(2015) 06 BOM CK 0074

In the Bombay High Court

Case No : Sales Tax Reference No. 20 of 2008 in Reference Application No. 135 of 2007 and Sales Tax Reference No. 21 of 2008 in Reference Application No. 134 of 2007

Kirti Ornaments Pvt. Ltd. — APPELLANT

Vs

The State of Maharashtra — RESPONDENT

Date of Decision : 01-06-2015

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 13, 13A, 13B, 13-B, 14
Constitution of India, 1950 — Article 286

Citation : (2015) 84 VST 441

Hon'ble Judges : B.R. Gavai, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : C.B. Thakar and Rahul C. Thakar, for the Appellant; Vinay Sonpal, Special Counsel, Advocates for the Respondent

Judgement

B.R. Gavai, J.—The learned Maharashtra Sales Tax Tribunal, Mumbai, vide order dated 23rd November, 2007, has referred the following questions of law for our determination:--

"I. Whether the Tribunal was correct in holding that, instead of the entry A-47 waiving tax on purchase in excess of given percentage, the dealer was liable to purchase tax @ 2% and not at reduced amount of 0.5% or 1.55% as applicable at relevant time under the entry A-47 while section 41 read with section 13AA of the Bombay Sales Tax Act?

II. Even though the entry A-47 cover exemption from tax on purchase, whether the Tribunal was justified in holding that the said exemption on purchase will not cover, purchase tax levied u/s. 13AA, unless specific exemption entry is inserted by Government."

2. The facts, in brief, giving rise to the present References, are as under:--

"The assessee, who is registered under the provisions of Bombay Sales Tax Act, 1959 and Central Sales Tax Act, 1956 (hereinafter referred to as "the said Act" and "Central Act"), is an importer/exporter of diamonds and manufacturer of gold jewellery. The place of business of the assessee is situated at Mumbai and it is also having branches at Surat and Hyderabad. The assessee was assessed for the Financial Year 2000-2001 and 2001-2002 under the provisions of the said Act by assessment order dated 26.3.2004 and 31.3.2005 respectively by the Assistant Commissioner of Sales Tax. As per the said assessment orders, the assessee was held to be entitled for refund of Rs. 50,128/- for the financial year 2000-2001, whereas for the financial year 2001-2002, the assessee was held liable to pay an additional amount of Rs. 2,85,862/-. For the said period, the Assessing Authority had held that the assessee had transferred the manufactured jewellery to its branches and, therefore, in respect of purchase of gold bullion, which were used in the manufacture of said jewellery, the Authority levied purchase tax under Section 13AA at 2%. According to the assessee, for the relevant period, the Government had issued a Notification under Section 41 and as per Entry A-47 of the said Notification, the tax rate is reduced to 0.5% for the period 31.5.2000 and 1.55% during the period 1.6.2000 to 31/3/2002 and that the levy of surcharge and Turn Over tax was also fully exempted in respect of bullion for the period from 1.6.2000 onwards. Since the Assessing Authority had refused to grant benefit of the Notification issued under Section 41 and had levied purchase tax at the rate of 2% and not at the reduced rate as per the said Notification and also denied to give exemption from payment of surcharge for the period from 1.6.2000 onwards, appeals were preferred before the Appellate Authority i.e. the Deputy Commissioner of Sales Tax. The Appellate Authority dismissed the appeals and confirmed the order of the original Authority. In so far as the financial year 2001-2002 is concerned, the assessee''s claim was partly allowed by giving a relief of Rs. 1,25,477/- in the quantum towards interest/ penalty. The said order was challenged by Second Appeal before the learned Tribunal. The learned Tribunal vide order dated 21st April, 2007, dismissed the appeals. Applications were made by the assessee for referring the aforesaid questions of law for determination by this Court. Vide order dated 23rd November, 2007, the said applications have been allowed. Hence the present reference."

3. Heard Shri Thakar, learned counsel for the assessee and Shri Sonpal, learned Special Counsel for the Revenue.

4. Shri Thakar learned counsel for the assessee, submits that the learned Tribunal grossly erred in holding that the case of the applicant is not covered by the Notification issued under Section 41 of the said Act. The learned counsel submits that, what is being levied is a purchase tax and what is being exempted by the Notification is also a purchase tax. He submits that merely because the case of the applicant is covered by Section 13AA, cannot itself be a ground to deny the benefit of exemption under the said Notification, inasmuch as what is being levied under Section 13AA is also a purchase tax. The learned counsel submits that when the language of the Notification is plain and simple, there is

no question of taking recourse to other principles of interpretation. The learned counsel submits that from plain interpretation of the Notification issued under Section 41, it will be abundantly clear that the purpose of the Notification is to give benefit of reduced rate of tax whenever purchase tax is liable to be paid and the distinction sought to be carved out by the Authority and the learned Tribunal is without any basis.

5. The learned counsel, relying on the Judgment of the Apex Court in the case of Hotel Balaji v. State of Andhra Pradesh and Ors. (cited supra) submits that the Hon''ble Apex Court itself has held that the tax under Section 13AA is in effect a purchase tax. The learned counsel therefore submits that, in view of the settled legal position, there is no reason as to why the benefit of exemption Notification should not be given to the assessee. The learned counsel also relies on the Judgment of the Apex Court in the case of Tata Iron and Steel Co. Ltd. Vs. Union of India (UOI), (1989) 42 ELT 353 and the Judgments of various High Courts, in support of the proposition that the rule of literal interpretation should be applied while interpreting the taxing statute. The learned counsel also relies on the Judgment of this Court in the case of Varun Polymol Organics Ltd. and another Vs. State of Maharashtra and others, (1995) 3 BomCR 502 in support of his submission, that the provisions of Section 41 are having overriding effect and therefore, if there is any conflict between the notification issued under Section 41 and Section 13AA of the said Act, notification under Section 41 would prevail.

