replace the Bombay Act by a new Act and that with that end in view, L.A. Bill No. 30 of 1969, as published in the Gujarat Government Gazette, Part V, Volume X, dated 31st July, 1969, was introduced in the State Legislature and it ultimately was enacted as the local Act. Sub-section (6) of section 29 of the local Act has been enacted in the same form in which it found place in L.A. Bill No. 30 of 1969 [vide sub-clause (6) of clause 29 as contained in the Bill]. In interpreting the provisions of sub-section (6), therefore, if there is any doubt about the meaning of any of the words or expressions, therein used, the meaning will have to be found bearing in mind the subject or occasion for their use and the object to be attained. If the state of the

law before the enactment of the sub-section contained any mischief or defect for which the law did not provide the remedy that the law has now provided and the reason of the remedy have all to be borne in mind, and in case of doubt, as far as possible. The construction has to be adopted which suppresses the mischief and advances the remedy.

36. At this stage, it would be convenient to highlight the difference in the language of sub-section (5A) of the Bombay Act and sub-section (6) of the local Act and to take note of the change in law. For this purpose, the substance of the two sub-sections is set out side by side hereinbelow :

Sub-section (5A)	Sub-section (6)
(A) Conditions for applicability :	(A) Conditions for applicability :
(i) A person must have been registered as a dealer upon an application made by him.	(i) A person must have been registered as a dealer u/s 22 upon an application made by him.
(ii) It is found thereafter that such person ought not to have been so registered under the provisions of the said section.	(ii) It is found thereafter that such person ought not to have been so registered under the provisions of the said section.
(a) either because he is not a dealer or	(a) either because he is not a dealer or
(b) because he is not liable to pay tax.	(b) because he is not liable to pay tax.
(B) Consequences :	(B) Consequences :
Notwithstanding that such person may not be liable to pay tax u/s 3, he shall be liable to pay tax under the provisions of the Act, on his sales or purchases made commencing on the date on which his registration certificate took effect and ending with its cancellation.	Notwithstanding that such person may not be liable to pay tax u/s 3, he shall be liable to pay tax under the provisions of the Act, on his sales or purchases made commencing on the date on which his registration certificate took effect and ending with its cancellation.

37. A comparison of the two provisions would show that there are two significant additions/modifications made in sub-section (6). First, after the expression "..... and thereafter it is found that he ought not to have been so registered under the provisions of this section", the words "either because he is not a dealer or because he is not liable to pay tax" have been added in sub-section (6) following upon a similar expression and, second, whereas the concluding words of sub-section (5A) were "..... notwithstanding that he may not be liable to pay tax u/s 3", the concluding words of sub-section (6) are "..... notwithstanding that he may not be liable to pay tax under the provisions of this Act". The question for consideration is as to what is the true effect of this changes accordingly effected in law.

Bhagwati, C.J.

in the course of his judgment in Anil's case [1969] 24 STC 180 has made the following pertinent observations on the scope of sub-section (5A) of section 22 of the Bombay Act (see page 230 of the reports) :

"The sub-section is intended to provide for a case where a person was not liable to pay tax u/s 3 either by reason of the fact that he was not a dealer or his

turnover did not exceed the relevant limit and was therefore not liable to be registered and yet was registered at his own instance on an application made by him."

38. The above observations would indicate that sub-section (5A) was held to be applicable, *inter alia*, in the case of a person who ought not to have been registered because he was not liable to pay tax as he was not a dealer. In other words, though the words "he ought not to have been so registered" occurring in sub-section (5A) were not followed by the words "either because he is not a dealer", as is the case with regard to the similar expression found in sub-section (6), those words were read into the said sub-section by a process of interpretation having regard to the context and collocation. It would not be unreasonable to proceed on the assumption, therefore, that the words "either because he is not a dealer" are inserted in sub-section (6) *ex abundanti cautela*. Even in the absence of those words, they would have been required to be read into sub-section (6) at the appropriate place.

