

(1996) 07 PAT CK 0040
In the Patna High Court
Case No : C.W.J.C. No. 564 of 1983

New India Sugar Mills Ltd. and Another APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 04-07-1996

Acts Referred:

Bihar Finance Act, 1981 — Section 12, 13, 13(1), 18, 2
Bihar Sugar Factories Control Act, 1937 — Section 29, 29(1)
Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 — Section 49
Bihar Sugarcane (Regulation of Supply and Purchase) Ordinance, 1968 — Ordinance 13, Ordinance 6
Constitution of India, 1950 — Article 141, 162, 19(1), 249, 250
Industries (Development and Regulation) Act, 1951 — Section 18

Citation : (1996) 2 PLJR 294

Hon'ble Judges : N.K. Sinha, J;B.P. Singh, J

Bench : Division Bench

Advocate : Rajaram Agarwal, in 2530, Y.V. Giri, in 2530, 2531, 8754, 8805, 8806, 12597 and 12600 of 1993 and 1941 of 1990, Pawan Kumar, in 2530, Praveen Kumar, in 2530, D.P. Verma, in 2530, Ramesh Kumar Agarwal, in 2530 and Jyoti Saran, in 2530, 2531, 8754, 8805, 8806, 12597 and 12600 of 1993 and 1941 of 1990, Ram Balak Mahto, in 8754, K.N. Gupta and Satyendra Krishna Pd., in 564 of 1983 and 2610 of 1993 and Rana Pratap Singh and Sanjay Singh, in 1353, for the Appellant; Rameshwar Prasad, Rafat Alam, G. Narain, O.P. Agarwal, Amarendra Kumar Sinha, Neena Kumari Jaiswal, Shayam Narain Sinha, Ranjan Kumar, Asha Sinha, Durga Nand Jha and Punam Singh, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh, J.—The Petitioners in this batch of writ petitions are the various Sugar Companies operating within the State of Bihar. The core issue which arises for consideration in these writ petitions is as to whether the Sugar Companies are liable to pay purchase tax/penalty under the provisions of Section 4 of the Bihar Finance Act, 1981, on the purchase of sugarcane which is the basic raw material for the manufacture of sugar for sale in the State of Bihar and/or in course of

inter-State trade and commerce. The vires of Section 4 of the Bihar Finance Act, 1981 (hereinafter referred to as "the Act") has not been challenged by any of the Petitioners, but the applicability of the said section to purchases of sugarcane made by the Sugar Mills for manufacture of sugar has been challenged on various grounds. Before adverting to the grounds urged in support of the writ petitions, it would be necessary to notice the salient facts of the case. The representative facts are, therefore, taken from C.W.J.C. No. 2530 of 1993.

2. The case of the Petitioner is that it is a Company registered under the Companies Act, and it is engaged in the business of manufacture of sugar by vacuum/pan process. The sugarcane is the principle raw material for the manufacture of sugar by the factory, and such sugarcane is purchased by the Petitioner from the farmers and the Co-operative Societies operating in the area. In the year 1937 the Bihar Sugar Factories Control Act, 1937 (Bihar Act VII of 1937) (hereinafter referred to as "the Act of 1937") was enacted with a view to regulate the supply, purchase, payment of cane price etc. in the State of Bihar. The said Act was subsequently declared to be ultra vires, but the Governor of Bihar promulgated the Bihar Sugarcane (Regulation of Supply and Purchase) Ordinance, 1968, which covered the entire field relating to supply, purchase, payment of cane price regulation of purchase, payment of purchase tax etc. The first Ordinance being Bihar Ordinance 3 of 1968 was followed by successive Ordinances, till it was replaced by (sic) Act of legislature known as the Bihar sugarcane (Regulation of Supply and Purchase Act, 1981 (hereinafter referred to as "the Act of 1981"). The object of the said Act was to regulate the production, supply and distribution of sugarcane intended for use in sugar factories and Khandsari sugar, manufacturing unit and taxation of sugarcane and matters incidental thereto. u/s 49 of the said Act the State Government was authorised to impose a tax not exceeding one rupee per quintal on entry of sugarcane into local area specified in the notification, for consumption or use of, or sale to a factory situate therein. The State Government was also authorised to impose a tax not exceeding one rupee per quintal on the purchase of sugarcane by or on behalf of the occupier of a factory. However, it was provided that the factory was not liable to pay tax on the purchase of sugarcane if in respect of the said sugarcane entry tax had been paid. The Petitioner has all along been paying such purchase tax on purchase of sugarcane at the rate of rupee one per quintal, and such tax had been paid to the authority under the Act in the year 1987-88 as well. Earlier, the Sugar factories were liable to pay sales tax on the sale of sugar, but later the aforesaid sales tax was merged with central excise, and the same is now being realised and paid by the Petitioner as additional excise duty. The Central Government in its turn makes necessary payment out of such additional excise duty realised from the producers of sugar. The sugar factory is controlled by the Central Government under the provisions of Section 18 of the Industries (Development and Regulation) Act, 1951, in exercise of power conferred under Entry 52 of List I of the Constitution. Various statutes have been enacted and orders issued under the Essential Commodities Act by the Central Government to

