

(2001) 05 RAJ CK 0053

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1526 of 2000

Merta Trade and Industries

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-05-2001

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 15(1)
Constitution of India, 1950 — Article 286(3)
Rajasthan Sales Tax Act, 1994 — Section 13A

Citation : (2002) 1 RLW 413 : (2002) 127 STC 524 : (2001) 3 WLC 757 : (2002) 1 WLN 302 : (2001) 3 WLN 499

Hon'ble Judges : Rajesh Balia, J;H.R. Panwar, J

Bench : Division Bench

Advocate : Dines Mehta and Vineet Kothari, for the Appellant; S.M. Mehta, General assisted by Sanjeev Johari and Sangeet Lodha, for the Respondent

Judgement

Balia, J.—In these three writ petitions, though multiple reliefs have been sought including declaration of "turn- over tax" imposed by the State by inserting Section 13-A in the Rajasthan Sales Tax Act, 1994 as ultra vires and unconstitutional but at the time of hearing, taking notice of the fact that competence of the State legislature to levy turn over tax has been upheld by the Supreme Entry 54 of List II (State List) in Schedule VII of the Constitution as an additional tax on sale or purchase of goods, the contentions have been confined to this extent that the impugned provisions are repugnant to Central Sales Tax Act because they do not restrict the "levy of tax" in the case of "turn over" relating to sale or purchase of goods which have been declared u/s 14 of the Central Sales Tax Act as of special importance in the course of interstate trade and commerce to the extent of rate until prescribed u/s 15 of the Central Sales Tax Act in aggregate, therefore, it can be subjected to tax at a rate in excess of the limit prescribed u/s 15 of the Central Sales Tax Act, 1956.

2. In this connection, the learned counsel appearing for the petitioners placed reliance on Clause (3) of Article 286 of the Constitution of India which leaves it

for the Parliament alone to prescribe maximum rate of tax at which sale or purchase of goods declared to be of special importance in the course of interstate trade and commerce.

3. The second contention raised in connection with the levy of "turn-over tax" is that while u/s 3 of the Rajasthan Sales Tax Act, 1994, a Dealer is not liable to be registered who is exclusively Dealer in tax-paid goods unless "turn-over" exceeds Rs. 16 lacs, yet it makes a Dealer liable to registration because of Section 13-A on having a "turn-over" of Rs. 3 lacs only notwithstanding that the entire "turn-over" is of tax-paid goods which is otherwise not subjected to tax in the hands of the Dealer who purchases such goods on payment of tax and thereafter enters into further transactions of sale of goods as no tax on such sales is being imposable on the multiple point and, therefore, these two provisions are incongruous.

4. As a limb of this contention, this was also contended that as no tax is payable in respect of goods purchased by registered Dealer on payment of tax from another registered dealer, such "turn-over" over or transactions is also made subject, to "turnover tax" u/s 13-A. It is urged that if the transaction is otherwise exempt from payment of tax, it cannot be made subject matter of "turn-over tax" which is goods. Learned counsel for the petitioners also invited our attention to a policy circular dated 12.9.2000 issued by the Commercial Taxes Department, Govt. of Rajasthan issuing guidelines to the effect that provisions of Section 15 of the Central Sales Tax Act are not applicable to "turn over tax."

5. The Circular dated 12.9.2000 reads as under:

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6. While not seriously joining the issue that looking to the nature of "turn-over" tax which has been declared by the Supreme Court as tax on sale or purchase of goods under Entry 54 of List- II of Schedule-VII of the Constitution and the provisions contained in Article 286(3) of the Constitution that any State legislation under Entry 54 of List-II of Schedule VII of the Constitution is subject to the limitations envisaged under Article 286(3) of the Constitution of India, it has been contended by the learned Additional Advocate General for the State that there is no real apprehension that while making assessment of "turn-over" tax, the Assessing Officer would be levying tax in contravention of the provisions of Section 15 of the Central Sales Tax Act, 1956 in respect of the "turn-over" falling under that clause.