6. Shri Sonpal, learned counsel for the Revenue, on the contrary, submits that the levy of tax under Section 13AA is irrespective of the other levies, which can be levied under the other provisions of the Act and in addition thereto. The learned counsel submits that the intention of the legislature of levying tax under Sec. 13AA is to compensate the loss of Revenue which is occasioned by transfer of goods manufactured in the State, to the branch of the assessee or his agent which are situated outside the State. The learned counsel submits that the legislative intent is very clear. He submits that even perusal of the Notification, would reveal that the benefit of reduced tax is referable to the rate of tax, as is referred to, in the Schedule to the said Act. The learned counsel submits that while construing the provisions of Section 13AA of the said Act, the Court will have to apply the mischief rule or Heydon''s rule. The learned counsel submits that if that rule is applied, it will be clear that the legislative intent is to levy universally, purchase tax at the rate of 2%, irrespective of the nature of goods, if the goods so manufactured in the State, are sent outside the State to the branch of the assessee or his agent.

7. For considering the rival submissions, it will be necessary to refer to certain provisions of the said Act. Sections 13, 13A, 13AA, 13B and Section 41 read thus:--

"S. 13. Purchase tax payable on certain purchases of goods--(1) Where a dealer, who is liable to pay tax under the provisions of this Act, purchases any goods specified in Schedules B or C from a person or a Government, who or which is not a [dealer or a dealer who is not Registered dealer] and treats them as capital assets any time after such purchase, then there shall be levied, subject to the provisions of sub-section (2) of section 7, a purchase tax on the turnover of such purchases at the rate set out against each of such goods in the Schedules aforesaid.

(2) Subject to the provisions contained in sub-section (1), where a dealer, who is liable to pay tax under the provisions of this Act, purchases any goods specified in Schedule B or C from a person or a Government, who or which is not a [dealer, or a dealer who is not a registered dealer] then unless the goods so purchased are resold by the dealer, there shall be levied, subject to the provisions of sub-section (2) of section 7, a purchase tax on the turnover of such purchases at the rate set out against each of such goods in the Schedules aforesaid.

Explanation - For the purposes of this section, the term "capital asset" shall have the same meaning as assigned to it in the Income-tax Act, 1961]"

"13A. Levy of purchase tax in certain cases.-Where a dealer, holding a Certificate of Entitlement, purchases any goods on a declaration referred to in clause (g) of section 12, there shall be levied a purchase tax on the turnover of such purchases at such rate not exceeding four percent., as may be prescribed and different rates may be prescribed for different classes of dealers.]"

"S. 13AA. Purchase tax payable on goods in Schedule C, Part I, when manufactured goods are transferred to branches - Where a dealer, who is liable to pay tax under this Act, purchases any goods specified in Part I of the Schedule C, directly or through commission agent, from any person and uses such goods in the manufacture of taxable goods and despatches the goods, so manufactured, to his own place of business or to his agents place of business situated outside the State within India, then such dealer shall be liable to pay, in addition to the sales tax paid or payable, if any, or, as the case may be, the purchase tax levied or leviable, if any, under the other provisions of this Act in respect of purchases of such goods, a purchase tax at the rate of two percent on the purchase price of the goods so used in the manufacture, and accordingly the dealer shall include purchase price of such goods in the turnover of purchases in his return under section 32, which he is to furnish next thereafter. "

"S. 13B. Purchase tax payable on specified goods.-

(1) Notwithstanding anything contained in this Act, but subject to the condition of previous publication, the State Government may, by notification in the Official Gazette, specify the goods or classes of goods (hereinafter referred to in this section as "the specified goods") in respect of which purchase tax shall be leviable on the turnover of purchase of the specified goods effected by a dealer liable to pay tax under this Act, at the rate of purchase tax leviable in respect of the specified goods under schedule B or Schedule C, as the case may be, unless such purchased goods are resold by such dealer:

[*****]

(2) Where the specified goods are declared goods, the purchase tax leviable under sub-section (1) shall be subject to the provisions of sub-section (2) of section 7.

(3) On issue of the notification under sub-section (1), nothing in sections 7, 8 [or 13] shall apply to the sale or purchase, as the case may be, of the specified goods."

S. 41. Exemption.--(1) Subject to the such conditions as it may impose, the State Government, if it is necessary so to do in the public interest, by notification in the Official Gazette, exempt any specified class of sales or purchases from payment of the whole or any part of any tax payable under the provisions of this Act [any notification issued under this section may be issued so as to be retrospective to any date not earlier than the 1st January 1960.]

(2) Where any dealer or person has purchased any goods under a declaration given by him under any of the notification issued under this section and-

(a) any of the conditions subject to which such exemption was granted, or

(b) any of the recitals or the conditions of the declaration, are not complied with, for any reason whatsoever, [or, in any other case, where such dealer or person was not entitled to issue [such declaration, then without prejudice to the other provisions of this Act] such dealer or person shall be liable to pay purchase tax on the purchase price of the goods so purchased, and the purchase tax shall be levied at the rates set out against each of such goods in column 4 of Schedules B and C, notwithstanding that such dealer or person was not liable to pay tax under section 3, and accordingly the dealer or the person who has become liable to pay purchase tax under this sub-section shall file a return in the prescribed form to the prescribed authority within a prescribed time and shall include the purchase price of such turnover of his return, and pay the tax in the prescribed manner. The tax due from any such dealer or person shall be assessed or reassessed under section 33 or 35, as the case may be:

Provided that, the amount of tax (if any) paid by the dealer or such person to a Registered dealer on such purchases, on which he has become liable to pay purchase tax under this sub-section, shall be set-off against the purchase tax so leviable.

