(2013) 07 MAD CK 0166

In the Madras High Court

Case No : Writ Petition No''s. 25952 to 25955, 26720 to 26723, 27728, 28226 to 28230, 28295 to 28298, 28356, 28357, 28426, 28448, 28464, 28510 to 28513, 28704 to 28711, 29051, 29052 and 29382 of 2010, 460 to 463, 1209, 1210, 1227, 1228, 2375 to 2378, 4113, 4114, 48

Jayam and Co. and Others APPELLANT

Vs

The Assistant Commissioner (CT) and Others etc. etc. RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Central Sales Tax Act, 1956 — Section 8
Constitution of India, 1950 — Article 13, 14, 19, 19(1)(a), 265
Sales of Goods Act, 1930 — Section 2(10), 4
Tamil Nadu Value Added Tax Act, 2006 — Section 18, 19, 19(10), 19(10)(a), 19(18)

Citation : (2014) 1 MLJ 157 : (2013) 65 VST 260

Hon'ble Judges : T.S. Sivagnanam, J;R. Banumathi, J

Bench : Division Bench

Advocate : N. Murali, Mr. S. Parthasarathy in W.P. Nos. 28226 to 28230, 28356, 28357 of 2010, Mr. C. Natarajan for Mr. N. Inbarajan in W.P. Nos. 25952 to 25955, 28510 to 28513 of 2010, 4113, 4114, 5269, 5270 of 2011, Ms. R. Hemalatha in W.P. Nos. 27728 of 2010 2375 to 2378 of 2011, 2316 to 2319, 4015, 4016 and 20086 of 2012, 34 to 36, 4154 and 4155 of 2013, Mr. V. Sundareswaran in W.P. Nos. 28704 to 28707 of 2010, 460 to 463, 1227, 1228, 4852, 15929 to 15931, 16673 to 16675, 16685 to 16687 of 2011, Mr. C. Venkatraman, Mr. V. Srikanth, Mr. P. Rajkumar in W.P. Nos. 28448 of 2010, 5969, 5970 of 2011 in W.P. Nos. 28464, 29382 of 2010, 4842, 17286 of 2011, 32031 to 32034 of 2012, Mr. R. Mahadevan in W.P. Nos. 6035, 6036 18810 to 18814, 19004 of 2013, Mr. R. Raghavan, Mr. N. Murali in W.P. Nos. 441 to 443 of 2011, 3329 to 3331 of 2012, Mr. K. Vaitheeswran in W.P. No. 28295 to 28298, 28426 of 2010, 13197, 5160 to 5163, 5797, 5798, 14238 to 14240 of 2011, 4974 of 2012, Mr. C. Baktha Siromani in W.P. Nos. 24018 to 24020 of 2011, Mr. K.S. Ganesh Babu in W.P. Nos. 28708 to 28711 of 2010, Ms. C. Rekha Kumari in W.P. Nos. 29051, 29052 of 2010, 1209, 1210 of 2011, Mr. L. Muralikrishnan, Ms. Hema Muralikrishnan in W.P. No. 6080 of 2011, Mr. S. Karunakar in W.P. Nos. 16483 to 16485 of 2011, Mr. T. Pramodkumar Chopda in W.P. Nos. 17192 to 17195 of 2011, 10002 of 2012, 1095 and 6194 of 2013 and Mr. S. Ramanathan in W.P. Nos. 6010 to 6013 of 2012, Mr. Prabhakaran in W.P. Nos. 26720 to 26723 of 2010, for the Appellant; AL. Somayagi assisted by Mr. V. Haribabu, AGP (Taxes), Mr. Cibi Vishnu, AGP (Taxes), Mr. Manohara Sundaram, Govt. Advocate

(Taxes), Mr. Kanmani Annamalai, Govt. Advocate (Taxes), Mr. J. Adithya Reddy, Govt. Advocate (Taxes) and Mr. A.R. Jayaprathap, Govt. Advocate (Taxes), for the Respondent

Judgement

R. Banumathi and T.S. Sivagnanam, JJ.—These batch of writ petitions could be broadly classified into two categories. In the first set of writ petitions, prayer has been made for issuance of a writ of declaration to declare Sub-section (20) of Section 19 as enacted by Tamil Nadu Value Added Tax (Second Amendment) Act, 2010, (22 of 2010), which came into force on 19.08.2010 and later retrospectively brought into force from 01.01.2007, by Tamil Nadu Value Added Tax (Special Provision) Act, 2010 (Act 42 of 2010) as being confiscatory, unreasonable, arbitrary and violative of Articles 14 and 19(1)(a) of the Constitution of India and repugnant to the general scheme of the charging provision of Section 3(2) and 3(3) of TN VAT Act, 2006, and beyond legislative competence of the State Legislature under Entry 54 of the State list and void and unenforceable. In the other set of writ petitions, prayer has been made for issuance of a writ of Certiorari to quash the reassessment order/show cause notices issued by the concerned assessing authority u/s 27 of the Act whereby the turnover of sale has been reassessed adding the trade discount received petitioners'' vendor as subsidy.

2. As there has been a challenge to Section 19(20) of the Act as amended by the Second Amendment Act 22 of 2010, brought into force retrospectively w.e.f. 01.01.2007, we first heard the writ petitions, which were filed seeking for a declaratory relief followed by the writ petitions, challenging the reassessment orders. As the nature of transactions done by the petitioners are more or less identical, it would be suffice to refer to the facts in W.P. No. 25952 of 2010, which has been taken as a lead case, at the request of the learned Senior Counsel appearing for the petitioner.

3. The writ petitioner in the lead case is a dealer in Electronic Home Appliances and registered under the provisions of the Tamil Nadu Value Added Tax 2006, (hereinafter referred to as the ''Act''). The petitioner purchases appliances from local registered dealers on payment of VAT under the vendors'' VAT invoices. The petitioner effects re-sales to consumers under VAT invoices charging appropriate VAT on their selling price. The petitioner purchased LCD TVs from M/s. L.G. Electronic Pvt. Ltd. for re-sale. An illustration has been given by the petitioner to demonstrate the controversy which has arisen. The vendors had charged VAT on the selling price as per VAT invoice, and based on the same, VAT was paid. After the original tax invoice and availing Input Tax Credit, the vendor had given discount and purchase credit note was issued for a lesser price.

The petitioners took into account of their price after discount to arrive at net cost and adding VAT remitted to the vendor, the goods were resold at a lesser price.

Case of petitioners is that the discount earned by the petitioners did not alter the VAT charged in the vendors'' invoice nor the petitioners got any credit or refund of VAT paid to vendor and Rule 10(b)(b)(ii)(C) was not violated.

According to petitioners, they had taken only Input Tax Credit on the actual tax paid to the vendor on the VAT invoice and Input Tax Credit had not been altered even by the vendor. Taking in to account the price after discount when the goods were resold, resultantly, there was a resale at a lesser price, the tax paid by the petitioners to the vendor to certain extent became credit in the hands of the petitioners. The State cannot appropriate the excess credit Input Tax lying in the account of the assessee. Petitioners had conducted their business all along on the basis of VAT scheme operating u/s 19 of the Act with a benefit of Input Tax Credit paid to the vendor which in turn was remitted to the Treasury and that tax cannot be recovered or reversed with retrospective effect and the petitioners challenge the vires of Sub-section (20) of Section 19.

4. While so, the enforcement officers of the respondent department visited the place of the business of the petitioner and took details of the discount received from the vendors and statements of the petitioner was recorded.

Thereafter, a notice was served u/s 27 of the Act proposing to treat as escaped turnover the discounts received from the vendors by treating the discount as subsidy, constituting re-selling price of the petitioner. The petitioner submitted their reply stating that the ITC taken has not been altered by the vendor and the credit taken by them was proper. Thereupon, the assessing authority passed the impugned order of assessment by relying upon Section 27 of the Act to state that the discount received was liable to be taxed as turnover. The action of the department was not in accordance with law.

5. It is further stated that after the order of re-assessment was passed, the petitioner is said to have met the assessing authority and requested the authority to take note that the re-sale price was higher than the cost of purchase taking into account the discount or abatement and that ITC was not altered. The petitioner is said to have shown credit notes, which were issued by the petitioner''s vendor. The petitioner would further state that the assessing authority cannot reexamine the question, since by the Special Provision Act, the 2nd Amendment Act has been given effect to from 01.01.2007, therefore, the petitioners have been virtually compelled to approach this Court by challenging the impugned provisions as well as the reassessment orders.

6. Resisting the writ petitions, Respondents filed counter contending that the vendors reduced the sale price under the pretext of discount, resulting in accumulation of Input Tax Credit at the hands of the purchasers. The dealers are selling the goods at lower prices than their purchase price, thereby availing huge Input Tax Credit and paying less Output tax to the Government. In order to protect the revenue of the Government, the Government decided to amend Tamilnadu Value Added Tax Act, 2006. In order to safe guard the Revenue and

with a view to curb the clandestine transactions resulting in evasion of tax, in respect of second and subsequent sales, Section 19(20) was introduced with retrospective effect.