control and regulate the sugar industry, and consequently the entire field relating to sale and purchase of sugarcane, sale and disposal of sugar, molasses etc. is controlled by various Central legislations and State enactments. The statutory price of sugar is fixed each year by the Government of India for the sale of levy sugar. The ratio of levy sugar and free sale sugar is varied from year to year. It is the case of the Petitioner that the increase in the cost of production either by way of imposition of tax or fee, which is not recoverable by the Petitioner will be ruinous to the Petitioner-factory. The entire field is controlled by various enactments and orders, and even the minimum price to be paid to sugarcane growers is fixed by the Sugar Controllers. In the matter of fixation of minimum price of sugarcane the incidence of tax under the Act has not been taken into account. Similar is the case in the matter of fixation of levy price of sugar.

The Bihar Finance Act, 1981, replaced the Bihar Sales Tax Act, 1959, and came into force with effect from 1.4.1981 after receiving the assent of the President of India on 20th April, 1981. u/s 4 of the Act every dealer who is liable to pay tax u/s 3 and who purchases goods in the circumstances in which no sales tax is payable, or has been paid, on the sale price of such goods, and either consumes such goods in the manufacture of other goods for sale or otherwise disposes of such goods in any manner other than by way of sale in the State or sale in the course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been livable on sale price of such goods u/s 12. The rate of tax specified u/s 12 of the Act is 8 percent. u/s 13 a special rate of tax is provided, and the State Government is authorised to fix a special rate of tax on sales to or purchase by a registered dealer of goods required by him directly for use in the manufacture or processing of any goods for sale in Bihar or in course of inter-State trade or commerce. In exercise of its power u/s 13 of the Act, the State Government by a notification dated 3.2.1986 has fixed the special rate of tax on Industrial raw materials (inputs) at the rate of two per centum of the taxable turn over with effect from 1.8.1985.

3. The Petitioner filed its return truly disclosing its entire turn over for the year 1986-87, which was scrutinised by the Assessing Officer, who did not hold the Petitioner liable for payment of tax on purchase of sugarcane under the Act. The order of assessment for the said year was passed on 20th August, 1988. In respect of earlier years as well no demand was ever made for payment of purchase tax under the Act, because the authorities of the Commercial Taxes Department knew that the Petitioner was paying tax on the purchase of sugarcane to the authorities under the Act of 1981. However, the authorities under the Act reopened the assessment already made, on the basis of audit report, for the year 1987-88, and a notice was issued to the Petitioner u/s 19(1) of the Act. The Petitioner filed its objection mentioning that it was paying purchase tax on the purchase of sugarcane under the provisions of the Act of 1981. Other objections were also taken. The case of the Petitioner is that there is no justification for imposing penalty, since the Petitioner entertained a bonafide

belief that it is not liable to pay purchase tax on sugarcane under the Act. Moreover, the Petitioner has disclosed the total quantum of purchase of sugarcane each year to the Cane Officer, who is an officer of the State of Bihar. The Petitioner further submits that the stock of sugar manufactured out of sugarcane purchased has already been disposed of and, therefore, realisation of purchase tax on sugarcane will impose heavy liability on the Petitioner, since it will not be in a position to realise the same from the purchasers of sugar. The Petitioner has also referred to various other facts to support its contention that the imposition of purchase tax on the purchase of sugarcane under the Act would have ruinous effect on the industry which is already in bad state. The Assistant Commissioner, Commercial Taxes (Respondent No. 2) made an order of assessment and demanded purchase tax on the purchase of sugar cane for the year 1986-87 which the Petitioner had challenged before this Court in C.W.J.C. No. 13111 of 1992. During the pendency of the said writ petition the Respondents have levied penalty in exercise of power u/s 29(1)(a) of the Act for the year 1987-88. The order of assessment and the demand in pursuance thereof for the year 1987-88 dated 16.12.1992 and 1.2.1993 respectively are annexed as Annexures 6 and 7 to the writ petition. The Petitioner has prayed for quashing of the said orders after holding that the Petitioner is not liable to pay the purchase tax under the provisions of the Bihar Finance Act on the purchase of sugarcane.

4. A counter-affidavit has been filed on behalf of the Respondents in which it has been contended that the Petitioner is liable to pay purchase tax on the purchase of sugarcane u/s 4 of the Act. The mere fact that u/s 49 of the Act of 1981 the Petitioner is required to pay tax not exceeding rupees one per quintal on the entry of sugarcane into a local area, will not prevent imposition of tax under the Bihar Finance Act, 1981. Two taxes are payable under different laws enacted by the State legislature and, therefore, the State Government is fully competent to realise both the taxes, it has been denied that the imposition u/s 4 of the Act is expropriatory in nature. The Act is perfectly a valid piece of legislation since Entry 54 of List II of the 7th Schedule authorises the State Government to realise tax on the purchase of goods. The action of the authorities in reopening the assessment has been justified having regard to the facts and circumstances of the case.

