

(2011) 09 KAR CK 0156

In the Karnataka High Court

Case No : STRP No"s. 168 and 169 of 2011 along with Writ Appeal No"s.
15110-120 of 2011 (T-RES)

Mitsubishi Corporation

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Citation : (2012) 53 VST 489

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : Udaya Holla, for Ajesh Kumar S for M/s. DSK Legal Advocates and B.G. Chidananda, for the Appellant; E.R. Indrakumar, for K.M. Shivayogiswamy, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—These revisions petitions are preferred by the assesses challenging the order passed by the Karnataka Appellate Tribunal upholding the levy of tax u/s 3(a) read with section 6 of the Central Sales Tax Act, 1956. As the question involved in all these revisions is one and the same, they are taken up for consideration together and disposed of by this common order.

2. The assessee, M/s. Mitsubishi Corporation, formed a consortium along with Mitsubishi Electric Corporation and Rotem Company. Mitsubishi Corporation is a leader of MRM Consortium. They have been awarded a contract (RSI) for design, manufacture, supply and commissioning of passenger rolling stock or train sets for the Mass Rapid Transport System-Phase I for the metro rail project of M/s. Delhi Metro Rail Corporation for their project at New Delhi for short hereinafter referred to a "DMRC". Under the RSI Contract, MRM Consortium, for short, hereinafter referred to as contractor or consortium, was to supply 60 trains sets (240 cars, as each train set comprises of four cars). Out of 60 train sets 15 train sets were to be manufactured in Korea and supplied to DMRC on high sea sale basis. The remaining 45 trains sets were to be manufactured indigenously in

India. For manufacturing these 45 train sets indigenously in India, the consortium imported as well, as procured within India, material in SKD/CKD condition and assembled the cars in India. The consortium had option to carry out the assembly" job anywhere in India. Rotem Company, as a member of consortium was under an obligation to supply car body shells. It entered into sub-contract for job-work with Bharat Earth Movers Limited, Bangalore, to carry out the assembly/fabrication work of car body structures in India. Complete knock down (CKD)/semi knock" down (SKD) components of car body shells were sourced from Korea. Some materials were procured within the country. These SKD/CKD materials were delivered by Rotem to BEML as free issue materials for job-work. The property in the goods at all times remained with Rotem. Mitsubishi Electric Corporation, another member of consortium sourced CKD/SKD materials for the propulsion system from Japan. For assembly of the propulsion the consortium had entered into a sub-contract agreement with Alstom India. The consortium delivered CKD/SKD materials to Alstom India at their factories at Kolkata, Chennai and Coimbatore as free issue materials for manufacturing of the propulsion system. Thereafter the finished propulsion system was supplied by Alstom India to the consortium and was further sent to BEML, Bangalore as property of Consortium for assembly, BEML, the subcontractor, after receiving the propulsion system, fits them in the car body structure fabricated by them. After car body structures are ready, the same are sent for functional tests at BEML's testing shop for its sub-systems. Throughout the process of assembly and testing, the cars are inspected by an Inspector of DMRC at BEML, who then records the progress of the work in his inspection certificate. Once the inspection certificate is issued, BEML's scope and obligation in terms of the sub-contract is completed. BEML raises an invoice for labour charges in the name of Rotem, New Delhi, for payment and confirms that the car structure are ready for dispatch in terms of sub-contract. BEML cleared goods from its factory by issuing Central excise invoice. Central excise duty is not levied in view of an exemption granted to DMRC project by the Union Government. Thereafter Rotem Company, under its name, arranged for the despatch of the finished car body structures to Delhi for the remaining work to be done under the RSI contract. The cars were transported from Bangalore to project site of the Consortium in Delhi, pulled by a locomotive presided by Indian Railways on hire basis and the freight charges of Indian Railways are borne by Rotem company. After their arrival at the Consortium project site at Delhi, the Consortium undertakes to do the remaining work on the cars to complete them into the passenger rolling stock (finished train sets) as required to be supplied to DMRC under the contract RSI. At the project site, installation of telecom equipments, signaling equipments, pantograph, PA/PIS equipments including route software, safety equipments and other components are installed and functional test carried out on the car body structures at New Delhi. Thereafter, integrated testing and commissioning of the trains are done which includes interface tests with telecom, signaling, station control equipment, track, overhead power traction, etc. It is thereafter the passenger rolling stock is transferred/supplied to DMRC under the RSI contract.

It is at that stage consortium raises sales invoice for the train set handed over to DMRC. The consortium is registered under the Delhi Sales Tax Act. Admittedly they have not registered under the Central Sales Tax Act (for short, hereinafter referred to as, "the CST Act"). For the assessment year 2003-04 consortium had paid Rs. 3,48,95,762 on the above sales transactions under RSI contract to the Delhi Government till the Delhi Government granted sales tax exemption. Pursuant to the exemption given to the DMRC for Central excise and customs purposes, the sale price of the train sets was revised by DMRC retrospectively.

3. A show-cause notice dated November 15, 2005 u/s 12(3) of the Karnataka Sales Tax Act read with section 9(2) of the CST Act was served upon the consortium leader, i.e., Mitsubishi Corporation. They were asked to show cause as to why for the assessment year 2003-04 and 2004-05, the sales made by the consortium to DMRG under the RSI contract of the total turnover of Rs. 218.18 crores should not be treated as inter-State sales effected from the State of Karnataka to DMRG, New Delhi and why the consortium should not be held to be liable to pay inter-State sales tax under the provisions of the CST Act amounting to Rs. 31,10,08,481. Consortium duly sent a reply dated December 16, 2005 denying the liability.

4. The assessing authority-Deputy Commissioner of Commercial Taxes (Intelligence) by his order dated January 31, 2006 held the transaction in question amounted to inter-State sales effected from the State of Karnataka u/s 3(a) of the CST Act and therefore, liable to pay tax and thus confirmed the demand.

5. Aggrieved by the said order, the assessee preferred a writ petition before this court in W. P. No. 3303 of 2006 which came to be dismissed on March 27, 2006 (Mitsubishi Corporation v. State of Karnataka) holding that the assessee should pursue the alternative remedy of statutory appeal under the Karnataka Sales Tax Act, 1957. Against the said Order the assessee preferred Writ Appeal No. 578 of 2006 (Mitsubishi Corporation v. State of Karnataka) before this court. The said writ appeal also came to be dismissed. Against the said order, the assessee" preferred" a SLP to the apex court in SLP (C) No. 11166 of 2007. The order of the Division Bench of this court where they had recorded a finding on merits that the transaction amounted to inter-State sales was set aside and the order of the learned single judge directing the assessee to approach the appellate authority was restored. Consequently, the assessee preferred a appeals to the Joint Commissioner of Commercial Taxes (Appeals).