39. It would be pertinent to recall in this connection that it was the view of Mehta, J., in Anil's case [1969] 24 STC 180 that the assessee-society in that case could not be regarded as a dealer qua the sales effected to its members, that the certificate of registration issued on the basis of such sales was non est, that such certificate did not require any cancellation and that, therefore, no question could arise of that person being liable to pay tax on the strength of such registration certificate by resorting to sub-section (5A). Bhagwati, C.J., although he concurred with Mehta, J., in the ultimate conclusion, has not adopted the same line of reasoning. The words "either because he is not a dealer" thus appear to have been introduced in sub-section (6) by way of abundant caution and to leave no room for doubt or debate about the taxability of such a person. The insertion of those words, therefore, does not appear to have the effect of modifying in any manner the legal position which obtained prior to the enactment of sub-section (6).

Bhagwati, C.J.

in the extracted portion of his judgment, has also pointed out that sub-section (5A) was attracted even in the case of a person who ought not to have been registered because he was not liable to pay tax by reason of the fact that his turnover did not exceed the relevant limit prescribed in section 3. It would thus appear that the words "or because he is not liable to pay tax" occurring in sub-section (6) and qualifying the expression "he ought not to have been so registered" were also read into sub-section (5A) at the appropriate place by a process of interpretation, albeit, in a restricted manner. The restricted interpretation, namely, the confinement of the applicability of sub-section (5A) to cases where the non-liability to pay tax arose by reason of the turnover not exceeding the relevant limit specified in section 3, was apparently placed on account of the concluding words of sub-section (5A), which contained a non obstante clause, wherein the expression used was "notwithstanding that he may

not be liable to pay tax u/s 3". It follows, therefore, that whereas sub-section (5A) was held to be confined in its operation to a person who was registered as a dealer upon his own application and in respect of whom it was subsequently found that he ought not to have been so registered inter alia because he was not liable to pay tax by reason of the fact that his turnover did not exceed the relevant limit prescribed in section 3, sub-section (6) has a wider operation and it takes in the case of a person registered as a dealer upon his own application and in respect of whom it is subsequently found that he ought not to have been so registered because he is not liable to pay tax, whether by reason of the fact that his turnover did not exceed the relevant limit prescribed in section 3 or for any other reasons whatever. As we shall presently point out, even the concluding portion of sub-section (6) is cast in a wider mould in consonance with this scheme and that modification also highlights this change. To the aforesaid extent, therefore, there is a change or modification brought about in the legal position which obtained at the time of the enactment of sub-section (6) and it will have to be given effect to.

40. So far as the expression in the concluding portion of sub-section (6), namely, "notwithstanding that he may not be liable to pay tax under the provisions of this Act" is concerned, there is a clear departure from the corresponding provision found in sub-section (5A) which had used the expression "notwithstanding that he may not be liable to pay tax u/s 3". It would be seen at once that the concluding portion of sub-section (6) is cast in wider terms than that of sub-section (5A). We have already dealt with this aspect in the immediately preceding paragraph and what we have there said in the context of the words "or because he is not liable to pay tax" occurring in the earlier part of sub-section (6) applies with equal force to the non obstante clause in the concluding portion of the said sub-section. In other words, the effect of the non-obstante clause in the concluding portion of sub-section (6) is to set aside as no longer valid anything contained in any other provisions of the local Act whereunder there would have been no liability to pay tax in respect of transactions of sale or purchase effected during the period and under the circumstances referred to in the said sub-section; the enacting part of the sub-section read with the non obstante clause imposes in positive terms upon a person thereby covered a liability to pay tax even if no such liability arose under any of the provisions of the Act. It would thus appear that sub-section (6) is not restricted like sub-section (5A) in its operation to cases where the liability to pay tax has not arisen because the turnover did not exceed the relevant limit specified in section 3; it also takes in the case where a person may not be liable to pay tax under any of the provisions of the Act. This is the change effected in law and it must be taken note of.

41. The forgoing discussion would show that the two expressions, namely, "or because he is not liable to pay tax" and "notwithstanding that he may not be liable to pay tax under the provisions of this Act" occurring in sub-section (6) read in juxtaposition create a liability to pay tax, if the other conditions specified

in the said sub-section are satisfied, although the tax may not be leviable and collectible under any of the provisions of the Act. In other words, the effect of the introduction of the above two phrases in sub-section (6) is to create a liability to pay tax, upon the other conditions therein mentioned being satisfied, even though the person thereby covered is not liable to pay tax under any of the provisions of the Act. By introducing these two phrases, the legislature has clearly widened the scope and thereby improved upon sub-section (5A) of the Bombay Act as interpreted in the decision in Anil's case [1969] 24 STC 180.

