

(2011) 04 CHH CK 0002

In the Chhattisgarh High Court

Case No : Writ Appeal No's. 367, 368, 370, 373, 374, 375, 376, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 396, 397, 402, 403, 406, 408, 409, 411, 412, 414, 415, 417, 423, 424, 425, 426, 427, 430, 431, 432, 433, 434, 435, 436, 4

Mohd Ismail Ahmed

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 1, 2(g), 3, 3(a), 9
Constitution of India, 1950 — Article 19, 19(1), 19(1)(f), 304, 304(b)
Income Tax Act, 1961 — Section 206C, 206C(1)

Citation : (2011) 45 VST 315

Hon'ble Judges : Rangnath Chandrakar, J;Dhirendra Mishra, J

Bench : Full Bench

Advocate : Kishore Bhaduri, Ravindra Shrivastava and G.N. Purohit, Anup Majumdar, Ashish Shrivastava, Naveen Prakash, Anup Jain, Harsh Wardhan, Devendra Patel, Rakesh Ranjan Agrawal, Abhishek Oswal, Anand Dadariya, Neelabh Dubey, Smt. Smiti Sharma, Pankaj Shrivastava, Parag Kotecha, Ajay Singh, Ajay Mishra, Ankit Singhal, B.D. Guru, H.S. Patel, V. Mishra and Dheeraj Kumar Wankhede, for the Appellant; A.S. Kachhawaha, Deputy Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

Dhirendra Mishra, J.—These writ appeals are being disposed of by this common judgment as the same are directed against the common order dated October 1, 2010 Reported as baba & Son's Tradelink Co. V. Sate of Chhattisgarh [2011] 45 VST 272 (Chhattisgarh) passed by the learned single judge, whereby their writ petitions for issuance of a writ of mandamus to the respondents to treat the trade in question as inter-State trade and other consequential reliefs, have been dismissed. Briefly stated, the facts of the case are that the appellants are dealers of tendu patta and registered under the Chhattisgarh Commercial Tax Act, 1994. They are also registered as exporters of tendu patta under the M.P./C.G. Tendu

Patta Niyamawali, 1966. In response to tender notice issued by the Chhattisgarh State Minor Forest Produce (Trading and Development) Co-operative Federation Ltd. (for short, "the Federation"), the appellants submitted their tender forms for purchase of tendu leaves and they were allotted forest tendu leave lots and accordingly, purchase agreements were executed under condition No. 7 of the tender notice. The appellants were also required to pay taxes under the terms of the purchase agreement and the appellants' challenge to the imposition of taxes under the terms of the purchase agreement has been dismissed by the learned single judge by the impugned order.

Submission on behalf of Shri Ravindra Shrivastava, senior advocate with Shri Anup Majumdar and Shri Ashish Shrivastava, advocates for the appellants in W.A. No. 367 of 2010:

2. The only question for consideration in this group of writ appeals is-- whether purchase of tendu leaves by the appellants, who are registered exporters of tendu leaves in the State of Chhattisgarh, is inter-State or intra-State sale? There is a complete State monopoly in the trade and transport of tendu leaves in the State, which is governed under the provisions of the Chhattisgarh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 (for short, "the Adhiniyam, 1964") and the Chhattisgarh Tendu Patta (Vyapar Viniyaman) Niyamawali, 1966 (for short, "Niyamawali, 1966") framed under the Adhiniyam, 1964. For the purposes of purchase and transport of tendu leaves, tender notice is published by the respondent-Federation for advance sale of tendu leaves in each season. The tender notice provides for the terms and conditions of the tender as well as standardized form of purchase agreement, which a tenderer has to execute upon acceptance of his tender. From perusal of various provisions of the Adhiniyam, 1964, Niyamawali, 1966 framed thereunder, the transport permits issued by the officers under the Niyamawali, 1966, the relevant clauses of the tender notice and purchase agreement, it would be evident that the agreements are subject to the provisions of the Adhiniyam, 1964, the rules made thereunder, the orders and notifications issued from time to time under the said Adhiniyam and the rules and terms and conditions of the tender notice, including general/other terms and conditions of the tender and instructions for tenderer contained in annexure 1 of the tender notice, and they form part of the agreement. Clause 10 of the tender notice specifically provides that if the terms and conditions of the tender notice pertaining to delivery and sale (Parivahan/Nikasi) of this agreement are not fully complied with, it will be deemed that the purchase of leaves has not taken place. Whereas under clause 18 of the tender notice, the purchaser cannot transport tendu leaves without a valid transport permit by the competent authority, as contemplated under the Adhiniyam, 1964 and the Niyamawali, 1966.

3. A conjoint reading of sections 5(2)(b) and 11 of the Adhiniyam, 1964 makes it clear that two types of purchasers of tendu leaves are contemplated under the Adhiniyam, i.e., manufacturers of bidis within the State and exporters of tendu leaves outside the State. The appellants' case pertains to exporters of tendu

leaves, as defined in rule 2(5) of the Niyamawali, 1966. Thus, whenever tendu leaves are sold to exporters in the State, the sale is for the purposes of exporting the same outside the State.

4. Referring to sub-section (2) of section 5, it was argued that tendu leaves for sale outside the State may be transported by such person outside the unit in accordance with terms and conditions of the permit to be issued in the prescribed manner. Even the excess quantity of the tendu leaves left after export, cannot be sold without permission of the State Government or any authorized officer u/s 12(A) of the Adhiniyam, 1964.

5. Thus, from the above, it is manifestly clear that the registered exporters of tendu leaves in the State of Chhattisgarh are required to transport the goods outside the State under an obligation of the statute and contract. There is an inextricable connection between sale of tendu leaves to the registered exporters and movement thereof to outside the State; tendu leaves cannot be moved without transport permit; transport permit facilitates movement of goods from the State of Chhattisgarh to outside the State, and failure to observe the terms and conditions of the transport permit renders the whole transaction of sale incomplete, and therefore, contention of the respondents that exporter is free to transport or dispose of the tendu leaves after he purchases the same from respondent No. 2, is not tenable.

6. The very premise of the impugned order that the provisions of the Adhiniyam, 1964 and the Niyamawali, 1966 do not form parts of the agreement, i.e., contract of sale, and movement of tendu leaves are independent and separable and have no bond or link in between, is, ex facie, patently wrong and erroneous and the same is based on total disregard to and/or provisions of the Adhiniyam, 1964 and the purchaser's agreement. The observations that the sale of tendu leaves is purely an internal sale and that movement of goods is not occasioned by the sale, but takes place after property is purchased, is also erroneous.

7. The judgment in the matter of Balabhagas Hulaschand Vs. State of Orissa, had no application to the facts of the present case, as it is settled law that it is immaterial whether the completed sale precedes the movement of goods or follows the movement of goods or for that matter, takes place while the goods are in transit. What is important is that the movement of goods and the sale must be inseparably connected.

8. Reliance is placed on the decisions in the matters of Commercial of Sales Tax, Uttar Pradesh and others, Vs. M/s. Bakhtawar Lal Kailash Chand Areti and others, etc. etc., Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, and I Indian Oil Corporation Ltd. and Another Vs. Union of India (UOI) and Others,

9. Further relying upon the decision of the The State of Bihar and Another Vs. Tata Engineering and Locomotive Co. Ltd., and Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam

and Others, it was argued that when a contract of sale or law under which goods are sold requires those goods to be exported or imported, the same would be considered as sale in the course of export or import/inter-State sale.