7. It is submitted by Mr. C. Natarajan, learned Senior counsel appearing for the petitioners that for the purpose of Section 19(20), which has been inserted with retrospective effect, the contracted price of the vendor to the petitioner and the re-sale price of the petitioner are to be compared to find out whether there is sale of goods at lesser price, which is a jurisdictional fact requisite for the application of the provision. It is further submitted that to constitute a contract of sale, there must be a consensus on the price between parties and the State can tax only the contracted price. Reliance was placed on the decision of the Hon''ble Supreme Court in State of Rajasthan and Another Vs. Rajasthan Chemists Association, Therefore, it is submitted that "sale price" or "turnover" adopted for levy cannot ignore price mutually agreed. Reference was placed upon the decision in The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., . It is further submitted that to say "invoice price" is the consideration or "price" for sale is untenable and it ignores the constitutional limitation and statutory provisions. By referring to the definition of ''turnover'' as defined u/s 2(41) read with explanation II(ii), it is submitted that the contracted price should be calculated after removing the discounts granted between the vendor and the petitioners. It is further submitted that trade discount of every kind, including post sale discount granted by credit note reduces the price and the abated price should be taken into consideration. In support of such contention, reliance has been placed on the decision in The The State of Madras Vs. Jeewanlal (1929) Ltd., ; Bharat Steel Tubes Ltd. Vs. State of Tamil Nadu]; and IFB Industries Ltd. Vs. State of Kerala, .

8. It is further submitted that the Hon''ble Supreme Court in Government of India and Others Vs. Madras Rubber Factory Ltd. and Others, held that discount allowed in trade by whatever name should be allowed to be deducted from the sale price, therefore, the respondents have no jurisdiction to invoke Section 19(20) as the petitioner has not sold the goods at a lesser price than the price, which the goods were purchased.

9. As regards the circular dated 30.11.2009, it is submitted that the discount received by the petitioners from their vendors has been taken as value to be taxed at the hands of the petitioners and such concept of value addition is alien to sale or price in a sale as against Excise Law, reference was made to Moriroku UT India (P) Ltd. Vs. State of U.P. and Others,

10. It is further submitted that when the petitioner''s vendor issued credit note, the price itself is abated and on account of the reduced price (post credit note) has resulted in the vendor having over charged VAT beyond the actual VAT due on the contracted price and this over charge VAT is restored to the petitioner through the route provided under Rule 10(6)(b)(ii)(C) and this amount which is restored to the petitioner is not a VAT or a tax, but a sum equivalent to VAT duly

restored to the buyer. It is submitted that unless the money collected is due as tax, the State cannot by law make it recoverable. Reliance was placed on the decision in R. Abdul Quader and Co. Vs. Sales Tax Officer, Hyderabad, ; R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, . It is further submitted that the said Rule avoids the two way traffic as u/s 2(r) and Rule 5A of the TNGST scheme.

11. It is further submitted that there is no machinery provided to operationalise Section 19(20), as if, the assessee does not reverse the credit, there is no provision by which the authority can proceed to adjudicate complying with the principle of natural justice and the revenue wrongly rely upon Section 27(2) and without amending the law providing appropriate machinery to enforce a provision, action cannot be initiated. Reliance was placed on the decision in Rai Ramkrishna and Others Vs. The State of Bihar, .

12. As regards the retrospectively, it is submitted that the same is repugnant to Articles 14 and 19(1)(a) of the Constitution being arbitrary and confiscatory. That it imposes a new burden retrospectively, which none of the petitioners have provided for in conducting their affairs. It is further submitted that retrospective validating laws imposing liability by a taxing enactment are upheld, if they do not impose a fresh tax or a new liability. These validation laws are in the nature of an amending and validating Act to cure a defect in a legal provision, which Court invalidates and such legislation though retrospective, is not a new levy. In support of such contention, reference was made to Rai Ramkrishna and Others Vs. The State of Bihar, ; Krishnamurthi and Co. etc. Vs. State of Madras, ; Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, ; R.C. Tobacco Pvt. Ltd. and Another etc. Vs. Union of India (UOI) and Others, . It is further submitted that whenever retrospective legislation imposed a fresh tax or new liability or created unforeseen demands, the same has been held to be unconstitutional. Reliance was placed on Bengal Paper Mill Co. Ltd. and Another Vs. Commercial Tax Officer and Others, ; Mega Trades vs. State of Kerala [(1991) 83 STC 59 (Ker)].

13. Mr. K. Vaitheeswaran, learned counsel for the petitioners brought out the scheme under the VAT regime and referred to Section 3 which is the charging provision and the mechanism provided under the said provision. Further, it is submitted that Section 19(20) seeks to create artificial one to one correlation and by referring to Section 3(3) which is the charging provision, it is submitted that the same does not bring about any input output correlation and Section 19(20) cannot bring out and artificial correlation which is not envisaged in the charging provision. Further, it is submitted that credit is indefinable and therefore it is a vested right and cannot be impaired that too retrospectively. In support of such contention reliance was placed on the decision in Collector of Central Excise, Pune Etc. Etc. Vs. Dai Ichi Karkaria Ltd. Etc. Etc., ; Eicher Motors Limited and Another Vs. Union of India and Others Etc., . It is further submitted that the impugned amendment is not only retrospective, but retroactive and the same is

arbitrary and unreasonable. In support of such contention reliance was placed on Welspun Gujarat Stahl Rohren Ltd. and Another Vs. Union of India (UOI) and Others, ; and Jay Mahakali Rolling Mills Vs. Union of India (UOI) and Others, Therefore, it is submitted that the sale and purchase go together and the sale price is the purchase price and credit notes are inevitable commercial concepts and a credit note given at a later date in effect brings down the purchase price. Regarding the concept of credit note, reliance was placed on the decision of the Hon''ble Supreme Court in Andhra Agencies Vs. State of A.P., .

14. Mr. AL. Somayaji, learned Advocate General while supporting the impugned provision made elaborate reference regarding the essential difference between the Sales Tax regime and the VAT regime. It is submitted that the sale price is to be determined on the date of sale and it is based on the sale price given in the tax invoice and the taxable event takes place on the date when the invoice is issued and subsequent discount by way of credit notes will not disturb the sale price intimated in the invoice. After referring to the provisions of the Act, it is submitted that Section 19 is not a charging Section rather a concession given to a dealer who may avail the input tax credit or may not avail such concession and the legislature is free to impose conditions for grant of such concession. Therefore, it is contended that Section 19 does not in any manner touch the charging Section 3(2) and the tax component shall be as indicated in the tax invoice and any arrangement between the seller and purchaser by way of credit notes issued after the issuance of a tax invoice cannot bind the revenue and the revenue is not concerned with such credit notes as the taxable event took place on the date, when the invoice was issued. Elaborate reference was made to the proceedings of the Commissioner of Commercial Taxes addressed to the Government for making amendments to the TN VAT Act by introducing sub-section 20 in Section 19. The learned Advocate General by referring to the sample tax invoice filed by the petitioner submitted that there is huge loss of revenue to the Government and the dealers who were paying substantial sums of money under the sales tax regime have not been paying any tax under the VAT scheme. Further, it is submitted that no arguments have been advanced as regards the legislative competence of the State in the light Entry 54 of List II of the Constitution and there is no infraction of Constitutional provisions so as to strike down the impugned amendment. Reference was made to the VAT Act in other States such as Kerala, Orissa, Punjab, Delhi and West Bengal. In support of his contention reliance was placed on the decision of the Hon''ble Supreme Court in Andhra Agencies Vs. State of A.P., ; K.R. Palanisamy and Others Vs. Union of India (UOI) and Others, Ultra Tech Cement Ltd. Vs. State of Kerala, and R.K. Garg and Others Vs. Union of India (UOI) and Others, . Justifying the retrospectivity of the impugned amendment, it is submitted that no fresh tax need be collected either from vendors or from the customers to whom the goods were sold by the writ petitioner and it is only against the amount that is lying with the writ petitioner for adjustment of payment of tax in future or the amount might have been adjusted against any outstanding dues in the earlier period.

15. It is further submitted that in law the petitioners are not entitled for the credit and therefore, it is not confiscatory and a credit not validly taken is liable to be refunded. In support of such contentions, reliance was placed on M. Mohammed Haji Manachithodi Agencies, Palakkad Vs. State of Kerala, R.C. Tobacco Pvt. Ltd. and Another etc. Vs. Union of India (UOI) and Others, Collector of Central Excise, Pune Etc. Etc. Vs. Dai Ichi Karkaria Ltd. Etc. Etc., It is further submitted that Rule 10(6)(b)(ii)C, is applicable to the vendors (sellers only) and not applicable to the petitioner being a purchaser. It is further submitted that because of the said Rule the petitioner''s vendor have not disturbed the VAT while giving discount in the invoice and the revenue to the Government is protected by the said Rule as far as the vendor is concerned. On the above submissions, the learned Advocate General seeks to justify the impugned provisions. As regards the writ petitions challenging the orders of assessment, it is submitted that the petitioners have to avail the statutory remedy under the Act and the writ petitions are not maintainable.

16. We have heard the learned counsels appearing for the parties and perused the materials placed on record.

17. Upon consideration of the submissions and materials placed on record, the following points arise for consideration in these writ petitions:-

(1) Whether amendment by inserting Section 19(20) to Tamil Nadu Value Added Tax reversing the amount of the input tax credit over and above the output tax of those credit is not within the legislative competence of the State Legislature under Entry 54 of the State List and ultra vires the Constitution and the Statute?