[Provided further that, if the dealer or the person liable to pay purchase tax as aforesaid has been assessed to purchase tax and if he has paid such tax, then the dealer from whom such goods are purchased shall be exempted from payment of tax on sales of such goods to the extent such purchase tax has been paid].

[(3) If the Commissioner has reason to believe that any person is liable to pay tax under sub-section (2), the Commissioner shall after, giving him a reasonable opportunity of being heard, assess the amount of tax so due.]"

8. Perusal of the aforesaid provisions would reveal that, Section 13 provides for liability of dealer, who is liable to pay tax under the provisions of the said Act, when he purchases any goods specified in Schedules B or C from a person or a Government, who or which is not a dealer or a dealer who is not Registered dealer and treats them as capital assets any time after such purchase. In such a case, purchase tax on all such purchases subject to the provisions of sub-section (2) of section 7, is to be levied on the turnover of such purchases, at the rate set out against each of such goods in the Schedules aforesaid. Sub-section (2) of Section 13 carves out an exception, when the goods so purchased are re-sold by a dealer, from the liability of payment of tax as is provided in sub-section (1) of Section 13.

9. Section 13A, deals with dealer holding a Certificate of Entitlement, who purchases any goods on a declaration referred to in clause (g) of Section 12 and provides for a levy of purchase tax on the turnover of such purchases, at such rate not exceeding four per cent as may be prescribed and further provides that different rates may be prescribed for different classes of dealers.

10. Section 13AA which is most material for the decision of the present Reference, deals with a dealer who is liable to pay tax under the Act and who purchases any goods specified in part I of the Schedule C, directly or through commission agent, from any person and uses such goods in the manufacture of taxable goods and dispatches the goods, so manufactured, to his own place of business or to his agents place of business situated outside the State within India. It provides that such a dealer shall be liable to pay, in addition to the sales tax paid or payable, if any, or, as the case may be, the purchase tax levied or leviable, if any, under the other provisions of the said Act in respect of purchase of such goods, a purchase tax at the rate of two per cent, on the purchase price of the goods so used in the manufacture.

11. Section 13-B deals with the power of the State Government to specify goods or classes of goods as specified goods by issuing a notification which is subject to the condition of previous publication. It provides that in respect of such specified goods, the purchase tax shall be leviable on the turnover of purchase of the specified goods effected by a dealer, at the rate of purchase tax leviable in respect of the specified goods under Schedule B or Schedule C, as the case may be, unless such purchased goods are resold by such dealer. Sub-section (2) thereof provides that where the specified goods are Declared goods, the purchase tax leviable under sub-section (1) shall be subject to the provisions of sub-section (2) of section 7. Sub-section (3) thereof provides that, on issuance of the notification under sub-section (1), nothing in sections 7, 8 or 13 shall apply to the sale or purchase, as the case may be, of the specified goods. Section 14 deals with a liability to pay purchase tax in case of contravention of terms of declaration, with which we are not concerned in the present matter.

12. Section 41 empowers the State Government, if it is necessary so to do in the public interest, to issue a notification in the Official Gazette so as to exempt, any specified class of sales or purchases, from payment of the whole or any part of any tax payable under the provisions of the said Act. The State Government is also empowered to impose such conditions subject to which the benefit of exemption can be given.

13. The State Government vide Notification dated 22.9.1995, exempted from payment of tax, to the extent specified in column 3 of the Schedule to the said Notification, certain classes of sales or purchases specified in column 2 thereof, on the conditions specified against each of the said classes of sales or purchases in column 4 of the said Schedule.

14. In the preset matter, we are concerned with entry No. 47 of the said Schedule to the said Notification which deals with sales or purchase by a Registered dealer of goods, covered by entry No. 10 in Part I of Schedule C.

Entry 10 in Part I of Schedule C reads thus:--

"SCHEDULE C PART I

As per the said notification, from 1.8.1995, till 31.5.2000, the duty in excess of 0.5% in respect of the goods covered by entry No. 10 was exempted from payment of tax and with effect from 1.6.2000 till 31.5.2002 the duty in excess of 1.55% and whole of surcharge was exempted.

15. It could thus be seen that insofar as the goods i.e. the bullion is concerned, it is undisputedly entitled to benefit of the notification under Section 41 of the said Act. However, the only question that is required to be considered, is as to whether by virtue of the said notification issued under Section 41, the liability of the assessee to pay the purchase tax as is provided in Section 13A of the said Act would be affected or not. In other words, it is required to be considered, as to whether irrespective of the notification issued under Section 41 of the said Act, an assessee is liable to pay the purchase tax at the rate of 2%, on the assess fulfilling the requirements as are provided in the said Section.

16. For deciding the issue, we will have to consider the legislative history of Section 13AA. It is to be noted that though the said Act is of 1959, Section 13AA was brought on the statute book, for the first time, with effect from 1.7.1982 by Maharashtra Act 22 of 1982. The original Section 13AA as enacted then, reads as under:--

"S. 13AA. Purchase tax payable on goods in Schedule C, Part I, when manufactured goods are transferred to branches - Where a dealer, who is liable to pay tax under this Act, purchases any goods specified in Part I of the Schedule C, directly or through commission agent, from any person and uses such goods in the manufacture of taxable goods and despatches the goods, so manufactured, to his own place of business or to his agents place of business situated outside the State within India, then such dealer shall be liable to pay, in addition to the sales tax paid or payable, if any, or, as the case may be, the purchase tax levied or leviable, if any, under the other provisions of this Act in respect of purchases of such goods, a purchase tax at the rate of two percent on the purchase price of the goods so used in the manufacture, and accordingly the dealer shall include purchase price of such goods in the turnover of purchases in his return under section 32, which he is to furnish next thereafter."

