

(2009) 04 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No's. 9757 of 2007, 10880, 8801, 8807, 8803 and 8802 of 2008, 14034 14728, 16030 and 17927 of 2007, 2285, 2416, 2417, 2418, 2672, 2976, 3030, 3220, 3283, 3389, 3578, 4792, 4999, 5038, 5102, 5240, 5246, 5397, 5398, 5399, 5478, 5529, 5571, 56

Mysore Construction Co. (Prop. Mycon Construction Ltd.) and Others APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 15, 15 (5) (e), 4 (3) (d)

Citation : (2009) ILR (Kar) 2657 : (2010) 8 RCR(Civil) 2157 : (2009) 24 VST 250

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : G. Rabinathan and M. Thirumalesh, in W.P. Nos. 9757 of 2007 and 8212 of 2008, A. Satyanarayan, in W.P. Nos. 5038, 5240, 8807 and 10880 of 2008, A. Rama, D. Venkatesh, Vikram and Alur, in W.P. Nos. 2976, 8788, 8789, 8790, 8791, 8792, 8793, 8794, 8795, 8796, 8797, 8798, 8800, 8801, 8802, 8803, 9762, 13489 and 14034 of 2008, G. Sarangan for Vani H., in W.P. No. 14728 of 2008, M.G. Kumar Law Firm, in W.P. No. 16030 of 2007, B.G. Chidananda Urs, in W.P. Nos. 17927 of 2007 and 3030 of 2008, H.B.V. Patil and Shalini Patil, in W.P. Nos. 2285, 2417, 2418, 2672, 3220, 3283, 5398, 5399, 5891, 6645, 6962 and 7322 of 2008, T.N. Keshavamurthy, in W.P. No. 2416 of 2008, B.S. Prasad, in W.P. No. 3030 of 2008, A. Rama and Atul K. Alur, in W.P. Nos. 3389, 5529, 5571, 5719, 6886 and 13999 of 2008, Arvind Kamath, in W.P. No. 3578 of 2008, Vani H. in W.P. No. 4792 of 2008, T.N. Keshavamurthy, in W.P. Nos. 4999, 5397 and 6080 of 2008, S.G. Shivaram, in W.P. Nos. 5102 and 5803 of 2008, Raghuraman and Chythanya, in W.P. No. 5246 of 2008, S. Kashninath Kalmath, for S.G. Shivaram, in W.P. Nos. 5478, 6409 and 6411 of 2008, A. Rama, D. Venkatesh and Vikram, A.H., in W.P. No. 5685 of 2008, G.K.V. Murthy and P.E. Umesh, in W.P. No. 6522 of 2008, Arvind Kamath, ALMT Legal, in W.P. Nos. 6762, 6763 and 6764 of 2008, A. Shankar and M. Lava, in W.P. No. 8850 of 2008, for the Appellant; K.M. Shivayogiswamy, HCGP in all WPs, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Writ petitioners are all traders who have transactions in the nature of sale of goods. Petitioners are all registered dealers under the provisions of the Karnataka Value Added Tax Act, 2003 [for short "the Act"], within the definition of a "registered dealer" as it occurs in Sub-section 27 of Section 2 of the Act.

2. While most of the writ petitioners are all registered dealers who have transactions in the nature of works contract, which is one of executing different types of works in favour of customers in terms of the agreement between the petitioners and their customers and at a price agreed upon, some are hoteliers and some are stone crushers.

3. Significance of works contract under the Karnataka Value Added Tax Act, 2003 is that the value of the goods in execution of such works, which becomes properties of the clients for whom the dealers are executing the work contract, which is a transaction in the nature of sale in respect of goods, attracts liability for payment of tax under the provisions of the Act as envisaged u/s 3 of the Act, which is the main charging section levying tax on every transaction in the nature of sale of goods and at the rate stipulated in respect of different goods as indicated in Section 4 of the Act, which is the normal scheme of levy and collection of tax under the provisions of this Act. This Act has provided an optional scheme of paying tax to such of those dealers who opt for the optional scheme known as payment of tax by way of composition as envisaged u/s 15 of the Act and by exercising the option. Petitioners have all opted for payment of tax or discharge their tax liability by making payment in terms of the provisions of Section 15 of the Act.

4. Payment of tax by way of composition as per Section 15 of the Act while is offered as an option to registered dealers liable for payment of tax under the Act, it is subject to fulfillment of certain conditions and is not necessarily offered to all registered dealers. It is only such of those registered dealers who fulfil the requirements of the provisions of Section 15 of the Act, who are given option to pay tax by way of composition and the option once so exercised, will be available to the dealers so long as the dealer concerned is fulfilling the requirements of Section 15 of the Act.

5. Petitioners who had exercised such an option and who were paying the composition amount of tax as understood by them, are aggrieved that either due to some legislative changes brought about by the legislature to the provisions of Section 15 of the Act or because of an erroneous understanding of the provisions of the Act by the assessing authorities, the taxes as paid by the petitioners, particularly for the period commencing from April 2005 to 31st March, 2006 as also for the following year i.e. commencing from April 2006 to 31st March 2007, having not been accepted by the assessing authorities and the assessing authorities having re-assessed and re-determined the liability of the petitioners for payment of tax even by way of composition u/s 15 of the Act and such revised assessments having resulted in additional tax burden on the petitioners

and in some cases also having resulted in levy of penalty as envisaged under Sub-section 2 of Section 72 of the Act, complaining of the additional burden of tax as well as penalty imposed on the petitioners and to get over the additional burden of tax as determined by the assessing authorities and also penalty levied under the provisions of Sub-section 2 of Section 72 of the Act, the present writ petitions are filed.

6. While as noticed above, most of the writ petitioners are dealers executing works contract, a transaction as defined in Sub-section 37 of Section 2 of the Act, payment of tax by way of composition is also offered to such of those dealers who are having business in the nature of hotel, restaurant, catering, running of sweet-meat stall or icecream parlour or confectionery and like business notified by the government, the dealers whose business is to possess a mechanized crushing unit producing granite or any other metals and while these dealers are identified with reference to the nature of their business, the composition is also offered in general to those dealers whose turnover in a given year does not exceed Rs. 50 lakh as a ceiling limit, to lower ceiling limit, as notified by the government in respect of different types of business, a common condition stipulated in respect of all those dealers, when the Act came into force, is that they should not have any transactions in the nature of purchase or securing goods, they were transacting from outside the State or outside the territory of India.

7. The liability for payment of value added tax while is essentially to be found in terms of Sections 3 and 4 of the Act, the significance of registered dealer" is that the registered dealer alone is enabled to collect tax from the consumers, and not otherwise. If a dealer is not a registered dealer, he is prevented or prohibited from collecting any tax from any consumer or buyer.

8. The mechanism of determining the tax liability of a registered dealer particularly, the net tax payable by the registered dealer in respect of the turnover with reference to each month, which is the total transactions of buying and selling of the products or goods by each dealer for the month, is arrived at by a combined reading of the provisions of Sections 10, 11 and incidentally the provisions of Sections 12, 13 and 14 of the Act.

9. Section 15 of the Act, the provision for payment of tax by way of composition tax, having indicated that this mode of payment of tax is an alternative mode of payment of tax by the dealers, who opt for payment under this provision, is generally understood by all dealers that it is in substitution of the total liability of a dealer under the provisions of the Act and once the dealer who has opted for composition of tax pays the stipulated amount as envisaged u/s 15 of the Act, such a dealer is totally rid of all his responsibilities and liabilities for payment of tax under any other provision of the Act.

10. Petitioners have approached this Court seeking for relief basically in the context of the reassessment orders and levy of penalties which, according to

them and even as understood in some cases by the authorities, as a result of the legislative changes brought about in Section 15 of the Act, particularly by the amending Act [Karnataka Act No 6 of 2007] in terms of Section 4(3)(d) of the Act 6 of 2007, where under a new clause - Clause [e] has been introduced in Sub-section (5) of Section 15 of the Act and that also being indicated as it is operative from 1-4-2006, though the Act itself was notified and gazetted and became a law on and after 30.4.2007 and according to most of the petitioners, who are dealers having business of executing works contract, such retrospective operation of this provision of the Act operative with effect from 1-4-2006, though introduced by way of an amendment notified on 30-3-2007 is the main culprit which is the cause for their complaints and misery and therefore they have chosen to question the legality of this provision, the constitutional validity of this provision, and have sought for a declaration that it is a bad piece of legislation, is unconstitutional and a fortiori so when it made operative from an anterior date. It is mainly due to the operation of Section 4(3)(d) of the Act No 6 of 2007, the assessing authorities have reassessed the orders and therefore the provision is bad and consequently they can get over the consequential orders, if once the provision is declared as unconstitutional and on such premise and understanding, the petitioners have sought for the declaratory relief by filing the present writ petitions.

11. In WP No 2416 of 2008, the writ petitioner is a registered dealer who is running a stone crushing unit and a dealer who had opted for payment of tax by way of composition and a dealer to whom the provisions of Clause-d of Sub-section (1) of Section 15 are applicable and who had opted to pay tax as notified by the state government which is a lump-sum amount payable per crusher per annum with reference to the crushing capacity of the crusher, but nevertheless even such petitioner also having been issued with a re-assessment notice u/s 39(1) of the Act proposing to re-determine the liability of the petitioner for the period beginning from 1-11-2005 to 31-3-2007 and also proposing levy of penalty in terms of Section 72(2) of the Act. as also interest u/s 36 of the Act, called upon the petitioner to show cause as to why it should not be done as per the notice dated 24-11-2007 [[copy at Annexure-D to the writ petition], the petitioner has approached this Court with the understanding and impression that the proposal is only a direct sequel to Section 4(3)(d) of Act No 6 of 2007 and on such premise has sought for invalidating the provisions of Section 15(5)(e) of the Act, as introduced by Section 4(3)(d) of Act No 6 of 2007.

12. Petitioners have all therefore directed their fury towards the provisions of Section 15(5)(e) of the Act and have sought for a declaration that this provision is bad in law, unconstitutional and all consequential actions should be quashed.

13. While the main plank of attack on the provisions of Section 15(5)(e) of the Act is because it is made operative with effect from 1-4-2006, though it was notified on 30-3-2007, and even conceding that the legislature has the power to amend the laws having retrospective effect and even by way of amendment to

an existing Act, the provision is sought to be invalidated mainly on the plank that it is an unreasonable, irrational provision, when it is sought to be implemented from an earlier date, particularly in the context of working of a scheme for payment of tax by way of composition; that the provision is a provision which works to the detriment of the petitioners, after having induced the petitioners to opt for payment of tax by way of composition on the terms and conditions, as it existed at the time of opting, being varied to the disadvantage of the petitioners after they have effected and altered their position and by altering the tax liability to their detriment, in the sense, the subsequent alteration in law having effect of increasing their tax burden for no valid reason or justification and also exposing the petitioners to possible penalty orders even when the petitioners have not violated or transgressed any of the provisions of the Act. It is because of the oppressive manner in which the provision operates on the petitioners, particularly as understood and implemented by the assessing authorities in terms of the impugned reassessment orders, the provisions should be declared as unconstitutional, as it is violative of Article 14 of the Constitution of India being a provision which is irrational, impracticable and unworkable and virtually one which calls upon the petitioners to do impossible acts, if they have to avoid the penal consequences.

14. The petitioners have also questioned even the prospective operation of the provisions of Section 15(5)(e) of the Act on several grounds, inclusive of the ground that it is contrary to the composition scheme; that it is virtually a provision working at cross purpose with the scheme of composition and the provision of Section 15(1) of the Act; that it brings about inequalities even within the category of dealers opting for composition and more so when in comparison to the dealers who had not opted for composition, in the sense, the liability for dealers who pay their taxes in the normal scheme remains the same, the provision has the effect of enlarging the tax on dealers who had opted for payment of tax by way of composition by altering the scheme midway after the dealers have chosen to pay the tax by way of composition.