7. The learned Advocate General has further contended that so far as the second contention of the petitioners is concerned ought not to be accepted because there is no such limit in any of the provisions of the Constitution of India, which prescribes levy on flat rate or prohibits imposition of tax on multiple points. It is a matter of legislative policy spelt through the relevant provisions of the law and if a particular part of the levy has not been made subject of some condition of which the other part of the levy under the same legislative entry has been made, it cannot be legitimately urged that there is any incongruity between Section 3 of the Act of 1994 and Section 13-A of that Act nor does it violates any provisions of the Central Sales Tax Act, 1956.

8. We should take notice of Article 286 of the Constitution of India, which reads as under:

"Article 286(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods when such sale or purchase takes place.

a) outside the State; or

b) in the course of import of the goods into, or export of the goods out of the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Clause (1).

(3) Any law of a State shall, insofar as it imposes, or authorises the imposition of,-

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-state trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in Sub-clause (b), Sub-clause (c) or Sub-clause (c) or Sub-clause (d) of clause (29-A) of Article 366,

be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of tax as Parliament may by law specify."

9. It may be seen that while under entry 92-A of Union List i.e. List-I of Schedule VII of the Constitution of India read with entry 54 of the State List i.e. List-II of Schedule VII of the Constitution of India, the Parliament has exclusive jurisdiction to enact the law for imposition of tax on sale or purchase which has taken place in the course of interstate trade or commerce. Entry 92-A of List-I of Schedule-VII of the Constitution provides legislative field of authorising the Parliament to impose tax on sale or purchase in the course of interstate trade and commerce and for that purpose, it is for the Parliament to provide for the principles which may determine what transactions are to be considered sale or purchase in the course of interstate trade or commerce. That being within the exclusive domain or jurisdiction of Parliament that such determination of "turn-over" during the course of interstate trade or commerce takes place and is taxed under such law made by the Parliament, it goes beyond the pail of authority of the State Legislation to tax such transactions in any manner whatsoever whether by calling it to be a tax on sale or purchase or by levying the tax as "turn-over tax" by way of additional tax on the "turn-over" of such sales of goods made by the Dealer without reference to the commodity with which the transaction is concerned. Obviously, in case of "turn-over" tax, the levy is at a flat rate on the entire turn over or on different slabs of "turn-over" as the case may be but the total amount of "turn-over" do comprise of different commodities, dealt with by the dealer and such commodities, may include goods declared to be of special importance in the course of interstate trade or commerce and the total turnover may include turnover of such declared goods also.

10. The second restriction which emanates from Article 286 of the Constitution in relation to interstate trade or commerce is by way of authorising the Parliament to declare any goods to be of special importance in interstate trade or commerce. Once such a declaration is made then the power to legislate the levy of tax on sale or purchase of goods so declared by the Parliament of special importance in interstate trade or commerce has been made subject to restriction and condition, if any, imposed by the Parliament in regard to (i) system of levy; (e) the rate and (3) other incidents of taxes as the Parliament may by law specify; that is to say that the mandate of Clause (3) of Article 286 of the Constitution conveys that the plenary power of the State of levy tax on sale or purchase of goods other than the sale or purchase that has taken place in the course of interstate trade or commerce or the sale or purchase which has taken place outside the State or the sale or purchase which has taken place in the course of import of goods into or export of goods outside the territory of India is inhibited as per the provisions of Article 286, apart from other constitutional restraints, with which we are not presently concerned. Article 286 also provides that the principles for determining when a sale or purchase of goods can be said to take place outside the State or in the course of import of goods into or export of goods outside the territory of India and also when such transaction is said to have taken place in the course of

interstate trade or commerce is to be prescribed by the Parliament and not by the State legislation. However, when any goods are declared to be of special importance in interstate trade or commerce, the power of State legislation to legislate the levy on sale or purchase of such declared goods is to be subject to restrictions and conditions in regard to transactions in such declared commodity as Parliament may by law specify.

11. The Central Sales Tax Act, 1956, which is a law made by the Parliament imposes tax on sale or purchase of goods in the course of interstate trade, or commerce, the field covered by entry 92A of the Union List and also provides for matters envisaged under Article 286 of the Constitution. Sections 14 and 15 are two such provisions which relate to matters provided under Clause (3) of Article 286.

12. Section 15 of the Central Sales Tax Act reads as under:

"S. 15: Restriction and conditions in regard to tax on sale or purchase of declared goods within a State: Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:-

(a) The tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State.

(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in Sub-Clause (i) of Clause (i) of Section 14, the tax levied on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy.