(2) Whether amendment to Section 19(20) of Tamil Nadu Value Added Tax Act by giving retrospective effect from 01.01.2007 is unreasonable and harsh and whether retrospective operation of the provision is liable to be struck down.

18. INTRODUCTION - SALES TAX REGIME TO VALUE ADDED TAX (VAT):

Value Added Tax is modern and progressive tax system now adopted in over 130 countries around the world. In India, this was initially tried out on Central Excise and after its success, extended to Service tax levy. Since at both levels Value Added Tax (VAT) has been successfully integrated in the tax system, the same has now been extended to state sales tax levies. Tax on sale within the State is a State subject. Over the period, many distortions had come in the regime of sales tax due to heterogeneity prevailed in the structure of sales tax. In the Sales Tax regime, there were problems of double taxation of commodities and multiplicity of taxes resulting in a cascading tax burden. Many steps were taken to remove the distortion and rationalise the tax structure since 1999. It was decided to introduce uniform State Level VAT.

19. Introduction of VAT was difficult in India as sales tax is a State subject and sales tax on sales within the State can be levied under Entry 54 of List II by respective State Governments. Initially the States Governments were reluctant

to introduce VAT in their respective States. After persuasion by Central Government, all States ultimately agreed to introduce the State Level Sales Tax - VAT at the Conference of Chief Ministers of all States at Delhi in November, 1999. A High Power Committee (termed as "Empowered Committee") consisting of senior representatives of all 29 States was constituted under Chairmanship of Dr. Asim Dasgupta. Introduction of VAT was delayed on several occasions. Finally, it was announced that all States agreed to introduce VAT with effect from 1.4.2005. A "White Paper" was released by the Empowered Committee on 17.1.2005 and the said White Paper is a Policy Document indicating the basic policies of the State Sales Tax VAT. The White Paper circulated by the Empowered Committee of State Finance Ministers furnished the following rationale for the introduction of VAT:

In the existing sales tax structure, there are problems of double taxation of commodities and multiplicity of taxes, resulting in a cascading tax burden. For instance, in the exiting structure, before a commodity is produced, inputs are first taxed, and then after the commodity is produced with input-tax load, output is taxed again. This causes an unfair double taxation with cascading effects. In the VAT, a set-off is given for input tax as well as tax paid on previous purchases. In the prevailing sales tax structure, there is in several States also a multiplicity of taxes, such as turnover tax, surcharge on sales tax, additional surcharge, etc. With introduction of VAT, these other taxes will be abolished. In addition, Central sales tax is also going to be phased out. As a result, overall tax burden will be rationalized, and prices in general will also fall. Moreover, VAT will replace the existing system of inspection by a system of built-in self-assessment by the dealers and auditing. The tax structure will become simple and more transparent. That will improve tax compliance and also augment revenue growth. Thus, to repeat, with the introduction of VAT, benefits will be as follows:

a set-off will be given for input tax as well as tax paid on previous purchases other taxes, such as turnover tax, surcharge, additional surcharge, et., will be abolished overall tax burden will be rationalized prices will be self-assessment by dealers transparency will increase there will be higher revenue growth

20. In order to examine the controversy raised in these writ petitions and to test the validity of the impugned provision, a birds eye view of the design of the VAT Act, its concept, coverage, the compulsory requirement to be complied with and other relevant details has to be looked into. The essence of VAT is in providing set off for the Tax paid earlier and this is given effect through the concept of input tax credit/rebate. VAT is based on value addition to goods and related VAT liability of the dealer is calculated by deducting input tax credit from tax collected on sales during the payment period. The input tax credit was available on both manufacturer and the trader for purchase of inputs/supplies meant for both sale within the State and sale in the course of inter-State Trade. Consequently, it reduced the immediate tax liability. In cases where, tax credit exceeds the tax payable on sales in a month, the excess credit will be carried over. The entire

design of VAT with input tax credit is crucially based on documentation of tax invoice, cash memo or bill. There is a statutory obligation for every registered dealer having turnover of sales above the amounts specified to issue a tax invoice serially numbered containing the prescribed particulars. Failure to comply with the mandatory requirements attracts penalty. The basic simplification of VAT is that VAT liability will be self assessed by the dealer themselves in terms of submissions on returns upon setting of the credit limit. This has done away with the requirement of compulsory assessment as in the sales tax regime. The correctness of self assessment is subject to check through the departmental audit. Therefore, the net effect of the VAT system is to rationalise the tax burden and bring down in general the price level, stop the tax rate war, and with a view to bring in simplicity and transparency in the tax structure thereby improving the tax compliance and eventually to ensure growth the revenue. The above in broad terms is the concept of VAT.

21. There is distinction between the scheme of tax on sale of goods both under the VAT regime and under the Sales Tax Act existing prior to that. Under the Sales Tax Act except a few items, all other goods were taxable at the point of first sale in the State. Therefore tax was levied and collected only from the first seller. Contrary to this, the scheme under the VAT regime is that the tax collected by the first seller is given as input tax credit to the second seller, and the tax paid by the second seller is given as input tax credit to the third seller and ultimately the entire tax is borne by the consumer. In other words, the tax paid on the value addition by a series of dealers is ultimately passed on to the consumer and dealers get reimbursement of the tax paid by them.

22. All the States have implemented VAT and made provisions for ITC as per their needs. Under the erstwhile Sales Tax regime, there was multiplicity of taxes like turnover tax, surcharge on sales tax, additional surcharge, etc., but with introduction of VAT, these other taxes have been abolished. As a result, over all tax burden will be rationalised and prices in general will also fall.

23. Point No. 1: Challenging the vires of Section 19(20):-

Tamil Nadu Value Added Tax Act, 2006 (in short, T.N. VAT Act No. 32 of 2006) was enacted introducing VAT in the State of Tamil Nadu with effect from 1.1.2007. Section 2 of TN VAT Act defines as many as 44 terms. Section 2(15) defines dealer to mean any person who carries on the business of buying, selling, supplying or distributing goods directly or otherwise, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration and includes those authorities and persons as enumerated in clause (i) to clause (ix) of Section 2(15). Section 2(21) defines goods to mean all kinds of movable property other than newspapers, actionable claims, stocks and shares and securities and includes all materials, commodities and articles including the goods etc. Section 2(24) defines "input tax" as the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods including capital goods in the course of his business". Section

2(28) defines "output tax" as "tax paid or payable under this Act by any registered dealer in respect of sale of any goods". Section 3 deals with "Levy of taxes on sales of goods". Section 3(3) provides for "reduction of tax payable by a dealer to the extent of tax paid on his purchase of goods".

24. Section 19 deals with "Input Tax Credit" and the conditions/requirements to be complied with for claiming Input Tax Credit. Sections 20 to 29 deal with tax administration, assessment of tax, filing of returns, collection of tax, etc., Section 27 deals with "Assessment of escaped turnover and wrong availment of input tax credit". Section 40 deals with "forfeiture of tax collected" i.e., if any person collects any amount by way of tax and his turnover for the year falls short of the taxable limits specified, the sum so collected should be remitted to the Government and forfeited. Sections 42 and 44 deal with "payment and recovery of tax, penalty and interest."

25. Section 3 of TN VAT Act deals with levy of tax on sale of goods. The manner and extent to which a registered dealer, who has paid tax as per the charging provision Section 3(2), would be entitled to Input Tax Credit has been spelt out in Section 3(3). Section 3 reads as under:-

3. Levy of taxes on sales of goods:

(1) (a) Every dealer, other than a casual trader or agent of a non-resident dealer, whose total turnover for a year is not less than rupees five lakhs and every casual trader or agent of a nonresident dealer, whatever be his total turnover, for a year, shall pay tax under this Act.

(b) Notwithstanding anything contained in clause (a), every dealer, other than a casual trader or agent of a non-resident dealer, whose total turnover in respect of purchase and sale within the State, for a year, is not less than rupees ten lakhs, shall pay tax under this Act.

(2) Subject to the provisions of sub-section (1), in the case of goods specified in Part - B or Part - C of the First Schedule, the tax under this Act shall be payable by a dealer on every sale made by him within the State at the rate specified therein.

[Provided that all spare parts, components and accessories of such goods shall also be taxed at the same rate as that of the goods if such spare parts, components and accessories are not specifically enumerated in the First Schedule and made liable to tax under that Schedule.]

(3) The tax payable under sub-section (2) by a registered dealer shall be reduced, in the manner prescribed, to the extent of tax paid on his purchase of goods specified in Part - B or Part - C of the First Schedule, inside the State, to the registered dealer, who sold the goods to him.

....

26. The essence of VAT is in providing set off for the tax paid earlier and this is

given effect through the concept of Input Tax Credit. Input Tax Credit is given only to ameliorate the cascading effect of tax burden. By virtue of the Section 3(3), the tax payable by the registered dealer shall be reduced in the manner prescribed, to the extent of tax paid on his purchase of the goods specified in Part B or Part C, inside the State to the registered dealer, who sold the goods to him. Input Tax Credit is creature of Statute. Case of respondents is that petitioners have no absolute right to claim Input Tax Credit, but only a concession and when Input Tax Credit is only a concession, it is open to the Government to impose conditions for availing Input Tax Credit.