Submissions by Shri R. R. Agrawal advocate on behalf of the appellants in W.A. Nos. 389,390, 391, 392, 393 and 605 of 2010:

10. Adopting the arguments advanced by Shri Ravindra Shrivastava, learned senior advocate, it was argued that the appellant-Shyam Bidi Works Ltd.-- is a company registered under the Companies Act, 1956 having its registered office at Allahabad. It has manufacturing unit in Bihar, Jharkhand and West Bengal, however, it has no manufacturing unit in the State of Chhattisgarh. The appellant is a registered dealer in the State of Bihar, Jharkhand, West Bengal, Uttar Pradesh and Chhattisgarh as also under the Central Sales Tax Act. The appellant was granted registration by respondent No. 3 as manufacturer and exporter of tendu leaves in the format prescribed under rule 8(2) of the Niyamawali, 1966. At the time of submitting his tender, the appellant was also required to mention its registration number with date of registration, attaching photocopy of the registration certificate. Deputy Commissioner, income tax, Allahabad, with whom the appellant is assessed, issued certificate u/s 206C of the IT Act in form 27C, directing the conservator of forest not to collect TDS u/s 206C(1) of the IT Act, in respect of goods specified in para 2 as they are for manufacture of bidis. However, the learned single judge did not consider the above aspect and the fact that the conservator of forest did not deduct tax as per order dated August 30, 2002 (annexure P/11), which clearly demonstrates that tendu leaves sold to the appellant by the respondent was exported out of Chhattisgarh. The case in hand is squarely covered by the decision of the Supreme Court in case of State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc., , and the learned single judge has wrongly distinguished it in para 118 of his judgment.

11. The appellant, as a exporter, purchased tendu leaves and transported the same to its factories in different States on the basis of TP 4 main and TP 4 subsidiary issued by DFOs in accordance with rule 4 of the Niyamawali, 1966 and thus, the sale or purchase of tendu leaves shall be deemed to have taken place in the course of inter-State trade u/s 3(a) under the Central Sales Tax Act as the sale and purchase had occasioned the movement of tendu leaves from the State of Chhattisgarh to other States Bihar, West Bengal and Jharkhand, where its manufacturing units are situated.

12. Referring to the circular dated October 10, 2001 of the Commissioner of Commercial Tax and order of the Additional Commissioner of Commercial Tax dated April 26, 2010 filed along with the supplementary affidavit dated September 16, 2010, it was argued that in the aforesaid circulars/orders, the transaction was treated as inter-State sale, notwithstanding that the delivery was given in depot, and the learned single judge has erred in holding that the aforesaid circular is not applicable to the appellant's case.

13. The question whether the sale is inter-State sale or not is to be answered with reference to and on the basis of section 3 of the Central Sales Tax Act alone, as held by the honourable Supreme Court in the case of A and G Projects and Technologies Ltd. Vs. State of Karnataka, especially when movement of tendu leaves is in pursuance of and incidental to contract of sale and movement of goods and sale are inseparable.

Submission by Shri Harsh Wardhan, advocate for the appellants in W.A. Nos. 373, 402 and 403 of 2010.

14. Tendu leaves, being State largess, are distributed by way of open tender in accordance with the Adhiniyam, 1964 and rules framed thereunder under the seal and authority of his excellency--the Governor of State of Chhattisgarh, as is evident from the tender notice and purchaser's agreement and as such, statutory contracts. That being the case, the provisions of the Adhiniyam and the rules framed thereunder, do form part and parcel of the contract. Even otherwise from perusal of the general terms and conditions of the tender and instructions for tenderers, forming part of tender notice, i.e., annexures I, II and III, it is clear that they have unambiguously and specifically incorporated the provisions of the Adhiniyam and rules framed thereunder by way of reference.

15. Clause (2) of the purchaser's agreement specifically provides that the agreement shall be deemed to be subject to the provisions of the Adhiniyam, the rules made thereunder and the orders and notifications issued from time to time under the said Adhiniyam and the rules and terms and conditions of the tender notice, including general/other terms and conditions of the tender and instructions for tenderers contained in annexure I of the tender notice, all of which shall form part of the agreement. A conjoint reading of clause 6(1)(a), clause 10 and clause 18 of the purchaser's agreement along with sections 5 and 12A of the Adhiniyam and rules 2(5), 4(3) and 8 read with section 15 of the Adhiniyam, irresistibly leads to the conclusion that the ultimate movement of goods outside the State of Chhattisgarh by an exporter has an inextricable link with that of the sale of tendu leaves inside the State by the Federation to the appellant.

16. In the matters of Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, Singareni Collieries Co., Ltd. Vs. State of Andhra Pradesh and Others, , State Trading Corporation of India Ltd. Vs. State of Mysore, The Cement Marketing Co. of India Ltd. and Another Vs. The State of Mysore and Another, and The Co-operative Sugar (Chittur) Ltd. Vs. State of Tamil Nadu, the honourable Supreme Court, considering that the goods/commodities involved were commodities--iron, coal, cement and sugar--which were controlled commodities and there were regulations and restrictions on purchase and movement of these controlled commodities by the State, held the sales to be inter-State sales. In the instant case also, movement of tendu leaves is regulated by the Adhiniyam, 1964 and the Niyamawali, 1966 framed thereunder and the ratio of law laid down in these judgments is squarely applicable.

17. The High Court of M P. has not considered section 12(A) of the Adhiniyam, 1964 while deciding the issue in the matter of Maharashtra Timber Laghu Udyog Mahasangh v. State of M.P. [1985] 18 VKN 195 and in other decisions. The ratio of law declared by the Supreme Court in, State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc., is applicable to the facts of the present case.

Submission by Shri Abhishek Oswal, advocate for the appellant in W.A. No. 412 of 2010:

18. Shri Oswal, advancing similar arguments, submitted that finding of the learned single judge recorded in paras 81 and 82 of the impugned order that the Adhiniyam, 1964 and the Niyamawali, 1966 are not part of the agreement but the agreement is conditional upon compliance of the Adhiniyam and the Niyamawali, is contrary to the stipulation in clause 2 of the agreement, which provides that the Adhiniyam, 1964 and Niyamawali, 1966 are part of the agreement. The learned single judge has relied upon the decision of the Supreme Court in Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others, However, the aforesaid judgment is distinguishable on fact as in that case, tea was purchased at Cochin in auction along with the export rights and later exported, and the contract for sale did not provide for movement of goods for export. Whereas in the instant case, the provisions of the Adhiniyam, 1964 and Niyamawali, 1966, including all notifications and directions, have been made part of sale agreement and transport permits are issued for the purposes of movement of goods, and the appellants are permitted to sell the goods locally, Thus, it is clear that the movement of goods is an incidence of sale agreement and the same occasioned through contract of sale and is clearly an inter-State sale.

19. The learned single judge has, in para 107 of the impugned order, has distinguished the present case from the case of The State of Bihar and Another Vs. Tata Engineering and Locomotive Co. Ltd., on fact with an observation that facts of the aforesaid case were that the dealers were required to remove the articles purchased by them from the State of Bihar to places outside Bihar as per terms of the contract entered into by them with the State, though in the instant case also, the movement of goods occasioned under the law that is incorporated in the agreement for sale and the contract agreement and the tender conditions required the appellants to transport the goods to the destinations outside the State and they are not permitted to sell the same within the State without express permission from the authorities.

Submission by Shri Ankit Singhal, Shri Parag Kotecha and Shri Anand Dadariya, advocates for the appellants in W.A. Nos. 490, 383 and 408 of 2010, respectively:

20. That, the issue whether the sale/purchase is inter-State or intra-State sale/purchase depends upon the facts of each case. The honourable Supreme Court has already settled the principles in this regard in Commercial of Sales Tax, Uttar

Pradesh and others, Vs. M/s. Bakhtawar Lal Kailash Chand Areti and others, etc. etc., The law in this regard has been further reiterated by the Supreme Court in the recent judgment in the matters of A and G Projects and Technologies Ltd. Vs. State of Karnataka,

Submission by Shri A. S. Kachhawaha, Deputy Advocate-General for the State and Shri Kishore Bhaduri, advocate for the respondent/Federation:

21. The learned single judge has elaborately dealt with the entire procedure of sale of tendu leaves in para 36 of the impugned order by referring to the relevant clauses of the purchaser's agreement. From perusal thereof, it would be evident that tendu leaves are auctioned on "as is where it is" basis. The prospective purchasers/buyers are allowed pre-inspection of the area of forest containing tendu leaves and thereafter, tenders are called for the lots. The responsibility of plucking tendu leaves is entrusted to the primary societies under the supervisions of the purchaser or his agent and the entire cost of plucking is borne by the purchaser, including the cost of transporting the leaves from the lots to processing places. The plucked leaves are collected in bundles of 50 leaves each and one thousand bundles of such leaves becomes one unit bag. The purchasers are bound to remove the collected and purchased leaves from the lot within 24 hours to their respective godowns for processing. Processing of the leaves is also done by the purchaser through members of the primary societies and after processing, the leaves are stored in the respective godowns. The transport permits are issued by the Forest Department to the purchasers for transporting these leaves from the lots to their godowns/processing places and such transport permits are also granted for transporting the processed leaves from the places of processing to the godowns. No godown for storage is provided by the State and the purchasers pay rent to the State for hiring such facility. At the time when the goods are taken away by the purchasers after payment of the price, transport permits are provided to facilitate the purchasers to route through the forest produce through the forest areas so as to avoid registration of any forest offence or otherwise against the purchaser. Taxes, as leviable on the said tendu leaves, are recovered by the society/Federation. As sales of the tendu leaves are made at the stage when the leaves are attached to the trees, therefore, it cannot be said that the processed tendu leaves or movement thereof is a consequence of sale.