(d) each of the pulses referred to in Clause (vi-a) of Section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law.

13. Thus, it can well be said on a combined reading of the entry 92A of Lists-I and entry 54 of List-II appended to Schedule VII and the provisions of Article 286 of the Constitution of India and the Central Sales Tax Act that though power of the State to impose tax on sale and purchase of goods is plenary and unrestricted, subject only to any restrictions imposed by the Constitution. Sees. 14 and 15 of the Central Sales Tax Act read with Clause (3) of Article 286 of the Constitution of India constitute restrictions upon the plenary power of the State

legislature to levy tax on sale or purchase of goods which have been declared to be of special importance for the inter-state trade or commerce. While Section 14 only enumerates the declared goods and it does not lay down any rate of tax, Section 15 of the Act puts in two restrictions: firstly by prescribing the maximum rate at which tax may be imposed on sale or purchase of declared goods; and secondly it requires that such taxes shall not be levied at more than one point. The object of two restrictions is to ensure that inter-state trade or commerce in such goods is not hampered by heavy taxation within the State occasioned by an excessive rate of tax or by multiple points of taxation.

14. In this connection, we may refer to a decision of Supreme Court in *Govind Saran Ganga Saran v. Commissioner of Sales Tax and Ors.* (1), wherein while considering the scope of Sees. 14 and 15 of the Central Sales Tax Act, the Court observed:

"The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax; the third is the rule at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability."

15. With this premise, the Court referring to Sections 14 and 15 of the Central Sales Tax Act, said:

"In the instant case, we are concerned with the taxation of goods which u/s 14 of the Central Sales Tax Act have been declared to be of special importance in inter-State trade or commerce. Where the turnover of such goods is subjected to tax under the sales tax law of a State, Section 15 prescribes the maximum rate at which such tax may be imposed and requires that such tax shall not be levied at more than one point. The two conditions have been imposed in order to ensure that inter-State trade or commerce in such goods is not hampered by heavy taxation within the State occasioned by an excessive rate of tax or by multi-point taxation. Section 15 enacts restrictions and conditions which are essential to the validity of an impost by the State on such goods. If either of the two conditions are not satisfied, the impost will be invalid. Now in order that tax should not be levied at more than one stage, it is imperative that the sales tax law of the State should specify either expressly or necessary implication the single point at which the tax may be levied. Alternatively, it may empower a statutory authority to prescribe such single point for the purpose. Where such point is not prescribed, either by the statute or by the statutory delegate, no compliance is possible with Section 15."

16. Thus, the Court held that if those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law and any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity.

17. From the above, it is clear that with these restrictions, it is imperative that where any State enacts two or more enactments levying tax on sale or enacts more than one provisions in the same enactment for levying tax on sale by more than one mode or by providing levy of surcharge in addition to the Sales Tax generally imposed, aggregate of all multiple rates under all provisions/enactments operating in the same field ultimately on any one transaction of sale or purchase of declared goods within the State must not transgress the ceiling of rate of tax on declared goods u/s 15(a) of the Central Sales Tax Act as it would result in transgressing the limits of rates which have been prescribed by the Parliament in exercise of its authority under Article 286(3) of the Constitution of India on the transactions relating to declared good and would defeat the very object of that provisions.

18. In this connection, it may be noticed that the restrictions are not only envisaged on the power of the State to levy tax on the transaction of sale or purchase of the declared goods in accordance with the conditions laid by law made by Parliament. It also unfolds the field of all restrictions which can be imposed by the Parliament on the power of the State to levy tax on declared goods, that field includes the system of levy of tax, rates of tax and other incidents of tax. Thus, the State legislature by devising the multiple system of levy, the rates and other incidence of tax cannot exceed beyond the one devised by the Parliament, else it would result in transgressing the provisions of Article 286(3) of the Constitution of India by the State legislature and to that extent the levy will have to be held to be ineffective.

19. In this connection, reference may be made to Mahendra Kumar v. Commercial Taxes Officer (2) and Rajkumar Sharwan Kumar v. The State of Uttar Pradesh and Anr. (3).

20. In the light of the discussion made hereinabove, it is desirable to analyse the impugned provision of Section 13A of the Raj. Sales Tax Act, 1994 in these petitions.