27. Petitioners in these cases are purchasing dealers of various products/goods, subject to different rate of tax as per Schedule for resale within the State. We are mainly concerned with the validity of Section 19(20) of the Act as inserted by the Amending Act 22 of 2010 with effect from 19.08.2010 and made to operate retrospectively from 01.01.2007 by Amending Act 42 of 2010 is under challenge, at this stage, we are not concerned about the goods which are subject matter of sale/purchase done by the petitioners.

28. In these writ petitions, we are mainly concerned with Input Tax Credit and Output Tax and the vires of Section 19(20) of TN VAT Act. Section 19 of TN VAT deals with the mechanism for availing Input Tax Credit. Section 19 of TN VAT Act deals with Input Tax Credit and stipulates conditions for claiming Input Tax Credit. Section 19 reads as under:-

Section 19. Input tax credit.-

(1) There shall be input tax credit of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule:

Provided that the registered dealer, who claims input tax credit, shall establish that the tax due on such purchases has been paid by him in the manner prescribed.

(2) Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of

(i) re-sale by him within the State; or

(ii) use as input in manufacturing or processing of goods in the State; or

(iii) use as containers, labels and other materials for packing of goods in the State; or

(iv) use as capital goods in the manufacture of taxable goods.

(v) sale in the course of inter-State trade or commerce falling under sub-section (1) of section 8 of the Central Sales Tax Act, 1956.

(vi) Agency transactions by the principal within the State in the manner as may be prescribed

(3) to (9) ....

(10) (a) The registered dealer shall not claim input tax credit until the dealer receives an original Tax Invoice duly filled, signed and issued by a registered dealer from whom the goods are purchased, containing such particulars, as may be prescribed, of the sale evidencing the amount of input tax.

(b) If the original tax invoice is lost, input tax credit shall be allowed only on the basis of duplicate or carbon copy of such tax invoice obtained from the selling dealer subject to such conditions as may be prescribed.

(11) to (15) .....

(16) The input tax credit availed by any registered dealer shall be only provisional and the assessing authority is empowered to revoke the same if it appears to the assessing authority to be incorrect, incomplete or otherwise not in order.

(17) If the input tax credit determined by the assessing authority for a year exceeds tax liability for that year, the excess may be adjusted against any outstanding tax due from the dealer.

(18) The excess input tax credit, if any, after adjustment under sub-section (17), shall be carried forward to the next year or refunded, in the manner, as may be prescribed.

(19) Where any registered dealer has availed input tax credit and has goods remaining unsold at the time of stoppage or closure of business, the amount of tax availed shall be reversed on the date of stoppage or closure of such business and recovered.

(20) Notwithstanding anything contained in this section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed.

29. Sub-section (1) of Section 19 of TN VAT Act, 2006 provides for availment of Input Tax Credit in any month accrued on purchases made against the output tax due on sale by a registered dealer. Proviso to sub-section (1) of Section 19 stipulates that the registered dealer, who claims Input Tax Credit, shall establish that the tax due on such purchases has been paid by him in the manner prescribed. Sub-section (2) of Section 19 enumerates the transactions for which Input Tax Credit shall be allowed. Section 19(3)(a) and (4) provide for allowing Input Tax Credit. As per Section 19(3)(a) and (4), Input Tax Credit shall be allowed in the manner prescribed. Section 19 contains details of sales in respect of which Input Tax Credit is to be allowed and sales in respect of which Input Tax Credit is not to be allowed. Since Input Tax Credit shall be allowed only in the manner prescribed, the registered dealer cannot claim Input Tax Credit independent of Section 19 of TN VAT Act.

30. By virtue of Tamil Nadu VAT Amendment Act (Act No. 22 of 2010), the State Government inserted sub-section (20) to Section 19 with effect from 19.8.2010. By the subsequent amendment Act, Section 19 sub-section (20) was given retrospective effect w.e.f. 1.1.2007. The implication of Section 19(20) is that now if a registered dealer sells goods below the purchase price, then the amount of the Input Tax Credit over and above the output tax of those goods shall be reversed.

31. Writ petitioners in W.P. Nos. 25952 to 25955 of 2010 are dealers in Electronic Home Appliances. Writ petitioners in W.P. Nos. 28295 to 28298 of 2010 are dealers in Hardware, Paints, Sanitary wares, G.I. PVC Pipes, G.I. Fittings and Asian Colour World and AC Sheet. Likewise, all other writ petitioners are dealers, who purchased goods within the State and effects sale of those goods within the State. As per Section 3(1) of the Act, the writ petitioners, who are dealers under Tamil Nadu Value Added Tax Act, whose turn over for a year is not less than Rs. Ten lakhs, shall pay tax under TN VAT Act. As per the scheme of TN VAT Act [Sub-section (3) of Section 3], the petitioners being purchasing dealers are entitled to take credit of the entire tax paid by the selling dealer on the said goods.

32. The controversy arises in view of the discount given by the vendor/ manufacturer after issuance of the tax invoice and charging VAT on the selling price, extending discount to the petitioner/purchasing dealer which were in the form of credit notes. On receipt of the credit notes, the purchasing dealer calculated the purchase price of the goods taking into account discount given by credit note and fixed the same as his purchase price. By value addition, the purchasing dealer sold the goods to the consumer and VAT was calculated on the sale price fixed by the purchasing dealer by reckoning the discount offered under the credit note. If the purchase price of the goods is taken as per the tax invoice undoubtedly the selling price was lower.

33. The petitioners had taken only Input Tax Credit of actual tax paid to the vendor on the VAT invoice and the Input Tax Credit had not been altered even by the vendor. The petitioners would thus take umbrage under the credit note issued by the selling dealer and state that on account of discount there is abatement of the original sale price and their sale price is higher than the price so abated and section 19(20) as inserted in the Amending Act is not attracted.

34. Petitioners rely upon Rule 10(6)(b)(ii)(C) of TN VAT Rules. As per the said rule wherever any credit notes are to be issued for discount or sales incentives by any dealer to another dealer after issuing tax invoice, the selling dealer shall pass a credit note without disturbing the tax component on the price in the original tax invoice, so as to retain the quantum of input tax credit already claimed by the buying dealers as well as not to disturb the tax already paid by the selling dealer. Thus the selling dealer could issue credit note without changing the tax component in the Original Invoice.

35. According to petitioners, vendors had not altered Input Tax Credit remitted

and by their credit note had not claimed any refund of Input Tax Credit in respect of the discount given on their sales. The vendors had not even sought alteration of their turnover after the tax invoice. While effecting re-sale, the petitioners took into account their price after discount to arrive at net cost added VAT remitted to the vendor. Resultantly, when the goods were re-sold, the VAT paid by the petitioners to the vendors to certain extent became excess credit in the hands of the petitioners. It is the case of petitioners that the excess component in the VAT calculated based on the original sale price is the excess credit/money credit in the hands of the petitioners and the same cannot be reversed.

36. The other contention being this money credit can never be taken as a tax and the State Legislature is not empowered to enact any law under Entry 54 of List II in respect of this amount as the Government cannot retain what is not tax on sale and collection of tax shall be only in accordance with the provisions of the Act and Rules. The further contention being if the selling dealer collected anything from the purchaser which is not authorised by the tax law, such collection is a matter between the vendor and purchaser and no law can be enacted to recover such amount which is in the nature of forfeiture not within the competence of the State Legislature under Entry 54 of the State List. Further, it was contended that Section 19(20) does not provide any penal provision and therefore, this amount which is in the nature of a money credit cannot be forfeited to the State or compelled to be reversed, more so, when there is no mechanism provided in the Act and consequently, it is ultra vires the Constitution and the statue.

37. We have been furnished with a sample transaction between the parties which would show as to how higher Input Tax Credit has been on the sale price and how output tax is collected at a lesser rate based on the discounted price and value added addition. This could be better explained by the following illustration by taking the case of the petitioner in W.P. No. 25952 of 2010. We may usefully refer to the sample Chart furnished in W.P. No. 25952 of 2010 as under:-

PURCHASE DATA:

Sl. No.

1

Name of the supplier

L.G. Electronics India Pvt. Ltd.

Description Model No.

LCD TV 32LG80FR

Purchase Bill No. and date

SINCHECE/40842 dt. 01.01.2009

Quantity received

10 units

Billing Price. Per unit

Basic : 36780.00

(VAT Invoice)

4597.50

41377.50

6477.75

Discount Per unit

NIL

Net cost after discount

30302.25

4597.50

34899.75

RE-SALE DATA:

Sl. No.

1.

Sale Bill No. and Date

10124 dt. 20.3.2009

Sale Price by Jayam &

Basic : 33777.78

Per unit

4222.22, 38000.00, 33777.78

Profit per unit

(-) 30302.25, 3475.53

Excess Input Tax Credit

375.28

Petitioners claim that in the above sample transaction, the writ petitioner (W.P. No. 25952 of 2010) claims to have earned excess Input Tax Credit of Rs.375.28 as under:-

VAT paid by the writ petitioner on the purchase of LCD TV i.e. Input Tax Credit

Rs. 4,597.50

VAT collected by the writ petitioner

on the sale as Output Tax

Rs. 4,222.22

Excess ITC earned by the writ petitioner

Rs. 375.28

38. Contentions of petitioners is that if the contracted discounted price with vendors (credit note discount) is taken into account, there may be no occasion for the Revenue to invoke Section 19(20) of TN VAT Act. According to petitioners, as per Rule 10(6)(b)(ii)(C) of TN VAT Rules, vendors had not altered the tax component/Input Tax Credit remitted and the sale price of the goods is not lesser than the purchase price of the same goods and therefore, there is violation of provisions of the Act.