15. A feeble and halfhearted attempt is also made to impugn the validity of Section 4(3)(d) of the Amending Act and the provisions of Section 15(5)(e) of the Act, as it stands now in the main Act, on the premise that it has the effect of levying tax both on purchase and sale of the same goods taking it beyond the limits of Entry 54 of the List-II of Seventh Schedule to the Constitution of India; that the State Legislature cannot levy tax twice on a dealer both on the purchase and on the sale and as the manner in which the provisions of Section 15(5)(e) of the Act is being implemented, demonstrates that the very goods when purchased by a registered dealer if had been purchased from an unregistered dealer, is subjected to tax in the hands of the registered dealer, as the registered dealer is required to make payment of purchase tax at the purchase point and while the goods are utilized in the execution of the work contract and sold as part of the work contract, it is again subjected to tax at the sale point, though the goods are the same and the value of purchase and sale is the same and therefore the

provisions are which seek to impose an additional burden for payment of the tax u/s 3(2) of the Act as purchase tax, which was otherwise not contemplated in the scheme and therefore is a provision which is lacking in legislative competence beyond the permitted limit of Entry 54 and as such to be declared as unconstitutional, is the argument

16. The petitioners have questioned the legality of the provisions on many other grounds, which can be referred to later.

17. All these petitions being admitted for examination by issue of Rule and the State and its officers being put on notice, the State has entered appearance through Sri K M Shivayogiswamy, learned Government Pleader, and has filed statement of objections.

18. Validity of the provision is sought to be defended by the State contending that the provisions of Section 15(5)(e) of the Act is valid, both when it operates prospectively or even as understood by the petitioners and indicated in the Section, when it operates with effect from 1-4-2006 also; that in the first instance the writ petitions cannot be entertained for making a complaint in respect of the provisions of Section 15 by persons like the petitioners, who are persons who have opted for claiming the benefit under this provision, which was an optional one, and it is open to the petitioners to come within the scheme or remain outside and if the petitioners choose to pay tax under the scheme of composition, they cannot complain with reference to the conditions or the manner in which the scheme of payment of tax by way of composition is offered to the petitioners; that the entire understanding of the petitioners and the premix on which the validity is questioned, is not available; that the legislative changes brought about to Section 15 of the Act by amendments in the years 2005-06 and 2006-07 are all more clarificatory in nature and have not brought about any additional burden; that the understanding of the provision by the petitioners that Section 15(5)(e) of the Act is a charging Section is fallacious; that the provisions of Section 15 have been amended/modified only to ensure that the liability for payment of tax by the dealers who opt for composition is on par with the liability for payment of tax under the normal scheme by other dealers; that while the amendment is by way of clarification, it is more an attempt to ensure parity in the liability between the dealers who do not opt for composition and persons like the petitioners who have opted for payment of tax by way of composition; that certain anomalies which worked in favour of persons who have opted for payment of tax by way of composition are set right by the amendment; that having regard to the concept of net tax payable by the dealers in the normal course and having regard to the fact that the dealers opted for payment of tax by way of composition are not allowed any input credits, the provision of Section 15 has been suitably fine tuned to ensure that the dealers who opted for payment of tax by way of composition are provided certain facilities such as not required to maintain regular or systematic books of account and other details, nevertheless their tax liability under the Act is not in any way

altered, only because they have opted to pay tax by way of composition; that the amended provision seeks to achieve this object; that having regard to the concept of net tax payable under the provisions of the Act, it was the intention and understanding of the State and the legislature that even dealers who opted for payment of tax by way of composition are nevertheless liable to pay tax payable in terms of Sub-section 24 of Section 3 of the Act, which is a tax which is always borne by the dealers who purchase goods, whether the tax so paid reaches the coffers through the medium of another registered dealer when the purchases are from a registered dealer or directly from the buying dealer when the dealer purchases from an unregistered dealer and to maintain parity and to ensure that a dealer opting for payment of tax by way of composition is not placed at an advantageous position; that the intention was all along clear that a person opting for payment of tax u/s 15 of the Act, should nevertheless meet the liability u/s 3(2) of the Act and such intention is only made explicit, as is now done under the provisions of Section 15(5)(e) of the Act and therefore the complaint that the petitioners are subjected to additional burden is only an imaginary grievance; that it cannot be a premise for declaring the provision as unconstitutional and the writ petitions are not with any merit either for declaring the provision invalid or for granting any other relief; that the object of legislature was never to give any benefit to persons opting for payment of tax by way of composition but only to simplify certain procedures in their favour and that does not mean that they are to be given any tax sops and if the petitioners had thought that they were given tax benefits and are complaining that it is now taken away because of the amendment, that by itself cannot be a ground for invalidating the provision, as the provision, even as amended by the Act 6 of 2007, does not place any additional burden on the petitioners, who have opted for payment of tax by way of composition.

19. It is also pointed out on behalf of the State that the liability which was a liability as existed u/s 3(2) of the Act is only pointed out u/s 15 through the amendment and it is not as though a new liability or new charging section is created u/s 15(5) of the Act and the contention of the petitioners that Section 15(5) create an additional charge or burden in itself is fallacious; that the provisions is more clarificatory in nature and it only refers to the existing charging section under which the tax is levied in respect of the transactions of purchases from unregistered dealers and therefore the provision is well within the competence of the state legislature to enact a law of this nature; that the challenge to the like provisions once earlier has been repelled and such provision has been upheld by the Supreme Court in the case of *State of Kerala and Anr. v. Builders' Association of India and Ors.* reported in [1997] 104 STC 134 and therefore the argument that the provision is unconstitutional, while is totally untenable, being an optional scheme and an alternative mode of payment of tax, the provision should be declared to be valid by applying the law as declared by the Supreme Court in the case of *Builders' Association of India* [supra].

20. It is in the background of such rival contentions, submissions are made by

the learned Counsel for the petitioners led by Sri. G Sarangan, learned senior counsel and ably supported by good number of learned Counsel appearing on behalf of the petitioners.

21. I have heard Sri. G Sarangan, learned senior counsel appearing for Smt. Vani, learned Counsel for the petitioner in WP Nos. 14728 of 2007, 4792 of 2008, M/s. Vikram & Atul K. Alur learned Counsel for the petitioners in WP Nos. 8801 of 2008, 8803 of 2008, 8802 of 2008, 14034 of 2007, 2976 of 2008, 5685 of 2008, 8788 of 2008, 8790 of 2008, 8792 of 2008, 8794 of 2008, 8795 of 2008, 8796 of 2008, 13489 of 2008, 8789 of 2008, 8791 of 2008, 8798 of 2008, 8793 of 2008, 8797 of 2008, 8800 of 2008, WP Nos. 5529, 5571, 5719, 13999, 6886 of 2008, Sri. M G Kumar, learned Counsel for the petitioner in WP No. 16030 of 2007, Sri. Rabinathan, learned Counsel for the petitioner in WP Nos. 9757 of 2007, Sri. Keshava Murthy, learned Counsel appearing for writ petitioners in WP Nos. 2416 of 2008, 4999 of 2008, 5397 of 2008, 6080 of 2008. Sri. A Satyanarayan, learned Counsel for the petitioners in WP Nos. 10880 of 2008, 8807 of 2008, 5038 of 2008, 5240 of 2008, Smt. Shalini Patil, learned Counsel for the petitioners in WP Nos. 2285 of 2008, 2417 of 2008, 2418 of 2008, 2672 of 2008, 3220 of 2008, 3283 of 2008, 5398 of 2008, 5399 of 2008, 5891 of 2008, 6645 of 2008, 6962 of 2008, 7322 of 2008, Sri. Shankar, learned Counsel for the petitioner in WP No. 8850 of 2008, Sri. Thirumalesh, learned Counsel for the petitioner in WP No. 8212 of 2008, Sri. Chidanand Urs, learned Counsel for the petitioners in WP Nos. 17927 of 2007, 3030 of 2008 on the one side and Sri. K M Shivayogiswamy, learned Government Pleader appearing for the State and its officers on the other.

22. Submission of Sri. Sarangan, learned senior counsel appearing for the petitioners in WP No. 14728 of 2007 is primarily aimed at invalidating the provision due to its retrospective operation as is done u/s 4[3][d] of Act No. 6 of 2007. Submission is that there was absolutely no justification or circumstance to mate the provision operate from an earlier date; that it is not for validating an otherwise defective provision so declared by the courts for falling due to other technical reasons; that no valid reason or intention is forthcoming before inserting Section 15[5][e] of the Act to the parent Act by Act No. 6 of 2007 and make it operative from 1.4.2006; that on the authority of law declared by the Supreme Court in the case of "Mycon Construction Limited v. State of Karnataka and Anr." reported in [2002] 127 STC 105 the provisions of a legislation which is given retrospective operation can be sustained if has a purpose to serve and to make the provisions work reasonably; that in the present case, the operation of the provision from an anterior date has while no purpose to serve at all also works unreasonably by placing an additional burden on persons who had opted to pay tax by way of composition; that the provision being not a charging section meant to retain or save earlier levy and collection which has been invalidated and being not a provision to obviate the State to tide over the obligation of refunding taxes collected and spent, such being not the position in the present case, retrospective operation of the provision cannot be sustained on settled principles

of validity and operation of retrospective legislation and therefore submits that the retrospective operation of the provision cannot be sustained, particularly, in the wake of the petitioners having acted on the premise of the law as it existed prior to 30.3.2007 which is virtually the fag end of the composition period by which time the petitioners had already worked out their tax liability, filed their returns, paid taxes and the entire obligations under the Act had all been fulfilled and to put the clock back and make the petitioners rework by digging into their old records which was otherwise avoided for the petitioners in the wake of composition scheme and expecting the petitioners to make good the details of purchases etc., made from unregistered dealers, is virtually asking the petitioners to perform the impossible and therefore the provision is a most unreasonable provision and falls fowl of Article 14 of the Constitution of India as it amounts to an irrational legislative provision with no object or purpose to achieve but only to fasten an additional burden and even consequential penalties on the petitioners and therefore the provision is bad.

23. Sri. Sarangan, learned senior counsel would submit that the petitioner - a works contractor had opted for payment of tax by way of composition and so paying the tax for the past three or four years is hard hit by the retrospective operation of the provisions of Section 15[5][e] of the Act as inserted by Section 4[3][d] of Act No. 6 of 2007.

24. First submission is that the additional burden in terms of Section 15[5][e] of the Act whether prospective or retrospective is unconstitutional being beyond the taxing power of the state legislature referable to Entry-54 of List-II of Schedule-VII of the Constitution of India as tax can only be paid on the sales or purchases of the same goods but not at both points in respect of the very goods in the hands of the same dealer. The language of entry is pointed out to submit that the levy can either be on the sale or on purchase.

25. The operation of Section 15[5][e] of the Act with effect from 1.4.2006 as indicated in the provisions of Section 4[3][d] of Act No. 6 of 2007 is contended to be unconstitutional for the reason that the retrospective implementation of the law is neither curative nor declaratory of any existing law; that it is creating an additional burden for the first time over and above the composition amount as envisaged u/s 15[1] of the Act and adding an independent burden a levy u/s 3[2] of the Act which was not the case earlier as an unreasonable levy and is to be struck down. It is submitted that retrospective amendment without any reason has always been frowned upon by the courts and the provision should be declared bad and inoperative for the earlier period: that Section 15[5][e] of the Act can never be understood to be operative from 1.4.2005 as understood by the assessing officer in the case of the petitioner that there was such a levy even on dealers opting for composition ever since the Act came into force and the amendment is only by way of clarification; that the stand of the State Government that the insertion of Section 15[5][e] of the Act is only a clarificatory provision is disputed.

