
(2006) 05 P&H CK 0166
In the Punjab And Haryana At Chandigarh

Kagaz Print-N-Pack (India) Pvt. Ltd.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 26-05-2006

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (2007) 5 VST 26

Hon'ble Judges : Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

1. Following question of law has been referred to this court for opinion u/s 42 of the Haryana General Sales Tax Act, 1973 (for short, "the Act") by the Haryana Tax Tribunal, Chandigarh (for short, "the Tribunal"), arising out of its order dated July 14, 2000 in S. T. A. Nos. 176 and 178 of 2000-01:

Whether the export sale is not part of gross turnover and therefore not includible for the purpose of calculation of notional tax liability under Rule 28-A(4)(a) of the Haryana General Sales Tax Rules, 1975 ?

2. The assessee-dealer, dealing in manufacturing and sale of paper and packing material, was granted exemption from payment of tax u/s 13-B of the Act read with Rule 28-A of the Haryana General Sales Tax Rules, 1975 (for short, "the Rules"). The Assessing Authority calculated notional tax liability, in terms of the provisions of the Rules without including "export sales" in the gross turnover. The Revisional Authority exercised suo motu revisional jurisdiction u/s 40 of the Haryana General Sales Tax Act, 1973 (for short, "the Act") and revised the assessment holding that export sales had to be included in the turnover for the purpose of calculation of notional tax liability. This view has been upheld by the Tribunal by referring to proviso to Rule 28-A(4)(a) of the Rules. The Tribunal, in the order in appeal, observed as under:

This provision leaves no doubt that the benefit of tax exemption extends to gross turnover only, which as per the definition in the Act, includes sales in the course

of export also. Therefore, while determining the tax benefit, the gross turnover which also includes export sales has to be considered and it cannot be excluded while calculating the tax benefit of finished goods.

3. Learned Counsel for the assessee submits that the view taken by the Tribunal is erroneous and export sales cannot constitute part of gross turnover. It is submitted that the State Legislature does not have competence to tax export sales. Once this is so, even for the purpose of calculation of notional tax liability for exemption, export sales cannot be included in the turnover. Turnover can include only sales which can legally be subjected to tax. Reliance is placed on the judgments of the honourable Supreme Court in *A. V. Fernandez v. State of Kerala* 1957 8 STC 561, *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* 1958 9 STC 353, *Gannon Dunkerley & Co. v. State of Rajasthan* 1993 88 STC 204 and *Century Club and Others Vs. The State of Mysore and Another*, and a judgment of the Bombay High Court in *Varun Polymol Organics Ltd. v. State of Maharashtra* 1995 97 STC 55.

4. On the other hand, the contention of learned Counsel for the State is that in terms of proviso to Rule 28-A(4)(a) of the Rules, the benefit of exemption from payment of tax is available to a unit on its gross turnover and the gross turnover is the total receipt on account of sales made by a dealer, of whatever kind it may be, which will certainly include even the export sales.

5. With a view to appreciate the controversy in the present case, it will be useful to refer to the following provisions:

Sections 12,13-B and 25-A of the Act:

Section 12. No tax payable in case of inter-State trade, etc.-Notwithstanding anything contained in this Act, a tax on the sale or purchase of goods shall not be imposed under this Act-

- (i) where such sale or purchase takes place outside the State ;
- (ii) where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territory of India ; or
- (iii) where such sale or purchase takes place in the course of inter-State trade or commerce.

13-B. Power to exempt certain class of industries.-The State Government may, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State, exempt such class of industries from the payment of tax, for such period either prospectively or retrospectively and subject to such conditions as may be prescribed.

25-A. Deferment of tax.-Notwithstanding anything to the contrary contained in this Act, the State Government, if satisfied that it is necessary and expedient so to do in the interest of industrial development of the State, may defer the payment of tax by such class of industries, for such period, either prospectively

or retrospectively, and subject to such conditions, as may be prescribed:

Provided that the State Government may convert whole or part of the deferred tax to interest-free loan or capital subsidy.

Rule 28-A(2)(n), 28-A(4)(a) first proviso, (10) and (11) of the Rules:

28-A. Class of industries, period and other conditions for exemption/deferment from payment of tax (sections 13-B and 25-A).-

(1) The industries covered under this rule shall not be entitled to any deferment or exemption from payment of tax under any other provisions of these rules.