22. The entire transaction of sale of tendu leaves is to be examined in the light of clauses of the agreement, the provisions of the Adhiniyam, 1964 and the Nivamawali, 1966. From examination of the agreement, particularly clauses 4, 5, 6, 7 and 8 of the agreement, it would be evident that possession of the leaves is transferred to the purchasers immediately after the bid is finalized and thereafter, the entire process of bundling, storage and other value addition is the responsibility of the purchasers. From perusal of clauses 7 and 8 of the agreement it is clear that the purchaser can take delivery of the goods against furnishing bank guarantee for the entire purchased leaves. Clause 8 casts a duty

upon the purchaser of making payment of leviable tax, including value added tax under the Chhattisgarh Value Added Tax Adhiniyam, 2005, as amended from time to time, and to pay income tax under the income tax Act, 1961. There is no stipulation in the agreement that delivery shall be made by the State towards the destination marked by the purchaser. The stipulation in clause 10 of the agreement, which provides that if terms and conditions of the tender notice pertaining to delivery and sale (parivahan/nikasi) are not fully complied with, it will be considered that purchase of leaves has not taken place, cannot be construed in the manner that the movement of goods occasioned due to sale contract. The aforesaid stipulation in the agreement is only with a purpose to avoid illegal exploitation of forest produce and to keep an eye on the movement of goods within the forest and outside as per the Adhiniyam and the Niyamawali, and the movement of goods is not an outcome of the statutory provisions, but a requirement under the statute, which forms part of the contract. This aspect has been elaborately dealt with by the learned single judge in the impugned order from paras 83 to 91.

23. Relying upon the decisions of the Supreme Court in the matters of State of A.P. Vs. National Thermal Power Corporation Ltd. and Others, it was argued that if we apply three tests laid down in the aforesaid judgment, it would be reflected that in the contract of purchase of tendu leaves, there is no express or implied stipulation regarding inter-State movement of goods, though tendu leaves move from one State to another, but the movement is not pursuant to the contract for sale nor the sale is a cause of such movement. The sale is complete within the State and the purchased tendu leaves are moved outside the State because of their own business/trading. The appellants cannot sell tendu leaves within the State as tendu leaves is a monopoly item in the State of Chhattisgarh. The movement of tendu leaves, in the instant case, from one State to another is not a consequence of sale. The ratio of law laid down in State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc., is distinguishable on facts as in that case, the purchase agreement for tendu leaves contained a provision (3.1.8) for export of the goods, where the State is under the obligation to deliver goods to a foreign State as a consequence of sale, which is not the case here. It was also brought to the notice of this court that the ratio of law laid down by the Supreme Court in State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc., is under reconsideration of the Supreme Court in the case of "Malay Giri Sandal Wood".

24. Reliance has been placed on the decisions of the Supreme Court in the matters of Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others, and The State of M.P. and Others Vs. Chhotabhai Jethabhai Patel and Co. and Another,

25. Heard learned counsel for the parties, perused the pleadings of the respective parties and documents appended therewith as also the impugned order.

26. The short question for consideration in these appeals is--whether purchase of tendu leaves by the appellants is an inter-State sale or intra-State sale within the meaning of section 3 of the Central Sales Tax Act, 1956?

27. Section 3 of the Central Sales Tax Act, 1956 (in short, "the Act of 1956") 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.

28. In the matter of Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, interpreting "sale" as defined u/s 2(g) and inter-State trade or commerce within the meaning of section 3(a) of the Act of 1956, it has been held that "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).

29. In the matter of The Cement Marketing Co. of India Ltd. and Another Vs. The State of Mysore and Another, , the first appellant was registered as a dealer of cement under the Mysore Sales Tax Act, 1948. Cement was a controlled article and sale of cement was effected only through authorisation given to the buyers by the appropriate Government authorities. Under such authorisation, cement could be sold by the first appellant in the mentioned quantities from the factory mentioned in the supply order and cement was to be booked to the railway station indicated in the authorisation. On these facts, referring to the decision in Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, with approval, it was held by the Constitution Bench that the sale transaction was in the nature of inter-State sale and was exempt from sales tax.

30. In State Trading Corporation of India Ltd. Vs. State of Mysore, the question before the Constitution Bench of the Supreme Court was--whether sales occasioned the movement of goods from another State into Mysore within the meaning of section 2(g) and section 3(a) of the Act of 1956. Following the decision in Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, , it was held that sale occasions the movement of goods from one State to another within section 3(a) of the Act of 1956 when the movement is the result of covenant or incident of contract of sale. Considering the facts of that case that permits for purchase of cement issued to the purchaser showed that the supplies were to be made by the cement factories outside the State of Mysore, but the marketing company in the State was named as the supplier and the purchasers had to place the order with the company and make a contract with it, it was held that a sale under such a contract would clearly be an inter-

State sale.

31. In the case of Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others, , the transaction of sale sought to be taxed by the Revenue authorities are in tea, which was a controlled commodity in the State of Kerala, Trade in tea, internal as well as export, is carried on through certain defined channels in the State of Kerala. Tea could not be exported otherwise than under a licence. In this judgment it was held as under (pages 759 and 760 of 15 STC):

(8) To constitute a sale in the course of export of goods out of the territory of India, common intention of the parties to the transaction to export the goods followed by actual export of the goods to a foreign destination is necessary. But intention to export and actual exportation are not sufficient to constitute a sale in the course of export, for a sale by export "involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export form parts of a single transaction": State of Travancore-Cochin and Others Vs. The Bombay Co. Ltd., . A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted, without a breach of the contract or the compulsion arising from the nature of the transaction. In this sense to constitute a sale in the course of export it may be said that there must be an intention on the part of both the buyer and the seller to export, there must be an obligation to export, and there must be an actual export. The obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export. A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be regarded as one in the course of export, unless the sale occasions export. And to occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it. Without such a bond, a transaction of sale cannot be called a sale in the course of export of goods out of the territory of India. There are a variety of transactions in which the sale of a commodity is followed by export thereof. At one end are transactions in which there is a sale of goods in India and the purchaser immediate or remote exports the goods out of India for foreign consumption. For instance, the foreign purchaser either by himself or through his agent purchases goods within the territory of India and exports the goods and even if the seller has the knowledge that the goods are intended by the purchasers to be exported, such a transaction is not in the course of export for the seller does not export the goods, and it is not his concern as to how the purchaser deals with the goods. Such a transaction without more cannot be regarded as one in the

course of export because etymologically "in the course of export" contemplates an integral relation or bond between the sale and the export. At the other end is a transaction under a contract of sale with a foreign buyer under which the goods may under the contract be delivered by the seller to a common carrier for transporting them to the purchaser. Such a sale would indisputably be one for export, whether the contract and delivery to the common carrier are effected directly or through agents. But in between lie a variety of transactions in which the question whether the sale is one for export or is one in the course of export, i.e., it is a transaction which has occasioned the export, may have to be determined on a correct appraisal of all the facts. No single test can be laid as decisive for determining that question. Each case must depend upon its facts. But that is not to say that the distinction between transactions which may be called sales for export and sales in the course of export is not real. In general where the sale is effected by the seller, and he is not connected with the export which actually takes place, it is a sale for export. Where the export is the result of sale, the export being inextricably linked up with the sale so that the bond cannot be dissociated without a breach of the obligation arising by statute, contract or mutual understanding between the parties arising from the nature of the transaction, the sale is in the course of export.