26. In so far as the validity of the provision even operating prospectively is concerned, submission of Sri. Sarangan, learned senior counsel is that the provision is virtually in the nature of a charging section by creating a liability in terms of Section 15[5][e] of the Act; that it is not envisaged in the scheme of composition to create additional liabilities; that Section 15[5] of the Act being a provision introduced for the first time in the year 2006 by Act No. 4 of 2006 from 1.4.2006 the liability is sought to be created if at all by way of the provision and not otherwise and therefore does not fit into the scheme of composition as no additional levies are permitted and being in the nature of charging section in a composition provision cannot be sustained is the submission.

27. Another ground urged in support of invalidating Section 15[5][e] of the Act even prospectively is that it has the effect of creating a tax liability twice on the same goods in the hands of the same dealer; that there cannot be a levy of tax both at purchase point and at the sale point on the same goods in the hands of the same dealer; that it is opposed to the scheme of levy of tax on the sale of goods as envisaged under Entry-54 of List-2 of Schedule-VII to the Constitution of India; that the attempt on the part of the State legislature to levy such a tax both at the purchase point and the sale point on the very goods in the hands of the same dealer is not permitted for the State legislature as it amounts to taxing the same transaction twice in the hands of the same dealer and in support of such submission has placed reliance on the following two decisions of the Supreme Court, namely, in the case of "Devi Dass Gopal Krishnan and Ors. v. The State of Punjab and Ors." reported in [1967] 20 STC 430 at page 443 in which it is submitted that purchase and sale are two facets of the same transaction and they cannot be split up as two transactions and what is sought to be achieved in terms of Section 15[5] of the Act is to split the transactions into two to levy tax both on purchase and also at sale and on the interpretation of the provisions of the Punjab General Sales Tax Act, 1948, the Supreme Court has declared that if the tax is levied both at point of purchase and sale, the question was whether the goods was same or different and as indicated in Builders' Association of India [supra], the levy of tax in the case of nature of transaction of works contract being only on the value of the goods which passes on the execution of the contract and not on the value of the contract is that the goods remaining the same and on such premise the levy of tax on goods involved in a works contract being on the hypothesis that the goods remain the same and there being tax at purchase point u/s 3[2] of the Act and again taxed on the value of the total turnover including the value of the goods which is paid by way of composition u/s 15[1] of the Act, it amounts to double taxation and it should be declared as unconstitutional on the authority of law as declared by the Supreme Court in the case of "Devidass Gopal Krishnan"s case [supra].

28. For the same proposition, reliance is also placed on the decision of the Supreme Court in the case of "Malnad Areca Processing & Marketing Ltd. v. Dy. Commissioner of Commercial Taxes [Assessment] and Ors." reported in [2008] 13 VST S81 [SC] at page 583 and submits that the provision should be declared

as unconstitutional as it is beyond the competence of the State legislature to levy such a tax yet again purporting to be u/s 3[2] of the Act when once the tax by way of composition as envisaged u/s 15[1] of the Act has already been paid.

29. Emphasis is to submit that sale and purchase are two different aspects of the same transaction. Whether sale or purchase, it will have same ingredients, whether it is a transaction so identified under the provisions of the Sale of Goods Act or even under the provisions of the Karnataka Value Added Tax Act, 2003 and on such premise, the provision cannot be sustained as valid.

30. Learned Counsel would also submit that implementation of the provisions in the manner as indicated in Section 15[5][e] of the Act as worked in the reassessment orders would virtually amount to subjecting the petitioners to undue hardship, particularly, as the petitioners have no way of opting out of the composition scheme at this point of time; that the provision operates oppressively on the petitioners if it is to be understood in the manner as is contended on behalf of the State and as is sought to be implemented in terms of Section 15[5][e] of the Act.

31. It is submitted that Entry-54 envisages levy of tax in a transaction of sale either at the sale point or at the purchase point and not both; that the significance of the disjunction "or" cannot be lost sight of and in support of the submission has referred to the dictionary meaning of the word "or" as indicated in Stroud's 2008 Edition and Ramanath Iyer's The Law Lexicon".

32. Sri. Vikram, learned Counsel for the petitioner in WP No. 14034 of 2007 who is a registered dealer carrying on the business of executing works contract and has opted for payment of tax under the provisions of the Act by way of composition as enabled u/s 15 of the Act submits that so far as the works contractor is concerned, the entire liability for payment of tax on opting to pay tax by way of composition was at 4% of the sale consideration received from the customer and no other tax liability was contemplated by the scheme of the Act on a works contractor and in respect of such dealer to insist on payment of additional tax burden leviable u/s 3(2) of the Act and that too with retrospective effect from 1.4.2006 is nothing short of an unreasonable and harsh act on the part of the state legislature that too when the petitioner had already filed his returns for the year 2006-07, had paid taxes as was provided and contemplated in terms of Section 15[1] of the Act and calling upon such a dealer not only to bear an additional burden in terms of Section 15[5][e] of the Act but also to mulct him with penalty u/s 72[2] of the Act is most unreasonable and irrational act, falling fowl of Article-14 of the Constitution of India and in support of submission has placed reliance on the decision of the supreme court in the case of "Tata Motors Ltd. v. State of Maharashtra and Ors." reported in [2004] 136 STC 1.

33. Sri. Vikram, would submit that while the legislature has the power to make laws both prospectively and retrospectively, a retrospective levy if has to be

sustained, there should be strong and exceptional circumstances to warrant such levy and it should be a reasonable levy only for the purpose of validating an earlier levy which has failed due to some technical reasons etc.

34. Learned Counsel would submit that though the amendment is said to be clarificatory and as urged in the statement of objections filed by the state, it is pointed out that under the scheme of legislation a levy u/s 3[2] of the Act on a dealer like a works contractor was never contemplated until introduction of Section 15[5][e] of the Act by Act No. 6 of 2007 and notified on 30.3.2007 but sought to be given effect to from 1.4.2006. Submission is that the amending provision is neither clarificatory nor a valid provision and with the state failing to satisfy that the retrospective amendment was inevitable and in fact there being no justification or necessity at all for such a levy, the retrospective insertion of Section 15[5][e] of the Act is to be declared as unconstitutional being violative of Article 14 of the Constitution of India.

35. Learned Counsel for the petitioner would also submit that the provisions of Section 15[5][e] of the Act cannot even be read down to provide an option to a dealer to opt out of the scheme from the date of its operation i.e., with effect from 1.4.2006 is not an option open to the court for the reason that even if the section is to be read down in that manner, so as to provide option to a dealer like the petitioner to opt out of the scheme of composition, consequence being rather serious, exposing a dealer like the petitioner to arduous or impossible compliances to be met, particularly, as the petitioner if opts out of the composition scheme has to file his return, indicate his total turnover which has never been kept track of by the petitioner as the entire liability of works contractor opting for composition was only to pay composition rate of tax on the sale consideration he receives from his client and not on the total turnover and therefore it is no way of saving the provision by providing an option to the petitioner to opt out for the earlier period; that the provision is not only unreasonable but also violative of Article 14 of the Constitution of India.

36. Sri. M.G. Kumar, learned Counsel for the petitioner in WP No. 16030 of 2007 submits that the petitioner - a PWD Contractor had opted for payment of tax by way of composition as the provision stood prior to the amendment of Section 15 by way of insertion of Section 15[5][e] of the Act; that the contract being with the Government, the state government itself had made deductions of taxes payable at source and at the rate of 4% as envisaged; that even in the understanding of the State Government that was the entire tax liability and had deducted that amount; that the amendment of this nature much later with retrospective effect has left the petitioner high and dry as there is no way of the petitioner getting back to his client for reworking the contractual terms which now eats into the business profits of the petitioner; that the burden so created much later and by way of amendment in a provision occurring in the Act in effect being a tax on the profit reflects a different character; that it also amounts to taxing the transaction twice, in the sense, that once earlier by way of

composition and later by way of additional tax u/s 3[2] of the Act: that it amounts to double taxation and therefore the provision is bad in law being opposed to a hybrid of composition and levy of tax in the normal scheme; that it is not so envisaged under the scheme of composition as provided u/s 15 of the Act and therefore the provision should be declared as unconstitutional as otherwise it amounts to subjecting the petitioner to harassment; that levy of tax should not amount to subjecting the citizen to harassment or uncalled for misery; that affecting the business in an awkward manner after the transaction is over is nothing short of violating the fundamental right of carrying on the trade or business of one's choice coming in the way of petitioner's right guaranteed under Article 19(1)[g] of the Constitution of India; that the provision cannot be said to be saved by any reasonable restriction or method justifying the petitioner to suffer such an ordeal; that levying such tax from an earlier date is clearly opposed to the ratio of the decision of the Supreme Court in the case of State of Kerala and Others Vs. Kurian Abraham Pvt. Ltd. and Another, .

37. It is also submitted that the provision is also opposed to the principles of promissory estoppel as person who had opted for payment of tax by way of composition and based on the liability as it existed at the time of opting has now been altered subsequently after opting and to the detriment of the petitioner and therefore it is bad in law and in support has placed reliance on the decision of the Supreme Court in the case of Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others, .

38. It is submitted that when the benefit given under an earlier piece of legislation is held to be subsisting under a corresponding provision of a successor legislation, such ratio should be a fortiori made applicable to the situation where under the very provision of the Act a variation or amendment is made to the detriment of a dealer so as to subjecting the dealer to additional burden by way of amendment and on the basis of the law declared in Southern Petrochemical Industries case (supra) and submits that the present amendment for foisting an additional liability in terms of Section 3[2] of the Act on a dealer who has opted for composition is not sustainable and should be declared as unconstitutional.

39. Sri. Keshava Murthy, learned Counsel for the petitioner in WP No. 2416 of 2008 a registered dealer having a mechanized crushing unit who had opted for payment of taxes by way of composition as enabled u/s 15[1][d] of the Act has submitted that the petitioner is aggrieved by the proposition notice at Annexure-D proposing to levy tax u/s 3[2] of the Act on the part of the turnover which is purchased from unregistered dealers and for such purpose having issued notice u/s 39[1] of the Act; that the said notice is not valid in law; that there is no liability on a person like the petitioner to pay any taxes in terms of Section 3[2] of the Act; that the petitioner having opted to pay tax at the composite rate and as a statutory option provided to the petitioner as per Section 15[1] of the Act, there is absolutely no further liability on the petitioner when once he has paid the fixed amount for different crushing machines; that the proposition is clearly

contrary to the provisions of Section 15[1] of the Act; that the stand of the state government that even in respect of a dealer like the petitioner there was always the liability u/s 3[2] of the Act is not supported by the language of the statutory provision; that it is a most unreasonable and unwarranted stand; that it is also opposed to the principles of promissory estoppel as dealers who had been given the option on stipulated conditions and the stipulated liability, are now being asked to shoulder additional burden after the dealers had exercised their option and had changed their position; that there is no way of dealers like the petitioner providing for details of their purchases from unregistered dealers as it was never the requirement under the Act or the rules for persons like the petitioner who had opted for payment of tax by way of composition; that the very premise on which the notice is issued is fallacious, unreasonable and it should be quashed.

40. Sri. Satyanarayan, learned Counsel for the petitioner in WP No. 10880 of 2008 has also submitted that addition of tax payable u/s 3[2] of the Act even on a dealer who has opted for payment of tax by way of composition u/s 15 of the Act is only heaping misery on the dealers; that the policy of the state should be to tax without tears and not by subjecting the citizens to misery and hardship and has therefore submitted that the provision should be declared as unconstitutional on the strength of the authorities relied upon by the earlier learned Counsel for the petitioners.

41. Smt. Shalini Patil, learned Counsel for the petitioner in WP No. 2285 of 2008 has submitted that the scheme of the Act for payment of tax in the normal scheme, particularly, even in respect of works contractor as can be culled out with reference to Section 1[4], 2[34] and 2[36] of the Act giving the definition of "total turnover" and turnover" and when once the liability for payment of tax by way of composition with reference to the total turnover and at 4% of the total turnover including the part of the total turnover which is attributable to the purchases from unregistered dealer is fixed, a further levy u/s 15(5)(e) of the Act is nothing short of levying tax twice on very turnover, i.e., the total turnover once by way of composition and again by way of purchase tax u/s 3[2] of the Act and therefore submits the provision is bad and also adopts the submissions of other learned Counsel for the petitioners.