5. In support of the writ petitions Counsel appearing for the Petitioners have advanced before us the following main contentions:

(a) The Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981, is a special Act dealing specifically with tax on purchase of sugarcane. On the other hand, Bihar Finance Act is of general application. On the principle therefore, that the special law will exclude the operation of general law, the operation of Bihar Finance Act is excluded and its provisions do not apply to the purchase of sugarcane by the Sugar Mills. In fact, the entire area related to purchase tax on sugarcane stands excluded from the purview of Bihar Finance Act, 1981;

(b) Even if not on the basis of legislative competence, on the principle of construction, double taxation must be avoided and, therefore, where the same authority in respect of the same subject matter for the same period and the same purpose imposes taxes even if referable to two different entries, by statutory interpretation double taxation must be avoided;

(c) On a fair Interpretation of Section 4 of the Bihar Finance Act, 1981, as it exists, purchase tax on purchase of sugarcane is not payable. Even the authorities under the Act have understood the provision in the same manner.

(d) Sugar is a declared industry under the Industries (Development and Regulation) Act, 1951, which is an Act of Parliament enacted under item 52 of List I of the 7th Schedule. Even if the power to levy tax by State is derived under Entry 54 of List II, that power cannot be exercised in such a manner as to destroy an item in List I. The power should not be so exercised as to cripple the industry, the control whereof vests in the Central Government, because that would amount to interference in the domain of Parliament;

(e) Assuming that none of the above contentions find favor with the Court, it must be held that the rate of tax on the purchase of sugarcane is only 2 percent u/s 13 and not 8 percent u/s 12;

(f) The imposition of penalty is not justified in the facts and circumstances of the case merely on the ground that the taxes were not paid on the purchase of sugarcane. The facts do not disclose any dishonest or contumacious conduct on the part of the Petitioners, who have all along acted under a bonafide belief that no purchase tax on sugarcane was payable under the Bihar Finance Act. Even the Assessing Officers shared the same view:

6. Mr. Rajaram Agarwal, Senior Advocate appearing on behalf of the Petitioners in C.W.J.C. No. 2530 of 1993 relied upon several decisions of the Supreme Court in support of the contention that a special law will exclude the applicability of the general law in relation to the same transaction. He submitted that the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981, is a special Act, which must take precedence over the general law, namely, Bihar Finance Act. He has referred to the provisions of the Bihar Sugar Factories Control Act, 1937, which was followed by the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981, and has submitted that since the purchase tax on purchase of sugarcane was payable earlier under the Act of 1937, and later under the Act of 1981, no purchase tax on sugarcane is payable under the general law, namely, Bihar Finance Act, 1981. It therefore, becomes necessary to appreciate the scheme of the special laws with a view to ascertain whether they can be characterised as special Acts in relation to the Bihar Finance Act, 1981. The question as to whether an Act is special in relation to Anr. Act is essentially a question of interpretation and such a question must be decided having regard to the scope, the purpose and the scheme of the Acts in question.

7. As its preamble suggests the Bihar Sugar Factories Control Act, 1937 was an

Act to provide for the licensing of sugar factories and to regulate the factories and for regulating the supply of sugarcane for use in such factories and the price at which it may be purchased, and for such other matters as may be incidental thereto, Under the said Act various authorities were constituted, such as Advisory Committees, the Sugar Control Board, Sugar Commissioner and Sugar Commission. The Advisory Committees were required to make recommendations with regard to the varieties of cane which were suitable or unsuitable for use in a factory. Section 9 of the Act is a licensing provision and Sub-section (2) thereof empowered the State Government to prescribe the conditions, and the circumstances in which licence for crushing cane have been provided in Section 11. u/s 11A, Government after consulting the Sugar Commission was empowered to fix the price of sugar. u/s 15 the Cane Commissioner after consulting, the advisory committee or committees, and after hearing other parties interest was authorised to declare an area to be a reserved area for the purpose of supply of cane to a particular factory during a particular season or seasons. u/s 18 a cane grower or a Cane-growers" Co-operative Society in a reserved area was obliged to offer the cane grown by it to the occupier of the factory for which the area was reserved. Similarly, the occupier or the manager of the concerned factory was required to enter into an agreement in the prescribed form on such terms and conditions as may be prescribed for the purchase of cane offered by the cane grower or Cane growers" Co-operative Society. u/s 21 the Governor after consultation with the Board was authorised to determine in respect of any area the minimum price to be paid by the, occupiers of factories for the cane purchased in that area and direct that such minimum price shall be calculated in accordance with rules. Section 22A vested the State Government with power to vary the minimum price in certain cases. Section 29 of the Act which stood amended with effect from 1st January, 1962 provided as follows:

29. Cess and tax on cane.-The State Government may, by notification, impose-

(a) a cess not exceeding fifty-one naye paise per quintal on the entry of sugarcane into a local area specified in such notification, for consumption, use or sale therein;

(b) a tax not exceeding fifty-one nays paise per quintal on the purchaser of sugarcane by or on behalf of the occupier of a factory:

Provided that such tax shall not be payable in respect of sugarcane for which a cess imposed under Clause (a) is payable.