32. In the matter of Singareni Collieries Co., Ltd. Vs. State of Andhra Pradesh and Others, , under the scheme of the Colliery Control Order, 1945, no person could acquire or purchase or agree to acquire or purchase any coal from a colliery and no colliery owner could sell or agree to sell or dispatch coal from the colliery, except under the authority and in accordance with the conditions prescribed by the Coal Commissioner, and that the person to whom coal was supplied also could not utilize it for a purpose other than the purpose for which it was supplied, nor could he dispose of coal supplied to him. Supply, use and disposal of coal were, therefore, regulated from the stage of production till consumption. The Coal Commissioner used to address letter to colliery authority authorising it to dispatch on the request of the specified consumer coal not exceeding the quantities mentioned in the schedule appended. The letter also set out the names of the concerns to whom the coal was to be supplied and acting upon such intimation, the quantity of coal allotted could be dispatched to him by train and thereafter, coals were allotted by the colliery to the railway wagons and dispatched the same by rail to the consumer at the destination requested. In these facts, it has been held that it was an inter-State sale and not liable to be taxed under the Hyderabad General Sales Tax Act, 1950.

33. In the matter of The State of Bihar and Another Vs. Tata Engineering and Locomotive Co. Ltd., , the terms of the contract of sale required the purchasers to move trucks, buses chassis and other spare parts purchased by them from the State of Bihar to places outside Bihar. They would have committed breach of their contracts and incurred the penalty prescribed in their dealership agreements, if they had failed to abide by the terms requiring them to move the goods outside the State of Bihar. On this facts, it was held that it is an inter-State

sale and on the basis of decided cases, it was held that the 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 (page 149 of 27 STC):

- (1) When goods which are in export or import stream are sold;
- (2) When the contract 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.

34. In *Balabhagas Hulaschand Vs. State of Orissa*, conditions have been enumerated which must be satisfied before a sale can be said to take place in the course of inter-State trade or commerce. In para 15, it has been held thus (pages 215 and 216 in 37 STC):

2. (15) That the following conditions must be satisfied before a sale can be said to take place in the course of inter-State trade or commerce:

- (i) that there is an agreement to sell which contains a stipulation express or implied regarding movement of goods from one State to another;
- (ii) that in pursuance of the said contract the goods in fact moved from one State to another; and
- (iii) that ultimately a concluded sale takes place in the State where goods are sent which must be different from State from which the goods move.

If these conditions are satisfied then by virtue of section 9 of the Central Sales Tax Act it is the State from which the goods move which will be competent to levy the tax under the provision of the Central Sales Tax Act. This proposition is not, and cannot, be disputed by the learned counsel for the parties.

35. In the matters of *Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others*, the respondent having its head office in the Union Territory of Delhi was carrying on business in air compressors and garage equipment which it manufactured in its factory at Faridabad within the State of Haryana. The respondent was a registered dealer for the purposes of sales tax in Union Territory of Delhi and State of Haryana. It filed returns for sales tax with the sales tax authorities in Delhi. It was served with a notice by the Sales Tax Assessing Authority at Gurgaon for the period commencing on April 1, 1961 and ending in the year 1964-65 mentioning therein that the sales made by the company were liable to assessment in Haryana. Accordingly, assessment was made by the assessing authority at Faridabad on the basis that sales effected by the company were inter-State sales liable to be assessed to sales tax under the

Act of 1956.

36. A writ petition was filed by the respondent contending therein that the authorities of both the State at Delhi and Haryana were demanding sales tax on the same sale transactions and therefore, prayed to resolve the controversy between the sales tax authorities of the two States and decide the question of jurisdiction to assess the turnover. The Delhi High Court allowed the writ petition and directed that the amount of tax, which respondent No. 1 had wrongly paid to the sales tax authorities, Delhi on the inter-State sales be transferred to the sales tax authorities at Faridabad.

37. On appeal by the Union of India, the Supreme Court, dismissing the appeal, held that the contracts of sales were finalized in the instant case at Delhi and specific goods were manufactured at Faridabad in pursuance of those contracts. The dispatch 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 the respondent only by the movement of the goods from Faridabad with the intention 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. It was further held that it is not necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of 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. In para 18, it has been held 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.

38. In *Indian Oil Corporation Ltd. and Another Vs. Union of India (UOI) and Others*, the Supreme Court considering that the source of supply is the seller's refinery at Barauni in Bihar and the destination is the buyer's factory at Kanpur through the pipeline constructed at the buyer's cost, held that the sales of naphtha in this case were inter-State sales as there was no two movements but only one movement from Barauni to Kanpur pursuant to the contracts of sale and the arrangement regarding storage facilities is only for operational convenience.

39. In *Commercial of Sales Tax, Uttar Pradesh and others, Vs. M/s. Bakhtawar Lal Kailash Chand Areti and others, etc. etc.*, it has been held that inter-State sale or purchase under clause (a) of section 3 is one which occasions the movement of goods from one State to another. The movement of goods from one State to another must be the necessary incident--the necessary consequence--of sale or purchase. It must be case of cause and effect--the cause being the sale/

purchase and the effect being the movement of the goods to another State. To fall u/s 3(a), the sale and the movement of the goods must be parts of the same transaction. A sale which occasions the movement of goods from one State to another is a sale in the course of the inter-State trade, no matter in which State the property in the goods passes. Even if the goods move in pursuance of an agreement of sale and the sale is completed in the State in which the goods are received, it will be an inter-State sale. Further, it is immaterial whether a completed sale precedes the movement of goods or follows the movement of goods, or for that matter, takes place while the goods are in transit. What is important is that the movement of goods and the sale must be inseparably connected. The question whether a sale/purchase is an inter-State sale/purchase depends on the facts of each case. The principles are well-settled; it is only a question of application of these principles to the facts found in each case.

40. In *The Co-operative Sugar (Chittur) Ltd. Vs. State of Tamil Nadu*, the appellant had its sugar factory in the State of Kerala. Due to shortage of sugarcane in that State, it obtained permission from the Government of Tamil Nadu to purchase sugarcane from a specified area in that State with a view to and exclusively for the purpose of transporting it to its factory at Kerala. Whatever was purchased was transported to the appellant's factory in Kerala. In these circumstances, it was held that this is a case where the movement of goods was occasioned by the sale by the farmers or by the purchase by the appellant and as such, an inter-State sale.

41. In *State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc.*, the respondents were registered dealers under the West Bengal Sales Tax Act, 1994 and the Act of 1956 in the State of West Bengal. They had their registered office outside the State of Orissa. They carried on business in tobacco and kendu leaves. They manufactured bidis at factories situated in West Bengal. The Orissa Forest Corporation Ltd., was a Government of Orissa undertaking. The trade in kendu leaves in Orissa was a State monopoly and, therefore, was being transacted by the Corporation. The Corporation issued tender notice for sale of processed and phal tendu leaves for the relevant year and invited scaled tenders from purchasers duly registered with it. The respondents submitted their tenders, which were duly accepted. They also entered into agreements with the Corporation. Clause 3.7 of the agreement provided that the tenderer would be bound by all Forest Department rules and regulations in connection with the purchase and transit of the forest produce. Clause 3.13 contained a requirement of and method for payment of security deposit by successful tenderers. It provided for an alternative method for tenderers making purchases for export outside India. The State of Orissa levied sales tax under the Orissa Sales Tax Act, 1947. This was challenged in the High Court. The High Court concluded that the kendu leaves could only be delivered after submission of necessary transport permit and the sale could only be completed after the goods had been directed to move to the definite place as mentioned in the transport permit and thus, it is an inter-State sale within the

meaning of section 3(a).

42. The Supreme Court dismissing the appeals of the State and the Corporation held that the nature of a transaction, i.e., whether it is an inter- State or intra-State would depend upon the factual scenario of the case under examination. Though mere knowledge about the ultimate destination cannot be sufficient, yet cumulative effect of the factual scenario has to be considered. In order to decide whether sale is inter-State, it is sufficient that movement of goods should have been occasioned by sale or should be incidental thereto. What is important is that the movement of goods and sale must be inseparably connected. It is not necessary that there should be an existence of contract of sale incorporating the express or implied provision regarding inter-State movement of goods. Even if hypothetically it is accepted that such a requirement is necessary, in the facts of the present case, such implied stipulation does exist. This is referable to clause 3.7 of the agreement.