42. Sri. Shankar, learned Counsel for the petitioner in WP No. 8850 of 2008 - a works contractor, has pointed out that in the case of this petitioner the reassessment is as though the petitioner is liable to pay additional tax u/s 3[2] of the Act notwithstanding having opted for payment of tax by composition even with effect from 1.4.2005 itself; that it is in fact even beyond the provisions of Section 15[5](e) of the Act which the legislature has made it clear that it is effective from 1.4.2006; that the assessment order so far as it relates to reopening or reassessment to add liability u/s 3[2] of the Act for the period 1.4.2005 to 31.3.2006 is per se unsustainable and should be quashed.

43. In so far as the provision operating with effect from 1.4.2006 by way of amendment is concerned, submission is that the retrospective operation can be

so given effect to only for the definite object and purpose as otherwise it can only mean to operate prospectively; that in the absence of any intention or purpose sought to be achieved by giving the provision retrospective effect the provision operates only prospectively and working the provision with effect from 1.4.2006 is also bad in law and in support of the submission has placed reliance on the following decision of the Supreme Court in the case of S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company, at page 240 and submits that until and unless the legislative provision expressly mentions that it operates from particular date it can only be taken to be prospective and cites this as an authority in support of invalidating the assessment for the period prior to 1.4.2006; that even for prospective operation two other authorities for the same purpose are in the case of J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and Another Vs. Induprasad Devshanker Bhatt, and another in the case of "Sales Tax Officer, Ward-II, Moradabad and Two Ors. v. Oriental Coal Corporation" reported in [1988] 68 STC 398.

44. One another attack on retrospective amendment being not justified is that unless it is a validating levy, it cannot be for levying a fresh tax or fresh levy and that too by an express provision and not by mere implication reliance is placed on the decision of the Supreme Court in Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others, It is also urged that the retrospective amendment is also bad for being violative of principles of natural justice and for the reason that it has the effect of placing an additional burden and in support of the submission, reliance is placed on the decision of the Supreme Court in the case of National Agricultural Co-operative Marketing Federation of India Ltd. and Another Vs. Union of India (UOI) and Others,

45. Learned Counsel also submits that even in the understanding of the officials of the commercial taxes department, a person like the petitioner - a works contractor - a dealer who has opted for payment of taxes by way of composition was not required to pay taxes in terms of Section 3[2] of the Act is demonstrated by the manner in which the forms had been provided for to work the provisions of Section 15 of the Act read with Rules 143 and 144 of the rules and wherein a form did not provide for a column to indicate the tax liability in terms of Section 3[2] of the Act even for the year 1.4.2006 onwards, but the form has now been amended retrospectively and even the forms have been modified in the year 2007 by giving effect to the modified form from an earlier date; that the modification of the form was only after 1.4.2007 but the petitioner having paid taxes by way of composition by filing its return on the basis of the form as it existed for the earlier period when such taxes were paid prior to 1.4.2007 the very understanding of the respondents was there was no liability for a dealer opting for payment of tax by way of composition u/s 15 of the Act, particularly, as envisaged now u/s 15[5][e] of the Act: that there was never any liability u/s 3[2] of the Act on such dealers and therefore the retrospective amendment is not one giving effect to an existing provision or clarificatory in nature but clearly one creating a liability from an earlier date which did not exist at the relevant

point of time when the law operated.

46. Learned Counsel for the petitioner would also submit that in a taxation statute the computation provision fails, if the actual liability is not precisely determinable in terms of the computation provision, the very charge fails and in the present case as the requirement of determining liability u/s 3[2] of the Act envisages details of the purchases effected by a registered dealer from unregistered dealers to have been maintained which was otherwise not the requirement and as there is no way of determining such liability as of now the very provision of Section 15[5][e] of the Act creating such liability fails so far as dealers who had opted for composition is concerned and therefore submits that Section 15[5][e] of the Act should be declared as an ineffective provision having failed to achieve its object in a cogent or concise manner. To support this submission, reliance is placed on the decision of the Supreme Court in the case of Commissioner of Income Tax, Bangalore Vs. B.C. Srinivasa Setty, .

47. One another facet of the argument is that asking the dealers like the petitioners to go back to the earlier transactions to provide information as to the purchases from unregistered dealers is virtually an impossible and unrealistic requirement foisted on persons like the petitioners who in the wake of opting for composition would not have maintained such details and subjecting dealers like the petitioners to such unreasonable requirements could affect the business and life of the petitioners violative of Article 21 guaranteed under the Constitution of India and in support of the same, reliance is placed on the decision of the Supreme Court in the case of Reliance Energy Limited and Another Vs. Maharashtra State Road Development Corporation Ltd. and Others, .

48. It is submitted that the doctrine of the State providing a level playing field to all businessmen/traders situated alike is constitutional obligation in terms of the Judgment of the Supreme Court in Reliance Energy Ltd.'s case [supra]; that commitment to rule of law and legal certainty as observed by Lord Goldsmith and quoted by the Supreme Court in this Judgment is the heart of Parliamentary democracy and that Article 14 of the Constitution of India equally applies to the Government policies and if the policy or act of the Government even in contractual matters fails the test of reasonableness, it becomes unconstitutional as being violative of Article 14 of the Constitution of India and it is submitted in the present case it is a fortiori so as the State by an act of legislature has ushered in an era of uncertainty by making an amendment operative from an earlier date and consequentially altering the burden of tax on such of those dealers who had opted for composition in terms of Section 15[1] of the Act, after the option is exercised and thereby not only affects the concept of certainty in law but also being an unreasonable provision, the provision should be declared as unconstitutional being violative of Article - 14 and Article - 19[1](g) of the Constitution of India respectively; that due to the very onerous conditions imposed on the petitioners in the provision, it should be held unconstitutional not only for the above reason but also for the reason that the law expects the

impossible to be performed.

49. One another attack on the provisions of Section 15[5][e] of the Act being made operative from 1.4.2006 is that if any provision is to be made operative from an earlier date it will have definite object to achieve and it will be made so operative from an earlier date either to meet an unforeseen contingency which had not been visualized earlier or to validate the law which has been subsequently declared as illegal and to ensure that the law is validated from its inception, but in the present case, with the State Government not indicating any specific object that is sought to be achieved by making the provisions of Section 15[5][e] of the Act operative from 1.4.2006 though notified later on 30.3.2007 and in this regard has drawn attention to the statement of objects and reasons provided by the Government when the Bill for amendment of Section 15 of the Act was introduced in the Assembly and points out that except for saying that the provisions were as part of rationalization measures sought to be introduced in the Karnataka Value Added Tax Act, 2003 and indicating that it was "clarification regarding tax liability of dealers under composition on their purchases from unregistered persons", nothing else is forthcoming in the Budget Speech of the Finance Minister while introducing the State Budget for the year 2006-07 and the proposal for amending the provisions of the Act being as part of the Finance Bill and in the absence of any specific object or purpose with which the Act was amended, particularly, for giving retrospective effect to the Act, it should be declared that the provision if is to be taken to be operative from 1.4.2006 itself it will be unconstitutional. In this regard, reliance is placed on the decision of the Supreme Court in the case of D. Cawasji and Co., Mysore Vs. State of Mysore and Another, .

50. Submission is the retrospective amendment of law having the effect of increasing the tax burden is bad in law unless is for a specific sustainable purpose.

51. Sri. Shankar, learned Counsel for the petitioner would also submit that the provisions of Section 15[5][e] of the Act even if it is to be taken to be operative from 1.4.2007 is nevertheless bad in law for the reason that the provision seeks to place an additional burden on dealers like the petitioners who are engaged in execution of works contract; that the composition amount as stipulated in Section 15[1] of the Act payable by the dealers who had opted for the alternative mode of payment of tax by way of composition had already been taken into account, as the possible loss of revenue u/s 3 of the Act including the loss attributable to the levy u/s 3[2] of the Act and having already been provided for as the possible tax liability of a dealer in the normal scheme being known and such possible loss having been factored while stipulating the rate of composition at 4% in respect of the entire value of the turnover of the dealer which is inclusive of many components which are otherwise not even taxable under the Act itself, asking only dealers like the petitioner executing works contract to bear the additional burden as indicated in Section 15[5][e] of the Act over and above

the liability of payment of tax at the composition rate in respect of the entire turnover not only amounts to levying a double tax on the same turnover in the hands of the dealers like works contractors but also amounts to an act of discrimination as only dealers like the petitioners who are works contractors are asked to bear such additional burden even within the class of dealers who are provided the option to pay tax by way of composition and therefore the provision should be declared as unconstitutional being unreasonable and discriminatory.

52. It is submitted that while dealers who have not opted for composition can definitely claim input credit for the taxes paid by them u/s 3[2] of the Act, such facility is denied to dealers opting for composition; that if the liability u/s 3[2] of the Act is to be claimed as an independent liability independent of the offer of composition in terms of Section 15 of the Act, the State cannot deny the facility of claiming input credit to dealers who have opted for composition while such facility is available to dealers who have not opted for composition when opting for composition by dealers like the petitioner does not make any difference to the liability for payment of taxes u/s 3{2] of the Act and for this reason also it is submitted that the impugned provision is discriminatory.

53. Learned Counsel for the petitioner would submit that it is not open to the State to adopt a policy of take it or leave it by contending that the composition scheme is an optional scheme as the State cannot adopt such an attitude which is more arbitrary in nature and in this regard would place reliance on the decision of the Supreme Court in the case of Hindustan Times and Others Vs. State of U.P. and Another, .

54. Sri. Thirumalesh. learned Counsel for the petitioner in WP No. 8212 of 2008 apart from adopting the submissions made by the earlier counsel would also submit that levy of tax in terms of Section 15[5][e] of the Act as inserted by Act No. 6 of 2007 and with retrospective effect from 1.4.2006 is clearly violative of Entry 54 of the List-II of Seventh Schedule to the Constitution of India for the reason that such additional burden as u/s 15[5][e] of the Act amounts to levy of tax both on purchase and sale of the same goods in the hands of the very registered dealer who has opted for payment of tax by way of composition; that even in terms of Entry 54 of the List-II of Seventh Schedule to the Constitution of India and read with definition of tax on the sale or purchase of goods" as it occurs in Sub-article 29A of Article 366 of the Constitution of India enables the State Government to levy tax only on either a sale or purchase and not on both; that by subjecting a dealer like the petitioner who has opted for payment of tax by way of composition to a liability at the purchase point of the goods purchased from unregistered dealers and also subjecting the very goods when sold as forming part of the works contract executed by the dealer at the composition rate as sales tax and in the hands of the very dealer and not allowing any input credit in the hands of the first dealers amounts to levying of tax both on purchase and sale of the same goods in the hands of the same dealer and therefore is unconstitutional. It is pointed out that in the case of registered

dealers who pay their taxes in the normal method if the purchases are from registered dealers the selling dealer collects tax and levy of tax on the person who is executing works contract is only when he effects sale of the goods and thereby the goods passes to the client but at the same time such dealers are also allowed input tax credit for selling to registered dealers and in effect the actual sales tax liability on such dealer is only on the value addition of sale and therefore there is no transgression to Entry 54 of the List-II of Seventh Schedule to the Constitution of India.

55. It is also pointed out that even if the purchases are from an unregistered dealer the tax paid by the dealer is allowed as an input tax credit of tax levied on purchases from unregistered dealers when the goods are sold and therefore levy is well within the scope of Entry-54.

56. It is also pointed out that in a situation where a registered dealer opting for composition makes purchases from registered dealers, the selling registered dealer collects tax whereas the purchasing works contractor pays tax only on the value of the goods involved in the execution of works contract and at only one point but without any input tax benefit but there is no violation of the limits of Entry-54 of List - II.