Under Section 29A the State Government was vested with the power to order reduction or remission of cess and exemption from payment of tax in special facts and circumstances Section 30 vested in the State Government the power to make rules to carry out the provisions of the Act. By Section 31 the Sugarcane Act, 1934 was repealed.

8. The Act of 1937 was followed by an Ordinance issued by the Governor of

Bihar, namely, Bihar Sugarcane (Regulation of Supply and Purchase) Ordinance, 1968 (Bihar Ordinance 3 of 1968). Two other Ordinances were issued in the year 1968 namely, Bihar Ordinances 6 and 13 of 1968. It appears that thereafter similar Ordinances were promulgated from time to time till the enactment of Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981. The Act of 1981 was assented to by the President of India on 23rd January, 1982, and was published in Bihar Gazette Extraordinary dated 25th January, 1982. The preamble of the Act discloses that the said Act was enacted to regulate the production, supply and distribution of sugarcane intended for use in sugar factories and Khandsari sugar manufacturing units and taxation of sugarcane and matters incidental thereto. Under the said Act various authorities were created, such as, Sugarcane Board, Zonal Development Council, Cane Commissioner and Cane Officer, who were entrusted with the functions specified in the Act. The Board was required to advise the State Government on the following matters:

4. Functions of the Board.- (1) The Board shall advise the State Government on the following matters, namely:

(a) planning of development schemes connected with production, research, transport and sale of sugar-cane;

(b) matters pertaining to regulation of supply, purchase and weighment of cane;

(c) The varieties of sugarcane, tested by the Sugarcane Research institute in the State, which are suitable or unsuitable for use in a factory;

(d) recommendations in respect of the price of cane to be supplied to factories;

(e) determination of the price of cane payable by owners of units;

(f) maintenance of healthy relations between the occupiers and managers of factories on the one hand and the cane-growers and co-operative societies on the other; and

(g) such other matters as may be prescribed.

Chapter III of the Act incorporates the licensing provisions authorising the State Government to issue licences for crushing cane in a factory in the form prescribed. Chapter IV of the Act incorporates provisions with regard to purchase and supply of cane and Section 32 provides for the declaration of reserved area by the Cane Commissioner after consulting the council concerned and the occupier of the factory or the occupiers of other affected factories. A detailed scheme has been laid down about the manner in which sugarcane was to be offered by the growers to the occupier of a sugar factory. Chapter V provides for the payment of price of cane, and in particular Section 42 thereof authorised the State Government after consulting the Board to determine by notification in the official Gazette, in respect of any area, the minimum price of cane payable by the owners of units to the cane-growers or co-operative societies for cane supplied to them in the crushing year concerned. Section 49 of the Act provides for the levy

of tax on sugarcane. It reads as follows:

49. Tax on Sugarcane.-

(1) The State Government may, by notification in the official Gazette, impose-

(a) a tax not exceeding one rupee per quintal on entry of sugarcane into a local area specified in such notification, for consumption or use of, or sale to a factory situated therein;

(b) a tax not exceeding one rupee per quintal on the purchase of sugarcane by or on behalf of the occupier of a factory:

Provided that the tax under Clause (b) shall not be payable by the occupier of a factory in respect of sugarcane for which a tax imposed under Clause (a) is payable by him.

(2) Notwithstanding anything contained in Sub-section (1) the State Government may, by notification in the official Gazette-

(a) reduce or remit, in whole or in part, such tax in respect of cane used in any such factory for the purposes of research, seed-distribution, crushing of diseased cane or intake of excessive crop.

(b) exempt for prescribed period from such tax any new factory or a factory unable to run without State aid.

(3) The tax payable under Sub-section (1) shall be paid by the occupier of the factory to the Collector of the district concerned in such manner as may be prescribed and the amount of arrears of such tax shall bear interest at the rate specified in Section 51 and shall together with interest be recoverable as a public demand or as an arrear of land revenue.

(4) There shall be levied and collected in such manner as may be prescribed, a tax on the purchase of sugarcane by the owner of a unit at such rate not exceeding one rupee per quintal of sugarcane, as may be notified in the official Gazette:

Provided that the tax under this Sub-section shall be payable on the quantity of sugarcane actually purchased or, at the option of the owner of the unit, on the quantity of sugarcane assumed in the manner prescribed.

(5) The owner of the unit shall make payment of the tax payable under Sub-section (4) to the Collector in the prescribed manner and interest at the rate of 7 1/2 per centum per annum shall be charged on the amount of arrears. The amount of arrears shall be realisable together with interest as a public demand.

(6) Subject to the claim of the Central Government in respect of any tax or duty of excise, the claim of the State Government in respect of the tax imposed under Sub-section (1) shall be the first charge on the sugar produced in the crushing year concerned.