(2) For the purpose of this Chapter, unless the context otherwise requires,-

(a) to (m) ...

(n) "notional sales tax liability" means

(i) amount of tax payable on the sales of finished products of the eligible industrial unit under the local sales tax law but for an exemption computed at the maximum rates specified under the local sales tax law as applicable from time to time; and

Explanation.-The sales made on consignment basis within the State of Haryana or branch transfer within the State of Haryana shall also be deemed to be sales made within the State and liable to tax;

(ii) amount of tax payable under the Central Sales Tax Act, 1956, on the sales of finished products of the eligible industrial unit made in the course of inter-State trade or commerce computed at the rate of tax applicable to such sales as if these were made against certificate in form C on the basis that the sales are eligible to tax under the said Act.

Explanation.-The branch transfers or consignment sales outside the State of Haryana shall be deemed to be the sale in the course of inter-State trade or commerce.

Note.-The expression and terms, if any appearing in this rule not defined above shall unless the context otherwise requires carry the same meaning as assigned to them under the Act and the Rules made thereunder.

Proviso to Rule 28-A(4)(a)

Provided that in the case of exemption the benefit shall extend to tax on gross turnover and in the case of deferment, it shall extend to tax on the taxable turnover of goods manufactured by the unit.

(10)(i) The eligible industrial unit shall continue to be liable to file the returns in the manner prescribed under the Act, and the Rules and its failure to do so shall expose it to penalty as provided in the Act.

(ii) The assessment of an eligible industrial unit holding exemption/entitlement certificate shall be framed in accordance with the provisions of the Act and Rules framed thereunder as early as possible and shall be completed by the 31st December, in respect of the assessment year immediately preceding thereto and the additional demand so determined, if any, shall be paid as per the provisions of the Act and the Rules.

(iii) The State Government may appoint special assessing authority for framing assessment of units mentioned in the preceding clause.

(iv) Notwithstanding the provisions relating to payment of tax due, according to returns, the eligible industrial unit which has availed of the benefit of sales tax deferment shall make payment of the deferred amount after the expiry of a period of five years to the extent of the amount deferred, every quarter or month, as the case may be, within the period specified in the Rules.

(v) On cancellation of eligibility certificate or exemption/entitlement certificate before it is due for expiry, the entire amount of tax exempted/deferred shall become payable immediately, in lump sum, and the provisions relating to recovery of tax, interest and imposition of penalty shall be applicable in such cases.

(11) (a) The benefit of tax exemption/deferment under this rule shall be subject to the condition that the beneficiary/industrial unit after having availed of the benefit,-

(i) shall continue its production at least for the next five years not below the level of average production for the preceding five years; and

(ii) shall not make sales outside the State for next five years by way of transfer or consignment of goods manufactured by it.

(b) In case the unit violates any of the conditions laid down in Clause (a), it shall be liable to make, in addition to the full amount of tax benefit availed of by it during the period of exemption/deferment, payment of interest chargeable under the Act as if no tax exemption/deferment was ever available to it:

Provided that the provisions of this clause shall not come into play if the loss in production is explained to the satisfaction of the Deputy Excise and Taxation Commissioner concerned as being due to the reasons beyond the control of the unit:

Provided further that a unit shall not be called upon to pay any sum under this clause without having been given reasonable opportunity of being heard.

6. In every taxing statute, provisions are added which enable the State to grant incentives for promoting industrialisation and economic growth in the State. In the Act also, Sections 13-B and 25-A have been added which provide for exemption from and deferment of payment of tax to a class of industries for a specified period. In exercise of the powers conferred under Sections 13-B and 25-

A of the Act, from time to time, the State Government had been framing certain schemes.