It will be relevant to refer the statement of objects and reasons for introducing Section 13AA.

"Clause 2. - By this clause, a new section 13AA is being inserted in the principal Act. The manufacturers in the State are treated on a special footing for the purposes of levy of sales tax, in that irrespective of the ax rates on various commodities, the manufacturers are permitted to purchase all their inputs at a concessional rate of four per cent at present on a declaration.

Most of the important industrial raw materials are placed in Schedule C, Part I, and bear a tax of only four per cent, which is also the concessional rate for purchase of inputs for manufacturers, and also the rate of tax on the inter-State transactions. The first proviso to section 14(I) provides for an additional tax at one per cent, on inputs that go into branch transfers but it is restricted to the goods specified in Part II of Schedule C. Since certain manufacturers who transfer most of the goods by branch transfers, use all the facilities of infrastructure provided by this State, it is felt that it is no more necessary to give them concession in respect of inputs, falling in Part I of Schedule C, for manufacture. Accordingly, it is proposed to levy two per cent purchase tax even on purchase of inputs covered by Part I of Schedule C, in addition to the sales/ purchase tax paid or payable, as the case may be."

17. It will be relevant to note that the validity of Section 13AA came to be challenged before this Court. This Court upheld the validity of the said Section. However, in the appeals before the Apex Court, the Apex Court in the Judgment, in the case of Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, AIR 1990 SC 781 : (1991) 188 ITR 402 : (1989) 4 JT 229 : (1989) 2 SCALE 982 : (1990) 2 SCC 71 : (1989) 1 SCR 510 Supp : (1990) 76 STC 71 allowed the appeals and held Section 13AA to be ultra vires. After the aforesaid Judgment was delivered by the Apex Court on 9.10.1989, by an Ordinance dated 6.12.1989, Section 13AA was again brought on the Statute Book, with retrospective effect, with validating and saving provisions, by removing the disability pointed out by the Hon''ble Supreme Court. The Ordinance came to be replaced by Maharashtra Act 24 of 1990.

18. Section 13AA as substituted reads thus:--

"Section 13-AA: Purchase tax payable on goods in Schedule C, Part I, when manufactured goods are not sold.--Where a dealer, who is liable to pay tax under this Act, purchases any goods specified in Part I of Schedule C, directly or through Commission agent, [from any person] and uses such goods in the manufacture of taxable goods, then, unless the goods so manufactured are sold by the dealer, there shall be levied, in addition to the sales tax, paid or payable, if any, or as the case may be, the purchase tax levied or leviable, if any, under the other provisions of this Act in respect of purchases of such goods, a purchase tax at the rate of two paise in the rupee on the purchase price of the goods, so used in the manufacture, and accordingly the dealer shall include purchase price of such goods in his turnover of purchases in his return under section 32, which he is to furnish next thereafter."

19. It will also be relevant to refer to the Statement of Objects and Reasons of Maharashtra Act 24 of 1990, which reads thus:--

"Under section 13AA of the Bombay Sales Tax Act, 1959 purchase tax was payable on goods in Schedule C, Part I when purchased and used in the manufacture of taxable goods which were transferred to branches outside the State within India. In Writ Petition No. 2114 of 1983 (Messrs. Vipro Products Limited versus State of Maharashtra), Writ Petition No. 3042 of 1984 (Maharashtra Vegetable Products Limited versus State of Maharashtra) and Writ Petition No. 2644 of 1984 Hindustan Lever Limited versus State of Maharashtra) section 13AA was challenged on the ground that it provided for levy of consignment tax and not a purchase tax. By the judgment reported in Wipro Products Limited and another Vs. The State of Maharashtra and another, (1989) 72 STC 69 , the High Court upheld the validity of section 13AA. Civil Appeal No. 4162 of 1988 (Messrs. Vipro Products Limited versus State of Maharashtra) and Civil Appeal No. 4163 of 1988 (Hindustan Level Limited versus State of Maharashtra) were filed in the Supreme Court against the decision of the High Court. The Supreme Court, by its judgment, dated 19th October 1989, declared section 13AA ultra vires holding that the tax leviable under that section was in the nature of tax on consignment.

2. The intention in prescribing the low rates of tax on raw materials included in Part I of Schedule C was that the raw material would be used in manufacture of taxable finished goods which would be sold and the State would be able to levy and recover normal rate of sales tax on the goods so manufactured. If a purchaser availed himself of the concessional low rate of tax at the time of purchase of the raw materials and used them in the manufacture of other taxable goods but did not sell the same, it would result into loss of revenue to the State which was not intended. Therefore, with a view to protecting the revenue, it was expedient to re-enact section 13AA with retrospective effect with validating and saving provisions by removing the disability pointed out by the Supreme Court and to provide levy of purchase tax in general on all the purchases of raw materials at the concessional low rate and which are used in the manufacture of taxable goods which are not sold

3. As both Houses of the State Legislature were not in session and the Governor of Maharashtra was satisfied that circumstances existed which rendered it

necessary for him to take immediate action further to amend the Bombay Sales Tax Act, 1959 for the purposes aforesaid; the Bombay Sales Tax (Amendment) Ordinance, 1989 (Mah. Ord. IX of 1989) was promulgated on the 6th December 1989.