(7) Until the tax imposed under Sub-section (1) is paid at the rate per quintal of sugar, notified in the official Gazette, by the State Government and the certificate of payment is obtained from the Cane Officer concerned, the occupier of any factory or any person acting on his behalf or any other person shall not remove sugar from the factory.

(8) There shall be paid to the Board and the council as grant, in the manner prescribed, such proportion of the amount realised under Sub-sections (3) and (5) in respect of every crushing year as the State Government may, from time to time, determine in his behalf to enable the Board and the council to meet the cost of such schemes of development as may be undertaken by them with the approval of the State, Government:

Provided that one-fifth of the amount payable under this Sub-section shall be paid to the Board and the rest to the council in proportions to the quantities of the cane crushed by the factories concerned.

9. Such are the schemes of the Act of 1937 and the Act of 1981. The dominant objective of the Act was not to raise revenue for the State. The Acts sought to regulate the production, supply and distribution of sugarcane intended for use in sugar factories. For that purpose various authorities were created, which were required to assist the Government in achieving the objectives under the Act. A reserved area was created with a view to ensure adequate supply of sugarcane to sugar factories within that area. Similar provision was made for payment of minimum price of sugarcane which was to be fixed under the Act. It is no doubt true that u/s 29 of the Act of 1937 cess or tax on the purchase of sugarcane was payable. If cess had been paid on the entry of sugarcane into a local area, no tax was payable on such sugarcane. Obviously, therefore under the Act of 1937 there was no requirement of paying tax on purchase of sugarcane, if cess had been paid on such sugarcane. In other words, purchase tax was payable on only such sugarcane as had not incurred the liability of cess. In all cases of purchase of sugarcane therefore, tax on purchase was not necessarily payable.

10. Under the Act of 1981 similar authorities were created and a scheme was framed which ensured adequate supply of sugarcane to growers. Section 49 of the Act provided for payment of an entry tax and for payment of purchase tax on purchase of sugarcane, but the occupier of the factory was liable to pay either entry tax or purchase tax and not both. In this respect the scheme is somewhat the same as under the Act of 1937. Sub-section (8) of Section 49 is, however, material, because that provides for payment to the Board or council as grant such proportions of the amount realised under Sub-sections (3) and (5) in respect of every crushing year as the State Government may determine in this behalf to enable the Board and the council to meet the cost of such schemes of development, as may be undertaken by them with the approval of the State Government. One fifth of the amount payable under Sub-section (8) was to be paid to the Board and the rest to the council in proportions to the quantities of the cane crushed by the factories concerned. It would thus appear that from out

of the collections made u/s 49 of the Act, the State Government was obliged to make grant to the Board and the council to enable them to meet the cost, of schemes of development. The tax realised, therefore, was partially utilised for the purpose of implementing the schemes under the Act, and for meeting the necessary expenses. The tax was not intended to raise revenue with a view to augment the state exchequer. Learned Advocate General appearing for the State submitted that though called tax, it was really in the nature of fee. It is not, however, necessary for me to go into that question for determining the issue.

11. The Act of 1981 is a legislation referable to Entry 27 of the State List. The tax leviable u/s 49(1)(a) is really a tax on the entry of goods covered by Entry 52 of the State List. But, the tax u/s 49(1)(b) is clearly a tax on the sale or purchase of goods covered by Entry 54 of the State List. On the other hand, the Bihar Finance Act is indisputably a legislation under Entry 54 of the State List. Counsel for the Petitioners submitted that the Act of 1981 is a special Act in relation to the Bihar Finance Act and therefore, the special law must prevail over the general law, and in any event it curtails the operation of the general law so as not to apply to situations covered by the special law. Large number of authorities were cited before us in support of the above proposition.

12. The first decision of the Supreme Court relied upon by the Counsel for the Petitioners is the one reported in *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, . In that case a question arose as to whether in a case where an enquiry was proceeding before a Regional Conciliation Board or the Provincial Conciliation Board or an appeal was pending before, the Industrial Court, the procedure for discharge to be followed in such cases was one contemplated under Clause 23 or under Clause 5(a) of the U.P. Government order. The Court held that Clause 5(a) of the order had no application in a case where the special provisions of Clause 23 were applicable and, therefore, where an enquiry was in fact pending before the Conciliation Officer, Clause 23 applied in respect of any discharge or dismissal of workman, and it was not open to the employer to take advantage of Clause 5(a). It was in this context that their Lordships approved the rule as laid down by Romilly, M.R. in *Pretty v. Solly* (1859 53 ER 1932) and observed as follows:

The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and Anr. to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. In *Pretty v. Solly* (1859 53 ER 1032) quoted in *Craies on Statute Law* at p.206, 6th Edition) Romilly, M.R., mentioned the rule thus:

The rule is that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative,

and the general enactment must betaken to affect only the other parts of the statute to which it may properly apply.