7. The incentives at the relevant time under consideration included sales tax benefits in terms either of exemption from sales tax or deferment of payment of sales tax as per the new scheme of sales tax incentives effective with effect from April 1, 1988. As the name suggests, it envisaged two types of incentives for new industrial units established by a dealer. In one case assessee was to be exempted from payment of tax during the operation of scheme altogether. Under the other scheme, though the assessee was not exempted from payment of tax, but the payment of sales tax due from assessee was deferred under the scheme though such tax has been collected by him. In other words, the assessee was allowed to retain the tax collected by him for a specified period before he was required to pay the same to public exchequer. In either case the limit of maximum amount of tax up to which the assessee can claim benefit and period during which such exemption could be availed were the same. The assessee is not entitled to avail tax incentives beyond the period during which he is so exempted, nor is he entitled to avail exemption of tax, either from payment or for deferred payment, beyond the maximum limit of tax determined and certified in his eligibility certificate. In order to control and regulate this part of the scheme that an assessee does not avail more benefit than allowed under the scheme, both as to tax-limit and time-limit, liability of assessee to tax is required to be determined also for the period during which exemption operates.

8. There is no dispute that but for exemption claimed, the petitioner is a dealer, who is subject to incidence of sales tax under the Act and his transactions in question are liable to be dealt with in accordance with the provisions of the Act. There is no dispute also about the applicability of exemption on sales made by him as the new industrial unit and he is entitled to avail exemption. The issue is not about the measure of exemption that can be availed by the petitioner. The issue is only how the exemption availed by the assessee is to be measured to match the entitlement.

9. A plain reading of the provisions of Rule 28-A of the Rules shows that the same have been framed in furtherance to the object sought to be achieved under Sections 13-B and 25-A of the Act. Rule 28-A provides for period and other conditions for exemption from/deferment of payment of tax.

10. What has been exempted under the Act and the Rules is the payment of tax by a class of dealers who have been issued eligibility and exemption certificates. As per the scheme of the Act, stage for payment of tax comes only when either the assessee pays tax on the basis of self-assessment at the time of filing of returns (section 25) or when the assessment is framed as per the provisions of the Act (sections 28 and 29) and some demand is created. The words "payment of tax" pre-suppose that liability to pay tax under the Act is existing, only then the stage of payment of tax would arise for exemption from/deferment of which the scheme in the form of Rule 28-A has been framed under the Act.

11. A judgment of the Constitution Bench of the honourable Supreme Court of India in the case of *A. V. Fernandez v. State of Kerala* 1957 8 STC 561, throws light on a distinction between exemption from payment of tax and non-imposition of taxes, in the following terms:

There is a broad distinction between the provisions contained in the statute in regard to the exemptions of tax or refund or rebate of tax on the one hand and in regard to the non-liability to tax or non-imposition of tax on the other. In the former case, but for the provisions as regards the exemptions or refund or rebate of tax, the sales or purchases would have to be included in the gross turnover of the dealer because they are *prima facie* liable to tax and the only thing which the dealer is entitled to in respect thereof is the deduction from the gross turnover in order to arrive at the net turnover on which the tax can be imposed. In the latter case, the sales or purchases are exempted from taxation altogether. The Legislature cannot enact a law imposing or authorising the imposition of a tax thereupon and they are not liable to any such imposition of tax. If they are thus not liable to tax, no tax can be levied or imposed on them and they do not come within the purview of the Act at all. The very fact of their non-liability to tax is sufficient to exclude them from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed.

12. The issue in the present case is whether the turnover of export of goods outside the territory of India would form part of the turnover on which notional tax liability is to be calculated so as to adjust the same from the exemption limit available to the unit. As to whether there is any liability on a dealer to pay tax on turnover of export of goods outside the country so that there may arise need to provide exemption or deferment from payment of such tax with a view to promote industrialisation, needs examination. Article 286 of the Constitution of India clearly debars the State Legislature to impose tax on the turnover of goods exported outside the country. An overriding provision opening with a non obstante clause, in the form of Section 12 of the Act, itself provides that notwithstanding anything contained in this Act, *inter alia*, tax on sale of goods in the course of export outside the territory of India shall not be imposed. Meaning thereby that any other provision in the Act, what to talk of the Rules, giving way for imposition of tax on export of goods outside the territory of India will be overridden by the plain language of Section 12 of the Act, providing for non-imposition of tax on such turnover. So the turnover of export of goods outside the territory of country falls in the category on which no liability of tax is there as per the provisions of the Act.