43. Referring to clause 3.13 of the agreement, it was observed that the clause clearly recognizes the possibility of a tenderer making purchase for the purpose of export outside India.

44. In A and G Projects and Technologies Ltd. Vs. State of Karnataka, also, it has been held that the question whether a particular sale is an inter-State sale or intra-State sale is a mixed question of fact and law. The name given to a transaction by the parties concerned does not decide the nature of transaction and to determine the nature of transaction, settled parameters in this regard by earlier judgments of the Supreme Court have been reiterated.

45. In Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others, , while considering the restrictions on transport contained in section 5 of the Adhiniyam, 1966 and rule 4(2)(g) of the Niyamawali, 1966, the Supreme Court observed in paras 10 and 13 thus:

10. The long title of the Act recites that the Act was enacted for regulating "the trade in tendu leaves" by creating a State monopoly in such trade. Trade in tendu leaves would consist of dealing in those leaves, i.e., their purchase and sale. Transport of the leaves once purchased or sold would not prima facie be an organic or integral part of dealing in those leaves. It is something extraneous to dealing in those leaves, something which takes place after the purchase or the sale thereof is completed and property in them has passed from the dealer to the purchaser and therefore does not form part of the trade in that commodity. That being so, the restrictions on their transport contained in section 5 cannot be held to be the integral part of the trade monopoly but as ancillary or incidental thereto, made for its effective enforcement. If that be so, it affects the right of the purchaser under article 19(1)(f) to hold and to dispose of the goods he has acquired, a right which is not co-related, as the right under clause (g) is, with the monopoly which the section seeks to create. It follows, therefore, that such a provision would have to pass the test of reasonableness under clause (5) and the

first part of clause (6) of article 19. That would also be the position in respect of article 304(b). But since the requirement of these provisions is the same the yardstick of reasonableness would be common to all these cases. It is well recognised that when an enactment is found to infringe any of the fundamental rights guaranteed under article 19(1), it must be held to be invalid unless those who support it can bring it under the protective provisions of clause (5) or clause (6) of that article. To do so, the burden is on those who seek that protection and not on the citizen to show that the restrictive enactment is invalid. (*Saghir Ahmad Vs. The State of U.P. and Others*, and *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*,

....

13. In our view, reading section 5(2) along with rule 9 of the said rules, what they are intended to require is that a manufacturer must have a permit to move the leaves purchased by him from the unit or units where he has purchased them to his warehouse outside and from there to his branches and also when he transports them to his sattedars. But, no such permit was intended to be necessary when the leaves are distributed for the manufacture of bidis by these sattedars to the mazdoors whom he employs. A construction so limited in its sweep is commendable as it is consistent with the object of the Act and is also in harmony with clauses (5) and (6) of article 19(1) and clause (b) of article 304. Regarding the ban against movement of old leaves contained in the order, dated June 4, 1965, there can be no difficulty as it is conceded that old leaves in the context mean those which were in stock when these rules came into force and not the balance of leaves left unconsumed from year to year. So construed, the restrictions against free transport cannot be held to be unreasonable and the validity of section 5 and rule 9 as also the order of June 4, 1965, except to the extent of its requiring a permit for distribution to the mazdoors, cannot be successfully challenged. So far as the order, dated October 12, 1965, is concerned, it was a mere cancellation of a concession and such cancellation cannot be challenged as a restriction, much less as an unreasonable restriction.

46. In *The State of M.P. and Others Vs. Chhotabhai Jethabhai Patel and Co. and Another*, the Supreme Court had an occasion to consider the restrictions contained in section 5(2) of the *Adhiniyam, 1964* in import of tendu leaves from outside the State or restrictions in its movement within the State. Allowing the appeal of the State against the judgment of the High Court, it was held that the entire provisions of the Act and the rules are consistent with and aimed at the State monopoly in the trade of tendu leaves in case of leaves grown or produced in the State and the Legislature never intended that the monopoly should be operative even to the extent of banning import of tendu leaves from outside or stalling the tendu leaves once they found their way into the State from outside. The transport of tendu leaves purchased outside but consigned to places within the State to be used for the manufacture of bidis is not integrally connected with the State monopoly as envisaged in the Act.

47. In *State of A.P. Vs. National Thermal Power Corporation Ltd. and Others*, considering the identical issue, the Constitution Bench of the Supreme Court in para 25 has held thus (pages 300 and 301 in 127 STC):

25. It is well-settled by a catena of decisions of this court that a sale in the course of inter-State trade has three essential ingredients: (i) there must be a contract of sale, incorporating a stipulation, express or implied, regarding inter-State movement of goods; (ii) the goods must actually move from one State to another, pursuant to such contract of sale; the sale being the proximate cause of movement; and (iii) such movement of goods must be from one State to another State where the sale concludes. It follows as a necessary corollary of these principles that a movement of goods which takes place independently of a contract of sale would not fall within the meaning of inter-State sale. In other words, if there is no contract of sale preceding the movement of goods, obviously the movement cannot be attributed to the contract of sale. Similarly, if the transaction of sale stands completed within the State and the movement of goods takes place thereafter, it would obviously be independently of the contract of sale and necessarily by or on behalf of the purchaser alone and, therefore, the transaction would not be having an inter-State element. Precedents are legion; we may briefly refer to some of them. In *English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax Officer and Others*, , this court held that when the movement of the goods from one State to another is an incident of the contract it is a sale in the course of inter-State sale and it does not matter which is the State in which the property passes. What is decisive is whether the sale is one which occasions the movement of goods from the State to another. In *Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others*, it was observed that a sale would 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 provided, however, that such movement was the result of a covenant in the contract of sale or was an incident of the contract. Similar view was expressed in *Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others*, . In *Manganese Ore (India) Ltd. Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur*, , after referring to *Balabhagas Hulaschand Vs. State of Orissa*, it was observed that so far as section 3(a) of the CST Act is concerned there is no distinction between unascertained or future goods and goods which are already in existence, if at the time when the sale takes place these goods have come into actual existence.

48. In *Maharashtra Timber Laghu Udyog Mahasangh* [1985] 18 VKN 195, the members of the Mahasangh purchased timbers on auction held in the State of Madhya Pradesh. They applied for certificate in form C on the ground that movement of timber on the basis of transit permit occasioned on account of sale of timber and thus, they are entitled for declaration in form C. Rejecting the contention of the petitioner, the Division Bench of the M.P. High Court held that in view of the procedure followed in accepting the highest bid of the participants, it is clear that the sale is complete when the bid is accepted and certificate is

issued and the property in goods passes as the bid of the purchaser is accepted and his signatures are taken and thus, sale is complete as defined in section 2(g) of the Act of 1956.

49. In the matters of Zunaid Enterprise v. State of Madhya Pradesh (W.P. No. 16775 of 2007 decided on July 15, 2010) Reported as M.M. Traders Vs. State of M. P. and Others, and other connected matter, the High Court of M.P. held as under (page 371 in 36 VST):

30. Merely by issuance of transit passes to the purchasers, in our opinion, it would not be a case of inter-State sale. The purchase agreement (P/5) contained in Schedule IV in the case of sale of tendu leaves provides the detail, method of sale, delivery. It is nowhere contemplated that the goods were to move from outside the State of Madhya Pradesh expressly or impliedly nor it was incidental thereto. In our opinion, the sale of tendu patta is not inseparably connected with the movement. There is no relationship in cause of sale and effect of movement. Merely by the fact that the exporter licence is held by some of the dealers is not enough to make it a case of inter-State sale on the settled principles of law laid down by the apex court in various decisions.

31. There was stipulation in the agreement with respect to tendu patta for payment of commercial tax, forest development cess and any other tax, which was to form part of sale price without payment of these taxes, the payment of price shall not be deemed to have been made. In view of the aforesaid discussion, in our opinion, the liability of tax could not have been escaped by the petitioners.