6. The first appellate authority on careful scrutiny of the entire material on record, after considering the contentions" of the assessee and also taking note of the law declared by the apex court in various judgments held that the movement of rolling stocks ex-works BEML, Bangalore to New Delhi amounted to inter State sales of rolling stock by M/s. Rotem Company and therefore the consortium is liable to pay Central sales tax and accordingly the appeals were dismissed upholding the orders of the assessing officer.

7. Aggrieved by the said order the assessee preferred second appeals to the Karnataka Appellate Tribunal. The Appellate Tribunal by a detailed order has upheld the order passed by the first appellate authority and dismissed the appeals of the assessee. Aggrieved by the said order, the assessee is before this court by way of a revision petitions challenging the findings recorded by the lower authorities.

8. Sri Udaya Holla, the learned senior counsel appearing for the assessee, assailing the impugned orders contended that the goods which were moved from Bangalore to Delhi are not the finished product and are in the nature of components or parts of the goods and therefore, the CST Act is not attracted. Until the goods attain the status of a deliverable state, there is no movement of the goods and therefore, section 3(a) of the CST Act is not attracted. The goods agreed to be sold by the Consortium as per RSI contract to DMRC is passenger rolling stock which includes PA/PAS equipment, route software/signalling equipment, telecommunication equipment, pantograph. The goods which were moved from Bangalore to Delhi did not have PA/PAS equipment, route software/signaling equipment, telecommunication equipment, pantograph. It is only after incorporating the aforesaid equipments to the railway cars the finished goods were delivered to DMRC at Delhi. After the passenger rolling stock was completed at Delhi, no movement of the said goods occurred outside the State of Delhi and therefore there is no sales tax liability u/s 3(a) of the CST Act.

9. Secondly, he contended that as per section 5(2) of the CST Act a sale or purchase of the goods is said to take place in the course of import if the sale or purchase occasions such import. Such goods cannot be deemed to be goods in the course of inter-State trade or commerce and will not attract CST under the charging section 6 of the CST Act. The object of the CST Act is to levy sales tax on goods in the course of inter-State trade or commerce and not in respect of goods in the course of import or export. Consequently, no tax can be levied on goods in the course of import. The incorporation of section 5(1) and (2) of the CST Act is a clear indicator that no tax is leviable in respect of goods which are imported inside the country or exported out of the country.

10. Thirdly, he contended that in an earlier round of litigation the Tribunal for the very same assessment years by its order dated January 17, 2006 in STA No. 571 of 2005 has held that no sales tax is leviable in respect of the transaction in question. He submitted the said finding operates as res judicata which factor has not been properly considered by the Tribunal.

11. Lastly he contended that, in case section 3(a) of the Act is held to be applicable, then the deduction has to be given to the extent of sales tax paid at Delhi. Further, the sales tax ought not to be charged on the gross value and the value of the goods added to the rail cars at Delhi has to be excluded in assessing the sales tax. For the aforesaid reasons he submitted that the impugned orders are illegal and require to be set aside. In support of his contention he relied on several judgments.

12. Per contra, Sri Indrakumar, the learned senior counsel appearing for the Revenue, supported the impugned order. He contended that under the contract between the parties what is agreed to be supplied is indigenously manufactured rail cars. The said rail cars are manufactured at BEML and after the cars were so manufactured, the finished product was moved from Bangalore to Delhi on rails and thereafter the Consortium has sold the said cars to DMRC at Delhi. As the contract of sale occasioned the movement of the goods from Bangalore to Delhi, section 6 of the CST Act is attracted read with section 9(1). The liability to pay Central sales tax arises and the Karnataka Government within whose jurisdiction the movement commenced is the authority which is competent to levy Central sales tax. He further contended that though the assessee contends that the rail cars which commenced movement from Bangalore were not the finished product and after the said rail cars reached Delhi the assessee has made value additions, absolutely no material is placed on record to substantiate the said claim. In fact before the Karnataka Appellate Tribunal an application was filed along with documents to substantiate the said claim. After arguments were addressed on the said application, being convinced there is no merit in the said contention, the assessee has withdrawn the application. Therefore, the Appellate Tribunal was justified in holding that there is no material placed on record by the assessee to show any value additions at Delhi before sale of the rail cars to DMRC and on the contrary the letter issued by the railway authorities clearly indicates that these goods left BEML which was a finished product in all respects and in that condition it was transported from Bangalore to Delhi. Therefore, the question of giving deduction as sought by the assessee would not arise in the facts and circumstances of the case. He also contended that sections 3, 4, 5 of the CST Act are independent and exclusive by themselves. None of those provisions is dependent on each other. Therefore, section 5(2) has no application in so far as payment of tax under the CST Act is concerned. Section 5(2) read with article 286(1) of the Constitution imposes a ban on the States to impose sales tax under their local laws in respect of goods which are either exported or imported in pursuance to a contract of sale. In the instant case no tax is imposed under the Karnataka Sales Tax Act on import of these goods. If the said goods had not left the State of Karnataka, the CST Act would not have been applicable. Because the material which was imported was used in the manufacture of these rail cars and it is the finished product which is the subject-matter of the agreement moved from Bangalore to Delhi, the provisions of section 3(a) read with section 6 is attracted and the levy of tax is legal and valid and do not call for any interference. Therefore, he submits there is no merit in these revision petitions.

13. In the light of the aforesaid facts and the rival contentions, the points that arise for our consideration are as under:

- (1) Whether section 3(a) read with section 6 is attracted to the transaction in question?
- (2) Whether section 5(2) of the Act exempts the assessee from payment of tax

under the said Act?

(3) Even if section 3(a) read with section 6 is held to be attracted, whether tax payable on the components which are embedded to the rail cars at Delhi is to be excluded at the time of computation of tax?

14. Before we go into the factual aspects, it is necessary to look into the relevant provisions of law, the interpretation placed by the apex court and the inferences which are to be drawn therefrom.

15. By the Constitution Sixth Amendment, articles 269 and 286 were amended. Sub-section (3) was substituted in article 269 which underwent further amendment consequent to Sixth Amendment to the Constitution. It reads as under:

(3) Parliament may by law formulate principles for determining when a sale or purchase of, or consignment of, goods takes place in the course of inter-State trade or commerce.

16. Similarly, sub-section (2) was substituted to article 286. It reads as under:

(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).

17. Consequently, entry 92A was included in List I and consequent to the same entry 54 was amended by way of substitution in List II of Schedule VII. Entry 92A, List I, Schedule VII reads as under;

92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.