13. Reference to a recent judgment of the honourable Supreme Court of India in the case of *Associated Cement Companies Ltd. v. State of Bihar* 2004 137 STC 389 would be quite relevant. In this case, the apex court, while considering as to when the question of exemption arises, held as under:

Crucial question, therefore, is whether the appellant had any "liability" under the Act. The answer to this lies in Section 3 of the Act which is extracted above and

is the charging section. In Sub-section (1) subject of the provisions of the Part (i.e., Part I) sales tax or purchase tax, as the case may be, shall be paid by every dealer as provided in the section itself. Section 7 speaks of exemption. Sub-section (3) of Section 7 stipulates that State Government may, by notification and subject to such conditions or restrictions as it may impose, exempt from sales tax or purchase tax certain sales or purchases as the case may be. The question of exemption arises only when there is a liability. Exigibility to tax is not the same as liability to pay tax. The former depends on charge created by the statute and the latter on computation in accordance with the provisions of the statute and rules framed thereunder if any. It is to be noted that liability to pay tax chargeable u/s 3 of the Act is different from quantification of tax payable on assessment. Liability to pay tax and actual payment of tax are conceptually different. But for the exemption, the dealer would be required to pay tax in terms of Section 3. In other words, exemption presupposes a liability. Unless there is liability, question of exemption does not arise. Liability arises in term of Section 3 and tax become payable at the rate as provided in Section 12. Section 11 deals with the point of levy and rate and concessional rate.

The word "liable" in the Concise Oxford Dictionary means, "legally bound, subject to a tax or penalty, under an obligation". In Black's Law Dictionary (Sixth Edition), the word "liable" means, "bound or obliged in law or equity; responsible; chargeable; answerable; compellable to make satisfaction, compensation or restitution ...obligated; accountable for or chargeable with". The above position was noted in *Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others*, .

Tax at the appropriate rate would have become payable but for the exemption. Decision in *Australian Mutual Provident Society v. IRC* 1962 AC 135 (PC), has stated the position as follows:

"The phrase "exempt from taxation" Land and Income Tax Act, 1954 (No. 6701) (New Zealand) Section 86(1) does not cover income that is not at all within the reach of the New Zealand tax laws. It refers to income that would, had it not been for the exemption, otherwise have been so taxable".

(Emphasis supplied)

14. We may also refer to a judgment of the Bombay High Court in *Varun Polymol Organics Ltd. v. State of Maharashtra* 1995 97 STC 55, where the issue under consideration was the vires of an identically worded provision of an exemption schemes, whereby the turnover on account of branch transfer was sought to be treated as inter-State sale for the purpose of calculation of notional tax liability, which was held to be ultra vires to the Constitution of India and was struck down by observing as under:

... The executive powers of the State executive is co-extensive with that of the State Legislature. Neither the State Legislature nor the State executive has any jurisdiction to levy sales tax directly or indirectly by enacting a fiction or

otherwise, on branch transfers or consignment of goods outside the State. Neither the "branch transfers" nor mere consignment of goods can be treated as "deemed sales" as if exigible to sales tax even as a measure of computation of sales tax incentives availed of by the eligible unit nor for purpose of computation of the "notional sales tax liability" as provided in Clause 2 of the 1983 package scheme of incentives to the new industrial unit in the backward areas. The conditions of exemption stipulated under the said notification cannot be enlarged or modified merely by issue of a Government resolution or an executive fiat. The State Government is not entitled to curtail or whittle down the "whole of tax exemption" by resorting to a device of converting non-sales into deemed sales in the garb of prescribing the so-called measure of computation for computation of tax exemption benefits availed of by the assessee-unit. Non-taxable transactions cannot be treated as deemed taxable and included in the turnover of sales and purchase for computation of benefits availed of by the unit. Assessment orders therefore are liable to be modified so as to exclude "the branch transfers" and "consignment of goods" from the computation of "notional sales tax liability" and computation of sales tax availed of by petitioner No. 1."

(Emphasis supplied)

15. The issue in question needs examination from other angles as well, keeping in view other provisions of Rule 28-A of the Rules, which are to be construed harmoniously. Effort of the respondents is to bring to tax export of goods outside the territory of India, which otherwise is not exigible to tax, for the purpose of calculation of notional tax liability. Notional tax liability is calculated for the purpose of deduction thereof from the total exemption limit available to a unit during the period of exemption. The term "notional tax liability" has been defined in Clause (n) of Rule 28-A of the Rules, where in Explanation (ii), it is mentioned that the branch transfer outside the State of Haryana shall be deemed to be sale in the course of inter-State trade and tax shall be calculated thereon, accordingly. There is no deeming provision under the Rules providing for turnover of export outside the territory of India to be part of sale for the purpose of calculation of notional tax.