4. The Bill is intended to replace the said Ordinance by an Act of the State Legislature."

20. The validity of the said amended Section 13AA again fell for consideration before the Hon''ble Apex Court. In the case of Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., AIR 1993 SC 1048 : AIR 1992 SC 1048 : (1992) 6 JT 182 : (1992) 2 SCALE 924 : (1993) 4 SCC 536 Supp : (1992) 2 SCR 182 Supp : (1993) 88 STC 98 , the Apex Court disagreed with its earlier Judgment in Goodyear India Ltd. v. State of Haryana (supra) and upheld the validity of the said provisions.

21. It appears that again by Act 16 of 1995, the said Section 13AA was substituted as it stands today. However, there are no substantial changes from the provision, which fell for consideration before Their Lordships of the Apex Court in the case of Hotel Balaji.

22. In this background, we will have to consider the question that falls for consideration before us. The Constitution Bench in the case of The Bengal Immunity Company Limited Vs. The State of Bihar and Others, AIR 1955 SC 661 : (1955) 2 SCR 603 : (1955) 6 STC 446 , has observed thus:--

"22. It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon''s case (1) was decided that-

"................... for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:--

1st. What was the common law before the making of the Act.,

2nd. What was the mischief and defect for which the common law did not provide.,

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth., and

4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico".

In ''In re. Mayfair Property Co.'' (1989) 2 Ch 28 at p. 35 (W) Lindley, M.R. in 1898 found the rule "as necessary now as it was when Lord Coke reported Heydon''s case(V)". In-Eastman Photographic Material Co. v. Comptroller General of Patents, Designs and Trade Marks'', 1898 AC 571 at p. 576 (X) Earl of Halsbury re-affirmed the rule as follows:

"My Lords,, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy'' These three being compared I cannot doubt the conclusion".

It appears to us that this rule is equally applicable to the construction of article 286 of our Constitution. In order to properly interpret the provisions of that article it is, therefore, necessary to consider how the matter stood immediately before the Constitution came into force, what the mischief was for which the old law did not provide and the remedy which has been provided by the Constitution to cure that mischief."

Taking guidance from the aforesaid observations of the Apex Court, we will have to discern four factors as laid down by the Apex Court:--

"(1) What was the common law before the making of the Act.

Before Section 13AA was brought on Statute Book, rate of tax on raw materials included in Part I of Schedule C was prescribed at low rates, with an intention that the raw materials will be used in the manufacture of taxable finished goods, which would be sold in the State and State would be able to levy and recover normal rate of sales tax, on the goods so manufactured. However, there was no provision to tax a purchaser if he avails himself of the concessional rate of tax at the time of purchase of raw materials, uses the same in the manufacture of taxable goods, but does not sell the same in the State, thereby resulting in loss of revenue to the State.

(2) What was the mischief and defect for which the common law did not provide.

The defect that the law did not provide was that there was no provision for levy of tax to compensate loss of revenue, where the purchaser avails himself of the concessional rate of tax at the time of purchase of raw materials, which was levied at the lower rate with an intention that the material will be used in the manufacture of taxable finished goods, which would be sold in the State and the State would be able to levy and recover normal rate of sales tax on the goods manufactured, but the purchaser though used that material and also used the State infrastructure, for manufacture of the goods, did not sell the same in the State and as such the State could not levy and recover the sales tax on the manufactured goods.

(3) What remedy the parliament hath resolved and appointed to cure the disease of the Commonwealth.

(4) The Legislature brought Section 13AA on the Statute Book, so as to provide for additional levy of purchase tax at the fixed rate of 2%, which was payable in

addition to the sales tax or the purchase tax payable or leviable under the other provisions of the Act, where a purchaser avails of the concessional rate of tax, at the time of purchase of raw materials, uses the same and the State infrastructure in the manufacture of taxable goods, but did not sell the same in the State.

(4) The true reason of the remedy.

The Legislature, in order to compensate the loss of revenue, which occasioned on account of a purchaser availing of the concessional rate of tax, at the time of purchase of raw materials specified in Part I of Schedule C has used them in the manufacture of taxable goods, but did not sell the manufactured goods in the State has brought Section 13AA on the Statute Book. The intention of the legislature, to provide concessional rate of tax on purchase of raw material, was that the said raw material would be used in the manufacture of taxable goods in the State, which will be sold in the State and upon such sale, the State would be in a position to levy sales tax at higher rate. The remedy provided by the statute, was in order to compensate the loss of revenue which occasioned on the purchaser purchasing the raw material from the State at concessional rate, but did not sell the goods which were manufactured by using the said raw material in the State."

23. It will be relevant to refer to some of the observations of the Apex Court in the case of Hotel Balaji (cited supra)

"This statement accords with our understanding of the scheme of section 9 of the Haryana Act as set out hereinabove. To repeat, the scheme of section 9 of the Haryana Act is to levy the tax on purchase of raw material and not to forego it where the goods manufactured out of them are disposed of (or despatched, as the case may be) in a manner not yielding any revenue to the State nor serving the interests of nation and its economy, as explained hereinbefore. The purchased goods are put an end to by their consumption in manufacture of other goods and yet the manufactured goods are dealt with in a manner as to deprive the State of any revenue; in such cases, there is no reason why the State should forego its tax revenue on purchase of raw material."

"In the light of the above scheme of section 9, it would not be right, in our respectful opinion, to say that the tax is not upon the purchase of raw material but on the consignment of the manufactured goods. It is well-settled that taxing power can be utilised to encourage commerce and industry. It can also be used to serve the interests of economy and promote social and economic planning. Section 9 of the Haryana Act and section 13-AA of the Bombay Act are intended to encourage the industry and at the same time derive revenue. It is also not right to concentrate only on one situation, viz. Consignment of goods to manufacturer''s own depots (or to the depots of his agents) outside the State. Disposal of goods within the State without effecting a sale also stands on the same footing, an instance of which may be captive consumption of manufactured products in the manufacture of yet other products. Once the scheme and policy of the provision is appreciated, there is no room, in our respectful opinion, for saying that the tax is on the consignment of manufactured goods."