18. Entry 54, List II, Schedule VII reads as under:

54. Taxes on the sale or purchase of goods other than news-papers, subject to the provisions of entry 92A of List I.

19. It in pursuance of these amendments to the Constitution which came into effect from September 11, 1956, the Central Sales Tax Act, 1956 was enacted. The statement of objects and reasons reads as under:

The Statement of objects and reasons

In the interest of the national economy of India certain amendments were undertaken in the Constitution by the Constitution (Sixth Amendment) Act, 1956, whereby--

(a) taxes on sales or purchases of goods in the course of inter-State trade or commerce were brought expressly within the purview of the legislative jurisdiction of Parliament;

(b) restrictions could be imposed on the powers of State Legislatures with respect to the levy of taxes on the sale or purchase of goods within the State

where the goods are of special importance in inter-State trade or commerce.

The amendment at the same time-authorised Parliament to formulate principles for determining when a sale or purchase takes; place in the course of inter-State trade, or, commerce or in, the course of export or import or outside a State in order that the legislative spheres of Parliament and the State Legislatures become, clearly demarcated. In the case of goods of special importance in, inter-State, trade or commerce, a law of Parliament is to lay down the restrictions and conditions subject to which any State law may regulate the tax on sales or purchases of such goods in the State.

2. This Bill seeks to provide for the legislation authorised by the Constitution as amended above with a view to, enabling the State Governments to raise additional revenues by levying tax on inter-State transactions, which are at present immune from tax under their respective sales tax laws. After taking into account the recommendations of the taxation enquiry commission and in consultation with the States the Government of India were of the view that the following principles should govern the scheme of the detailed legislation on the three inter-related subjects:--

(i) The Central Government should authorise the State Governments to impose on behalf of the Central Government tax on the sale or purchase of goods in the course of inter-State trade or commerce. The Central legislation should also delegate to the States the Central Government's power to levy and collect the tax and for this purpose prescribe the same system of registration, assessment, etc., as prevails in the States concerned under their own sales tax system.

(ii) An important aspect of the Central legislation will be concerned with the definition of the locale of sales for the purpose of defining in detail the relative jurisdiction, firstly of the Union and the States, and secondly, of the States inter se. It is therefore, necessary that the law should define clearly, with specific reference to sales tax the circumstances in which a sale or purchase becomes taxable by a particular State and no other, it should also define for the purpose of the Constitutional restrictions on the State's power to impose a tax under item 54 of the State List, when a sale or purchase of goods may be said to take place;--

(a) in the course of export out of India;

(b) in the course of import into India; and

(c) in the course of inter-State trade or commerce.

(iii) The Central legislation should provide for the declaration of certain commodities which are in the nature of raw materials and of special importance in inter-State trade or commerce and lay down the restrictions and conditions as to the rate, system of levy and other incidents of tax subject to which the States may impose tax on the sale or purchase thereof.

3. Necessary provisions have, therefore, been made in the different chapters of this bill incorporating the principles stated above.

20. Chapter II of the Central Sales Tax Act, 1956, formulates the principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside State or in the course of import or export. Section 3 deals with when is a sale or purchase of goods said to take place in the course of inter-State trade or commerce. It reads as under:

3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.--A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase--

(a) occasions the movement of goods from one State to another;

or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation 1.--Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2.--Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

21. Section 6 is the charging section which finds a place in -Chapter III. During the relevant periods it reads as under:

6. Liability to tax on inter-State sales.--(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of subsection (3) of section 5, is a sale in the course of export of those goods out of the territory of India.

(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods,--

(a) to the Government, or

(b) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,--

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made--

(i) to a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8, or

(ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of sub-section (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,--

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State, exempt from tax generally or is subject to tax generally at a rate which is lower than four percent (whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (a) or clause (b) of this sub-section.

(3) Notwithstanding anything contained in this Act, if--

(a) any official or personnel of--

(i) any foreign diplomatic mission or consulate in India; or (if) the united nations or any other similar international body,

entitled to privileges under any convention to which India is a party or under any

law for the time being in force; or

(b) any consular or diplomatic agent of any mission, the United Nations or other body referred to in sub-clause (i) or sub-clause (ii) of clause (a),

purchase any goods for himself or for the purposes of such mission. United Nations or other body, then, the Central Government may by notification in the Official Gazette, exempt, subject to such conditions as may be specified in the notification, the tax payable on the sale of such goods under this Act.

22. Section 9 provides for levy and collection of tax and penalty. During the relevant period it read as under:

9. Levy and collection of tax and penalties.--(1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced:

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods and being also a sale which does not fall within sub-section (2) of section 6, the tax shall be levied and collected--

(a) where such subsequent sale has been effected by a registered dealer, in the State from which the registered dealer obtained or, as the case may be, could have obtained, the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods; and

(b) where such subsequent sale has been effected by an unregistered dealer, in the State from which such subsequent sale has been effected.

(2) Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of

offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section.

(2A) All the provisions relating to offences, interest and penalties including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions relating to matters provided for in sections 10 and 10A of the general sales tax law of each State shall, with necessary modifications, apply in relation to the assessment, reassessment, collection and the enforcement of payment of any tax required to be collected under this Act in such State or in relation to any process connected with such assessment, reassessment, collection or enforcement of payment as if the tax under this Act were a tax under such sales tax law.

(2B) If the tax payable by any dealer under this Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax and all the provisions for delayed payment of such tax and all the provisions relating to due date for payment of tax, rate of interest for delayed payment of tax and assessment and collection of interest for delayed payment of tax, of the general sales tax laws of each State, shall apply in relation to due date for payment of tax, rate of interest for delayed payment of tax, and assessment and collection of interest for delayed payment of tax under this Act in such States as if the tax and the interest payable under this Act were a tax and an interest under such sales tax law.

(3) The proceeds in any financial year of any tax, including any interest or penalty, levied and collected under this Act in any State (other than a Union Territory) on behalf of the Government of India shall be assigned to that State and shall be retained by it; and the proceeds attributable to Union Territories shall form part of the consolidated fund of India.

23. These provisions have been the subject-matter of interpretation by the apex court in *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, . The Constitution Bench of the apex court interpreting section 3(a) held as under (pages 665 and 666 in 11 STC):

...By section 3, a sale or purchase of goods is deemed to take place in the course of inter-State trade or commerce if the sale or purchase (a) occasions the movement of goods from one State to another, or (b) is effected by transfer of documents of title to the goods during their movement from one State to another. A transaction of sale is subject to tax under the Central Sales Tax Act on the completion of the sale, and a mere contract of sale is not a sale within the definition of sale in section 2(g). A sale being by the definition, transfer of property, becomes taxable u/s 3(a) if the movement of goods from one State to

another is under a covenant or incident of the contract of sale, and the property in the goods passes to the purchaser otherwise than by transfer of documents of title when the goods are in movement from one State to another. In respect of an inter-State sale, the tax is leviable only once and that indicates that the two clauses of section 3 are mutually exclusive. A sale taxable as falling within clause (a) of section 3, will be excluded from the purview of clause (b) of section 3; otherwise certain sales may be liable to tax under both the clauses and two States may, in respect of a single sale, claim to levy the tax contrary to the plain intendment of sections 6 and 9 of the Act.