39. Learned Senior Counsel Mr. C. Natarajan submitted that Section 3 of TN VAT Act defines levy of taxes on sale of goods. Learned Senior Counsel submitted that as per Section 4 of Sale of Goods Act, 1930, sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. Section 2(10) of Sale Goods Act defines price means the money consideration for sale of goods. Learned Senior Counsel further submitted that sale is consensual transaction between the seller and the buyer and after discount, the sale price is arrived at by mutual consent and while so, the sale price after discount given in the credit note ought to be taken as price. Learned Senior Counsel further submitted that the Authorities are not right in adding sale price and shifting the burden of VAT to the consumer which is against the concept of VAT. Learned Senior Counsel contended that under TNGST Act as well as the analogous provisions, Courts have held that the contracted prices are to be looked at and the trade discount were accepted in the sellers invoice or granting subsequently by credit note will reduce the sale price as well as the turnover of the selling dealer. In support of his contention, learned Senior Counsel placed reliance upon IFB Industries Ltd. Vs. State of Kerala, ; Government of India and Others Vs. Madras Rubber Factory Ltd. and Others, ; India Pistons Ltd. Vs. State of Tamil Nadu, Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam Vs. Advani Oorlikon (P) Ltd., ; The State of Tamil Nadu Vs. Ultramarine and Pigments Ltd., The State of Madras Vs. Jeewanlal (1929) Ltd., ; Bharat Steel Tubes Ltd. Vs. State of Tamil Nadu ; M/s Neyveli Lignite Corporation Ltd. Vs. Commercial Tax Officer, Cuddalore and Another, and TISCO General Office Recreation Club Vs. State of Bihar and Others,

40. All the above decisions referred to by the learned Senior Counsel pertains to discount under Sales Tax and Central Excise Act which would have no relevance to the present case where we are considering vires of Section 19(20) of TN VAT Act. As pointed out earlier, there is a vast distinction on sale of goods under VAT

regime and under Sales Tax regime.

41. We should now see as to whether the discount offered by the manufacturer to the petitioner which is post the tax invoice could have any effect on the particulars mentioned in the tax invoice or could make a dent either in the purchase price or the tax component. The learned counsels for the petitioners would contend that the discount abates the sale price.

42. In the preceding paragraphs, we have noticed the importance of tax invoice in the VAT regime. This is a crucial document and the entire design of VAT with Input Tax Credit is based on this document. In terms of Rule 10(2), every registered dealer, who claims "Input Tax Credit" under sub-section (1) of Section 19, shall produce the Original Tax Invoice in support of his claim of "Input Tax Credit".

43. "Tax Invoice" is defined in Section 2(36) of TN VAT Act as under:-

Section 2(36) "tax invoice" means an invoice issued by a registered dealer who sells taxable goods to another registered dealer in the State showing the tax charged separately and containing such details as may be prescribed.

44. As per Section 19(10)(a) of TN VAT Act, for a registered dealer to claim "Input Tax Credit", the Original Tax Invoice is mandatory. Section 19(10)(a) of TN VAT Act reads as under:-

Section 19(10)(a) The registered dealer shall not claim input tax credit until the dealer receives an original Tax Invoice duly filled, signed and issued by a registered dealer from whom the goods are purchased, containing such particulars, as may be prescribed, of the sale evidencing the amount of input tax.

As per sub-section (10) Clause (b) of Section 19 of TN VAT Act, in case the Original Tax Invoice is lost, the Input Tax Credit shall be allowed only on the basis of duplicate or carbon copy of such tax invoice obtained from the selling dealer subject to the conditions as may be prescribed.

45. By reading of Section 19(10)(a) of the Act, it is clear that for claiming "Input Tax Credit":-

(i) Registered dealer should receive an Original Tax Invoice duly filled, signed and issued by a registered dealer from whom the goods are purchased;

(ii) Original Tax Invoice must contain particulars of sale as prescribed evidencing the amount of "Input Tax Credit".

Section 19(10)(a) bars claiming input tax credit until the dealer receives original tax invoice with the particulars as mentioned in Rule 10(2) of the Rules.

46. Rule 10(2) requires production of original tax invoice to claim tax credit inter alia requiring the value of goods and the rate and amount of tax charged. As per Rule 10(2) of TN VAT Rules, the Original Tax Invoice shall contain the following details:-

(a) A consecutive serial number;

(b) The date on which the invoice is issued;

(c) The name, address and the Taxpayer Identification Number of the seller;

(d) The name, address of the Taxpayer Identification Number of the buyer;

(e) The description of the goods;

(f) The quantity or volume of the goods;

(g) The value of the goods;

(h) The rate and amount of tax charged; and

(i) The total value of the goods.

Rule 10 makes it clear that the tax invoice is the invoice for the sale and cannot comprehend any subsequent Credit Note or Debit Note arising out of post-sale matters.

47. Sub-section (13) of Section 19 empowers assessing authority to deny the benefit of input tax credit in cases where the registered dealer without entering into a transaction of sale issues a tax invoice to another registered dealer. Sub-section (16) of Section 19 states that the input tax credit availed by a registered dealer is only provisional and the assessing authority is empowered to revoke the same if it appears to be incorrect, incomplete or otherwise not in order. Only after the assessing authority has determined the input tax credit for a year and if the credit exceeds the tax liability for that year, the excess may be adjusted in accordance with sub-section (17) of Section 18. The excess input tax credit after adjustment under sub-section (17) shall be carried forward to the next year or refunded in the manner as may be instructed. Thus, the tax invoice which is a statutory invoice is a crucial document and the ITC has to be assessed/calculated based on the particulars contained in the tax invoice and such invoice issued by the registered dealer who sells taxable goods has a pivotal role in the VAT regime.

48. Section 2(38) of TN VAT Act defines taxable turnover means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed.

Turnover is defined in Section 2(41) of TN VAT Act. Turnover as defined under sub-section (41) of Section 2 means the aggregate amount for which the goods are bought or delivered or supplied by a dealer for cash or for deferred payment or other valuable consideration in respect of articles returned by the customers should not be included in the turnover as per Clause (ii) of Explanation II. Section 2(41) and the said clause (ii) of Explanation II to Section 2(41) reads as under:-

Section 2(41) - turnover means the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (33), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea and rubber (natural rubber latex and all varieties and grades of raw rubber) grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.

Explanation I. ....

Explanation II. - Subject to such conditions and restrictions, if any, as may be prescribed in this behalf

(i) .....

(ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover.

The turnover as defined in Clause (ii) of Explanation II to Section 2(41) of TN VAT Act clearly excludes discount in computation of turnover.

49. Taxable event takes place on the date of sale i.e. the date of tax invoice. Sale price given in the tax invoice should be the basis for arriving at the quantum of tax and therefore, the price in the invoice must be taken as sale price. Any subsequent discount should not disturb the sale price or tax component indicated thereon.

50. Giving discount and reducing price is an internal arrangement between the selling dealer and buying dealer and for the said internal arrangement, credit note may be issued. State is not concerned about the discount or internal arrangement between the seller and the buyer. For the purpose of revenue, the tax component should be the same as indicated in the tax invoice, until the goods is sold to the ultimate consumer. The Value Added Tax shown in the tax invoice which is available to the petitioner as Input Tax Credit should not be altered, when he sells the goods.

51. The tax invoice is a document to be issued by the registered dealer who sells the taxable goods to another registered dealer and the entire design of VAT with Input Tax Credit is crucially based on documentation of invoice. Therefore, the petitioner who is the purchasing dealer can never be allowed to amend the tax invoice or contend that by virtue of the subsequent credit note issued by the selling dealer, there is abatement in the sale price. The theory as propounded by the petitioner has absolutely no legal basis rather it runs foul to be very concept of the VAT regime.

52. In the recent decision of the Calcutta High Court in Crompton Greaves Limited Vs. Assistant Commissioner of Commercial Taxes, Corporate Division, , the Calcutta High Court refused to allow deduction of subsequent discounts by

way of credit notes from the seller''s turnover holding as under:-

21. ...... the learned Tribunal came to the fact finding that at the time of removal of the goods full price with sales tax, surcharge were realized without any dispute, subsequently the prayer for additional discount in the form of credit notes was not sustainable. It is further on fact found that the petitioner herein had realized the full price with the sales tax and surcharge without any mention of discount being allowed in any manner whatsoever. It is not a discount, which was known and understood at the time of removal of the goods. There was no whisper in the invoices as to discount being allowed. No recurring credit scheme was also introduced to allow the purchasers to get the discount through the credit notes. It was not turnover discount through issuance of credit notes to encourage turnover of sales.

53. We have perused a sample invoice produced by the petitioner in W.P. No. 25952 of 2010 dated 01.01.2009 (Page No. 37 of typed set). The sample invoice contains all the details as required under Rule 10(2). It is actually captioned as VAT TAX INVOICE. The sample invoice shows that the petitioner has been given a discount under two heads and after deducting the discount from the unit rate the net amount has been arrived at. The Tax/VAT at 12.5% has been calculated on the said net amount. Therefore, the purchasing dealer is entitled for Input Tax Credit on the Tax/VAT mentioned in the invoice. We have examined the statutory provisions concerning the tax invoice and as per the VAT scheme the tax invoice is the sole and basic document based on which the entire credit structure emerges.