"Section 13-A Levy of Turnover-Tax:

(1) Every registered dealer and every dealer who is liable to get himself registered u/s 3, and whose total turnover in a year exceeds Three Lacs Rupees, whether or not the whole or any portion of such turnover is liable to tax under any other provisions of this Act, shall be liable to pay turnover tax, from such date and at such rate as may be notified by the State Government but not exceeding ten percent of this gross annual turnover.

(2) No tax under Sub-section (1) shall be payable on that part of turnover which relates to:-

(i) Sale or purchase of exempted goods;

(ii) Sale or purchase of goods in the course of inter-State Trade or commerce.

(iii) Sale or purchase of goods in the course of export out of the territory of India or sale or purchase in the course of import into the territory of India.

(iv) All amounts collected by way of tax under the provisions of this Act or under the provisions of this Act or the Central Sales Tax Act, 1956 (Central Act 74 of 1956);

(v) All amounts allowed to dealers in respect of goods returned to the dealer when goods are taxable on sales provided that the goods were returned within a period of six months from the date of delivery of the goods and the accounts show the date on which, and the amount for which, refund was made;

(vi) All amounts realised by a dealer by the sale of his business as whole;

and except as provided above, no other deduction shall be made from the gross turnover of a dealer for the purpose of this section.

(3) For the purposes of assessment, collection and refund of tax "levied under this section, the provisions pertaining to assessment, collection and refund under other provision of this Act and the rules made thereunder shall mutatis mutandis apply."

21. A perusal of the aforesaid provisions of Section 13-A of the Act ultimately go to show that in computing taxable turnover for the purpose of imposing turnover tax u/s 13-A, the "turn-over" relating to sale or purchase of declared goods as per Section 14 of the Central Sales Tax Act, 1956 has not been excluded nor any declaration has been made that rate in respect of that part of "total turn-over" which is attributable to sale or purchase of any declared goods shall not exceed the maximum rate prescribed u/s 15 of the Central Sales Tax Act, 1956.

22. The petitioners have come with a specific case that their gross total turnover includes the "turn-over" of declared goods which has already suffered tax at the maximum rate (4% at the relevant time) prescribed u/s 15, and imposition of any additional tax on total taxable turnover of the Dealer which includes such turnover in respect of declared goods within the State of Rajasthan at the rate prescribed for the turnover tax will result in levy of tax on turnover of declared goods in excess of rate of tax provided u/s 15(a) of the Central Sales Tax Act. So also where the turnover of declared goods had suffered tax under original charge at a lesser rate than the rate that could be charged u/s 15(a) of the Central Sales Tax Act, 1956, tax on such turnover in aggregate, by taking the tax levied on turnover of such declared goods independently and tax chargeable on such turnover of declared goods as part of total taxable turnover u/s 13A shall exceed the rate limit u/s 15(a) of the Central Sales Tax Act, 1956. This is so because the tax at flat rate is charged on the total taxable "turn-over" after excluding the turn over enumerated under Clause (2) of Section 13-A of the Act, which conveys that such net taxable turn over in the first instance suffers tax as per schedule of rates prescribed u/s 4 of the Act of 1994 in respect of each component part of such taxable turnover and then it also suffers additional tax

prescribed u/s 13A as "turnover tax" on net aggregate "turn-over" of all commodities, other than excepted under Clause (2) of Section 13-A of the Act of 1994.

23. In other words, all transactions of sale of all commodities included in the net taxable turn over are subjected to additional taxation at the flat rate in addition to the tax which they had suffered in the ordinary course under the charging Section 4 of the Act.

24. It was contended by the learned counsel for the petitioners that the tax on such "turn-over" which relates to sale of declared goods which has also suffered tax @ 4% under the charging Section 4 of the Act of 1994, if allowed to suffer tax u/s 13-A of the Act, it would to subjecting such transaction of sale of declared goods to tax at a rate higher than the maximum limit prescribed under the Central Sales Tax Act, 1956.