24. In the case of *Oil India Ltd. Vs. The Superintendent of Taxes and Others*, [1975] 1 SCC 733, it is held as under:

(1) A sale which occasions movement of goods from one State to another is a sale in the course of inter-State trade, no matter in which State the property in the goods passes; (2) it is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement; and (3) it is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale. If the movement of goods from one State to another is the result of a covenant or an incident of the contract of sale, then the sale is an inter-State sale.

25. Following the aforesaid judgment the apex court in the case of *Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others*, explaining the meaning of the words when the sale occasions the movement of goods from one State to another has held as under (pages 461, 462 and 464 in 43 STC):

14. It is clear from these averments that goods were manufactured by respondent 1 in its factory at Faridabad, Haryana, in pursuance of specific orders received by its head office at Delhi. The contracts of sales were made at Delhi and in pursuance of those contracts, goods were manufactured at Faridabad according to specifications mentioned in the contracts. This, therefore, is not that type of case in which goods are manufactured in the general course of business for being sold as and when orders are received by the manufacturer for their purchase. Contracts of sales were finalised in the instant case at Delhi and specific goods were manufactured at Faridabad in pursuance of those contracts. Those were "future goods" within the meaning of section 2(6) of the Sale of Goods Act, 1930. After the goods were manufactured to agreed specifications, they were despatched to the head office at Delhi for being forwarded to the respective customers at whose instance and pursuant to the contracts with whom the goods were manufactured. The goods could as well have been despatched to the respective customers directly from the factory but they were sent in the first instance to Delhi as a matter of convenience, since there are better godown and rail facilities at Delhi as compared with Faridabad. The

despatch of the goods to Delhi was but a convenient mode of securing the performance of contracts made at Delhi. Goods conforming to agreed specifications having been manufactured at Faridabad, the contracts of sale could be performed by respondent 1 only by the movement of the goods from Faridabad with the intent on of delivering them to the purchasers. Thus, the movement of goods was occasioned from Faridabad to Delhi as a result or incident of the contracts of sale made in Delhi.

....

17. ...If a contract of sale contains a stipulation for such movement, the sale would, of course, be an inter-State sale. But it can also be an inter-State sale, even if, the contract of sale does not itself provide for the, movement of goods from one State, to another but such movement is the result of a covenant in the contract of sale or is an incident of that contract.

18. The decisions to which we have referred above show that in order that a sale may be regarded as an inter-State sale, it is immaterial whether the property in the goods passes in one State or another. The question as regards the nature of the sale, that is, whether it is an inter-State sale or an intra-State sale, does not depend upon the circumstances as to in which State the property in the goods passes. It may pass in either State and yet the sale can be an inter-State sale.

26. A Constitution Bench of the Supreme Court in *State of A.P. Vs. National Thermal Power Corporation Ltd. and Others*, explaining the meaning of the word "inter-State" held as under:

The situs of the sale or purchase is wholly immaterial as regards inter-State trade or commerce. In view of section 3 of the Central Sales Tax Act, 1956, all that has to be seen is whether the sale or purchase (a) occasions the movement of goods from one State to another; or (b) is effected by a transfer of documents of title to the goods during their movement from one State to another. If the sale or purchase satisfies any one of the two requirements it is deemed to be a sale or purchase of goods in the course of inter-State trade or commerce and, by virtue of articles 269 and 286, the sale or purchase would be beyond the competence of a State Legislature to tax without regard to the fact whether such a prohibition is spelled out by the description of a legislative entry in Seventh Schedule or not.

27. The Supreme Court in the case of *Bharat Heavy Electrical Limited etc. Vs. Union of India and Others etc.*, after referring to sections 3, 4, 5, 9, 14 and 15 and also the different aspects of articles 286 and 269 held as under (pages 382 and 383 in 102 STC):

The aforesaid survey of the relevant provisions of the Act clearly shows that sections 3, 4, 5, 9(1), 14 and 15 pertain to and deal with distinct topics and different aspects of articles 286 and 269. It follows that if a question arises whether a sale is an inter-State sale or not, it has to be answered with reference

to and on the basis of section 3 and section 3 alone. Section 4, or for that matter section 5; is not relevant on the said question.... Similarly, where the question arises, in which State is the tax leviable, one must look to and apply the test in section 9(1); no other provision is relevant on this question.

28. The court had an occasion to consider these provisions in the case of NCR Corporation India Pvt. Ltd. Vs. The Deputy Commissioner of Commerical Taxes (Intelligence), where it is held as under (page 381 in 22 VST):

16. The aforesaid section states, when a sale takes place in the course of inter-State trade or commerce. It contains a deeming provision. A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase has occasioned the movement of the goods from one State to another or is effected by a transfer of documents of title to the goods during the movement from one State to another. The essence of an inter-State sale or purchase is the movement of goods from one State to another. If the movement of goods from one State to another is a result of a covenant or an incident of the contract of sale, then the sale is an inter-State sale, no matter in which State the property in the goods passes. A sale which occasions movement of goods from one State to another is a sale in the course of inter-State trade. The inter-State movement must be the result of a covenant express or implied in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of or incidental to the contract of sale. When the movement of goods from one State to another is an incident of the contract, it is a sale in the course of inter-State sale. What is decisive is whether the sale is one which occasions the movement of goods from one State to another.

29. From the aforesaid judgments it is clear that, the essence of an inter-State sale or purchase is the movement of goods from one State to another. If the movement of goods from one State to another is a result of a covenant or an incident of the contract of sale, then the sale is an inter-State sale, no matter in which State the property in the goods passes. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of or incidental to the contract of sale. Therefore only when sale or purchase of goods occasions movement of goods from one State to another, the liability to pay tax under the Act is attracted.

30. A transaction of sale is subject to tax under the Central Sales Tax Act on the

completion of the sale and a mere contract of sale is not a sale within the definition of sale in section 2(g). A sale being by the definition, transfer of property, becomes taxable u/s 3(a) if the movement of goods from one State to another is under a covenant or incident of the contract of sale, and the property in the goods passes to the purchaser. If a contract of a sale contains a stipulation for such" movement, the sale would, of course, be an inter-State sale. But it can also be an inter-State sale, even if, the contract of sale does not itself provide for the movement of goods from one State to another but such movement is the result of a covenant in the contract of sale or is an incident of that contract. The question as regards the nature of the sale, that is, whether it is an inter-State sale or an intra-State sale, does not depend upon the circumstances as to in which State the property in the goods passes. It may pass in either State and yet the sale can be an inter-State sale. The situs, of the sale or purchase is wholly immaterial as regards inter-State trade or commerce. In view of section 3 of the Central Sales Tax Act, 1956, all that has to be seen is whether the sale or purchase (a) occasions the movement of goods from the State to another; If the sale or purchase satisfies any one of the two requirements it is deemed to be a sale or purchase of goods in the course of inter-State trade or commerce and, by virtue of articles. 269 and 286, the sale or purchase would be beyond the competence of a State Legislature to tax without regard to the fact whether such a prohibition is spelled out by the description of a, legislative entry in the Seventh Schedule or not. In, respect of an inter-State sale, the tax is leviable only, once, and that indicates, that the two clauses of section 3 are mutually exclusive.