54. The learned Advocate General would contend that even assuming that the Assessing Authority accepts the discount granted to the petitioners by way of credit note and there is a residual amount being the excess tax paid, since there is reduction of the original sale price, the person who can seek for return of the said amount shall only be the selling dealer and not the petitioners/purchasers. Therefore, it is clear that it is the selling dealer who has fixed the sale price based on which VAT has been calculated and remitted by the selling dealer. Any discount on the price allowed in respect of any sale shall be by the selling dealer as a consequence any reduction in the VAT remitted by the selling dealer shall accrue to the selling dealer alone. This conclusion is fortified by Section 19(20) of the Act where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him the amount of Input Tax Credit over and above, the output tax of those goods shall be reversed and by a conjoint reading of Clause (ii) of Explanation II in Section 2(41) and Section 19(20), it is only the selling dealer in the lead case, L.G. Electronics Limited can seek for refund or reversal of the said amount. We would add a caveat here to state that this claim is not an absolute right, but subject to assessment proceedings. The petitioners do not dispute this legal position, but would add that the selling dealer cannot retain it himself, but it should be passed on to the petitioner, who has borne the incidence of tax. If that be so, it is purely a matter between the seller and

purchaser and we are at a loss to understand as to how the VAT Department could be made party to this arrangement between the seller and purchaser.

55. Input Tax Credit/Set-off is a concession granted by the Legislature. In the absence of Section 19, the registered dealers, who claims "Input Tax Credit" has no right to claim "Input Tax Credit" independent of Section 19 of the Act. Thus the entitlement to "Input Tax Credit" is created by Statute and can be claimed only in terms of Statute viz., receiving Original Tax Invoice duly filled containing particulars as prescribed in Rule 10(2) of TN VAT Rules. Entitlement to "Input Tax Credit" flows from the provisions of TN VAT Act. Input tax credit given u/s 3(3) is really a benefit/concession in respect of certain taxable transactions. The Input Tax Credit provided u/s 3(3) is really a benefit or indulgence. While so, it is open to the State Legislature to impose conditions and restrictions while extending the concession.

56. On this issue, useful reference may be made to the recent decision of the Division Bench of Bombay High Court in M/s.Mahalaxmi Cotton Ginning Pressing and Oil Industries, Kolhapur Vs. The State of Maharashtra and Ors, The challenge before the High Court of Bombay was to the constitutional validity of Section 48(5) of the Maharashtra Value Added Tax Act, 2002. Section 48 deals with set-off, refund, etc. Though the terminology used in Section 48 is slightly different from the terminology used in Section 19 of the TNVAT Act, in effect what is contemplated u/s 48 of the MVAT Act is in effect a credit or a refund of duty paid by a dealer subject to fulfillment of the conditions set out in Section 48. The Bombay High Court threadbare analyzed the set-off provision and held that the purpose of set-off is to obviate a cascading effect of the tax burden on the ultimate consumer and this element of legislative policy is to be balanced with the need for securing tax compliance and ensuring against a loss of legitimate revenue owing to Government. After analysing the erstwhile provisions contained in the Bombay Sales Tax Act and the Maharashtra Value Added Tax Act, the Division Bench of the Bombay High Court held that a set-off constitutes a concession granted by the legislature and in the absence of set-off, the selling dealer would be liable to pay tax on the sale consideration and there is no independent right to a set-off apart from Section 48.

57. In the case of M. Mohammed Haji Manachithodi Agencies, Palakkad Vs. State of Kerala, , the Kerala High Court held as under:-

7. ..... The set off so provided is in the nature of a concession. It is a benefit conferred on the assessee quite in harmony with the scheme of multi point levy of tax but confined to the value addition at each stage.

58. Input tax credit which is in the nature of the concession or indulgence, could be availed only in the manner prescribed u/s 19. The law is well settled that the person, who claims exemption or concessional rate, must obey and fulfill the mandatory requirements exactly. Unless there is strict compliance with the provisions of the statute, the registered dealer is not entitled to claim input tax

credit. When Section 19(10) stipulates that the registered dealer shall not claim Input tax credit until the dealer receives original tax invoice and Input tax credit can be claimed only in the manner prescribed in Section 19. Input tax credit could be claimed only on the sale price stated in the tax invoice and not on any other credit note. When the concession of "Input Tax Credit" is available to a registered dealer on complying the conditions in the Act, the mandatory requirements of those conditions must be strictly complied with. Therefore, the petitioners cannot rely upon the credit note and contend that the purchase price after discount as stated in the credit note has to be taken as the price for which goods were purchased.

59. As pointed out earlier, Section 3(3) of TN VAT Act permits availing of Input Tax Credit which is a benefit given to the registered dealer. Entitlement of Input Tax Credit is subject to the compliance of the provisions in Section 19 and dealer receiving original tax invoice, which contains the prescribed particulars as contemplated under Rule 10(2). Whatever is the tax component in the Original Tax Invoice, which was taken as Input Tax Credit by the dealer, cannot be reduced by altering the sale price. Legislature would not have intended to allow registered dealer to take Input Tax Credit without compliance of mandatory provisions. Unless there is strict compliance of mandatory provisions of the Statute, the registered dealer is not entitled to the Input tax credit.

60. Division Bench of the Kerala High Court in Ultra Tech Cement Ltd., vs. State of Kerala and Ors., referred supra, was considering somewhat an identical case and had considered the effect of the sale price mentioned in the tax invoice. It was observed that a discount shown separately should mean a discount shown separately in the tax invoice. It was further held when discount is given from the sale price by the seller and tax is charged on the net price after excluding discount, the sellers claim is only the sale price reduced by discount and no buyer can be called upon to pay the discount amount after the seller grants it, as a reduction in the tax invoice.

61. It is not in dispute that the Legislature can provide for and also prescribe terms and conditions for discounts in the sale price and as trade practice discounts could be offered by way of credit notes, but those discounts offered by a selling dealer can have no impact on the payment of tax. If any such discount, be it a trade discount or a cash discount, a incentive discount, such discount quantifies for deduction from payment of tax only when, it is separately mentioned in the original tax invoice and this is vivid from the statutory provision, which we have been discussed above.

62. Having arrived at such a finding, the decisions relied on by the learned counsel for the petitioner pertaining to the tax discount as to how they have to be construed under the Sales Tax Act and the Central Excise Act would have no impact on the facts of the present case and does not render any support to the petitioners'' case.

63. Let us now point out the background/reasons for inserting Section 19(20) by Amendment Act 22 of 2010, by referring to the Chart, the sample instance is detailed in the Chart in paragraph (34). Let us recapitulate the entries in the Chart. Based on the sale price i.e., Rs. 36,780/- in the tax invoice, an amount of Rs. 4,597.50 was paid as VAT and the same was taken as Input Tax Credit i.e. Input Tax Credit of Rs. 4,597.50 was available to the petitioner when he re-sells goods. Based on the Credit Note, the same goods are re-sold within the State at a lesser price than what was purchased i.e. Rs. 33,777.78 (taking into account discount price, there is a profit margin for the dealer) and thereby the output tax payable to the Government is reduced, leaving excess Input Tax Credit at the hands of the dealer. The said excess credit in the hands of the dealer might be adjusted to their other liabilities or might claim refund of the said excess Input Tax Credit. Taking excess Input Tax Credit and later in the guise of credit note giving discount and reducing the price of the goods which reduces the Output tax payable to the Government dwindles State revenue.

64. Learned Advocate General contended that seller and buyer coalition in issuing purchase invoice at an escalated price thereby taking benefit of excess Input Tax Credit and later in the guise of credit notes giving discount, reduced the price of the same goods and thereby reducing the output tax payable to the Government creates a dent of the State revenue. Learned Advocate General further submitted that excess Input Tax Credit available in the hands of the dealer is being adjusted to their other liabilities and the dealer might also make a claim of refund of Input Tax Credit as per Section 19(18) of the Act which were ultimately resulted in creating dent on the State revenue.

65. To contend as to how the so called discount and reduction of sale price caused revenue loss to the Government, the learned Advocate General has drawn our attention to the illustration stated in paragraph (6) of the counter which reads as under:-

Purchase price of 10 Washing Machines

...

Rs. 1,00,000/-

Tax paid on purchase at 12.5% (ITC allowed)

...

Rs. 12,500/-

Sale price after discount

...

Rs. 75,000/-

Tax payable on sales at 12.5%

...

Rs. 9,375/-

Excess ITC available (Difference between ITC and Output Tax)

...

Rs. 3,125/-

Rs.12,500

Rs.9,375

Excess ITC adjusted

...

Rs. 3,125/-

66. As rightly contended by the learned Advocate General, the Input Tax Credit adjusted in the above illustration comes to Rs. 3,125/- in a single transaction and that it would run to several lakhs and crores for a year for a single dealer. The excess Input Tax Credit earned by the petitioners is being adjusted against the outstanding tax due or carried forward to next year or refunded. If this trend is allowed to continue, the concept of VAT that meant for payment of tax on every value addition gets defeated.

67. In order to protect the revenue and with a view to curb the clandestine transactions resulting in evasion of tax, in respect of second and subsequent sales, Section 19(20) was introduced, where any dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of.

Input Tax Credit over and above the output tax of those goods, shall be reversed.