25. In this connection, reference has been made on behalf of the petitioners to a decision of the Supreme Court in *Kodar v. State of Kerala* (4). In that case, the Constitutional Bench while dealing with the provisions of Tamil Nadu Additional Sales Tax Act, 1970 with reference to total sales tax imposed on the dealer was challenged before the Supreme Court as ultra vires. The Court said:

"that the additional tax levied under the Act is readily a tax on the sale of goods and not on the income of a dealer. The fact that the quantum of the additional tax is determined with reference to the sales tax imposed would not alter its character. The additional tax is an enhancement in the rate of sales tax when the turnover of a dealer exceeds Rs. 10 lakhs a year and it is a tax on the aggregate of the sales effected by the dealer during the year."

26. The ratio of the aforesaid decision is that such additional tax imposed on the entire turnover of a dealer is in the character of an additional tax on sale, that would not transgress the legislative field governing under the Entry 54 for that reason alone because tax is not levied with reference to separate transaction in specific commodity but has been levied with reference to total tax payable by the assessee in respect of its entire turnover, when such turn over exceeds Rs. 10 Lacs. The Court made it clear that additional tax is merely an enhancement in the rate of sales tax.

27. In *Polaki Motors v. State of Orissa* (5), the Supreme Court was considering the provisions of Orissa Additional Sales Tax Act, 1975 and Orissa Sales Tax Act, 1947. In that case, u/s 4 of the Orissa Additional Sales Tax Act, 1975, liability to pay tax in accordance with the provisions of the Principal Act was imposed on every dealer whose gross turn over during the fiscal year exceeds Rs. 50,000/-. Section 5 Delegated the authority to the Govt. for prescribing the rate at which tax was payable on taxable turnover from time to time and Section 8 of the Act provided that goods shall not be taxed at more than one point. By the Orissa Addl. Sales Tax Act, 1975 it was provided that the tax payable by the dealer for a year under the Orissa Sales Tax Act, 1947 shall be increased by the additional

tax at the rate of 2% of the tax, if his gross "turn-over" for that year does not exceed Rs. 1 lacs; at the rate of 3% of the tax, if his gross "turn-over" for that year does not exceed Rs. 5 lacs; and at the rate of 5% of the tax, if his gross "turn-over" for that year exceeds Rs. 5 lacs. However, it took care to add proviso that where in respect of declared goods, the tax payable by such dealer under the said Act together with additional tax payable under the said section exceeds the maximum percentage of sale or purchase price thereof specified from time to time under Clause (a) of Section 15 of the Central Sales Tax Act, the rate for additional tax in respect of such goods shall be reduced to such an extent that the tax and the additional tax shall not exceed such maximum percentage of such sale or purchase of such goods.

28. Before proceeding further, considering the decision of Polaki Motors case (supra), it may be noticed that this declaration of making the provision subject to restriction u/s 15(a) in relation to the maximum rate of tax was in consonance with the principles enunciated by the Supreme Court in Govind Saran Ganga Saran v. Commissioner of Sales Tax and Ors. (supra), referred to above. Considering these provisions, the Court said that the levy of additional sales tax on gross turn over irrespective of its taxability under the Act of 1947 and at multi points de hors the scheme of the single point of sales tax on taxable turnover u/s 4 of that Act was within the legislative competence of the State legislature and valid. This position clearly negatives the second contention of the petitioners that because the provisions of Section 13-A provides for a lesser limit of gross "turn-over" for obligating a dealer to get himself registered and results in levy of additional tax in addition to a tax already suffered levy of tax on commodity which has already suffered resulting in multiple point tax. It may be noticed that levy of additional tax on the same "turn-over" is not levied under multiple point tax but because of additional tax and levying on tax on ST paid goods purchased by the Dealer on subsequent sale by him results in multiple point tax. However, in other cases, as noticed by us above, when Orissa Sales Tax Act had given effect to restrictions spelt out u/s 15 of the Central Sales Tax Act, 1956 by excluding the turnover of declared goods from the preview of additional tax imposed thereunder, it did not give rise to the question whether it is in violation of Section 15 of the Act. However, as in the present case, we have seen that no such expression or implied provision has been made for restricting the liability to additional tax to the extent the total rate of tax levied on declared goods u/s 14 of the Central Sales Tax Act, 1956 does not exist the maximum limit provided u/s 15 of the Act and in practice, it has been demonstrated by the Dealers in these writ petitions that levy of additional tax as "turnover tax" on the entire taxable turnover which includes the "turn-over" of declared goods also has already suffered the maximum permissible rate of tax prescribed u/s 15 of the Central Sales Tax Act and results in levy of tax on such sale transactions of declared goods in excess of rate as prescribed u/s 15 of the Central Sales Tax Act.