31. Section 6 is the charging section under the Act. The liability to pay tax under the Act on sale of goods other than the electrical energy, effected by a dealer arises in the case of inter-State trade or commerce. Once there is movement of goods from one State to another in pursuance of a contract of sale, then section 6 of the Act is attracted and sales tax under the Act is leviable on such sales, Proviso to section 6 makes, it clear that a dealer shall not be liable to pay tax under this Act on any sale of goods which in accordance with the conditions of sub-section (3), of section 5, it is a sale in the course of export, of those goods other than the territory of India. In other words, if a dealer is exporting the goods within the territory of India. Section 6 is not attracted Export from India, within the territory of India, is not treated as an interstate trade or commerce. Significantly, similar provision is not found in respect of goods which are imported into the territory of India. Sub-section (2) of section 5 which deals with imports, provides for sale or purchase of goods which shall be deemed to have taken place in the course of import of goods into the territory of India, only if sale or purchase has occasioned such import or is effected, by transfer of documents of title to the goods before the goods crossed the custom frontier of India. In other words, if an agreement of sale occasions the movement of goods into the territory of India from outside the territory, still the liability to tax under the Act is not attracted, because the liability to pay tax under the Act arises only

if an agreement of sale occasions movement of goods from one State to another. For sales in the course of import, three essentials would obviously be required to be met before the sale can, be said to be in the course of import, (i) there must be a sale; (ii) the goods must actually be imported; and (iii) the sale must be part and parcel of the import. In the course of import, if goods are imported from outside the country into the country, when the goods move from outside the country into the country it is not a movement of the goods from one State to another State. Therefore, the provisions of the Act are not attracted even in respect of such transactions.

32. Sections 3, 4, 5, 9(1), 14 and 15 pertain to and deal with distinct topics and different aspects of articles 286 and 269. It follows that if a question arises whether a sale is an inter-State sale or not, it has to be answered with reference to and on the basis of section 3 and section 3 alone. Section 4, or for that matter 5, is not relevant on the said question. Where the question arises, in which State is the tax leviable, one must look to apply the test in section 9(1); no other provision is relevant on this question.

33. On a proper understanding of these provisions as set out above it is necessary to know the intent of article 286 of the Constitution of India, which reads thus:

(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where 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.

34. The Constitutional provision and the effect of it is reflected in the provisions of the Central sales tax in the form of sections 4 and 5. The object is to prevent the State from taxing the goods which is sold or purchased outside the State. Similarly, to prevent the State from imposing tax on sale or purchase in the course of import or export under article 286. Prior to the sixth amendment only clause (2) was introduced in article 286 read with entry 92A of List I of the Seventh Schedule. The Parliament enacted the Act imposing tax on sale or purchase of goods in the course of inter-State trade or commerce, if the sale or purchase occasions movement of goods from one State to another. Therefore, in the charging section u/s 6 the tax liability is attracted to only in case of inter-State trade. Section 6 is not attracted to intra-State sale nor sales outside the State nor for exports and imports. Under the scheme of the Act and the object with which it is enacted it cannot be inferred that no tax liability under the Act is attracted to goods which are imported. If the goods are imported into the State, as there is no movement of the goods from one State to another, such sale did not satisfy the requirement of section 3 and consequent there is no liability to pay tax u/s 6. If after such import, the goods are sold or purported to be sold in a State in which it imported such goods do not attract sales tax either under the

local law or under the Act. The imposition of tax by the State is prohibited by article 286 read with section 5(2) of the CST Act. No tax is payable under the Act because the requirement of section 6 is not complied with. But if after materials are imported into the State and the said materials are consumed and a new product is manufactured and that manufactured goods cross the borders of the State in pursuance of an agreement of sale then section 3 is attracted. In other words, if in pursuance of a contract of sale, after manufacturing the goods, it occasions movement of such manufactured goods from one State to another State, section 6 is attracted. It is immaterial where the sale actually takes place.

35. The Constitution Bench of the Supreme Court in the case of Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, held as under (page 541 in 25 STC):

...The phrase "sale in the course of export" comprises in itself three essentials: (i) that there must be a sale: (ii) that goods must actually be exported, and (iii) the sale must be a part and parcel of the export. Therefore either the sale must take place when the goods are already in the process of being exported which is established by their having already crossed the customs frontiers, or the sale must occasion the export. The word "occasion" is used as a verb and means "to cause" or "to be immediate cause of. Read in this way the sale which is to be regarded as exempt is a sale which causes the export to take place or is the immediate cause of the export. The export results from the sale and is bound up with it. The word "course" in the expression "in the course of means "progress or process of, or shortly "during". The phrase expanded with this meaning reads "in the progress or process of export" or "during export". Therefore the export from India to a foreign destination must be established and the sale must be a link in the same export for which the sale is held. To establish export a person exporting and a person importing are necessary elements and the course of export is between them. Introduction of a third party dealing independently with the seller on the one hand and with the importer on the other breaks the link between the two, for then there are two sales one to the intermediary and the other to the importer. The first sale is not in the course of export for the export begins from the intermediary and ends with the importer.

36. Yet another Constitution Bench of the apex court in the case of The State of Bihar and Another Vs. Tata Engineering and Locomotive Co. Ltd., dealing with the sales tax in the case of inter-State trade or commerce at para 14 held as under (page 149 in 27 STC):

The decided cases establish that sales will be considered as sales in the course of export or import or sales in the course of inter-State trade and commerce under the following circumstances:

- (1) When goods which are in export or import stream are sold;
- (2) When the contracts of sale or law under which goods are sold require those goods to be exported or imported to a foreign country or from a foreign country

as the case may be or are required to be transported to a State other than the State in which the delivery of goods takes place, and

(3) Where as a necessary incidence of the contract of sale goods sold are required to be exported or imported or transported out of the State in which the delivery of goods takes place.