(emphasis supplied)

It could thus be seen that the Apex Court has held that the scheme of the aforesaid provisions is to levy the tax on purchase of raw material and not to forego it, where the goods manufactured out of them are disposed of (or despatched as the case may be) in a manner not yielding any revenue to the State nor serving the interests of nation and its economy. The Apex Court further held that, where the purchased goods are put an end to by their consumption in manufacture of other goods and yet the manufactured goods are dealt with in a manner, so as to deprive the State of any revenue, in such cases, there is no reason why the State should forego its tax revenue on purchase of raw material. The Apex Court, has further held that, the taxing power can be utilized to encourage commerce and industry and at the same time, serve the interests of economy and promote social and economic planning. It has been held that, Section 9 of the Haryana Act and Section 13AA of the Bombay Act are intended to encourage the industry and at the same time derive revenue.

24. The Apex Court, has further held that, the scheme of the said provision is to levy the purchase tax, on the purchase price of raw material purchased by a manufacturer. However, it is waived in three situations (i) sale of manufactured goods within the State, (ii) inter-State sale and (iii) export sale of manufactured goods. It has been held that in other cases, it is not.

25. Insofar as the provisions with which we are concerned, the Apex Court has specifically observed thus:--

"The same is the position under Section 13AA of the Bombay Sales Tax Act. The said provision, properly analysed, yields the following ingredients: (i) where a dealer who is liable to pay tax under this Act purchases any goods specified in Part I of Schedule (C) either directly or through commission agent, from a person who is or is not a registered dealer and (ii) uses such goods in the manufacture of taxable goods and (iii) despatches the goods so manufactured to his own place of business or to his agent''s place or business situated outside the State within India. (iv) such dealer shall pay, in addition to the sales tax/purchase tax paid or payable or levied or leviable, as the case may be, a purchase tax at the rate of two paise in the rupee on the purchase price of the goods so used in the manufacture. Here again it may be noticed that the tax levied is a purchase tax on the purchase of raw material and not upon the consignment of the manufactured goods The object of this provision too is the same as of the Haryana provision. The levy is waived where the manufactured goods are sold within the State, or sold in the course of inter- State trade or commerce or sold in the course of export. It is retained and collected where the goods are taken out of Maharashtra State by way of consignment, in which event the State sees no reason not to retain and collect the levy on purchase of raw material The provisions is substantially similar to Section 9 of Haryana Act. Whatever we have said with respect to the Haryana provision applies equally to this provision. It is not necessary to repeat the same here."

(emphasis supplied).

26. The Apex Court has held that for invoking the provisions of Section13AA, the following four ingredients are necessary:--

"(i) where a dealer who is liable to pay tax under the said Act purchases any goods specified in Part I of Schedule (C) either directly or through commission agent, from a person who is or is not a registered dealer and

(ii) uses such goods in the manufacture of taxable goods and

(iii) despatches the goods so manufactured to his own place of business or to his agent''s place of business situated outside the State within India.

(iv) such dealer shall pay, in addition to the sales tax/purchase tax paid or payable or levied or leviable, as the case may be, a purchase tax at the rate of two paise in the rupee on the purchase price of the goods so used in the manufacture."

It has been held that, the levy is waived where the manufactured goods are sold within the State or sold in the course of inter-State trade or commerce or sold in the course of export. It has been further held that it is retained and collected, where the goods are taken out of State of Maharashtra. It has been further held that in such an event, there is no reason, as to why the State should not retain and collect the levy on purchase of raw material.

27. It could thus be seen that the Apex Court in clear terms has held that, the levy under Section 13AA is waived only when the goods are either sold in the State or in the course of inter-State trade or commerce or sold in the course of export. It has further been held that, when the goods manufactured are not sold within the State, there is no reason as to why the State should not collect the levy on purchase of raw material.

28. It is further to be noted that, Sections 13 and 13-B of the said Act specifically refer to the rate of purchase tax leviable in respect of specified goods in Schedule B or Schedule C. Even insofar as Section 13A is concerned, wherein a power is vested in the State government to prescribe the purchase tax for different classes of dealers, on the turnover of purchase of goods on a dealer holding a certificate of entitlement, the State is empowered to prescribe different rates for different classes of dealers, however with an outer limit of 4%. It is pertinent to note that insofar as Section 13AA is concerned, the legislature has itself provided for levy of additional purchase tax, at the fixed rate of 2% and that too covering all classes of purchasers, irrespective of the nature of the goods.

29. It could thus be seen that insofar as the other provisions of the said Act like Sections 13 and 13-B are concerned, there is a reference to levy of purchase tax leviable in respect of specified goods under Schedule B or Schedule C or in the case of Section 13A, where a discretion is available to prescribe different rates of purchase tax for different classes of dealers, insofar as Section 13AA is concerned, the legislature in its wisdom, has specifically determined the levy of purchase tax at the fixed rate of 2% for all classes of purchasers, irrespective of the nature of the goods or the dealers.

30. It will be appropriate to refer to the following observations of the Apex Court in the case of Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, (1987) 1 SCALE 100 : (1987) 1 SCC 424 : (1987) 2 SCR 1 : (1987) 1 UJ 586 .

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression ''Prize Chit'' in Srinivasa and we find no reason to depart from the Court''s construction."