42. The net result of the forgoing discussion, in so far as it concerns the present case, is that a person who cannot be regarded as a dealer under sub-section (10) of section 2 because he is not carrying on business within the meaning of sub-section (4) of section 2 and who ought not, therefore, to have been registered upon an application made by him, would become liable to pay tax under sub-section (6) (of section 29) on his turnover of sales or purchases made during the period commencing on the date on which the registration certificate took effect and ending with its cancellation, although he is not liable to pay tax on such turnover under the provisions of the local Act.

43. Against the aforesaid background, let us consider whether the conditions laid down in sub-section (6) are satisfied in the instant case so as to attract the said sub-section. It is not dispute that the assessee has been registered as a dealer u/s 29 upon its own application. Be it noted in this connection that though the Tribunal appears to have found that the registration was u/s 30, the parties are agreed that the registration was, in fact, pursuant to the provisions of sub-sections (1), (2) and (3) of section 29. In the course of the present assessment proceedings, it has been found by the Tribunal that the activity of the assessee, which consisted of the printing of the Ahmedabad edition of the daily newspaper in question for and on behalf of its owners and publishers, amounted to rendering "mere service" and that the assessee was, therefore, not carrying on "business" within the meaning of sub-section (4) of section 2 and that it was not a "dealer" within the meaning of sub-section (10) of section 2 of the local Act, although it was registered as such. As a logical corollary or consequence of the said finding, the Tribunal ought to have held that the assessee ought not to have been so registered. The Tribunal, however, instead of holding accordingly, proceeded to find that the assessee was estopped from contending that it was not a "dealer" and that it cannot avoid the legal consequences of its own admission and that it cannot be allowed to blow hot and cold and to take the benefit of registration without discharging the corresponding obligation. The Tribunal has further found that the assessee was, in fact, "registered dealer" and that its benefits and obligations in the capacity of a registered dealer would extend to the activity of purchase and sale of the printing machinery in question, especially because the registration certificate was still outstanding and was not cancelled. In the course of this judgment, we have upheld the finding of the Tribunal that the assessee was not a "dealer" within the meaning of sub-section (10) of section 2 of the local Act; we have further held that the assessee cannot

be regarded as a "dealer" even in respect of the sale of the printing machinery in question. We have, however, reversed the finding of the Tribunal which seeks to place the bar of estoppel against the assessee and held that the mere fact that the assessee got itself registered as a dealer cannot operate to preclude it from contending that it was not a "dealer" or "registered dealer". The logical and inevitable conclusion, which must follow as a consequence of the above findings, is that the assessee ought not to have been registered under the provisions of section 29 because it was not a "dealer" and also because it was not liable to pay tax under the provisions of the local Act in regard to the activity of rendering "mere service" carried on by it, or on the sales or purchases effected by the assessee as ancillary or incidental to such activity including on the sale of the printing machinery in question. It would thus appear that all the conditions laid down in sub-section (6) are satisfied on the facts and in the circumstances of the present case. The assessee, therefore, must be held liable to pay tax under sub-section (6) on the sale of the printing machinery in question, notwithstanding that it is not liable to pay tax on such turnover under the other provisions of the local Act, since such sale has taken place after its registration certificate took effect and before its cancellation.