37. In the case of K. Gopinathan Nair and etc. Vs. State of Kerala, the apex court has adverted to the Constitution Bench judgment in the case of Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, and the principles laid down in the said case have been applied in respect of the parameters envisaged in section 5(2) of the Act. The apex court has held thus (pages 590 and 591 in 105 STC):

...The third Constitution Bench judgment is found in the case of Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, In that case the Coffee Board had sold coffee at the export auctions with a view that the coffee may get exported through these auction purchasers to outside countries. It was the contention of the Coffee Board that these sales were in the course of export of coffee out of the territory of India since the sales themselves occasioned the export of coffee and coffee so sold was not intended for use in India or for sale in Indian markets. This contention canvassed in the writ petition under article 32 of the Constitution by the Coffee Board was rejected by the majority of the Constitution Bench speaking through Hidayatullah, C.J. It was held that the petitioners cannot claim exemption from tax. The phrase "sale in the course of export" comprises in itself three essentials: (i) that there must be a sale; (ii) that goods must actually be exported; and (iii) that the sale must be a part and parcel of the export. Therefore, either the sale must take place when the goods are already in the process of being exported which is established by their having already crossed the customs frontiers, or the sale must occasion the export. The phrase expanded with this meaning reads "in the progress or process of export", "or during export". Therefore the export from India to a foreign destination must be established and the sale must be a link in the same export for which the sale is held. The tests are that there must be a single sale which itself causes the export or is in progress or process of export. There is no room for two or more sales in the course of export. The only sale which can be said to cause the export is the sale which itself results in the movement of the goods from the exporter to the importer. Sale must be an integral part of the precise export before it can be said to have occasioned that particular export. Applying the aforesaid test laid down by majority in that decision to "sales in the course of import" three essentials would obviously be required to be met before the sale can be said to be in the course of import, (i) there must be a sale; (ii) the goods must actually be imported; and (iii) the sale must be part and parcel of the import. Consequently it must be shown by the appellants that the sale by CCI to the local users of imported raw cashew nuts had occasioned the import and such a sale was a part and parcel of the import. If there are two independent sales, one

by a foreign exporter to CCI and second sale by CCI to the local users, the link between the import of raw cashew nuts and their actual delivery to their actual users would be broken. The integrated course of import would then be found wanting....

38. Thus, it can be noticed that three essential conditions for a sale to be in the course of import within the meaning of section 5(2) of the Act are required to be met before the sale can be said to be in the course of import. Thereafter, at paragraph 12, the Supreme Court has summed up the legal position as under (page 599 in 105 STC):

12. In the light of the aforesaid settled legal position emerging from the Constitution Bench decisions of this court the following propositions clearly get projected for deciding whether the concerned sale or purchase of goods can be deemed to take place in the course of import as laid down by section 5(2) of the Central Sales Tax Act, 1956:

- (1) The sale or the purchase, as the case may be, must actually take place.
- (2) Such sale or purchase in India must itself occasion such import, and not vice versa, i.e., import should not occasion such sale.
- (3) The goods must have entered the import stream when they are subjected to sale or purchase.
- (4) The import of the concerned goods must be effected as a direct result of the concerned sale or purchase transaction.
- (5) The course of import can be taken to have continued till the imported goods reach the local users only if the import has commenced through the agreement between foreign exporter and an intermediary who does not act on his own in the transaction with the foreign exporter and who in his turn does not sell as principal the imported goods to the local users.
- (6) There must be either a single sale which itself causes the import or is in the progress or process of import or though there may appear to be two sale transactions they are so integrally interconnected that they almost "resemble one transaction so that the movement of goods from a foreign country to India can be ascribed to such a composite well integrated transaction consisting of two transactions dovetailing into each other.
- (7) A sale or purchase can be treated to be in the course of import if there is a direct privity of contract between the Indian importer and the foreign exporter and the intermediary through which such import is effected merely acts as an agent or a contractor for and on behalf of Indian importer.
- (8) The transaction in substance must be such that the canalising agency or the intermediary agency through which the imports are effected into India so as to reach the ultimate local user appears only as a mere name lender through whom it is the local importer-cum-local user who masquerades.

39. In the light of the admitted facts, the question for consideration is, is it a inter-State sale attracting Central sales tax or is it a intra-State sale attracting sales tax under the Delhi Sales Tax Act? It was contended that the rolling stock could be said to be suitable only after the issue of the fitness certificate by the consortium. Admittedly after the issue of fitness certificate, the goods are not moved from one State to another. Therefore there is no liability to pay Central sales tax. In the alternative it was contended that admittedly M/s. Rotem India, a member of the consortium imported goods from Korea in SKP/CKD conditions u/s 5(2) of the Act. No sales tax is payable under the Act and therefore it was submitted that in either way the sales tax under the Act is not payable.

40. Under the RSI contract, 15 trains sets were to be manufactured in Korea and supplied to DMRC on high sea sale basis. In respect of these 15 train sets are concerned section 5(2) is attracted and therefore no liability under the tax is attracted. In respect of the remaining 45 trains are concerned, the contract is for supply of the train sets after they are manufactured indigenously in India. For manufacturing them indigenously in India, the assessee, i.e., MRM consortium did not import any goods for manufacturing the same. It is the members of the consortium, namely, M/s. Mitsubishi Corporation procured propulsion system from Japan and yet another member Rotem India procured the parts from Korea. Then those imported parts were entrusted to BEML at Bangalore. BEML at Bangalore after fabrication and manufacturing despatched the same to Delhi. RSI contract is entered into between M. R. M. Consortium and DMRCL. There was no privity of contract between the DMRCL and the firm at Japan, as well as the firm at Korea to supply those materials.. After these materials were procured by the members of the consortium and not the consortium they were delivered to BEML. These cars were assembled/fabricated/manufactured. That is what is agreed to under the agreement. That is manufactured indigenously In India. The said fabrication and manufacturing was done under the supervision of the engineers from DMRCL according to their specifications. After these trains were manufactured they were tested at DMRCL. Thereafter the cars are inspected by inspector of DMRCL, who issues an inspection certificate. It is after the issue of inspection certificate BEML raises an invoice for labour charges in the name of M/ s. Rotem, New Delhi. That activity which is carried on in BEML constitutes manufacturing activity and on the said manufactured goods Central excise duty is attracted. Keeping in view the exemption granted by the Union Government, no Central excise duty is paid. It is thereafter M/s. Rotem India, arranges for dispatch of these car body structures to Delhi, it was by locomotive provided by Indian Railways on hire basis and the hire charges are borne by Rotem. The Indian Railway has given despatch advise issued by BEML dated August 31, 2004 is produced at annexure P16B at page 408. The description is as under:

1. Completely built metro corridor train sets Nos. 2, 3 and 4. (One completely built metro corridor train set consists of 2 DT cars and 2 M cars).