50. From the judgments cited above, it is clear that for a sale to be inter-State sale, it must satisfy three essential ingredients: (i) there must be a contract of sale, incorporating a stipulation, express or implied, regarding inter-State movement of goods; (ii) the goods must actually move from one State to another, pursuant to such contract of sale, the sale being the proximate cause of movement; and (iii) such movement of goods must be from one State to another State where the sale concludes. The movement of goods which takes place independently of a contract of sale would not fall within the meaning of inter-State sale. Where the transaction of sale stands completed within the State and the movement of goods takes place thereafter independently of the contract of sale, the transaction would not be having an inter-State element. Where the movement of goods is the result of a covenant in the contract of sale or is an incident of the contract, the sale may be regarded as an inter-State sale and it is immaterial whether the property in goods passes in one State or another. What is important is that the movement of goods and the sale must be inseparably connected. It is not necessary that there should be an existence of contract of sale incorporating the express or implied provision regarding inter-State movement of goods.

51. The question whether a sale/purchase depends on the facts of each case.

The principles are well-settled, it is only a question of application of these principles to the facts found in each case.

52. We propose to examine the contract of sale in the batch of these writ appeals in the light of above principles of law laid down by the Supreme Court.

53. As per procedure for sale of tendu leaves in the State of Chhattisgarh, tenders for collection of tendu leaves are initially called and leaves are sold on "as it is where it is" basis. The tenderers are afforded opportunity of pre-inspection of the portion of forest where tendu trees are located. The offers are invited lot wise (portion of forest). A successful tenderer, i.e., the purchaser is responsible for plucking of leaves from the trees on completion of the bid and an agreement is entered into between the Federation and the purchaser. The amount against the sale is payable in one stroke or in four equal instalments. Where the purchaser opts for payment in instalment, tendu leaves are stored by the purchaser under dual lock system, one key remains with the Federation and tendu leaves are released by the Federation on payment of instalments. The purchasers are responsible for collection of bundles of leaves and wages are paid by the purchasers through the society. The entire cost of transporting the leaves from the lots to processing places is borne by the purchasers. The processing of leaves, such as moisturizing, bagging, etc., are done by the purchasers themselves through members of the primary society. The transport permit is also issued by the Forest Department to the purchasers for transporting the leaves from the lots to the processing places and for transporting the processed leaves to godowns. The Federation does not provide any godown to the purchaser for storage and where godowns are provided, the purchasers pay rent to the State for hiring such facility.

54. The learned single judge has dealt with the provisions of the Adhiniyam, 1964, the Niyamawali, 1966 framed thereunder, conditions of the tender notice and purchase agreement between the Federation and the purchaser in detail.

55. From a perusal of the Adhiniyam, 1964, the Niyamawali, 1966, conditions of the tender notice and purchase agreement, it is found that the Adhiniyam and the Niyamawali framed thereunder have been enacted for creating State monopoly in the trade of tendu leaves. u/s 5(1), on issue of a notification under sub-section (3) of section 1 in any area, no other person except the State Government or an officer authorised by it or an agent in respect of the unit, in which the leaves have grown, can purchase or transport tendu leaves. Under sub-section (2) of section 5, tendu leaves purchased from the State Government or any officer or agent specified in the said sub-section by any person for manufacture of bidis within the State or by any person for sale outside the State may be transported by such person outside the unit only in accordance with the terms and conditions of a permit to be issued, as provided under the rules. Whereas sub-section (3) of section 5 provides that any person desiring to sell tendu leaves may sell them to the aforesaid Government officer or agent to any depot situated within the said unit.

56. Section 7 empowers the State Government to fix the price, in consultation with the Committee constituted u/s 6, at which tendu leaves shall be purchased by it or by any of its authorised officer.

57. Section 11 mandates that every manufacturer of bidis and every exporter of tendu leaves shall get himself registered and every registered manufacturer of bidis and exporter of tendu leaves is to furnish a declaration in the prescribed form and manner.

58. Whereas u/s 12A, it is provided that any left over excess quantity of tendu leaves with the manufacturer of bidis or exporter of tendu leaves cannot be resold by them without permission of the State Government or any officer authorised by it in this behalf and such manufacturer of bidis or exporter of tendu leaves intending to resell, is required to apply for permission to the State Government. Similarly, for purchase of excess quantity of tendu leaves, the manufacturer of bidis and exporter of tendu leaves has to apply for permission to the State Government or any officer authorised in that behalf and only after the State Government accords permission for sell or purchase on such conditions, as the case may be, sell or purchase can be made.

59 u/s 14, all the Forest Officers and Police Officer of a particular rank and above or any officer authorised by the State Government, can effect search and seizure, where there is reason to believe that any offence under the Adhiniyam has been committed in respect of tendu leaves.

60. Section 19 empowers the State Government to make rules to carry out the provisions of the Adhiniyam.

61. The Niyamawali, 1966 has been made by the State Government in exercise of powers u/s 19 of the Adhiniyam, 1964. Sub-rule (5) of rule 2 defines "exporter of tendu leaves" as a person or party who exports tendu leaves outside the State for his or its own use or sells tendu leaves to another person or party carrying on trade in tendu leaves at a place outside the State. Whereas sub-rule (7) defines "purchaser" as a person or party to whom tendu leaves have been sold by the State Government u/s 12. Sub-rule (11) defines "transport permit" as a permit issued under clause (b) of sub-section (2) of section 5 for transport of tendu leaves.

62. Under rule 4, four types of transport permits are issued by the officers and authority competent to issue such permit. Under rule 4(1)(iv)(a), main permit for transport outside the State is issued in form TP 4 (main), whereas under rule 4(1)(iv)(b) subsidiary permit is to be issued in form TP 4 (subsidiary). The application for issue of transport permit is to be made in form D to the Divisional Forest Officer.

63. Rule 4(3) prescribes the conditions that each consignment of tendu leaves during movement by any mode of transport shall be accompanied by a transport permit of the concerned type, and leaves shall be transported only by the route

specified in the permit and the transport permit is liable for cancellation where it is found that it has been misused or is likely to be misused.

64. The Chhattisgarh State Minor Forest Produce (Trading and Development) Co-operative Federation Ltd., has been appointed as agent of the State Government u/s 4 of the Adhiniyam, 1964 for collection, purchase and trade of tendu leaves. The Federation acting in the name of the Governor of Chhattisgarh invites sealed tenders for purchase of tendu leaves. Terms and conditions of tender and instructions for tenderers are published in the tender notice. Tenders are invited for the purchase of lots of tendu leaves to be collected or purchased by the societies, as shown in the Schedule appended to this notice for the relevant contract period as per condition No. 3 of the tender notice.

65. Purchaser's agreement is to be executed as per condition No. 7 of the tender notice. As per condition No. 7(ii), an agreement is to be executed between the successful tenderer before the conservator of forests in form given in annexure IV in respect of every lot within 30 days of the issue of acceptance of his offer by the Federation. In the event of non-execution of the agreement, the appointment shall be liable to be cancelled and on such cancellation, eight percent of the purchase price of the concerned lot shall be forfeited from the EMD.

66. Condition No. 8 of the tender notice provides that due purchase price shall be payable in four equal instalments on or before the given dates in the tender notice. Where the purchaser makes full payment of the purchase price along with due taxes up to the due date of first instalment, a rebate of two percent of purchase price shall be given.

67. Under condition No. 9, removal and transportation of leaves, after payment of the instalment(s) has been made, is to be in accordance with the provisions contained in annexures I and IV. Where the purchaser wants to avail of the facility of release of tendu leaves from double lock against bank guarantee, then it can be done in the manner provided in clause 7 of the purchaser's agreement.

68. Condition No. 1(xix) of the tender notice of annexure I, defines the word "tax payable" as value added tax, forest development cess and other taxes/cess as leviable from time to time, on the purchase price of the tendu leaves in a lot. The sale of tendu leaves is on "as is where is" basis.

69. Condition No. 3 of annexure I provides that all the provisions of the Adhiniyam and the Niyamawali for the time being in force insofar as they are applicable to purchasers shall specifically form part and parcel of the terms and conditions of the tender notice and the purchaser's agreement. Whereas condition No. 4 of annexure I mentions about the persons authorised to submit tender, etc. Condition No. 4(v) provides that a tenderer must be registered under the Adhiniyam and Niyamawali as manufacturer/exporter on the date of submission of the tender and if successful, he must obtain registration certificate till the date of expiry of the contract period.