In *Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others*, , a question arose whether having regard to the provisions of the Bihar Town Planning and Improvement Trust Act, 1951, an acquisition could be made for the Patna Improvement Trust following the procedure laid down in the Land Acquisition Act, 1894. The majority opinion was that having regard to the scheme of the special Act it was apparent that even for the purpose of acquiring land for the Trust the machinery of the Land Acquisition Act as modified was contemplated and that did not exclude the Land Acquisition Act. On the contrary it made it applicable subject to certain modifications and exceptions. In his dissenting opinion, however, K. Subba Rao, J. (as he then was) took the view that Patna Improvement Trust could acquire lands only in the manner provided under the Special Act, and not under the Land Acquisition Act, and in that context he observed:

The law on the subject is very well settled and, in my view the learned Judges of the High Court have correctly appreciated it and applied it to the facts of the case. Two principles noticed by the High Court are apposite. The first principle is *generalia specialibus non derogant*. This principle is exemplified by the decision of the Privy Council in AIR 1931 149 (Privy Council) . The second principle is that if a statute directs a thing to be done in a certain way that thing shall not, even if there be no negative words, be done in any other way. This principle is illustrated by the decision in *Ex-parte Stephens* (1876) 8 Clu 1) (151). A combined effect of the said two principles may be stated thus: a general Act must yield to a special Act dealing with a specific subject-matter and that if an Act directs a thing to be done in a particular way, it shall be deemed to have prohibited the doing of that thing in any other way. Under the Act, the Trust is authorized to implement the improvement schemes in a particular way and for the purposes of implementing them to acquire land in a prescribed manner. If that be so, the Trust is bound to implement the scheme in the manner prescribed and cannot resort to any other method, that is to say it can acquire land for that purposes only by resorting to the provisions of the Land Acquisition Act as modified and incorporated by reference in the Act.

13. Reliance was also placed on the decision of the Supreme Court, reported in *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, in which a question arose as to whether Regulation 102(2) which conferred a suo motu power on the Divisional Board to amend the result of the examination in respect of any candidate or candidates on its being found that such result had been affected by error, malpractice, fraud, improper conduct etc., conferred any right on an examinee to demand a disclosure, inspection or verifications of his answer books or other related documents. The Court held that the power conferred by Regulation 102(2) did not confer any such right on an examinee, and this was

apparent from a mere reading of Regulation 104 which specifically dealt with the subject of verification of marks obtained by a candidate and which restricted the verification to check whether all the answers had been examined and whether any mistake had been committed in totaling of marks in that subject or in transferring marks correctly on the 1st cover page of the answer book as well as whether the supplements attached to the answer books as mentioned by the candidates were intact. Clause 3 of the said Regulation imposed the further limitation that no candidate shall claim or be entitled to revaluation of his answer book or further documents. While dealing with this question the Court observed:

We consider that the above approach made by the High Court is totally fallacious and is vitiated by its failure to follow the well-established doctrine of interpretation that the provisions contained in a statutory enactment or in rules/regulations framed there under have to be so construed as to be in harmony with each other, that where under a specific section or rule a particular subject has received special treatment, such special provision will exclude the applicability of any general provision which might otherwise cover the said topic.

14. Considerable reliance was placed on the decision of the Supreme Court in *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, . The aforesaid decision refers to the earlier decisions of the Supreme Court, and it was observed:

One such principle of statutory interpretation which is applied is contained in the Latin maxim: *leges posteriores priores contrarias abrogant* (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: *generalalia specialibus non derogant* (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by Anr. enactment contained in an earlier Act. It is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: *Statutory Interpretation* pp 433-34).

In the aforesaid decision the Court came to the conclusion that the Rent Control Act as well as the Public Premises Act enacted by the same legislature were in the nature of special enactments and, therefore, the Court held that in case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment covered by the language of the relevant provisions therein. It is not necessary for me to notice in detail other decisions relied upon by Counsel for the Petitioners, as they reiterate the same principles, and I may only notice the following decisions which were cited in support of the Sub-mission:

(i) *Motiram Ghelabhai (Dead) through Lr Maniram Motiram Vs. Jagan Nagar (Dead) through Lrs and Others*,

(ii) AIR 1992 SC 1754

(iii) Jogendra Lal Saha Vs. The State of Bihar and others, ; and

(iv) Waverly Jute Mills Co. Ltd. Vs. Raymon and Co. (India) Private Ltd., .