68. Constitutional Validity of fiscal legislation:- When there is a challenge to the constitutional validity of the provisions of a Statute, Court exercising power of judicial review must be conscious of the limitation of judicial intervention, particularly, in matters relating to the legitimacy of the economic or fiscal legislation. While enacting fiscal legislation, the Legislature is entitled to a great deal of latitude. The Court would interfere only where a clear infraction of a constitutional provision is established. The burden is on the person, who attacks the constitutional validity of a statute, to establish clear transgression of constitutional principle. Observing that the law relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc., in R.K. Garg and Others Vs. Union of India (UOI) and Others, the Supreme Court held as under:

8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than

Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Frankfurter in Morey Vs. Doud, (1957) 354 US 457 where Frankfurter, J., said in his inimitable style:

In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to pub="USSC", the bewildering conflict of the experts, and the number of times the judges have been overruled by events self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.

.... There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.

69. When vires of a Statute is challenged, Courts must make every effort to uphold the constitutional validity of a statute. In Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi, the Hon''ble Supreme Court has observed as under:

The Court must, therefore, make every effort to uphold the constitutional validity of a statute, even if that requires giving the statutory provision a strained meaning, or narrower or wider meaning, than what appears on the face of it. It is only when all efforts to do so fail should the court declare a statute to be unconstitutional.

70. Legislative entries in the Seventh Schedule to the Constitution have to be read in a broad and comprehensive sense to include all subsidiary and ancillary

matters. An entry, which authorises the imposition of a tax, such as Entry 54 of List II, also authorises an enactment, which prevents the tax evasion or taking excess credit. Experience has shown that attempts to evade tax are often made, which has an impact on the State revenue. It is with the object of preventing claiming excess input credit Sub-section (20) of Section 19 was inserted.

71. Sub-section (20) of Section 19 uses the expression that where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of input tax credit over and above the output tax on those goods shall be reversed. The expression ..... over and above the output tax of those goods shall be reversed will clearly show that the registered dealer can take input tax credit only to the extent that he has paid output tax i.e., only to the extent actually collected from the consumer and paid to the Government. By effecting purchases by way of special discount separately after sale from their sellers, the dealers are alleged to be claiming excess Input Tax Credit as the selling price is lesser than the purchase price. Having regard to enormity of the excess input credit, in order to safe guard the revenue the State Legislature inserted Sub-section (20) of Section 19.

72. We shall now examine Section 19(20) which is impugned. The provision starts with non-obstante clause and would state that where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him the amount of input tax credit over and above the output tax of those goods shall be reversed. Sub-Section (33) of Section 2 define ''sale'' to mean every transfer of property in goods other than mortgage, hypothecation, charge or pledge by one person to another in the course of business for cash, deferred payment or other valuable consideration and includes other types of transfers as listed out in clause (i) to clause (vi) in sub-section (33) of Section 2.

73. Price or Sale Price has not been defined under the VAT Act. Before adopting any external aid for the definition of "sale price" or "price" at which goods are sold, we should first see whether there is an indication in the VAT Act as what should be the "price" at which the goods have been sold. When we examine the meaning of tax invoice as defined under Sub-section (36) of Section 2, it has been defined to mean an invoice issued by a registered dealer who sells taxable goods to another registered dealer showing the tax charged separately and containing details as may be prescribed. The prescription is under Rule 10(2)(a) to (i). As pointed out earlier, in terms of clause (g) of Rule 10(2) the registered dealer is required to disclose the value of the goods. As per clause (h) the rate and amount of tax charged and as per clause (i) the total value of the goods. The rate and amount of tax charged shall necessarily be on the value of the goods. Discounts or deduction provided by the selling dealer as a part of normal business practice or as an incentive should find place in the invoice.

74. Bearing in mind these provisions, if we look into the impugned sub-section (20) of Section 19 the only plausible meaning to the word ''price'' used therein shall be the price/value as reflected in the tax invoice. Any other interpretation

given would not be in consonance with the scheme of the VAT Act. Therefore, the correct manner in which sub-section (20) of Section 19 has to be read is that where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him as reflected in the original tax invoice as defined u/s 2(36) of the Act, then the amount of input tax credit over and above the output tax of those goods has to be reversed.

75. The amount lying in the hands of the selling dealer being a component of the input tax credit on account of a sale lesser than the purchase price will not lose its character as a tax credit and shall continue to remain as a tax credit in the hand of the petitioner and therefore, requires to be reversed. The reversal of such excess tax credit shall be in the manner prescribed under the Act and the Rules. In terms of sub-section (16) of Section 19 ITC availed by a registered dealer shall be only provisional and the assessing authority is empowered to revoke the same, if it is found to be incorrect or otherwise not in order, this is so because the VAT Act contemplates a procedure of self assessment. Therefore, it cannot be stated that there is no mechanism provided under the Act and Rules for reversal of the credit taken.

76. Thus, there is no ambiguity in the provision, the provision does not go beyond the legislative power of the State legislature under Entry 54 of List II nor the provision is confiscatory as contended by the petitioner.

77. Input Tax Credit not to exceed the amount of Tax payable on its sale Similar Provision in other States VAT Act:-

It is pertinent to state that in other State VAT Acts, similar provision of "reversal of input tax credit" is incorporated. Section 10(5) was introduced in Delhi Value Added Tax Act, 2004 vide Notification No. F. 3 (23)/Fin (T & E)/2009-10 dated 13.01.2010. The new Section provided that if a goods are sold by a dealer at a lower price than the price at which it was purchased by the dealer, then reduced proportionately in the tax period during which the goods are sold. Section 10(5) of Delhi VAT Act reads as under:-

Section 10(5) Where the goods which have been purchased by a dealer are sold at a price lower than the price at which it was purchased by the dealer, the tax credit on such purchases shall be reduced proportionately in the tax period during which the goods are sold.

Explanation The tax credit claimed on a particular purchase shall not exceed the amount of tax payable on its sale.

78. Likewise, the Uttar Pradesh Value Added Tax Act, 2008 have been amended by adding a new clause "(f)" to sub-section (1) of Section 13 of U.P. VAT Act providing that the amount of input tax credit shall be claimed and be allowed to the extent of tax payable on the sale value of goods or manufactured goods. Section 13, sub-section (1), clause (f) of U.P. VAT Act reads as under:-

Section 13(1)(f) Notwithstanding anything to the contrary contained in this sub-section where goods purchased are resold or goods manufactured or processed by using or utilizing such purchased goods are sold, at the price which is lower than:

(i) purchase price where purchased goods are resold; and

(ii) cost price of manufactured goods where purchased goods are used in manufacture of such goods,

the amount of input tax credit shall be claimed and be allowed to the extent of tax payable on the sale value of goods or manufactured goods:

79. Sub-section (5) of Section 48 of Maharashtra VAT Act provides that in no case shall the amount of set-off exceed the amount of tax in respect of the same goods actually paid into the Government treasury. Section 48(5) reads as under:-

48. Set-off, refund, etc.,....-

(5) For the removal of doubt it is hereby declared that, in no case the amount of set-off or refund on any purchase of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under this Act or any earlier law, into the Government treasury except to the extent where purchase tax is payable by the claimant dealer on the purchase of the said goods effected by him.

Provided that, where tax levied or leviable under this Act or any earlier law is deferred or is deferrable under any Package Scheme of Incentives implemented by the State Government, then the tax shall be deemed to have been received in the Government Treasury for the purposes of this sub-section.

Validity of Section 48(5) of Maharashtra VAT Act was upheld by the Bombay High Court in M/s.Mahalaxmi Cotton Ginning Pressing and Oil Industries, Kolhapur Vs. The State of Maharashtra and Ors,

80. Sub-rule 2-A has been added to Rule 21 of Punjab VAT Rules with effect from 09.11.2011 vide Notification No. GSR.37/P.A.8/2005/S.70/Amd.(31)/2010 dated 08.11.2010, which provide that Input Tax credit shall be allowed to a taxable person to the extent of tax payable on the re-sale value of goods or sale value of manufactured/processed goods where such goods are sold below the purchase price in case of re-sale or cost price in case of manufactured/processed goods. The balance Input Tax Credit shall be reversed. Rule 21(2-A) reads as under:-

Rule 21(2-A) Input Tax Credit is available only to the extent of tax payable on the resale value of goods or sale value of manufactured/processed goods, when such goods are sold at a price:

(i) lower than purchase price in the case of resale, or

(ii) lower than cost price in the case of manufactured/processed goods.

81. Entry 54 of State List which authorises the State Legislature to levy tax "on the sale or purchase of goods other than News Papers ...." also authorises an

enactment to prevent the tax evasion. Sub-Section 20 of Section 19 contains specific provision, where the goods are re-sold at a lesser price than the price at which it was purchased, to reverse the input tax credit over and above the output tax credit. We do not find any infraction of the constitutional provisions.