70. Condition No. 5 provides for deposit of earnest money along with tender. The manner of filing tender is described in condition No. 6. Under this condition, a tenderer can submit only one tender for one/several lots showing his order of priority for purchase of lots. The rate is to be quoted as per standard bag exclusive of any tax/cess for purchase of tendu leaves for each lot mentioned in his tender.

71. Condition No. 9 provides that the successful tenderer shall have to deposit security deposit amounting to 25 percent of the total purchase price of the lots for due performance of the terms and conditions of the purchaser's agreement executed by him.

72. Condition No. 10 provides that the purchaser can remove/transport the leaves from the godown only after full payment of the instalment due has been made.

73. Condition No. 11 provides that if a purchaser commits any breach of provisions of the Adhiniyam, Niyamawali and/or any condition of the purchaser's agreement as a result of which he is punished u/s 15 of the Adhiniyam, he shall be liable to be blacklisted for a period up to five years.

74. Tender form for purchase of tendu leaves lots is to be submitted in annexure II made under condition No. 4 of the tender notice. Paragraph 4 of annexure II of the tender notice provides for declaration to the effect that the tenderer holds a certificate of registration as a manufacturer of bidis and/or exporter of tendu leaves under the Adhiniyam, 1964.

75. The purchaser's agreement is executed in annexure IV made under condition No. 7 of the tender notice. Clause 2 of the agreement deals with the parts of the agreement and it provides that the agreement shall always be deemed to be subject to the provisions of the Adhiniyam, 1964, Niyamawali made thereunder, the orders and notifications issued from time to time under the said Adhiniyam and the terms and conditions of the tender notice, including the general/other terms and conditions of the tender and instructions for tenderers contained in annexure I of the tender notice, all of which shall form part of and shall be deemed to have become part of this agreement and which shall be construed to have been specifically provided for in these presents.

76. Whereas clause 4 provides for procedure for collection/purchase and payment and delivery of leaves at collection centers.

77. Clause (6) provides for the procedure for payment of amount due and delivery of leaves. Under clause 6(1)(a), the purchaser can remove the tendu leaves up to the notified quantity of the lot from the collection centers under transit pass as per the provisions of the Adhiniyam and Niyamawali by making payment of the purchase price calculated on the basis of notified quantity along with tax payable on it. However, if the collected quantity is more than the notified quantity, then the permission for removal of additional quantity would be given

only after payment of additional amount due along with taxes.

78. Clause 6(1)(b) reads as under:

(b) If the purchaser does not want to get the leaves released from the phad after paying the full balance amount due and expresses the written desire to store the leaves in the godowns under double lock of purchaser and Federation to avail the facility of the payment in instalments up to April 15, 2010 or 21 days from the date of purchaser appointment order whichever is later, he will be permitted to store the leaves in the godowns taken on rent by him in the State of Chhattisgarh, specially approved for this purpose by the Managing Director, District Union or any officer authorised by him for the purpose after executing the tripartite agreement (annexure VII) enclosed with this tender notice. The permission to transport the leaves from phad to godowns will be granted after it only. For the purpose of inspection in the godowns, stacking of tendu leaves will be done minimum 2 feet away from the godown walls. If the Managing Director, District Union directs the purchaser appointment order whichever is later to take the godowns of Forest Department/Federation/primary society/others on rent, then he will be bound to do so on the rent of Rs. 18 per actual bag but he will not be required to execute the tripartite agreement in annexure VII and can keep the leaves in the godown till April 15, 2011 but if the purchaser wants, he can store the leaves in his own godown under double lock of purchaser and Federation after paying the rent of Rs. 18 per actual bag. The purchaser will have to make the payment of godown rent on the basis of storage capacity of the godown fixed by the Managing Director, District Union by March 15, 2010 in one instalment.

79. Under clause 6(2) if the purchaser makes full payment of the purchaser price of the lot along with due taxes up to the due date of first instalment, he is entitled for rebate of two percent of the purchase price.

80. Clause 7 of the agreement provides for facility of delivery of leaves against bank guarantee, whereas clause 8 of the agreement provides for payment of taxes, which reads as under:

Payment of taxes:

(i) Under this agreement, an instalment shall not be deemed to have been paid unless all taxes due thereon are also fully paid.

(ii) The purchaser shall pay the value added tax under Chhattisgarh Value Added Tax Adhinyam, 2005 as amended from time to time and forest development cess and other taxes/cess as per details given in the condition No. 13 of annexure I.

(iii) The purchaser, unless exempted by the income tax authorities in the prescribed pro forma, shall pay the income tax due under the income tax Act, 1961.

81. Sale certificate is issued to the purchaser by the Federation under clause 9 of

the agreement, whereas clause 10 contemplates that if the terms and conditions of the tender notice pertaining to delivery and sale (parivahan/nikasi) and of this agreement are not fully complied with, it will be considered that the purchase of leaves has not taken place.

82. Clause 14 of the agreement provides for termination of the purchaser's agreement and blacklisting of the purchaser for a period up to five years.

83. Clause 18 provides for transport of tendu leaves and issue of transport permit, which reads as under:

18. Transport of tendu leaves and issue of transport permit.--The purchaser shall not transport tendu leaves without a valid transport permit issued by the competent authority as contemplated under the said Adhiniyam and the Niyamawali. Last transit pass of the lot will be issued to the purchaser after the full payment of due amounts.

84. TP 4 (main) and TP 4 (subsidiary) are issued under rule 4 in the prescribed pro forma as under:

Form T.P. 4 (Main) (See rule 4)

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(Original/copy) [Transport permit 4 (Main)] (For transport outside the State)

1 Shri/M/s...purchaser of unit No. ...of Division...is permitted to transport...standard bags packed in...actual bags from...to...by road and thence to...by train.

2 Name and address of...the consignee outside.... Chhattisgarh.....

3 The permit is valid up to....

Place....

Dated....

Divisional Forest Officer Division

Form T. P. 4 (Subsidiary) (See rule 4)

Book No.

Page No.

Transport Permit 4 (Subsidiary)

1 Name of purchaser....

2 Unit No. Division....

3 Reference to T. P. 4 (Main)....

(i) Book No. Page No.

(ii) Quantity permitted.... Standard bags/Actual bags

(iii) Valid up to....

4 Quantity covered under the above authority already transported previous to issue of this page.

(i) Details of transport permit 4 (subsidiary). Book No. Page No.

Date....

(ii) Quantity.... Standard bags/actual bags.

5 Quantity now being transported in the consignment accompanying this permit (give serial number of bag and quantity in each. Standard bags/actual bags).

6 Quantity in balance for transport-standard bags/actual bags.

7 From...to....

8 Route of transport.....

9 Place of places for checking.....

10 The permit is valid up to.....(Date)

Note

Unless otherwise authorised by the Divisional Forest Officer in writing period shall not exceed 48 hours.

Place....

Date....hour....

.... Signature of the Issuing Officer.

Checked

Place....

Date....hour....

.... Signature of the Checking Officer.

85. It has been vehemently argued by learned counsel for the appellants that an exporter of the tendu leaves has to be registered under the provisions of the Adhiniyam and the Niyamawali and for transport of tendu leaves outside the State. Transport permits are issued in TP 4 (main) and TP 4 (subsidiary) forms, which are prescribed in the Niyamawali. In TP 4 (main), column No. 2 requires "information to be furnished in respect of name and address of consignee outside the State" whereas sub-rule (5) of rule 8 makes it obligatory for every exporter of tendu leaves to furnish a declaration in the prescribed form regarding details

of export of tendu leaves made during previous two years as well as estimated export during the ensuing year. The exporter not only requires transport permits for transport outside the State as an essential concomitant of sale for movement of tendu leaves, but is also obliged to disclose the destination in the application.