15. It is quite clear to me that the rule that general provisions should yield to specific provisions is a rule of interpretation to bring about harmony between two statutes, one special and the other general. By applying the rule the intention of the legislature is ascertained. The question whether the special or the general law shall prevail, or whether the special law effects a curtailment of the operation of general law, will arise only in cases where there is a conflict between the two. The contrariety between the two enactments will arise only when they are irreconcilable. The question of conflict or contrariety will not arise if both the enactments, so to speak, run parallel to each other. In other words, if both the general and special laws can operate by their own force in the field assigned to them, the question of the special law prevailing over the general law does not arise. So far as the taxing statutes are concerned, if both the enactments can be given effect, without in any manner violating any constitutional provision, the question of the special law superseding the general law, or curtailing its operation will not arise. The moot question, therefore, which must be answered is whether the Act of 1981 and the Bihar Finance Act create distinct liabilities which the Petitioners are liable to discharge. If it is found that the tax under the general law is to be paid in addition to the tax under the special law, the question of the special law superseding or curtailing the operation of the general law will not arise. Realising this, Sri Agarwal strenuously urged that double taxation should be avoided as far as possible not on the ground of legislative competence but on the principle of construction.

16. On the question of double taxation the law appears to be fairly well-settled by a series of decisions of the Supreme Court. A taxing statute should not be interpreted in such a manner as to cast the burden twice over on the tax payer unless the language of the statute is compellingly certain. It is not fair to interpret a taxing statute as to impute an intention to the legislature to go on taxing what is virtually the same product in different, forms, over and over again, nor should the same person be taxed twice in respect of the same transaction, unless the legislature specifically intends it [See (1972) H.H. Prince Azam Jha Bahadur (Dead) through LRs Vs. Expenditure Tax Officer, and State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, But it is equally well-settled that there can be two taxes on the same commodity or person imposed by different enactments, without one law repealing the other. There can thus be an exise levy as well as sales tax on excisable goods. There can be a cess and sales tax, which are levied under different enactments. It is also permissible to levy tax on raw materials and again on finished goods by the same law, as the two goods are different Mathra Prashad and Sons Vs. State of Punjab, .

17. Learned Advocate General submitted that there is no force in the contention that the tax levied u/s 4 of the Bihar Finance Act is not realisable in respect of

sugarcane which has borne tax under the Act of 1981. He submitted that two types of taxes were envisaged under the Act of 1981, one being a tax on entry of goods and the other being a tax on the purchase of sugarcane. The Act of 1981 itself made clear that sugarcane which had borne entry tax was not to be taxed by way of purchase tax. Even so, the levy u/s 4 of the Bihar Finance Act was to be borne by the Petitioners regardless of the fact whether the sugarcane purchased by the Sugar Mills had borne the tax under the Act of 1981. He placed strong reliance upon a Full Bench decision of Patna High Court, reported in 1972 PLJR 39; (1972) 29 STC 177 (M/s Rajpur Farms Ltd. v. the Commissioner, Commercial Taxes, Bihar). In the aforesaid case the question which fell for consideration of their Lordships was as follows:

Whether on the facts and in the circumstances of the case Section 29(1) of the Bihar Sugar Factories Control Act, 1937, bars imposition of tax on the sale of the sugarcane under the Act.

It may be noticed that in the case before the High Court, the question arose as to the liability to pay tax on the sale of sugarcane under the Sales Tax when the tax under the Act of 1937 had already been paid by the purchaser. In answering the question in the negative, it was observed:

I have already related the arguments on behalf of the dealer, which in substance, was that levy of sales tax under the Sales Tax Act as also levy of cess on it under the Control Act amounted to double taxation. The case of the dealer in this respect, was that the Control Act would prevail as against the Sales Tax Act in so far as it concerned the levy on the sale of sugarcane. The Commercial Taxes Tribunal, however, held that both the impositions would be valid being authorised under two different entries, namely, entry Nos. 52 and 54 of VII Schedule, State List II of the Constitution of India.

I do not consider it necessary to detain myself in an elaborate discussion on this issue. The law is now settled by the Supreme Court of India in the case of (6) Mathra Prashad and Sons Vs. State of Punjab, that such double impositions would be valid. That was a case in which a firm of general merchants sold, besides other goods, manufactured tobacco as defined under the Punjab Tobacco Vend Fees Act (12 of 1954) which came into force in the State of East Punjab from 1st of April, 1954. The firm was also a registered dealer under the East Punjab General Sales Tax Act, 1948 and was paying sales tax on manufactured tobacco. There was some confusion in the mind of the dealer which was created by virtue of an amendments to the schedule of the exemption u/s 6 of the said Sales Tax Act as to whether it was liable to pay sales tax as also the vend fees under the Tobacco Vend Fees Act. One of the contentions resisting the levy of sales tax as also of the vend fees was that the Punjab Tobacco Vend Fees Act pro tanto repealed the East Punjab General Sales Tax Act and that therefore sales tax on manufactured tobacco could not be levied after April 1954. Their Lordships held that "...there can be two taxes on the same commodity or goods without the one law repealing the other. No repeal can be implied, unless there is an

express repeal of an earlier Act by the latter Act, or unless the two Acts cannot stand together....