57. In this background, it is pointed out that only in the case of registered dealers who is a works contractor and who has opted for composition who has made purchases from unregistered dealers not only tax is levied in his hands u/s 3[2] of the Act even when he has opted for composition but also is asked to pay taxes on the entire turnover inclusive of such purchases and at the common composition rate but at the same time is not allowed any input tax credit for the tax paid by this dealer at purchase point from unregistered dealers and it is therefore submitted that tax is levied on the very goods both at purchase and sale and therefore it is a levy beyond the scope of Entry-54 of List-II of seventh schedule to the Constitution of India

58. Sri. Thirumalesh, learned Counsel for the petitioner also submits that while Section 15[5][d] of the Act allows deductions of the value of purchases made by dealers opting for composition under Clauses [a] or [c] of Section 15[1] of the Act, purchased from unregistered dealers from out of the total turnover with reference to which tax at the rate of composition should be worked out. i.e., such dealers' purchases turnover is excluded from the total turnover it is only in the case of dealers like the petitioners who are works contractors such exclusion is not provided for and it is for this reason the provision not only transgresses the limits of Entry-54 but also is discriminatory as between dealers like the petitioners visa-vis dealers who are mentioned for concession u/s 15[5][d] of the Act.

59. Sri. Thirumalesh would also submit that making the levy operative from 1.4.2006 i.e., making it retrospective in terms of Section 15[5][e] of the Act is unreasonable as it virtually eats into the profits of the petitioner and partakes

the character of levy of tax on income and is therefore not only violative of Article 19[1][g] of the Constitution of India but also unconstitutional as it goes beyond the scope of Entry-54 of List-II.

60. Last submission of Sri. Thirumalesh is that the levy of penalty u/s 72[2] of the Act in respect of the petitioner being a direct consequence of the introduction of the provisions of Section 15(5)[e] of the Act and even when the petitioner is not at fault, in the sense, the petitioner has not committed any infraction of any provision of the Act, the provision should be held unconstitutional if it is to be taken to be retrospective as the offence is sought to be created by the retrospective operation of the Act in respect of an incident otherwise not an offence and is therefore violative of Sub-article [1] of Article 20 of the Constitution of India.

61. Sri. Atul K Alur, learned Counsel for the petitioners in WP Nos. 5529, 5571, 5719, 13999, 6886 of 2008 while adopts the arguments of the earlier counsel, would also point out that the petitioners who are all contractors executing works for public works department in the state government are left high and dry because of the retrospective operation of Section 15(5)[e] of the Act and seeks for invalidation of the provision.

62. Sri. Chidanand Urs, learned Counsel for the petitioners in WP Nos. 3030 of 2008. 17927 of 2007 would submit that while in WP No. 17927 of 2007 at the time of filing the writ petition, the petitioner had questioned the legality of the notice on the very ground urged earlier that the provision of Section 15(5)[e] of the Act is virtually in the nature of a charging section; that the levy of the nature as in Section 15(5)[e] of the Act cannot be characterized as a clarificatory levy; that retrospective levy of this nature after the event, namely, the sale or purchase is over and creating an additional burden would virtually be in the nature of levy on the profit being not at the time of transaction and is therefore unconstitutional being beyond the competence of the state legislature to levy a tax of this nature.

63. Sri. Chidanand Urs, learned Counsel would place reliance on the decision of the Supreme Court in the case of Collector of Central Excise, Hyderabad etc. etc. Vs. M/s. Vazir Sultan Tobacco Company Limited, Hyderabad Etc. Etc., to submit that the levy u/s 15(5)[e] of the Act is virtually a levy not on transaction in the nature of sale or purchase but on something else such as profit of the petitioner and is therefore unconstitutional.

64. Learned Counsel for the petitioner submits that increasing the tax burden when the event is over amounts to levy on a transaction other than the sale or purchase and therefore is beyond the competence of the state legislature.

65. Reliance is also placed on the decision of the Supreme Court in the case of D. Cawasji and Co., Mysore Vs. State of Mysore and Another, .

66. Sri. Shivayogiswamy, learned Government Pleader appearing for the State,

countering such submissions has stoutly defended the validity of Section 15[5][e] of the Act both retrospectively and prospectively. In this regard, learned Government Pleader has taken me through the relevant statutory provisions such as definition sections, charging Section 3, Section 4 - providing for rate of tax and on different commodities, normal scheme of levy of tax under the Act as indicated in Sections 9, 10 and 11 of the Act, provisions of Section 15 which are an alternative mode of payment of tax under the scheme, an optional scheme, which is enabled to opt for payment of tax by way of composition, the relevant rule for the purpose of Section 15 of the Act such as Rules, 135, 136, 138, 139, 142 and 143 of the rules and submits that the so called additional levy or additional burden of tax u/s 15[5][e] of the Act as inserted by Act No. 6 of 2007 is not really any additional levy that it is only a levy which was very much in existence as per Section 3[2] of the Act which is a provision since the inception of the Act; that the section is more clarificatory in nature than to create an additional burden or levy; that having regard to the object of the legislature to provide for an alternative; less cumbersome mode of payment of tax by way of composition and as a rough and ready method by computing the tax at a given rate on the entire turnover but the state having the object of maintaining its revenue and the further object of not either giving an undue advantage to dealers who opted for composition nor to put them at any great disadvantage the legislature has made minor adjustments to the provisions of Section 15 of the Act from time to time to ensure the twin object of maintaining the revenue collection and also extending the facility of composition mode of payment of taxes, the provisions have achieved such purpose and nothing beyond; that collection of taxes in terms of Section 15 of the Act is well within the competence of the state legislature; that the levy is only on the transaction of sale or purchase and not on anything else; that having regard to the nature of the business and varying interest of transactions and business practices involved in carrying of different types of business and the dealers being differently situated commensurate provisions have all been made without losing sight of the main object of providing the facility of composition; that the scheme being an optional scheme, it is open to the petitioners to stay in the scheme or opt out and to pay taxes in the normal course; that on the ratio of the Judgment of the Supreme Court in the case of "State of Kerala and Anr. v. Builders" Association of India and Ors." reported in [1997] 104 STC 134 at page 139, the provisions have to be held to be valid and constitutional and therefore there is no merit in the writ petitions and the writ petitions are to be dismissed.

67. Learned Government Pleader has taken me through the statement of objections and submits that the stand of the state government is that the liability u/s 3(2) of the Act is a liability which is envisaged on all dealers effecting purchases from unregistered dealer and is uniformly levied; that having regard to the language of Section 15 of the Act indicating that the amount of tax by way of composition being in lieu of the net amount of tax payable lay the dealer, the liability u/s 3(2) of the Act had always been kept out of this computation of net

amount of tax payable by dealer for the purpose of Section 15 of the Act that it was never the intention of the legislature to provide a concession or exemption to a dealer opting for payment of tax by way of composition in respect of the liability contemplated u/s 3[2] of the Act and therefore the stand of the petitioners and the submissions by learned Counsel for the petitioners that the dealers who opted for payment of tax by way of composition are not liable to pay tax leviable u/s 3[2] of the Act is not tenable and is to be rejected.

68. Learned Government Pleader in support of his submission that the amendment u/s 15 of the Act by way of insertion of Section 15[5][e] of the Act by Act No. 6 of 2007 does not amount to a retrospective amendment for the reason that no new liability is being created by this provision, has placed reliance on the division Bench decision of the this Court in the case of "Kanthi Enterprises v. Deputy Commissioner of Commercial Taxes and Anr." reported in [2001] 121 STC 478. It is submitted that the amendment is more in the nature of a clarificatory amendment and not as though some provisions have been made to create an additional liability from an anterior date: that what was implicit in the form of liability as it existed u/s 3[2] of the Act is only made explicit by Section 15[5][e] of the Act and therefore no fault can be found in this provision.

69. Learned Government Pleader has also placed reliance on the budget speech of the Finance Minister indicating the amendments to be clarificatory in nature as used to be found at Sl. No. 10 of Annexure-2 to the speech for the year 2006-07 to submit that the amendment to the provisions of the Act was not a retrospective amendment to create a new liability but by way of clarification and for such purpose and therefore submits that the submission on behalf of the petitioners by all learned Counsel for the petitioners being on the premise of a retroactive legislation and therefore being unreasonable the provision should be declared unconstitutional, is not tenable.

70. Some of the learned Counsel for the petitioners have supplemented the submissions made at the time of hearing with some written submissions also which only sums up the contentions noticed above.

71. It is in the background of the legislative changes made to Section 15 of the Act and the arguments advanced at the Bar and grounds urged in support of the writ petition the validity of Section 15[5][e] of the Act whether operates from earlier date or prospectively is required to be examined.

72. Let me first examine the question of the provision being unconstitutional on the premise that Section 15[5][e] of the Act takes the levy beyond the scope of Entry-54 of List-II of Schedule-VII of the Constitution of India.

73. Stress is laid on the scope of levy under the entry in the context of the definition of the phrase tax on the sale or purchase of goods" as it occurs in Sub-article 29-A of Article 366 of the Constitution of India and the use of disjunctive proposition "or" indicates that the levy can be either on a sale or on a purchase and not on both. Dictionary meaning and authorities in support of this expression

being a tax on either sale or purchase are relied upon by learned Counsel for the petitioners.

74. The language of Entry-54 having been incorporated, the words from the definition of Sub-article 29-A of Article 366 of the Constitution of India and it being very clear that the tax is on the sale or purchase of goods, it can only mean that the tax is when a sale takes place or purchase takes place. The argument is that levying tax both at the time of purchases and also at the time of sale on the same goods virtually alters the scope of the entry by reading as though the entry is tax on the sale and purchase of goods.

75. While it is not necessary to go into the question as to what could have been the scope of the entry if it was tax on sale and purchase, the phrase "tax on sale or purchase" in entry 54 is good enough to indicate that the state legislature has the competence to levy tax whenever there is a purchase or whenever there is a sale. The argument also proceeds on the premise that in the hands of dealers who are works contractors and who have effected purchases from unregistered dealers while the state collects tax from their hands at the purchase point of the said goods, when the very same goods are forming part of works contract executed by the dealer and the goods pass on the execution of the contract, that very value is taxed at the sale point at the rate as provided for composition and it is therefore urged that it is a levy both at the purchase point and sale point as goods are the same and the dealer paying the purchase tax as well as sales tax is one and the same. It is for this reason it is urged that the provisions of Section 15[5][e] of the Act which brings about such result is unconstitutional.

76. This argument overlooks the very obvious state of affairs that when a works contractor purchases goods from an unregistered dealer, it is one transaction and the transaction can attract tax even in terms of Entry-54 as a tax on purchase and it so happens that it is at the purchase point tax is levied.

77. Tax is on the transaction of purchase and a registered dealer being looked upon for collection is from convenience point for the State to gather tax. That by itself cannot affect the validity of the levy. If the purchases were to be from a registered dealer, that registered dealer would have collected tax and remitted it to the state though ultimately the purchaser would have borne the brunt of the tax. So far as the works contractor buying from an unregistered dealer are concerned, instead of paying it to the seller as in the case of registered dealer, the amount is remitted directly to the state by the purchasing dealer himself i.e., the burden is borne by the buyer here also.

78. When such goods are forming part of works contract and the value of the goods constitute sale in favour of the client in whose favour contract is executed, the sale is part of another transaction. Under the Constitutional scheme there can be a levy of tax every time there is a transaction of sale or purchase. The sale of the goods though the goods may be the same is as part of another transaction and can attract levy for payment of tax. The purchase of goods from

unregistered dealer is one transaction and the sale of may be the very goods in favour of person for whom works contract is executed is another transaction and in one transaction levy is at the purchase point and in another transaction levy is at the sale point but that does not mean that the levy is in respect of the same transaction. It is not as though both the purchases and sale of the same transaction is subjected to tax but purchases and sale of the same goods as forming part of two different transactions are subjected to tax. That is not frowned upon by Entry-54. It is for this reason, the provisions of Section 15[5] [e] of the Act cannot be faulted as bringing about unconstitutionality assuming that the provisions are one creating an additional liability.