86. It has been further argued that from reading of the definitions, terms and conditions of the tender notice and instructions for the tenderers, particularly condition No. 3 of annexure I, it is clear that the provisions of the Adhiniyam and the Niyamawali, for the time being in force insofar as they are applicable to the purchasers, shall specifically form part and parcel of the terms and conditions of the tender notice and the purchaser's agreement. Clause 2 of the purchaser's agreement specifically mentions that the provisions of the Adhiniyam and the Niyamawali, order and notifications issued from time to time under the said Adhiniyam and the rules and terms and conditions of the tender notice and instructions for tenderers contained in annexure I of the notice, shall form part of the agreement. Clause 10 specifically provides that if the terms and conditions of the tender notice pertaining to delivery and sale (parivahan/nikasi) are not fully complied with, then it will be considered that the purchase of leaves has not taken place. Thus, in the instant case, the movement of goods is inextricably connected with sale, which is governed by the statutory contract. Looking to the peculiar features of the case in hand and in the light of law laid down by the Supreme Court, it is established that transaction in question is an inter-State sale within the meaning of section 3(a) of the Adhiniyam, 1964.

87. Tender has been invited by the Federation as an agent of the State Government appointed u/s 4 of the Adhiniyam, 1964 for collection, purchase and trade of tendu leaves in the whole of the State. The tender notice clearly mentions that sealed tenders are invited from persons, registered firms/legal companies for the purchase of said tendu leaves. Rates are to be quoted by the tenderers per standard bag for tendu leaves in form of annexure II as per condition No. 4 of the tender notice, exclusive of value added tax, forest development cess and other taxes/cess. Pre-tender inspection of the area/lot is permitted to the tenderers and leaves are auctioned on "as it is where it is" basis. The green leaves are handed over to the purchaser at the collection centers only. The treatment, transport and godowning, etc., of the delivered tendu leaves are to be done by the purchasers at their own expenses. The amount against sale is payable in one stroke or on four equal instalments at the choice of the purchaser. Where the purchaser opts for payment in instalments, tendu leaves are stored by the purchaser under dual lock system. Condition No. 1(xix) of annexure I appended with the tender notice defines "tax payable" as value added tax, forest development cess and other taxes/cess as leviable from time to time on the purchase price of the tendu leaves in a lot. Whereas condition No. 4(v) requires that the tenderer submitting his tender must be registered under the Adhiniyam and the Niyamawali as manufacturer/exporter. Under condition No. 13 of annexure I, the purchaser is to deposit sale price, forest development cess, value added tax, income tax, interest and godown rent,

etc., with the Federation within due time. The agreement is executed in form of annexure TV.

88. Under clause 6 of the agreement, the purchaser can remove the tendu leaves up to the notified quantity of the lot from the collection center under transit pass by making payment of the purchase price along with tax payable on it. Where full payment of purchase price of the lot along with due tax up to the due date of first instalment is made, a rebate of two percent of the purchase price is given to the purchaser.

89. Clause 8 of the agreement specifically provides that all the taxes due are payable along with instalments and the purchaser shall pay value added tax under the Chhattisgarh Value Added Tax Adhiniyam, 2005 as amended from time to time. Thereafter, sale certificate is to be issued by the Federation in form L after giving delivery of the tendu leaves under clause 9 of the agreement.

90. From perusal of the entire scheme of the sale of tendu leaves by the Federation, as reflected from the tender notice, terms and conditions of sale appended with the tender notice and stipulation in the purchaser's agreement, the movement of tendu leaves outside the State of Chhattisgarh is not attributable to the seller, It is not the case that the export quota of tendu leaves is being sold together with export rights to the appellants herein and the tendu leaves sold to the appellants are earmarked for export.

91. In the instant case, it was open to any person/company, firm of the State of Chhattisgarh and other States to participate in the tender process and submit their offer for purchase of tendu leaves, and tendu leaves could be sold to any successful tenderer, who was eligible to participate in the tender process as per eligibility condition prescribed in the tender notice. Registration of the appellants as exporter merely enables them to carry tendu leaves purchased by them outside the State to the indicated destinations mentioned in the transport permit. The fact that tendu leaves have been sold to the appellants, who are registered exporters and they were issued transport permits for transporting the purchased tendu leaves to the destination outside the State, imputes knowledge to the seller that the goods are purchased with the intention of exporting by the appellants. However, there is nothing in the transaction from which it can be said that the sale and the intended export is part of the same transaction. The knowledge that the goods purchased are intended to be exported does not make the sale and export parts of the same transaction.

92. We further observe that under the Adhiniyam, 1964 and the Niyamawali, 1966 made thereunder, the State Government has monopoly in the trade of tendu leaves. The Legislature with a purpose to achieve the object of the Adhiniyam, 1964, regulates the storage and transport of tendu leaves by imposing restrictions in transporting the tendu leaves by issuing transport permits: TP 1 (main) for transport from collection depot to storage godown, TP 2 for transport from one storage godown to another or to distribution center, TP 3

for transport from distribution center to sattedars or mazdoors, and TP 4 for transport outside the State.

93. We are in entire agreement with the observations of the learned single judge that the movement of tendu leaves takes place as a result of other statutory and non-statutory requirement, not as a result of an express or implied terms under the contract of sale, and the movement of tendu leaves was an independent transaction. We also endorse the view that the purchaser's agreement is conditional upon the compliance of the provisions of Adhiniyam, 1964 and the Niyamawali, 1966 framed thereunder.

94. For the aforesaid reasons, issuance of registration certificate by the Deputy Commissioner, income tax, Allahabad u/s 206C of the income tax Act in form 27C directing the conservator of forest not to collect TDS and accordingly, non-deduction of the income tax by the conservator of forest alone would not make the instant trade inter-State trade of tendu leaves within the meaning of section 3 of the Act of 1956, as argued by learned counsel for the appellants.

95. In *The Cement Marketing Co. of India Ltd. and Another Vs. The State of Mysore and Another*, *State Trading Corporation of India Ltd. Vs. State of Mysore*, and *Singareni Collieries Co., Ltd. Vs. State of Andhra Pradesh and Others*, the goods sold were controlled articles and sale was effected only through authorisation given to the buyers by the Government authorities and under such authorisation, the goods were sold to the buyers outside the State. In these circumstances, it was held that transaction was in the nature of inter-State sale.

96. In *The State of Bihar and Another Vs. Tata Engineering and Locomotive Co. Ltd.*, covenant in the agreement required the purchasers to move truck, buses chassis and other spare parts purchased by them from the State of Bihar to places outside Bihar and thus, considering that if the purchasers failed to abide by the term requiring them to move the goods outside the State, they would have committed breach of their contracts and incurred penalties, it was held that the sale was in the course of inter-State trade and commerce.

97. In *Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others*, considering that the contract of sale could be performed by the respondents only by the movement of goods from Faridabad with an intention to deliver them to the purchasers, the sale was held to be an inter-State sale.

98. In the matters of *State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc.*, there was also stipulation in the contract of sale that tendu leaves are to be exported.

99. We are also conscious of the fact that under clause 8 of the agreement, there is specific mention that the purchasers were required to pay commercial tax/VAT under the provisions of law as amended from time to time, forest development cess and other taxes/cess. The appellants have participated in the tender process

and quoted their purchase price keeping in view the aforesaid stipulation in the agreement.

100. The learned single judge, after elaborately considering the arguments advanced by learned counsel for the appellants, has dismissed the writ petitions with the following observations in para 129 of the impugned order:

129. For the reasons and analysis aforestated, unhesitatingly, I hold that the purchase of tendu leaves was an independent transaction, which was complete in the State of Chhattisgarh. Movement of tendu leaves thereafter was a different transaction and independent of the contract of sale. There is no link between the contract of sale and movement of leaves from the State of Chhattisgarh to outside the State of Chhattisgarh. Further, the movement of leaves to outside the State of Chhattisgarh was not occasioned by sale of tendu leaves, as it was not on account of covenant of the contract of sale. Thus, the sales are intra-State sales. The petitioners are liable to pay all the taxes accordingly under the provisions of the State Acts. All the interim reliefs granted earlier stand vacated. The petitioners are accordingly directed to make payment of balance amount of taxes to the respondent-State, as aforestated.

101. We are in entire agreement with the reasonings of the learned single judge in holding the sale transaction of tendu leaves as intra-State sale, and not inter-State sale. We find no substance in this batch of writ appeals, the same deserve to be and are, accordingly, dismissed. Consequently, all the interim orders passed earlier stand vacated. No order as to costs.