41. The certificate issued by the railway is at annexure P19 which reads as under:

M/s. BMEL, Bangalore, is assembling 180 Nos. of coaches in association with M/s. Rotem, Korea, for Delhi Metro Rail Corporation (DMRC). Each self-propelled bi-directional unit consists of four cars. One Driving Trailer Car (DTC). Two Motor Cars (MC) and one Driving Trailer Car (DTC). These coaches are proposed to be moved in 1, 2, 3 or 4 unit configuration. These coaches are jitted with Schaku coupler, electro pneumatic brake system and boister-loss boggles having air suspension at secondary stage and rubber pad suspension at primary stage. These 180 Nos. empty DMRC coaches are to be moved on their own wheels with their panto in locked down condition on Indian Railway System. These coaches have been designed and manufactured by M/s. Rotem, Korea. The design features and layout of DTC and MC coaches are as shown in RDSO drawing Nos. SK--K2038 and SK-2039, respectively. DMRC coaches having air suspension inflated and brake system isolated are to be hauled by IR locomotive in a special rake formation. Axle load of DTC and MC coaches under tare condition is. 10.35 and 10.5 t, respectively. Similar such 60 coaches were moved from Kolkata Port to Delhi Shahadara in 2002.

2.0 In order to commission, these coaches in Delhi Metro Rail System, the coaches are required to be moved from M/s. BEML, Bangalore to Delhi-Shahadara via Raichur-Secunderabad-Nagpur-Bhopal-Jhansi. It is certified considering the design features, that DMRC coaches are safe for movement on Indian Railway System in unbraked, empty condition, as a trailing load, at a maximum speed of 30 km/h in a special rake formation from M/s, BEML, Bangalore to Delhi-Shahadara via Raichur-Secunderabad-Nagpur-Bhopal-Jhansi, subject to the following conditions.

42. As is clear from the aforesaid letter of the railways para 2.3 deals with rolling stock and 2.3.1 makes it explicitly clear that before initiating the movement of DMRC coaches CME of the railway will certify the track worthiness and safety of the rolling stock. The coaches should move preferably with air springs inflated.

43. The said letter clearly demonstrates that the coaches have been desisted by M/s. Rotem Korea and manufactured by BEML, Bangalore. These 180 numbers empty DMRC coaches are to be moved on their own wheels with Panto in locked down condition on Indian Railway System, in order to commission these coaches in Delhi Metro Rail System, it is certified considering the design features, that DMRC coaches are safe for movement on Indian Railways Systems in unbraked, empty condition, as a trailing load, at a maximum speed of 30 km/h in a special rake formation from M/s. BEML, Bangalore to Delhi-Shahadara via Raichur-Secunderabad-Nagpur-Bhopal-Jhansi.

44. In spite of these admitted facts, it was contended that it is only after incorporation of electronic and telecommunication item into these coaches it could be said that the goods reached the deliverable state. After such state, there was no movement of the goods from one city to another and therefore, there was no liability to pay sales tax under the Act. The Tribunal has considered the said contention elaborately in paragraphs 30 and 31 of its order. In para 30,

it has observed as under:

The dominant objective of the composite contract entered between the consortium and the DMRC is only for the supply of train sets as the other works like King of track civil works, providing of telecommunication and signaling system, etc., are awarded to other contractors and thereby though it is a composite contract involving supply of train sets along with services but it can be said that the said contract is predominantly for supply of train sets as the services involved in completing the contract are incidental in nature. The services involving prior to the manufacturing of completed train sets as BEML like design, manufacture, supply, testing, etc., are essential in making of the train sets and therefore such services are integrated with the work involved in making of the trains and thereby the value of the services merges with the value of the train sets. This aspect is evident by the Central excise involves raised by the BEML at the time of dispatch of the train sets to Delhi. Further; the various services like testing, interfacing, commissioning, etc., employed at Delhi before the delivery of the trains sets to DMRC are in the nature of post manufacturing activity and therefore they are incidental to the main objective of supply of train sets to the DMRC. Without testing and interfacing the passenger rolling stocks on its track which is provided by the DMRC at Delhi it would not be ensured that the project is free from defects and the safety of the commuters is ensured and therefore such services are though essential but can be regarded as incidental to the main contract, i.e., for supply of train sets. Therefore, the RSI contract though it appears to be a composite contract but it is contract for supply of goods as dominant objective of the contract is for supply of passenger rolling stock.

45. In paragraph 31, it has observed as under:

These inspection reports do not reveal that the substantial portion of the work is yet to be attended at Delhi in order to say that the completed train sets as per the specification of RSI contract would come into existence only in Delhi. The minor works to be attended at Delhi on these train sets are in the nature of incidental work to be attendee to the satisfaction of the DMRC authorities before taking the delivery of the train sets. No material has been added to the train sets sent from Bangalore by the consortium at Delhi, on the other hand only services of qualified engineers, skilled workers and labourers are employed to cure the defects as pointed out in the inspection reports. Further, the appellant's counsel made an attempt to produce additional document like purchase invoices to demonstrate that the additional work is carried out in Delhi, by filing an application under regulation 36 of the Karnataka Appellate Tribunal Regulations, after the due deliberation he could not prove that these invoices relate to additional work and therefore at a late stage the appellant's counsel filed, a memo seeking permission of the court to withdraw the said application. This course of action of the appellant's counsel clearly indicate that nothing has been added to the train sets at Delhi, which means the train sets prepared by the BEML are complete train sets, In view of these facts, we are thoroughly

convinced that the train sets which got manufactured in the State of Karnataka and sent to Delhi are finished train sets as per specification of the RSI contract and nothing is added at Delhi, on the other hand whatever that has been attended at Delhi is in the nature of curing the defects and making the train in the presentable form.

46. Therefore from the aforesaid facts which are not shown to be wrong, if the goods are manufactured and transported to another State merely because before delivery of the goods in terms of the contract some additional fixture were embedded to that manufactured goods, it would not nullify the effect of the goods being transported after it is being manufactured from one State to another. The effect of an inter-State sale is not effaced by such additions to manufactured product. This court in its revisional jurisdiction cannot interfere with the finding of fact recorded by the appellate authority based on legal evidence. Therefore the contention that what is transported from Bangalore to Delhi was only a part of the rolling stock and it was not a finished product has no substance, In a contract of this nature, what is to be seen is, what is the dominant nature. If the contract is looked into from that angle, it is very clear that after importing material from Korea, after getting locomotive part from Kolkata, Chennai and Coimbatore, at BEML, these rail coaches were assembled, fabricated, manufactured, tested and only after they found road worthy, they were despatched from Bangalore to Delhi on rails. Therefore the goods agreed to be sold under the contract of sale were moved from Bangalore to Delhi in terms of the agreement of sale and sold at Delhi. Therefore all the ingredients which have to be satisfied to attract the liability of tax u/s 6 are fulfilled in this case.