79. Though learned Counsel for the petitioners have placed reliance on the various authorities of the Supreme Court, it is not as though the sale and purchase of the same transaction are subjected to tax in the present situation.

80. However. I find some force in the argument that if the burden in terms of Section 15(5)[e] of the Act is made known at much later point of time, it could virtually transform into a levy on the profit and not necessarily levy on the transaction of sale as the liability when once was made known even to a dealer opting for composition if it is in any way altered later to the detriment of the dealer such that the dealer is not in a position to take corrective measures etc., and the levy may not partake a levy on the transaction of sale or purchase. But in the case of the petitioners, as the petitioners are totally prevented from collecting any tax when once they opt for composition, this argument may not also be available to the petitioners except that if the position should have been known earlier, perhaps the petitioners could have suitably worked their business transaction with regard to the end price etc.,. But that argument is far fetched to seek invalidation of the provision as unconstitutional, on the ground of want of legislative competence.

81. The next argument is that the levy is made retrospective in operation and therefore an unreasonable levy as it brings about considerable hardship, misery and expects the petitioners to comply with the impossible.

82. Some of the learned Counsel for the petitioners have submitted that the provision is virtually in the nature of an additional charging section and if so brings about an anomaly of not allowing input tax rebate as once it is kept out of the purview of the composition scheme there cannot be any distinction for allowing input tax credit between dealers paying taxes on regular basis and dealers who have opted for composition.

83. The provisions of Section 15 of the act since its inception and with the amendments read as under:

[A]. Section 15 of the Act by Karnataka Act No. 32 of 2004 w.e.f. 19.1.2005:

15. Composition of tax.- (1) Subject to such conditions and in such circumstances as may be prescribed. any dealer other than a dealer who

purchases or obtains goods from outside the State or from outside the territory of India, liable to pay tax as specified in Section 4 and,

(a) whose total turnover in a period of four consecutive quarters does not exceed fifteen lakh rupees; or

(b) who is a dealer executing works contracts; or

(c) who is a hotelier, restaurateur, caterer, or

(d) who is a mechanised crushing unit producing granite metals;

may elect to pay in lieu of the net amount of tax payable by him under this Act by way of composition, an amount at such rate not exceeding five per cent on his total turnover or on the total consideration for the works contracts executed or not exceeding two lakh rupees for each crushing machine per annum as may be prescribed.

(2) For the purposes of Sub-section (1) a quarter shall mean any period ending on final day of the months of March, June, September and December.

(3) Any dealer eligible for composition of tax under Sub-section (1) may report, to the prescribed authority, the exercise of his option and he shall pay such amount due and furnish a return in such manner as may be prescribed.

(4) Any dealer opting for composition of tax under Sub-section (1) shall not be permitted to claim any input tax on any purchases made by him.

[B]. Section 15 of the Act by Karnataka Act No. 32 of 2004 amended w.e.f. 1.4.2005:

15. Composition of tax.- (1) Subject to such conditions and in such circumstances as may be prescribed, any dealer other than a dealer who purchases or obtains goods from outside the State or from outside the territory of India, liable to pay tax as specified in Section 4 and,

(a) whose total turnover in a period of four consecutive quarters does not exceed fifteen lakh rupees; or

(b) who is a dealer executing works contracts; or

(c) who is a hotelier, restaurateur, caterer; or

(e) who is a mechanised crushing unit producing granite metals;

may elect to pay in lieu of the net amount of tax payable by him under this Act by way of composition, an amount at such rate not exceeding five per cent on his total turnover or on the total consideration for the works contracts executed or not exceeding two lakh rupees for each crushing machine "per annum as man be notified by the Government.

(2) For the purposes of Sub-section (1) a quarter shall mean any period ending

on final day of the months of March, June, September and December.

(3) Any dealer eligible for composition of tax under Sub-section (1) may report, to the prescribed authority, the exercise of his option and he shall pay such amount due and furnish a return in such manner as may be prescribed.

(4) Any dealer opting for composition of tax under Sub-section (1) shall not be permitted to claim any input tax on any purchases made by him,

[C]. Section 15 of the Act by Karnataka Act No. 27 of 2005 w.e.f. 7.6.2005:

15. Composition of tax,- (1) Subject to such conditions and in such circumstances as may be prescribed, any dealer other than a dealer who purchases or obtains goods from outside the State or from outside the territory of India, liable to pay tax as specified in Section 4 and,

(a) whose total turnover in a period of four consecutive quarters does not exceed fifteen lakh rupees; or

(b) who is a dealer executing works contracts; or

(c) who is a hotelier, restaurateur, caterer, or dealer running a sweetmeat stall or an ice cream parlour.

(d) who is a mechanised crushing unit producing granite metals may elect to pay in lieu of the net amount of tax payable by him under this Act by way of composition, an amount at such rate not exceeding five per cent on his total turnover or on the total consideration for the works contracts executed or not exceeding two lakh rupees for each crushing machine per annum as may be notified by the Government.

(2) For the purposes of Sub-section (1) a quarter shall mean any period ending on final day of the months of March, June, September and December.

(3) Any dealer eligible for composition of tax under Sub-section (1) may report, to the prescribed authority, the exercise of his option and he shall pay such amount due and furnish a return in such manner as may be prescribed.

(4) Any dealer opting for composition of tax under Sub-section (1) shall not be permitted to claim any input tax on any purchases made by him.

[D] Section 15 of the Act by Karnataka Act No. 4 of 2006 w.e.f. 1.4.2006:

15. Composition of tax.- (1) Subject to such conditions and in such circumstances as may be prescribed, any dealer other than a dealer who purchases or obtains goods from outside the State or from outside the territory of India, liable to pay tax as specified in Section 4 and,

(a) whose total turnover in a period of four consecutive quarters does not exceed an amount as may be notified by the State Government which shall not exceed fifty lakh rupees, and who is not a dealer falling under Clause (b) or (c) or (d)

below; or

(b) who is a dealer executing works contracts;

(c) who is a hotelier, restaurateur, caterer; or dealer running a sweetmeat stall or an ice cream parlour or bakery or any other class of dealers as may be notified by the Government: or

(d) who is a mechanised crushing unit producing granite or any other metals may elect to pay in lieu of the net amount of tax payable by him under this Act by way of composition, an amount at such rate not exceeding five per cent on his total turnover or on the total consideration for the works contracts executed or not exceeding two lakh rupees for each crushing machine per annum as may be notified by the Government.

(2) For the purposes of Sub-section (1) a quarter shall mean any period ending on final day of the months of March, June, September and December.

(3) Any dealer eligible for composition of tax under Sub-section (1) may report, to the prescribed authority, the exercise of his option and he shall pay such amount due and furnish a return in such manner as may be prescribed.

(4) Any dealer opting for composition of tax under Sub-section (1) shall not be permitted to claim any input tax on any purchases made by him.

(5) Notwithstanding anything contained in Sub-sections (1) and (4):

(a) a dealer executing works contracts and who purchases or obtains goods from outside the State or from outside the territory of India shall be eligible to opt for composition under Sub-section (1), and if the property in such goods (whether as goods or in some other form) is transferred in any works contract executed by him, the dealer shall be liable to pay tax on the value of such goods at the rate specified in Section 4. and such value shall be deducted from the total consideration of the works contracts executed on which an amount as notified is payable under Sub-section (1) by way of composition in lieu of the tax payable under the Act:

(b) in the case of a dealer executing works contracts and opting for composition of tax under Sub-section (1), no tax by way of composition shall be payable on the amounts paid to a Sub-contractor as consideration for execution of works contract whether wholly or partly and such amounts shall be deducted from the total consideration of the works contracts executed on which an amount as notified is payable under Sub-section (1) by way of composition in lieu of the tax payable under the Act subject to production of proof that such sub-contractor is a registered dealer liable to tax under the Act and that such amounts are included in the return filed by such sub-contractor;>

(c) in the case of a dealer executing works contracts, after opting for composition of tax under Sub-section (1) effects sale of any goods liable to tax under the Act other than by transfer of the property in such goods (whether as goods or in

some other form) in any works contract executed by him, the dealer shall be liable to pay tax on the value of such goods at the rate specified in Section 4, without any deduction for input tax on purchase of such goods made by him:

(d) in the case of a dealer opting for composition of tax under Clause (a) or (c) of Sub-section (1), the turnover on which tax is leviable under Sub-section (2) of Section 3 shall be deducted from the total turnover on which an amount as notified is payable under Sub-section (1) by way of composition in lieu of the tax payable under the Act.

[E] Section 15 of the Act by Karnataka Act No. 6 of 2007 w.e.f. 1.4.2007:

15. Composition of tax.- (1) Subject to such conditions and in such circumstances as may be prescribed, any dealer other than a dealer who purchases or obtains goods from outside the State or from outside the territory of India, liable to pay tax as specified in Section 4 and,

(a) whose total turnover in a year does not exceed an amount as may be notified by the State Government which shall not exceed fifty lakh rupees, and who is not a dealer falling under Clause (b) or (c) or (d) below; or

(b) who is a dealer executing works contracts; or

(c) who is a hotelier, restaurateur, caterer; or dealer running a sweetmeat stall or an ice cream parlour or bakery or any other class of dealers as may be notified by the Government; or

(d) who is a mechanised crushing unit producing granite or any other metals may elect to pay in lieu of the net amount of tax payable by him under this Act by way of composition, an amount at such rate not exceeding five per cent on his total turnover or on the total consideration for the works contracts executed or not exceeding two lakh rupees for each crushing machine per annum as may be notified by the Government.

(2) Notwithstanding anything contained in Sub-section [1], a dealer whose nature of business is of a type falling under more than one clause of Sub-section [1] shall be eligible to opt for composition under the said sub-section in respect of tax payable on his turnover relating to any or all of such types of business subject to the condition that:

[a] such dealer maintains separate account of each type of his business;

[b] the total turnover in a year in respect of all types of business of such dealer falling under Clause [a] of Sub-section [1] does not exceed the amount as may be notified under the said clause:

[c] the amount payable by way of composition by such dealer on his total turnover or the total consideration in respect of each type of such business shall be as may be notified for such type under Sub-section [1].

[d] the total turnover of such dealer from all his types of business shall be

reduced to the extent of the total turnover or total consideration in respect of each such tape, for calculating the amount payable by way of composition for such type of business under Sub-section [1]; and

[e] in respect of such type of business for which, he has not exercised his option or is not eligible, for composition under Sub-section [1], then on the taxable turnover as determined from the balance total turnover after reduction as specified in Clause [d]. he shall be liable to tax as specified u/s 4.

(3) Any dealer eligible for composition of tax under Sub-section (1) may report, to the prescribed authority, the exercise of his option and he shall pay such amount due and furnish a return in such manner as may be prescribed.