The Apex Court has held that interpretation must depend on the text and context. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted, when we know why it was enacted. It has been held that if a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different, than when the statute is looked at without the glasses provided by the context. It has been further held that with these glasses, we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say, as to fit into the scheme of the entire Act. It has been held that, no part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. As already discussed hereinabove, the purpose for bringing Section 13AA on the Statute Book, was to compensate the loss of revenue, that occasioned on account of the purchasers purchasing raw material at concessional rates, using the same for manufacture of goods in the State and also using the State infrastructure, but however not selling the goods in the State, thereby depriving sales tax which the State would have earned from such sales at a higher rate.

31. It will also be relevant to refer the following observations of the Apex Court in the case of Bengal Immunity Co. Ltd. (cited supra):--

"(168) I see no force in this contention. It is a cardinal rule of construction that when there are in a Statute two provisions which are in conflict with each other such that both of them cannot stand, they should, if possible, be so interpreted that effect can be given to both, and that a construction which renders either of them inoperative and useless should not be adopted except in the last resort. This is what is known as the rule of harmonious construction. One application of this rule is that when there is a law generally dealing with a subject and another dealing particularly with one of the topics comprised therein, the general law is to be construed as yielding to the special in respect of the matters comprised therein.

Now, the reason of the rule requires that it should apply whenever there is overlapping of the fields occupied by two conflicting enactments, and when that is shown, it would not be logical to exclude its application on the ground that the enactments have been made with a different purpose. It is the identity of the subject matter of the conflicting provisions, not the identity of their purpose or angle of vision that is essential for the application of the maxim. No authority was cited for limiting it in the manner contended for by the appellant."

(emphasis supplied).

32. It could thus be seen, that the Apex Court has held that when there is a conflict in two provisions with each other, such, that both of them cannot stand, if possible they should be so interpreted that effect can be given to both and that construction which renders either of them inoperative should not be adopted, except by last resort. It has been consistently held by the Apex Court that the provisions of a statute should be construed harmoniously with each other and not in isolation. It has been held that the statute should be construed, so that meaning could be given to each and every provision enacted by the legislature. Insofar as the contention of Shri Thakar that the provisions of Section 41 will have an overriding effect is concerned, we are unable to accept the said contention. We find that there is no conflict in the provisions and all the provisions of the statutes referred to hereinabove, can exist in harmony. Insofar as the Judgment in the case of Varun Polymol Organics Ltd., which is cited in support of the aforesaid proposition is concerned, we find that the said Judgment, would not be applicable to the facts of the present case. The question

that fell for consideration before this Court in the said case, was as to whether in view of a conflict between a subordinate legislation i.e. notification and the administrative circular, what would prevail. The Court held that an administrative circular, cannot have an overriding effect over the notification issued under Section 41, which is a subordinate legislation and as such, the notification issued under Section 41, will have an overriding effect over the administrative circular. A case of conflict between Section 41 with any other provision of the said Act did not arise for consideration.

33. As already discussed hereinabove, Sections 13 and 13B make a specific reference to the rate of purchase tax in respect of goods covered under Schedule B or Schedule C. Perusal of Schedule B and Schedule C would also reveal that the rate of tax is specifically provided for each of the entries. The relevant clause of the Schedule to the notification, would also reveal that the notification refers to sale or purchase by a registered dealer of goods covered by entry 10 in Part I of Schedule C. Part I of Schedule C specifies the rate of tax at 2%. We find that applying the principles of harmonious construction, the notification will have to be construed to apply to the rate of tax as specified in entry 10 of Part-I of Schedule C of the said Act. The rate is specifically prescribed at the rate of 2%. We find that, what has been provided by the notification is exemption of tax, in excess of what is provided under the said notification, from the tax payable as specified by entry 10 of Part-I of Schedule C of the said Act. As already discussed hereinabove, the legislature has specifically provided for a purchase tax, at the rate of 2% in addition to the tax payable under the other provisions of the Act, when the requirements as provided under the said section are fulfilled. The tax as provided in Section 13AA, is an additional tax payable in certain circumstances as carved out in the said Section, so as to compensate the loss of revenue. We are of the considered view that there is no conflict between any of the provisions of the said Act if the principles of harmonious construction is applied thereto.

34. We further find that, on another ground also the contention raised by the assessee will have to be rejected. The Apex Court in the case of Ashok Service center and Others Vs. State of Orissa, AIR 1983 SC 394 : (1983) 1 SCALE 123 : (1983) 2 SCC 82 : (1983) 2 SCR 363 : (1983) 53 STC 1 had an occasion to consider the provisions of Orissa Sales Tax Act, 1947 and Orissa Additional Sales Tax Act, 1975. The Apex Court held that in the eventuality of two Acts in a series dealing with the same subject-matter, the latter Act will be required to be construed together with the principal Act as a single code. It further held that, while doing so the effect will have to be given to the provisions of the latter Act in preference to the former Act, wherever the latter intended to modify the former. It will be appropriate to refer to the following observations of the Apex Court in the said case:--

"We are of the view that it is necessary to read and to construe the two Acts together as if the two Acts are one, and while doing so to give effect to the provisions of the Act which is a later one in preference to the provisions of the principal Act wherever the Act has manifested an intention to modify the principal Act. The following observations of Lord Simonds in Fendoch Investment Trust Co. v. Inland Revenue Commissioners made in connection with the construction of certain fiscal statutes are relevant here. He said at page 144 :

My Lords, I do not doubt that in construing the latest of a series of acts dealing with a specific subject-matter, particularly where all such Acts are to be read as one, great weight should be attached to any scheme which can be seen in clear outline and amendments in later Acts should if possible be construed consistently with that scheme."