82. Point No. 2:- Challenge to retrospective operation of sub-section (20) of Section 19:- Coming to the next aspect of retrospectivity, the challenge is on the ground that the Hon''ble Supreme Court has upheld retrospective legislation only in cases of validation laws, where the law as initially passed was held to be inoperative by the Court. The competence of the Parliament and the State Legislature to repeal, amend or suspend an exemption notification is unquestionable. In a line of decisions, the Hon''ble Supreme court consistently held that a law cannot be held to be unreasonable merely because it operates retrospectively. As far as fiscal legislation is concerned, the limitation is implicit in Article 265 of the Constitution, which provides that no tax shall be levied or collected except by authority of law. In Chhotabhai Jethabhai Patel and Co. Vs. The Union of India and Another,), the Hon''ble supreme Court has held as under:

If by reason of Article 265 every tax has to be imposed by law it would appear to follow that it could only be imposed by a law which is valid by conformity to the criteria laid down in the relevant articles of the Constitution. These are that the law should be (1) within the legislative competence of the legislature being covered by the legislative entries in Schedule VII of the Constitution; (2) the law should not be prohibited by any particular provision of the Constitution such as, for example, Articles 276(2), 286, etc. and (3) the law or the relevant portion thereof should not be invalid under Article 13 for repugnancy to those freedoms which are guaranteed by Part III of the Constitution which are relevant to the subject-matter of the law.

83. The factors which are generally considered relevant for examining the reasonableness of retrospectivity are: (i) the context in which retrospectivity was contemplated, (ii) the period of such retrospectivity, and (iii) the degree of any unforeseen or unforeseeable financial burden imposed for the past period. (vide Empire Industries Limited and Others Vs. Union of India and Others,

84. The decisions referred to challenging the retrospectivity of the Act have been referred by the Hon''ble Supreme Court in case of Escorts Limited and Others Vs. Union of India and others, . The entire gamut of cases on this aspect have been referred to and the legal principle has been culled out in the decision of the Hon''ble Supreme Court R.C. Tobacco Pvt. Ltd. and Another etc. Vs. Union of India (UOI) and Others, The broad legal principle while testing a retrospective statute are as follows:-

(i) A law cannot be held to be unreasonable merely because it operates retrospectively;

(ii) The unreasonability must lie in some other additional factors;

(iii) The retrospective operation of a fiscal statute would have to be found to be unduly oppressive and confiscatory before it can be held to be unreasonable as to violate constitutional norms;

(iv) where taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of tax or that is confiscatory, Courts will be justified in striking down the impugned statute as unconstitutional;

(v) The other factors being period of retrospectivity and degree of unforeseen or unforeseeable financial burden imposed for the past period;

(vi) Length of time is not by itself decisive to affect retrospectivity. When we examine the impugned enactment, we see no discrimination in the matter and the manner of giving effect to the impugned legislation and it applies to all dealers covered under the VAT Act.

85. Like other enactments, taxing statute has also to satisfy the test of reasonableness. Taxing statutes are not beyond the limitation imposed by Articles 14 and 19 of the Constitution of India or the test of reasonableness prescribed by Article 304(b). The taxing statute may arise in which retrospective operation of a taxing or other statute may introduce an element of unreasonableness and the same may be open to challenge as unconstitutional. But the test of length of time covered by the retrospective operation cannot by itself necessary be a decisive test.

86. Considering the constitutional validity of retrospective operation of law, referring to various Supreme Court judgments, in Shamanur Kallappa and Sons and Others Vs. State of Karnataka and Others, , Justice H.L. Dattu, (as His Lordship then was) held as under:

24. Now, it is well-settled that the legislative power to impose tax also includes within itself, the power to tax retrospectively. The power to legislate retrospectively embraces within its scope, the power to validate actions taken and laws which had been declared invalid by the courts, provided the infirmities or vitiating factors pointed out by the courts removed or cured legally. Inability of the dealer to realise the sales tax from its customers during the period covered by retrospective operation of law is also not a relevant factor which affects the competence of the Legislature to enact a law imposing sales tax retrospectively and lastly the test of the length of time covered by the retrospective operation of amended law cannot by itself, necessarily be a decisive test. The general principle underlying the legislative power is that, once the legislative power is conceded, the Legislature may exercise power prospectively or retrospectively.

87. On behalf of the petitioners, it was contended that over the years the writ petitioners have accumulated credit and adjusted the input tax credit and reverse the accumulated input tax credit after three years would be unreasonable, casting a new and substantial burden on the assesses with retrospective effect.

88. In the light of the above submission, it has to be seen as to whether on

account of retrospective operation whether there would be a degree of unforeseen or unforeseeable financial burden imposed for the past period and the length of time would have any effect.

89. From the counter affidavit, it is seen that the Amending Act 22 of 2010 came into effect on 19.08.2010. The assessing authorities appear to have experienced difficulties in reversal of ITC that was spread over to the earlier years in view of the fact that the link originated from coming into force of the VAT regime with effect from 01.01.2007. Therefore, it was felt necessary to give retrospective effect to the statute as the revenue loss for the intervening period i.e., from 01.01.2007 to 19.08.2010 appeared to be huge. This led to giving retrospective effect from 01.01.2007 by way of Ordinance No. 7 of 2010. Further, it is seen that on account of giving retrospective effect no fresh tax need be collected either from the vendors or from the customers to whom the goods were sold by the writ petitioners, it provides for adjustment against the amount lying with the writ petitioners. This factual position mentioned in the counter affidavit has not been controverted by the writ petitioners.

90. We may at this stage, refer to as to why the legislature thought fit to bring about an amendment by inserting sub-section (20) of Section 19. From the communication dated 24.11.2009, emanating from the Commissioner of Commercial Tax to the Principal Secretary to Government Commercial Taxes and Registration, it is seen that the department observed a sudden fall in the tax collection after the advent of the VAT regime. On a closure scrutiny, it was observed that non-realization of tax under TNVAT Act, is due to various discount received by the dealers after the issue of sale invoices, which were in the form of credit notes. These discounts resulted in accumulation of input tax credit claimed by virtue of purchase invoices raised without these discount components. Statistics have been furnished to show that a registered dealer for the assessment year 2005-06 under the erstwhile TNGST Act reported a turnover of Rs. 28.42 crores and paid tax of Rs. 28,42,905/- whereas after the advent of the VAT regime for the year 2007-08, the same dealer reported a taxable turnover of Rs. 31.53 crores, but did not pay any VAT. In the said communication reference has been made to similar provisions such as Section 19(20) which have been inserted in the Kerala VAT Act, West Bengal VAT Act, Orissa VAT Act and the learned Advocate General also referred to the similar amendments made in Delhi VAT Act and Punjab VAT Act.

91. In the light of the above facts, as there is no intention on the part of the respondents to collect tax either from the vendor or from the consumers and it is aimed at recovery of tax available with the writ petitioner which was admitted by the petitioners to be retained by them, the impugned amendment given effect to retrospectively does not cause any unforeseen or unforeseeable financial burden for the past period.

92. We are conscious of the observations made by the Hon''ble Supreme Court in various judgments, when the Court examines the validity of fiscal statutes. We

may in this regard refer to the decision in R.K. Garg and Others Vs. Union of India (UOI) and Others, . The cardinal rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. Laws relating to economic activities should be viewed with greater attitude than laws touching civil rights such as freedom of speech, religion etc. That the Court should remember legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, there may be crudities and inequities in complicated experimental, economic legislation, but on that account alone it cannot be struck down as invalid.

93. VAT structure has the ultimate goal of augmenting the revenue by making the procedure simple and more transparent. The scheme of the Act requires the Input Tax Credit to be claimed along with returns, original tax invoice duly filled with particulars. Sub-section (20) of Section 19 prescribes that where goods are sold at lesser price than the purchase price of the goods, the Input Tax Credit over and above the Output tax shall be reversed. Sub-section (20) of Section 19 was inserted in order to safe guard the interest of the revenue. In the light of all the discussion we hold that Section 19(20) as amended by Amendment Act 22 of 2010, is a valid piece of legislation and the amendment given retrospective effect with effect from 01.01.2007, by Amending Act 42 of 2010, cannot be struck down as being either unreasonable, discriminatory or causing any unforeseen or unforeseeable financial burden for the past period nor unduly oppressive or confiscatory. Accordingly Constitutional validity of the impugned enactment is upheld.

94. The other bunch of writ petitions challenging the assessment order/show cause notices are not maintainable as they are pre-mature. The writ petitions challenging the constitutionality of the impugned amendment having failed the writ petitions challenging assessment orders/show cause notices have no legs to stand and therefore, they should necessarily fail. However, it is open to the petitioners to avail the statutory remedy available to them under the Act.

95. In cases where final orders of assessment have been challenged, the assessees shall be entitled to prefer statutory appeal against such order and if such appeals are presented, within a period of 60 days from the date of receipt of a copy of this order, the same shall be entertained by the appellate authority subject to the assessee full-filing other mandatory statutory conditions except rejecting those appeals on the ground of limitation. In cases where the petitioners have challenged show cause notices, they are at liberty to submit their explanation. If such explanation is submitted within a period of 30 days from the date of receipt of a copy of this order, the assessing authority shall consider the case in accordance with law. In the result the writ petitions are dismissed holding that Section 19(20) as amended by Amendment Act 22 of 2010, is a valid piece of legislation and the amendment given retrospective effect with effect from 01.01.2007, by Amending Act 42 of 2010, cannot be struck

down as being either unreasonable, discriminatory or causing any unforeseen or unforeseeeable financial burden for the past period nor unduly oppressive or confiscatory. The parties are at liberty to avail the statutory remedy available under the Act in terms of the observations made supra in Paragraphs (95) and (96). The interim stay granted in all writ petitions stand vacated and the miscellaneous petitions are closed. There is no order as to costs.