(4) Any dealer opting for composition of tax under Sub-section (1) shall not be permitted to claim any input tax on any purchases made by him,

(5) Notwithstanding anything contained in Sub-sections (1) and (4),:

(a) a dealer executing works contracts and who purchases or obtains goods from outside the State or from outside the territory of India shall be eligible to opt for composition under Sub-section (1), and if the property in such goods (whether as goods or in some other form) is transferred in any works contract executed by him, the dealer shall be liable to pay tax on the value of such goods at the rate specified in Section 4, and such value shall be deducted from the total consideration of the works contracts executed on which an amount as notified is payable under Sub-section (1) by way of composition in lieu of the tax payable under the Act;

(b) in the case of a dealer executing works contracts and opting for composition of tax under Sub-section (1), no tax by way of composition shall be payable on the amounts payable or paid to a subcontractor as consideration for execution of works contract whether wholly or partly and such amounts shall be deducted from the total consideration of the works contracts executed on which an amount as notified is payable under Sub-section (1) by way of composition in lieu of the tax payable under the Act subject to production of proof that such sub-contractor is a registered dealer liable to tax under the Act and that such amounts are included in the return filed by such sub-contractor;

(c) in the case of a dealer executing works contracts, after opting for composition of tax under Sub-section (1), who effects sale of any goods liable to tax under the Act other than by transfer of the property in such goods (whether as goods or in some other form) in any works contract executed by him, the dealer shall be liable to pay tax on the value of such goods at the rate specified in Section 4, without any deduction for input tax on purchase of such goods made by him,

(d) in the case of a dealer opting for composition of tax under Clause (a) or (c) of Sub-section (1), the turnover on which tax is leviable under Sub-section (2) of Section 3 shall be deducted from the total turnover on which an amount as notified is payable under Sub-section (1) by way of composition in lieu of the tax

payable under the Act;

deemed to have been inserted from 1.4.2006

(e) a dealer executing works contracts and opting for composition of tax under Sub-section [1], shall be liable to pay tax, if any, under Sub-section [2] of Section 3, in addition to tax by way of composition on the total consideration for the works contracts executed.

[F] Section 15 of the Act by Karnataka Act No. 5 of 2008 w.e.f. 1.8.2008:

15. Composition of tax.- (1) Subject to such conditions and in such circumstances as may be prescribed, any dealer other than a dealer who purchases or obtains goods from outside the State or from outside the territory of India, liable to pay tax as specified in Section 4 and,

(a) whose total turnover in a year does not exceed an amount as may be notified by the State Government which shall not exceed fifty lakh rupees, and who is not a dealer falling under Clause (b) or (c) or (d) below; or

(b) who is a dealer executing works contracts; or

(c) who is a hotelier, restaurateur, caterer; or dealer running a sweetmeat stall or an ice cream parlour or bakery or any other class of dealers as may be notified by the Government; or

(d) who is a mechanised crushing unit producing granite or any other metals may elect to pay in lieu of the net amount of tax payable by him under this Act by way of composition, an amount at such rate not exceeding Jive per cent on his total turnover or on the total consideration for the works contracts executed or not exceeding two lakh rupees for each crushing machine per annum as may be notified by the Government.

(2) Notwithstanding anything contained in Sub-section [1], a dealer whose nature of business is of a type falling under more than one clause of Sub-section [1], shall be eligible to opt for composition under the said sub-section in respect of tax payable on his turnover relating to any or all of such types of business subject to the condition that:

[a] such dealer maintains separate account of each type of his business;

[b] the total turnover in a year in respect of all types of business of such dealer falling under Clause [a] of Sub-section [1] does not exceed the amount as may be notified under the said clause;

[c] the amount payable by way of composition by such dealer on his total turnover or the total consideration in respect of each type of such business shall be as may be notified for such type under Sub-section [1].

[d] the total turnover of such dealer from all his types of business shall be reduced to the extent of the total turnover or total consideration in respect of

each such type, for calculating the amount payable by way of composition for such type of business under Sub-section [1]; and

[e] in respect of such type of business for which, he has not exercised his option or is not eligible, for composition under Sub-section [1], then on the taxable turnover as determined from the balance total turnover after reduction as specified in Clause [d], he shall be liable to tax as specified u/s 4.

(3) Any dealer eligible for composition of tax under Sub-section (1) may report, to the prescribed authority, the exercise of his option and he shall pay such amount due and furnish a return in such manner as may be prescribed.

(4) Any dealer opting for composition of tax under this section shall not be permitted to claim any input tax on any purchases made by him

(5) Notwithstanding anything contained in Sub-section (1).:

(a) a dealer executing works contracts and who purchases or obtains goods from outside the State or from outside the territory of India shall be eligible to opt for composition under Sub-section (1) and if the property in such goods (whether as goods or in some other form) is transferred in any works contract executed by him, the dealer shall be liable to pay tax on the value of such goods at the rate specified in Section 4, and such value shall be deducted from the total consideration of the works contracts executed on which an amount as notified is payable under Sub-section (1) by way of composition in lieu of the tax payable under the Act;

(b) in the case of a dealer executing works contracts and opting for composition of tax under Sub-section (1), no tax by way of composition shall be payable on the amounts payable or paid to a subcontractor as consideration for execution of works contract whether wholly or partly and such amounts shall be deducted from the total consideration of the works contracts executed on which an amount as notified is payable under Sub-section (1) by way of composition in lieu of the tax payable under the Act subject to production of proof that such subcontractor is a registered dealer liable to tax under the Act and that such amounts are included in the return filed by such sub-contractor;

(c) in the case of a dealer executing works contracts, after opting for composition of tax under Sub-section (1), who effects sale of any goods liable to tax under the Act other than by transfer of the property in such goods (whether as goods or in some other form) in any works contract executed by him, the dealer shall be liable to pay tax on the value of such goods at the rate specified in Section 4, without any deduction for input tax on purchase of such goods made by him;

(d) in the case of a dealer opting for composition of tax wider Clause (a) or (c) of Sub-section (1), the turnover on which tax is leviable under Sub-section (2) of Section 3 shall be deducted from the total turnover on which an amount as notified is payable under Sub-section (1) by way of composition in lieu of the tax payable under the Act)

[e] a dealer executing works contracts and opting for composition of tax under Sub-section [1], shall be liable to pay tax, if any, under Sub-section [2] of Section 3, in addition to tax by way of composition on the total consideration for the works contracts executed.

84. There is no dispute that payment by way of composition of tax u/s 15 of the Act made available to the identified dealers and liable to pay tax as specified in Section 4 of the Act is a payment in lieu of net amount of tax payable under the Act. While there are legislative changes effected for identifying the type of dealers and conditions subject to which they are provided option for composition, the tax by way of composition being in lieu of the net amount of tax payable has remained the same all along. This is also found in Sub-sections [1], [2], [3] and [4] of Section 15 of the Act which also since inception have undergone several changes and Sub-section [5] of Section 15 has been inserted by Act No. 4 of 2006 with effect from 1.4.2006. Here again Clause [e] of Sub-section [5] of Section 15 of the Act is the impugned provision inserted by Act No. 6 of 2007 but its Section 4[3][d] of the amending Act No. 6 of 2007 which specifically indicates that the provision shall be deemed to have been inserted from 1st day of April 2006. It is because of the language of Section 4[3][d] of Act No. 6 of 2007 and the actual contents of Section 15[5][e] of the Act the argument on behalf of the petitioners that it is a retrospective amendment as the amendment itself was notified on 30.3.2007.

85. An examination of the provisions of Sub-sections [2], [3], [4] and [5] of Section 15 of the Act indicates that they are all in the nature of riders or proviso to Sub-section [1] of Section 15 of the Act which provides for the general liability of a dealer who has opted for payment of tax by way of composition. For our purpose, it can be noticed that the complaint of the petitioners is mainly directed to the operation of Section 15[5][e] of the Act with effect from 1.4.2006 as it is their stand that they had paid tax and cleared their liability for the year by the time this provision was made known and the provision seeks to alter the computation of their liability even in terms of Section 15[1] of the Act and to their detriment, in the sense, additional amount now becomes due over and above what had been computed in terms of Section 15[1] of the Act as it stood earlier.

86. It is demonstrated on authority that retrospective operation is to be accepted as an unreasonable provision, if it is without any purpose and is only creating an additional burden and additional hardship to the petitioners and in some cases also exposing them to levy of penalty for no fault on their part.

87. Even on the authority of the decision of the Supreme Court in Builders' Association of India's case [supra], the composition is an alternative scheme of payment of tax and an optional one. Though many shades of arguments on behalf of the petitioners is that the subsequent variation after the petitioners had acted on the basis of the provision as it stood earlier putting the petitioners to great disadvantage and possible penalties, is virtually a breach of assurance

given to such dealers who had been given an impression that once they pay and clear the tax liability in terms of Section 15[1] of the Act as it existed their vows were over. It is also because of this additional burden the provision is sought to be projected as a charging section and that it ill fits in a composition scheme etc.

88. The further argument is that having regard to the scheme of the Karnataka Value Added Tax Act, 2003, the levy of sales tax is sought to be made a single point levy, in the sense that the same goods would not suffer tax repeatedly but if there is a value addition to the goods it is only the additional value which suffers tax and permitting Section 15(5)[e] of the Act to operate from an earlier date runs counter to the scheme and therefore also the provision is bad. This was one of the arguments called in aid to submit that the provision also becomes unconstitutional.

89. While it may be true that some of the provisions in the Act even including Section 15 of the Act could be demonstrated as not necessarily in alignment with the general scheme of the Karnataka Value Added Tax Act, that by itself cannot be an argument to submit that it is also unconstitutional. Likewise, when once Section 15 of the Act is indicated to be an alternative mode of payment of tax by way of composition and an optional scheme, to characterize the same as charging section also does not stand to reason as the entire section is designed to indicate the optional payment in lieu of the liability of tax under the Act. Though it is contended on behalf of the petitioners that the State cannot have an attitude of take it or leave it and it is the obligation on the part of the state to provide a level playing field to all dealers paying taxes under the Act whether under the normal scheme or under the composition scheme, the composition scheme remains as an alternative scheme and it is not one thrust upon the petitioners. However, if the impact of the provision on the petitioners who had exercised their option is in such a manner that it keeps varying after the option is exercised, that can amount to subjecting the law to uncertainty, in the sense, that the basis of inducing a person to exercise the option is kept on altering and can lead to an element of arbitrariness and unreasonableness, if dealers who had chosen to use the option and had made payment of tax are subsequently called upon to pay additional amount which they had not bargained at the time of opting to get into the scheme.

90. The argument on behalf of the State that the provisions of Section 15[5][e] of the Act is only by way of clarification and even as indicated in the budget speech of the Finance Minister and that it does not create an additional liability but only points to an existing liability only reveals half truth.

91. While it is true that the liability as u/s 3[2] of the Act was prevalent all along since the inception of the Act, in the scheme of composition u/s 15 of the Act u/s 15[1] of the Act, the net amount of tax by way of composition under the Act was indicated at 4% of the turnover or the total consideration in respect of works contractors or at fixed rate in respect of stone crusher per machine per annum, there is absolutely no way of reading into this situation a dichotomy of taxes

payable under Sub-sections [1] & [2] of Section 3 of the Act. The language is clear that it is in lieu of the net. amount of tax payable by the dealer to whom the composition amount is being offered. A look into the provisions of Sub-sections [2], [3] and [4] of Section 15 of the Act also would never indicate that the composition amount is independent of the liability u/s 3[2] of the Act. Though an argument is addressed that the introduction of Section 15[5] of the Act by way of Act No. 4 of 2006 with effect from 1.4.2006 and as indicated in Clause [d] of Sub-section [5] of Section 15 of the Act there was a mention of liability u/s 3[2] of the Act, an incisive reading of Clause [d] of Sub-section [5] of Section 15 of the Act indicates that it was in no way linked to the bearing of the burden of the tax u/s 3[2] of the Act by a dealer opting for composition but a provision which was one to further relieve some burden in favour of dealers covered under Clause [a] or [c] of Sub-section [1] of Section 15 of the Act.

92. But for the introduction of Clause [e] of Sub-section [5] of Section 15 by way of Act No. 6 of 2007, there is no clue in the provisions of Section 15 of the Act that a dealer who had opted for payment of tax by way of composition was in addition liable to pay taxes as contemplated u/s 3[2] of the Act. This position can hold good even in the case of a works contractor but for Section 15[5][e] of the Act. As to whether the provision is merely clarificatory or restrictive is amply answered by the very use of the language in Section 4[3][d] of Act No. 6 of 2007. The use of the fiction by employing the deeming provision leaves one with no doubt that but for this provision and the employment of the word "deemed to have been inserted from 1.4.2006" Section 15[5][e] of the Act would have acted only prospectively and not from an earlier date.