16. Sub-rule (10)(i) of Rule 28-A provides that an eligible industrial unit shall be liable to file returns in the manner prescribed under the Act and the Rules and further the assessment of such a unit shall be framed in accordance with the provisions of the Act and the Rules. If a dealer availing benefit of exemption from payment of tax is bound to file returns in the manner prescribed under the Act and the Rules and even his assessment is also to be framed in accordance with the provisions of the Act and the Rules, then without violating the provisions of the Act, the turnover of export of goods outside the territory of country cannot be added to the turnover on which tax payable can be calculated for the purpose of deduction thereof from the exemption limit.

17. Benefit of exemption from payment of tax is available to an eligible industrial unit subject to certain conditions and on violation thereof either during the

currency or after five years of availing the exemption, entire amount of tax exemption availed is recoverable. Clause (v) of Sub-rule (10) of Rule 28-A provides that on cancellation of eligibility certificate or exemption/entitlement certificate before it is due for expiry, entire amount of tax exempted/deferred shall become payable immediately in lump sum. Sub-rule (11) of Rule 28-A puts certain conditions on a unit availing benefit of Rule 28-A for next five years after the benefit has been availed of. In Clause (b) thereof, it is provided that in case the conditions put in Clause (a) of Sub-rule (11) of Rule 28-A are violated, the unit shall be liable to make payment of the entire amount of tax benefit availed of during the period of exemption/deferment. The net effect of Rule 28-A(10)(v) and Rule 28-A(11)(b) would be that in case of any violation, the unit availing benefit or having availed of the benefit under Rule 28-A would be liable to make payment of the entire amount of the benefit availed of.

18. The procedure for assessment of a unit, availing benefit under Rule 28-A is that while framing assessment, notional tax liability on the turnover of the unit is calculated and the same is reduced from the quantum of total benefit available to the unit and the balance thereof is carried forward. This process continues till either the period during which the benefit could be availed of expires or the quantum of benefit is exhausted, whichever is earlier. If the interpretation given to the Rules by the authorities is accepted, the effect would be that at the time of framing the assessment, tax would be calculated on the turnover of export of goods outside the territory of India notionally and the same would be reduced out of the total benefit of exemption available to the unit and the amount of tax calculated on turnover of export of goods outside the territory of country will form part of exemption availed of. In case of any of the contingencies arising as per Rule 28-A(10)(v) or Rule 28-A(11)(b) of the Rules, the unit would be liable to pay the entire amount of tax benefit availed of by it, meaning thereby that even the turnover of export, on which no tax can possibly be charged under the provisions of the Act or the Rules, would also become taxable and tax thereon would become payable. Such an absurd interpretation to the provisions of the Act/Rules cannot be accepted at all.

19. Further the respondents have tried to create a class within class of industries availing benefits provided to promote industrialisation in the State. Whereas tax on turnover on account of export of goods outside the country is sought to be added in the notional tax liability in case of units availing exemption from payment of tax but in case of units availing deferment of payment of tax, it is not done. The only contention on behalf of the State to justify this apparent discrimination is that in the case of units availing benefit of deferment of payment of tax, since the amount of tax benefit availed of is payable after five years from due date, only actual amount of tax due under the Act is taken as notional tax. Even this argument of the State Counsel does not have any legs to stand since as per Rule 28-A(2)(n) of the Rules, even branch transfers, which are otherwise not taxable, have been treated as inter-State sales and tax calculated thereon is forming part of notional tax liability, which will have to be paid by the

dealer after five years though no tax on such transaction can be levied by the State Legislature. Secondly, in case of withdrawal of benefit under Rule 28-A(10) or (11), the entire amount of benefit availed of becomes payable immediately which will include tax on branch transfers as well.