44. It was strenuously contended on behalf of the assessee that since, in the instant case, no authority has found that the assessee ought not to have been registered and that its registration should be cancelled, a very material ingredient of sub-section (6) is not satisfied. Alternatively, it was contended that sub-section (7), which confers the power of cancellation of registration, does not authorise cancellation in a case where a person, who was not liable to be registered at all, has been registered upon his own application made under a mistaken belief or otherwise, and that, therefore, sub-section (6), which imposes a liability to pay tax on sales or purchases, made during the period commencing on the date on which the registration certificate took effect and ending with its cancellation, is not applicable. We are unable to agree. As regards the first limb of the submission, we are constrained to observe that it has been stated merely to be rejected. Herein we have found in terms that the assessee ought not to have been registered as a "dealer" for the reasons already mentioned. As a consequence of the said finding, the registration will have to be cancelled. Under these circumstances, it is idle to make submission covered by the first limb. As regards the second limb of the submission, it is true that sub-section (7) does not cover a situation such as the one obtaining in the present case, namely, where a person has been registered u/s 29 upon his own application, although in law and fact he was not liable to be so registered because he was not carrying on any business and was not a dealer and whose registration certificate is, therefore, required to be cancelled. However, in view of section 21 of the Bombay General Clauses Act, 1904, the power to rescind or cancel the registration certificate is inherent in the power to issue such certificate. In other words, the power to cancel the registration certificate even if it is not found to have been expressly conferred by sub-section (7) will have to be held to flow out of the

power to issue such certificate contained in sub-section (3) of section 29. Even the second limb of the submission deserves to be rejected.

45. It must be mentioned that in support of the aforesaid first limb of the submission, reliance was placed on behalf of the assessee upon the observations of Bhagwati, C.J., in the extracted portion of the judgment in Anil's case [1969] 24 STC 180. It will be recalled that the decision of Bhagwati, C.J., in Anil's case [1969] 24 STC 180 was founded on the premise that sub-section (5A) was not attracted in that case, because no authority had found that the assessee ought not to have been registered or that his registration should be cancelled and that, in fact, the assessee was admittedly a dealer in respect of the other transactions carried on by it and that it was properly registered as a dealer in respect of those transactions. We are unable to see how those observations can assist the assessee on the facts and in the circumstances of the present case. In Anil's case [1969] 24 STC 180 on the findings there recorded, the question could never have arisen that the assessee ought not to have been registered, and consequently, the question of cancellation also could not have arisen. Herein, the situation is entirely different. The only activity of the assessee consists of rendering "mere service" and its registration as a dealer is also in respect of such activity. As earlier held, since the rendering of "mere service" cannot amount to carrying "business" within the meaning of sub-section (4) of section 2 and since the assessee could not, therefore, be regarded as a dealer within the meaning of sub-section (10) of section 2, the assessee ought not to have been registered as a dealer and its registration, which pertains only to such activity, will require to be cancelled. In our opinion, therefore, the assessee cannot draw any sustenance from the decision of Bhagwati, C.J., in Anil's case [1969] 24 STC 180.

46. The next submission, which was vehemently urged on behalf of the assessee, was that if it was not liable to pay tax under the relevant provisions of the local Act on the sale of the printing machinery in question, no such liability could ever arise out of and be fastened upon it under sub-section (6). This submission, in other words, was that if there was no liability to pay tax on a transaction of sale, which was not effected in the course of business and in respect of which the assessee could not be regarded as a dealer under the Act, such liability cannot legitimately be read as having been created by sub-section (6). This submission too is stated merely to be rejected. It conveniently overlooks the very object and purpose of the enactment of sub-section (6) as well as its scope, ambit and effect; it also obviously attempts to ignore the express liability created by sub-section (6) precisely under the circumstances such as those which obtained in the present case. This aspect has been adequately dealt with earlier while interpreting the provisions of sub-section (6) and we need not reiterate the reasons which impel us to reject this submission. All that we need to state is that sub-section (6), in unmistakable terms, creates liability to pay tax where a person would otherwise be not liable to pay tax under the other provisions of the local Act, provided, of course, the conditions laid down in the sub-section are satisfied which, as earlier pointed out, are in fact, satisfied in the instant case.

47. In view of the foregoing discussion, the third question requires to be answered in the affirmative.

48. In the result, we answer the questions referred to us as follows :

Question No. (1) : In the negative, that is to say, in favour of the assessee and against the revenue.

Question No. (2) : In the affirmative, that is to say, in favour of the assessee and against the revenue.

Question No. (3) : In the affirmative, that is to say, in favour of the revenue and against the assessee.

49. On the facts and in the circumstances of the case, it appears to be just and proper to direct that each party shall bear its own costs.