93. While it is no doubt true that the legislature is competent to make laws both prospectively and retrospectively and that in itself is not a ground to say that the provision is bad, while understanding and interpreting the laws which operate retrospectively, the courts have read in some fetters into the laws operating from an anterior date in the light of the constitutional guarantee assured under Articles 14 and 19 of the Constitution of India.

94. The authorities cited at the Bar referred to earlier does support this proposition. The ultimate test is that if a legislation even when made to operate prospectively fails the test of reasonableness, becomes arbitrary or oppressive and seeks to impose unreasonable restrictions on the rights guaranteed under Article 19 of the Constitution of India, in the instant case Article 19[1][g] of the Constitution of India, it can be declared as unconstitutional as violative of Articles 14 or 19 of the Constitution of India, it is no different in the case of a law which operates from an earlier date. If at all, the tests are applied more rigorously in the case of law which operates from an earlier date as the impact of the provision is more if it is to be made known subsequently, after the parties had acted on the state of law as it prevailed earlier, it definitely puts such parties to a disadvantage and therefore deeper the scrutiny. It is on this touchstone the impact of Section 15[5][e] of the Act when it operates from 1.4.2006 has to be

examined.

95. I am quite conscious of the celebrated principles that there is no estoppel against statute and when a liability is created or the position is altered by a legislative provision, persons affected by such a provision cannot complain that the provision should not be enforced against them on the principle of promissory estoppel as the principle of promissory estoppel cannot be pleaded against the working of a statute.

96. If the operation of a statutory provision was sought to be avoided only on the principle of promissory estoppel perhaps this principle would automatically apply. But in the instant case, it is not merely the operation of the statutory provision that brings about an adverse result on the petitioners but the manner in which and the provision for which it is so provided. The legislative scheme of payment of tax by way of composition though offered by the legislature is nevertheless an assurance given to a dealer. It is because of this reason that the principle of no estoppel against the statute stops at this point as the statute itself is providing an option to a dealer to opt for payment of tax by way of composition on certain premise and on certain basis and indicating the tax liability for a dealer who opts for payment of tax under the scheme. If the fulfillment of the conditions to a dealer who has opted for payment of tax by way of composition is kept on being altered subsequently to the disadvantage of the person exercising the option, whether it is by way of legislation or otherwise the principle of estoppel does operate as the promise/option was offered by way of legislation and in a statutory provision and in favour of only those who opt for composition. It is not as though the option is in general and therefore the further effect need not be examined. The moment it is indicated as an option, it is offered selectively and not in general. The impact of Section 15[5][e] of the Act assumes significance only because if it is to be read as operative from 1.4.2006, it places an additional burden and possible penalty liability on the dealers when they can do nothing about avoiding the same and when such dealers had bonafide acted on the option and on the premise of the provision of law as it existed at the time of opting. It is because of this unreasonable manner in which the provision operates, particularly, as submitted by learned Counsel for the petitioners that [a] it has the effect of increasing the tax liability [b] it has the effect of subjecting them to levy of penalties and [c] it also has the effect of asking them to comply with the impossible requirements such as reconstructing the books of accounts and details of purchases for an earlier period which was neither required nor could have the dealers anticipated such an eventuality. the provision turns out to be unreasonable and in fact becomes irrational, as submitted by some of the learned Counsel for the petitioners when it is permitted to be operative with effect from 1.4.2006.

97. Submission of some of learned Counsel for the petitioners that the provision being rendered constitutional by reading down the provision in such a manner that it is rendered constitutional is not an option available because of the adverse

impact, the dealers are left with even if given an option to get out of the scheme and to get into the normal mode of payment of tax, as even if an option is read into the Section from an earlier date when the provision is made operative there being no way of such dealers complying with the requirement for payment of tax under the normal scheme in the absence of their books of accounts and details of the purchases they have effected from unregistered dealers, such an eventuality is definitely not possible and therefore provision has to be declared as unreasonable if given effect to in terms of Clause [d] of Sub-sections [3] of Section 4 of Act No. 6 of 2007.

98. That takes us to the next question as to the validity of this provision if it is to be made operative subsequent to the date of the notification. As discussed above, the payment of tax under the scheme of composition is an alternative mode of payment and no doubt the liability for dealers opting for payment of tax by way of composition is indicated in Sub-section [1], in so far as dealers who are works contractors are concerned, Section 15[5][e] of the Act acts as a rider to the provisions of Sub-section [1] of Section 15 of the Act

99. Though arguments are addressed on behalf of the petitioners that the insertion of Section 15[5][e] of the Act is not only contrary to the scheme of composition but also contrary to the scheme of payment under the Act and that by itself constitutes a ground for declaring the provision as unconstitutional, the declaration can only be if the statutory provision turns out to be an unreasonable, arbitrary or irrational provision which may fall foul on Article 14 of the Constitution of India and can be declared unconstitutional. In the present case, by the operation of the amended provision, the best, the liability so far as a works contractor for paying taxes by way of composition is concerned, it gets altered because of Section 15[5][e] of the Act.

100. Though learned Counsel for the petitioners have urged that the state cannot adopt an attitude of take it or leave it, it is not as though the state is adopting this attitude without any rhyme or reason. The twin object of providing composition being to provide a facility to relieve them of the requirement of maintaining detailed accounts but at the same time to ensure that the revenue effected to the state is not in any way diminished, an amendment to an existing provision to ensure this object and to fine tune the statutory provision so that the twin objects are achieved in a proper and comprehensive manner cannot be termed as an unconstitutional provision tailing foul of Articles 14 or 19 of the Constitution of India

101. It may be that in respect of works contractors the actual composition amount could have been very well indicated in Sub-section [1] itself, i.e., instead of making the contents of Clause 15[5][e] of the Act as an independent provision it could have been appended to Section 15[1] of the Act, but the mere fact that the provision is found elsewhere in the very scheme of composition and u/s 15(5) (e) of the Act cannot by itself be a ground to render the provision unconstitutional.

102. Though no doubt, learned Counsel for the petitioners have raised the argument that fastening additional liability for composition of tax only on works contractors and not on others would amount to subjecting the dealers like the petitioners who are works contractors to hostile discrimination, the argument as countered by learned Government Pleader and to some extent by Sri. Keshava Murthy, learned Counsel for the petitioner in the case of a stone crusher that there are considerable distinguishable features between the dealers who are having business in the nature of works contractors and other dealers who are provided with the composition scheme of payment of taxes and particularly the state government being keen to maintain its revenue level inspite of offering the scheme of composition and such object being achieved by altering the mode of payment under the composition scheme in respect of works contractors the allegation of discrimination does not stand as there is a classification and the classification can be said to have a nexus to the object as the endeavour is to retain even a dealer like a works contractor within the scope of composition scheme but by suitably altering the liability for payment of composition tax having regard to the over all object of retaining the revenue level to the State notwithstanding composition scheme being offered to some of the dealers.

103. The argument of learned Counsel for the petitioners that even the authorities under the Act all along were under the impression that there was no liability on the part of the dealers opting for composition to pay any additional tax by way of Section 3[2] levies and with reference to the rules and the forms in which such dealers should have filed their return for payment of tax by way of composition, that by itself is not substantial argument to pronounce on the validity of the provision and it is also pointed out by learned Government Pleader that in some situations the authorities by their conduct have indicated that there was such liability also, the precise liability, in the sense, the amount payable by the dealer opting for composition is only as indicated in Section 15[1] of the Act unless it is controlled by any other sub-section or clause of any other sub-section of the same section. Change is brought about in the liability as indicated in Section 15[1] of the Act only in the case of works contractors and as provided for u/s 15[5][e] of the Act and inserted and notified on 30.3.2007 and not at any point of time earlier. In the above discussion while there is no impediment for the prospective operation of this provision, in the sense, the tax liability even under the scheme of composition in respect of a works contractor is only as indicated in Section 15[1] of the Act read with Section 15[5][e] of the Act. in respect of all other dealers it is only as indicated in Section 15[1] of the Act and as further relaxed or as conditioned under Sub-sections [2], [3] and [4] of Section 15 of the Act.

104. Learned Counsel for the petitioners have also raised a feeble argument that in the wake of the provisions of Section 15[5][d] of the Act if it is to be accepted that there is a liability u/s 3[2] of the Act in addition to the amount stipulated u/s 15[1] of the Act in respect of all dealers and that a relaxation is made only in favour of dealers covered under Clause [a] or [c] of Sub-section [1] and not in

favour of dealers covered u/s 15[1][b] of the Act like majority of the petitioners in this batch, there is a common liability for payment of tax in respect of all dealers u/s 3[2] of the Act even though they had opted for payment by way of composition.

105. In fact, such is the argument of the learned Government Pleader and it is also because of this reason that some of the learned Counsel for the petitioners have questioned the provisions of Section 15[5][e] of the act as an independent charging section.

106. Section 15 of the Act being a composition provision, there is no question of this provision being understood as a charging section. Section 15 of the Act is only a provision indicating the liability of tax in respect of dealers who have opted for payment of tax by way of composition and not a provision creating liability for payment of tax under the Act. Liability is only created u/s 3 of the Act and as effectuated u/s 4 of the Act and payment u/s 15 of the Act is in place of that liability and not by way of an independent charging section. It is for this reason, Section 15[5][e] of the Act is not to be taken as part of a charging section but only a mechanism under which the quantum of composition tax payable by a dealer opting for composition is indicated. If such is the situation, the question of enabling provision of Section 15[5][e] of the Act bringing about a discrimination between dealers who are works contractors vis-a-vis who are petty dealers, hoteliers or restaurateurs is one not tenable for the very reason and logic as indicated above while rejecting the argument of additional burden only on dealers executing works contract.

107. That still leaves the question of the assessment orders in respect of some of the dealers having been modified on the premise that such petitioners are liable for payment of tax u/s 3[2] of the Act even from the 1.4.2005 also which is the case in the case of petitioners in WP Nos. 8850 of 2008, 8212 of 2008.

108. In the view taken above, when once it is held that the scheme of composition and payment of tax u/s 15 of the Act being in lieu of the total tax liability under the Act, there is no question of levy of an independent tax on dealers who have opted for composition u/s 3[2] of the Act as it is opposed to the provisions of Section 15[1] of the Act. In fact, the principle of promissory estoppel having been indicated to be attracted to a situation of the present nature as what the statute provided for earlier is an option and that option after having been exercised the consequence are sought to be changed by subsequent variation of the law is unreasonable, same logic holds good in respect of any liability fastened for the period from 1.4.2005 to 31.3.2007.

109. However, the position continues to be the same in respect of all dealers other than works contractors and in the case of works contractors from 1.4.2007 onwards the liability as indicated in Section 15[5][e] of the Act though is independently mentioned is to be read as part of composition as offered u/s 15[1] of the Act and it has to be worked on such premise for persons who have

opted for payment of tax by way of composition and who are dealers, on and after 1.4.2007 onwards.

110. In this view of the matter, all reassessment orders for levy of additional burden on the premise of the liability u/s 3[2] of the Act for the period prior to 1.4.2007 and also any penalties levied u/s 72[2] of the Act and the consequential levy of interest and penalty including any prosecution launched covering the period only on the premise that the tax paid by the petitioners by way of composition falls short of the amount indicated in the reassessment order, stands quashed by issue of a writ of certiorari.

111. In this view of the matter, the show cause notices issued in the case of petitioners in WP No. 2416 of 2008 at Annexure-D stands quashed by issue of a writ of certiorari. Petitioners having confined their challenge to the assessment orders upto the period 31.3.2007 and with the declaration of law that the provisions of Section 15[5][e] of the Act as it operates from 1.4.2007 is a valid provision, other consequences in law follows.

112. Section 4[3][d] of Act No. 6 of 2007 is declared unconstitutional in so far as it pertains to the deeming provision of making Clause [e] of Sub-section [5] of Section 15 of the Act operative from 1.4.2006 being an unreasonable provision having deleterious consequences on the petitioners.

113. Writ petitions are allowed in Dart. Rule issued and made absolute to the extent indicated above.