29. The contention of the learned Advocate General is that apprehension of the Dealer is not well founded. That assurance is belied when one looks at the

direction issued by the State Govt. on 12.9.2000. The levy of additional tax on the "turn-over" of declared goods, if exceeds the maximum limits of tax prescribed u/s 15 of the Central Sales Tax Act results in violation of the provisions of Article 286(3) of the Constitution. The Circular referred to above issued by the State Govt. which contain clear directives to all the Assessing Officers that Section 15 of the Central Sales Tax Act is not at all applicable where the taxes imposed on gross "total turn-over" and not on the separate "turn-over" of the specified goods. That in our opinion is wholly misconceived and unwarranted direction and is contrary to the restrictions imposed on the State Govt.'s competence to levy taxes on declared goods exceeding the rate prescribed u/s 15 of the Central Sales Tax Act. It cannot be countenanced and sustained.

30. The question then arises whether the provisions of Section 13A are to be declared outright ultra vires or are to be read down so as to read in conformity with the provisions of the Central Sales Tax Act, 1956. In this connection, there is a conflict of opinion amongst different High Courts. While the Calcutta High Court has taken the view in Mahendra Pratap v. Commercial Taxes Officer (6), that portion of charging section would be repugnant to Section 15(a) of the Central Sales Tax Act and, therefore, will be ultra vires Article 286(3) of the Constitution. Hence, it cannot be given effect to and no tax can be levied on such goods. On the other hand, Allahabad High Court in Katyar & Co. v. Sales Tax Officer (7), has held that entire charging section is not to be ineffective and so much of it is in conformity of Section 15(a) rates shall be effective and excessive rate shall not be given effect to.

31. The question has been set at rest by the Supreme Court in Modi Spinning and Weaving Mills Co. Ltd. v. Commissioner of Sales Tax (8). The constitutional bench of the Supreme Court speaking through Hidayatullah, J. said:

"The meaning of intention of Clause (3) of Article 286 is not destroy all charging sections in the Sales Tax Acts of the States which are discrepant with Section 15(a) of the Central Sales Tax Act, but to modify them in accordance therewith. The law of the State is declared to be subject to the restrictions and conditions contained in the law made by Parliament and the rate in the State Act would pro tanto stand modified. The effect of Article 286(3) is now brought out by the second proviso to Section 5(1). But this proviso is enacted out of abundant caution and even without it the result was the same."

32. Thus, in view of the aforesaid discussion, as we have come to the conclusion that extant provisions of Section 13-A results in Including the "turn-over" relating to declared goods also in the total "taxable turn over" for the purpose of levying "turn-over" tax at a flat rate in addition to sale tax chargeable under the charging provision of Section 5 of the Rajasthan Sales Tax Act, 1994 and results in certain cases levy of tax at a rate exceeding maximum limit of rate prescribed u/s 15(a) of the Central Sales Tax Act. Therefore, it is required to be declared that effect of Clause (3) of Article 286 is not to destroy the charging section in

the Sales Tax Act of the State whether provided under the single enactment or in separate enactment which are discrepant with Section 15(a) of the Central Sales Tax Act but it modifies the same in accordance therewith. Thus, the law of the State is declared to be subject to the restrictions and conditions contained in the Central Sales Tax Act, 1956, law made by the parliament and the incidence of the tax in aggregate of principal tax and additional tax or charge thereto on the sale transactions in the State Act on the "turn-over" of declared goods to the extent it exceeds the rate of tax stated u/s 15(a) of the Central Sales Tax Act, 1956 would pro tanto stand modified upto the limit stated in Section 15(1) of the Central Sales Tax Act, 1956. Any charge in excess thereof in whatever form is not permissible.

33. As a result, these petitions are partly allowed as aforesaid. The assessments of turn over tax if already made shall stand set aside and the Assessing Officer shall make fresh orders in accordance with the law keeping in view the aforesaid principles and the provisions of Sections 14 and 15 of the Central Sales Tax Act, 1956 read in the light of Article 286(3) of the Constitution of India. The Circular dated 12.9.2000 issued by the State Govt. is quashed.

34. There shall be no order as to costs.