20. The argument of the learned State Counsel is to the effect that as per first proviso to Rule 28-A(4)(a), the benefit of exemption from payment of tax is to be calculated on the gross turnover of the dealer and the entire receipts, on whatever accounts received by the dealer, would be included in its gross turnover. In view of that, even the turnover of goods exported outside the territory of India will also form part of the turnover on which the quantum of benefit of exemption has to be calculated. While raising the argument, learned Counsel lost sight of the overriding provisions of Section 12 of the Act and statutory form ST-9 on which returns are to be filed by a dealer. This form clearly provides that gross turnover would be a result after deduction from the total receipts, inter alia, on account of export of goods outside the territory of India. Relevant part of the same is extracted below:

Form ST-9 (See Rule 17) Right Side Code Return of sales tax payable for the quarter/month ending the Name of the dealer.....
Address of the dealer..... Number of dealer's Registration Certificate....
Name of District of Registration..... Amount (Rs.) A. Sale prices received/
recoverable for goods sold, supplied, distributed or exported during the return
period B. (i) Cash discount allowed according to ordinary trade practice
and included in the sale prices but separately as such (ii) Exports Total (i)
and (ii) ... C. Gross turnover (A minus B)

21. The principles of purposive construction will also be useful for interpretation of the provisions in the present case. The Legislature in its wisdom had enacted Sections 13-B and 25-A of the Act providing for grant of exemption from or deferment of payment of tax with a view to promote industrialisation in the State, which clearly means that it is the benefit of exemption from or deferment of payment of tax which is extended to the prospective entrepreneurs inviting them to set up their industries in the State. This, in any case, does not mean that exemption would be meant to be granted on the turnover on which otherwise, under the provisions of the Act and the Rules, no tax is leviable or could be levied by the State Legislature. If the rules in question are interpreted in the manner, suggested by the counsel for the State, the purpose for which Sections 13-B and 25-A have been inserted in the Act, will not be achieved. The purpose and object with which the provisions have been added in the statute is that exemption/deferment is granted of the tax which is payable as per the provisions of the Act, as that can be considered to be the real incentive in the competitive market and not that tax is first calculated on the transactions on which no tax as such is leviable/payable under the Act and then grant exemption thereof.

22. Referring to its earlier judgments in Commissioner of Income Tax, Amritsar

Vs. Straw Board Manufacturing Co. Ltd., and Bajaj Tempo Ltd., Bombay Vs. Commissioner of Income Tax, Bombay City-II, Bombay, , the honourable Supreme Court in Commissioner of Sales Tax Vs. Industrial Coal Enterprises, held that in taxing statutes, provision for concessional rate of tax as well as provisions granting incentives to promote economic growth and development should be construed liberally and in a reasonable and purposive manner so as to advance the object of the provisions. The object of granting exemption from payment of sales tax has always been for encouraging capital investment and establishment of industrial units for the purpose of increasing production of goods and promoting the development of industries in the State.

23. It will be useful to refer to the following observations of a judgment of the honourable Supreme Court of Sri Ram Saha Vs. State of West Bengal and Others, , on the interpretation of statutes:

It is well-settled principle of interpretation that a statute is to be interpreted on its plain reading; in the absence of any doubt or difficulty arising out of such reading of a statute defeating or frustrating the object and purpose of an enactment, it must be read and understood by its plain reading. However, in case of any difficulty or doubt arising in interpreting a provision of an enactment, courts will interpret such a provision keeping in mind the objects sought to be achieved and the purpose intended to be served by such a provision so as to advance the cause for which the enactment is brought into force. If two interpretations are possible, the one which promotes or favours the object of the Act and purpose it serves, is to be preferred. At any rate, in the guise of purposive interpretation, the courts cannot rewrite a statute. A purposive interpretation may permit a reading of the provision consistent with the purpose and object of the Act but the courts cannot legislate and enact the provision either creating or taking away substantial rights by stretching or straining a piece of legislation.

(Emphasis supplied)

24. We may also refer to the judgment of the honourable Supreme Court in the case of Associated Cement Companies Ltd. v. State of Bihar 2004 137 STC 389 laying down the following guiding principles for construction of exemption provisions:

Literally "exemption" is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden of progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When the question is whether a subject falls

in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. See *Union of India and others Vs. M/s. Wood Papers Ltd. and another*, *Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others*, to which reference has been made earlier.

25. In view of our above discussion, we are of the considered view that turnover of goods exported outside the territory of India would not form part of turnover on which notional tax liability is to be calculated for the purpose of deduction thereof out of the quantum of benefit of exemption being claimed by a dealer under Rule 28-A of the Rules.

26. We, therefore, answer the question in favour of the assessee-dealer and against the Revenue.