(emphasis supplied)

35. As discussed hereinabove, the said Act has come into effect in 1959. Section 41 is on the statute book since beginning. However, Section 13AA, has been brought on the statute book, for the first time on 1.7.1982. After the same was held to be ultra vires in the case of Goodyear India Ltd. again by an Ordinance dated 6.12.1989 it was brought on statute book, with retrospective effect and also provision for validating and saving provisions, by removing the disability pointed out by the Hon''ble Supreme Court. The intention of the legislature, in bringing the said provisions on the statute book, is writ large from the Statement of Objects and Reasons while bringing the said provisions on the statute book in the year 1982 and reincorporating them with retrospective effect in the year 1989. A perusal of the Statement of Objects and Reasons would reveal that the intention of the legislature in prescribing the low rate of tax on raw material, was that the raw material would be used in the manufacture of taxable finished goods, which would be sold and the State would be able to levy and recover normal rate of sales tax, on the goods so manufactured. The intention of bringing the same on the statute book, was to protect the revenue, so as to compensate the loss of revenue, where though the purchaser purchased the goods at concessional rate, used the same for manufacture in the State, but did not sell the same in the State and thereby deprived a substantial revenue to the State. We find that the intention of the legislature, in bringing the provisions subsequently, on the statute book, so as to do away with the mischief noticed by it and thereby providing remedy will have to be given effect to.

36. It will be relevant to refer to the observations of the Apex Court in the case of The State of Tamil Nadu Vs. M.K. Kandaswami and Others, AIR 1975 SC 1871 : (1975) 4 SCC 745 : (1976) 1 SCR 38 : (1975) 36 STC 191 : (1975) 7 UJ 521 .

"It may be remembered that section 7-A is at once a charging as well as a remedial provision. Its main object is to plug leakage and prevent evasion of tax. In interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book, should be eschewed. If more than one construction is possible, that which preserves its workability and efficacy is to be preferred to the one which would render it otiose or sterile."

It could thus be seen that the Apex Court has held that in interpreting such a provision, the construction which would defeat its purpose and in effect, obliterate it from the statute book, should be avoided. It has been further held, that if more than one construction is possible, the construction which preserves its workability and efficacy is to be preferred, to the one which would render it otiose or sterile. If the contention of the assessee is to be accepted, then the very purpose for which Sec. 13AA is brought on the statute book would be defeated. By availing the benefit of notification by paying the meager tax, the assessee would purchase the said goods, use them for manufacture by using State infrastructure and then take away finished goods, from the State to other State and thereby deprive the State its revenue, which it would have earned by way of sales tax, at much higher rates, if the goods were sold in the State.

37. If the contention of the assessee is to be accepted, then the purchaser who purchases raw material at concessional rate, uses them for manufacture in the State of Maharashtra and also sells them in the State will be required to pay purchase tax at the rate of 0.5% and the sales tax at the rate of 4% as provided in entry 98 of Part II of Schedule C and thereby required to pay total tax of 4.5% for the financial year 1999-2000, whereas the purchaser like the assessee, who purchases raw material from the State of Maharashtra, manufactures goods in the State of Maharashtra using the State infrastructure, would be required to pay only 0.5% of purchase tax for the said assessment year. As held by the Apex Court in the case of Hotel Balaji, the taxing power can be utilised to encourage commerce and industry. Section 13AA is intended to encourage industry and at the same time derive revenue. If the interpretation as sought to be placed by the assessee is to be accepted, it will frustrate both the intentions. The purchaser who sells the goods in the State of Maharashtra, will be required to pay much higher rate of tax, whereas the purchaser who purchases raw material from the State at concessional rate, uses the said material and State infrastructure for manufacturing the goods, but does not sell the same in the State, would be required to pay meager tax. This would neither encourage the industry nor would be in the interest of revenue. As held by the Apex Court in the case of Hotel Balaji, while upholding the aforesaid provisions, purchase tax is leviable on the raw material purchased by a manufacturer. As held by the Apex Court that only in 3 situations i.e. (i) sale of manufactured goods within the State, (ii) inter-State sale and (iii)export sale of manufactured goods, the said levy is waived; in other cases it is not waived. It is further to be noted that such tax is required to be paid, in addition to the tax payable under the other provisions of the said Act.

38. In our considered view, in view of the aforesaid pronouncement of law by the Apex Court on the very same provision, the tax as levied under Section 13AA, is liable to be levied except in the aforesaid 3 situations. However, where the purchaser purchases raw material at a concessional rate, manufactures the goods by using the State infrastructure, but does not dispose of by 3 aforesaid methods, but despatches it to his branch or to his agent, situated outside State, it cannot escape from the liability of tax at the rate of 2%, as is leviable under

Section 13AA.

39. In that view of the matter, we answer the questions referred to us as under:--

"(I) The Tribunal was justified in holding that the dealer was liable to purchase tax at he rate of 2% and not at reduced amount of 0.5% or 1.55% as per entry A-47.

(II) The Tribunal was justified in holding that the benefit of the said notification was not available, insofar as the purchase tax, as is levied under Section 13AA of the said Act, is concerned."

Both the Sales Tax References stand disposed of in the aforesaid terms. No order as to costs.

40. Before we conclude, we must place on record our appreciation for the valuable assistance rendered by Shri Thakar appearing on behalf of the assessee and Shri Sonpal, learned counsel on behalf of the Revenue. We also appreciate the valuable assistance rendered by Shri Nirmal Darda, Deputy Commissioner of Sales Tax and Shri Madhav Kamath, Asstt. Commissioner of Sales Tax, to the learned Special Counsel for the Revenue in putting forth the case on behalf of the Revenue.