47. Therefore, it is clear what is transported from BEML to DMRC is rolling stock. Clause (1) of the agreement between DMRC and MRM is manufacture, supply and commissioning of passenger rolling stock of contract RSI of the mass rapid transport system. It is in pursuance of the said contract, the passenger rolling stock, the goods agreed upon to be sold, moved from Bangalore to Delhi. In other words, the contract entered into between the parties occasioned the movement of goods from Bangalore to Delhi and therefore section 3 of the Act is attracted. It is this inter-State movement of the goods which attracts payment of tax u/s 6 of the Act. Though the parts which are used in the manufacture of rolling stock is imported from Korea to Bangalore, the said parts or goods was not appropriated or sold in State of Karnataka. On the contrary it is used in the fabrication and manufacture of passenger rolling stock. It is after manufacturing the said goods they were transferred to Delhi for being sold to DMRC. Therefore, though the sale has taken place at Delhi, as the agreement of sale occasioned the movement of goods from Bangalore to Delhi, it is an inter-State sale as defined u/s 3 of the Act and consequently section 6 is attracted. Therefore, the contention that what is transported from Bangalore to Delhi is only a part of the rolling stock, it is not a finished product, it was not a deliverable state and had attained deliverable state only after it reached Delhi where additional fixtures were embedded to the rolling stock in the facts of the case has no substance.

Therefore, the authorities were justified in holding that it is a case of inter-State sale and therefore, the assessee is liable to pay tax under the Act. It is also on record the Government of India has granted exemption from payment of customs duty, payment of excise duty and even the State of Delhi subsequently has exempted the assessee from payment of sales tax. Therefore, at no point of time these goods have suffered tax under any of the provisions of the Act and therefore, the question of the very same goods suffering tax over and again as contended by the assessee is without any substance.

48. In so far as the Government which is competent to levy tax is concerned, section 9 is very clear. Sub-section (1) of section 9 makes it clear the tax under the Act shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2) in the State from which the movement of the goods commence. The passenger rolling stock, were fabricated and manufactured by BEML at Bangalore. The movement of goods started from Bangalore to Delhi for being delivered to DMRC at Delhi. Therefore the State from which movement of goods commence, namely, State of Karnataka is the authority to levy tax under the Act and therefore the tax which is now levied is levied properly by a State which has authority to levy tax as contemplated u/s 9 of the Act.

49. The learned counsel for the appellant also submitted that in an earlier proceedings between Rotem India v. Karnataka State Sales Tax Authorities, the Tribunal has categorically held that Act is not attracted. Therefore the said order having not been challenged by the State, it has attained finality and therefore the said finding operates as res judicata in this proceedings, which has not been taken into consideration by the Tribunal. The order passed by the Karnataka Appellate Tribunal in STA 551/05 on January 17, 2006 is produced as annexure K. It discloses that goods vehicle bearing No. BR 386-8082 was called at Shiradon Check-post on June 5, 2004 at 11:35 a.m. the person in-charge of the goods vehicle had tendered L.R. issued by M/s. Mahalakshmi Logistics (P) Ltd., along with pro forma invoice issued by KNORR BREMSE INDIA (P) LTD., Haryana, in support of goods carried in the goods vehicle. On verification of the same, the COP found that the goods were consigned to M/s. Rotem Company, Bangalore, Site office at BEML, Bangalore. The CPO observed that the pro forma bill did not contain the registration number under the KST Act/CST Act of the consignee. Therefore, the CPO had issued a G. C. endorsement to confirm the existence of the consignee. Rejecting the reply furnished to the G. C. endorsement the CPO has issued a show-cause notice proposing a penalty of Rs. 10,85,565. The reply filed by M/s. Rotem to the show-cause notice was also rejected and the order imposing penalty as proposed was passed. Appeal filed against the said order came to be dismissed. In second appeal, the "tribunal held that M/s. Rotem is not a dealer under the provisions of the Karnataka Sales Tax Act, 1957 and is not liable for registration. The goods have moved from Faridabad to BEML on behalf of M/s. Rotem for execution of works contract, i.e., for assembly and manufacture of 180 EMUS and 2 prototype cars at BEML's works, Bangalore. The

CPO is totally in error in proceeding to invoke the provision of section 28A of the Act. Section 28A(2) of the Act applies to dealers and do not apply to persons other than dealers. It is established that the goods in question were moving to Bangalore for delivery to BEML by M/s. Rotem pursuant to a job-work agreement. "The provisions of section 28A of the Act do not apply to the transaction of the assessee. The CPO has misconstrued the assessee's works site at BEML's work as place of business of M/s. Rotem India. He has failed to appreciate that the job-work carried by BEML on behalf of the appellant is highly technical in nature, the presence of the M/s. Rotem's technical personnel are required to be present in BEML's work place. The said place cannot be treated as a place of business. On completion of job-work by the BEML, the goods that is property in trains have moved to the site of DMRC where testing and commissioning of the trains as an integral part of the overall arrangement to design and construct a rail based on Mass Rapid Transport System has taken place. Without conducting all integrated testing installation and commissioning, the sale will not fructify. Till such time, the property in the trains vests with M/s. Rotem India. This is clearly envisaged in clause 2 of the agreement which the assessee has entered with DMRC. Thus, it is clear that there is no sale either in Karnataka or in the course of inter-State trade or commerce. In the circumstances, the order imposing penalty u/s 28A(4) of the Act was held as illegal and unsustainable in law. As there was no sale either in Karnataka or in the course of inter-State trade or commerce, it is contended that the said finding having attained finality, operates as res judicata.

50. In the first place, while dealing with the case filed under the KST Act, 1957, the Tribunal had no jurisdiction to go into the provisions of law governing the Act. That was not the subject-matter of the appeal. Secondly, that was a matter between M/s. Rotem Company and the State of Karnataka. Whereas, in the instant case, the assessee is a consortium and the question is, whether the assessee is liable to pay tax u/s 6 of the Act. The said questions were neither raised in the said appeal nor answered by the Tribunal. In that view of the matter, the said order does not operate as res judicata and therefore, we do not find any substance in the said contention.

51. It is submitted that if it is to be held that the agreement of sale occasioned movement of goods from Bangalore to Delhi the tax to be levied is on the value of the goods. After it reaches its destination at Delhi, if there are any value additions, that cannot be the subject-matter of levy of tax under the Act by the State of Karnataka u/s 9 of the Act. It was further contended that as at the point of actual sale, the Government of India had not granted exemption from payment of customs duty and excise, all of them have added to the value of the goods. Therefore, the tax levied u/s 9 is on the total value. Once Government of India granted exemption from payment of customs duty and excise duty, corresponding value of the goods is to be reduced and tax leviable u/s 6 is to be confined only to that net value of the goods which were manufactured at Bangalore and transported to Delhi. If it is so it is open to the assessee to

approach the authorities by furnishing the particulars which are relevant and if the authorities are satisfied firstly that there was value addition at Delhi and the cost of the goods includes customs duty as well as excise duty which is exempted, certainly, they would work the liability of tax payable u/s 6 in accordance with law. That would meet the ends of justice.

52. For the aforesaid reasons, we do not find any merit in these revisions. Accordingly, these revisions are dismissed. In view of the fact that revisions are dismissed on merits, the writ appeals have become infructuous. Accordingly, they are dismissed as having become infructuous.