The aforesaid decision of the Full Bench of Patna High Court no doubt supports the contention of learned Advocate General. More clinching, however, is the decision of the Supreme Court in *Shri Krishna Das Vs. Town Area Committee, Chirgaon*, . I can do no better than to quote the relevant passage in the said decision which clearly supports the plea of the State that the levy under the Act of 1981 and the levy under the Bihar Finance Act are distinct levies, though imposed by the same legislature under different Acts while legislating under the same entry. The law was lucidly stated in the following words:

Where more than one legislative authority, such as the State Legislature and a local or municipal body possess the power to levy a tax there is nothing in the Constitution to prevent the same person or property being subject to both the State and municipal taxation or the same legislature exercising its power twice for different purposes. In *Avinder Singh and Others Vs. State of Punjab and Others*, the State of Punjab in April, 1977 required the various municipal bodies in the State to impose tax on the sale of India made foreign liquor @Rs. 1/- per bottle w.e.f. 20.5.1977. The municipal authorities having failed to take action pursuant to the direction, the State of Punjab directly issued a Notification u/s 90(5) of the Punjab Municipal Corporation Act, 1976 and similar provision of the Municipal Act 1911. The Petitioner challenged the Constitutional validity of the said statutes and the levy on the, inter alia, ground of double taxation. Krishna Iyer, J. speaking for the Court held: "There is nothing in Article 265 of the Constitution from which one can spin out the Constitutional vice called double taxation. (Bad economics may be good law and vice versa). Dealing with a somewhat similar argument, the Bombay High Court gave short shrift to it in *Cantonment Board, Poona Vs. Western India Theatres Ltd.*, . Some underselling contentions die hard, rather survive after death. The only epitaph we may inscribe is: Rest in peace and don't be reborn if on the same subject matter the legislature chooses to levy tax twice over there is no inherent invalidity in the fiscal adventure save where other prohibitions exist." We do not find materials in this case to allow the contention to be reborn. The submission is accordingly rejected.

Counsel for the Petitioners sought to distinguish the Full Bench decision of the Patna High Court in *M/s Rajpur Farms Ltd.*'s case (supra) that in that case there was a clear distinction between the cess payable under the Act of 1937 and tax payable under the Sales Tax law. The distinction sought to be made is not acceptable, because under the Act of 1937, cess was payable u/s 29(a) of the Act. Under the same statute purchase tax was payable u/s 29(b). The proviso, however, made it clear that purchase tax was not payable in respect of sugarcane for which a cess imposed under Clause (i) was payable. Obviously, therefore, either cess or purchase tax was payable on the sugarcane purchased by the Sugar Mills. The same statute created both the liabilities, but provided

that either tax or cess shall be payable and not both. In any event, even if purchase tax was paid under the Act of 1937, nothing prevented the State legislature from enacting a law creating an additional liability by way of sales tax/purchase tax.

Learned Counsel submitted that the observations in the judgment of the Supreme Court in *Avinder Singh and Others Vs. State of Punjab and Others*, were made in answer to a feeble plea raised on behalf of Petitioners. Even if that be so, the law declared by the Supreme Court is binding upon this Court. The mere fact that a plea was feebly raised before the Supreme Court is not a ground to say that the law laid down by the Supreme Court on that plea is a feeble or weak law. The law declared by the Supreme Court even in such circumstances is the law of the land and is a binding precedent under Article 141 of the Constitution of India. The binding effect of a precedent is not curtailed by the fact that the plea raised before the Supreme Court was a feeble plea.

The decision of the Supreme Court in *Sri Krishna Das's case (supra)* was sought to be distinguished on the ground that in that case on facts it was found that there was no double taxation. That may be so, but since the levy was challenged on the ground that it amounted to double taxation, it became imperative for the Court to answer the plea and lay down the law for the guidance of courts. Even if the observations be considered as obiter dicta, it will still bind this Court. Since the Petitioners have not challenged the Bihar Finance Act on the ground of lack of legislative competence or on the ground of breach of any constitutional provision, there is no reason why the liability created u/s 4 of the Bihar Finance Act should not be enforced against the Petitioners. There is nothing in the Bihar Finance Act which discloses the legislative intendment not to apply the provision of Section 4 to purchases of sugarcane which have borne entry tax or purchase tax under the Act of 1981. I have, therefore, no hesitation in coming to the conclusion that the liability to pay purchase tax u/s 4 for the Bihar Finance Act is in addition to the liability to pay entry tax or the purchase tax under the Act of 1981. The submission that Section 4 should be so interpreted as to avoid incidence of double taxation must be rejected.

18. This takes me to a consideration of the submission urged by Mr. Agarwal that on a fair interpretation of Section 4 of the Bihar Finance Act, no purchase tax is payable by the Petitioners in respect of sugarcane purchased by them for which tax had been paid under the Act of 1981. Section 4 of the Bihar Finance Act reads as follows:

4. Levy of purchase tax. - Subject to the provisions of Sections 5, 6 and 7 of this part, every dealer liable to pay tax u/s 3, who purchases goods in circumstances in which no sales tax is payable or has been paid on the sale price of such goods and either consumes such goods In the manufacture of other goods for sale or otherwise disposes of such goods in any manner other than by way of sale in the State, or sale in the course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would

have been leviable on the sale price of such goods u/s 12.

Counsel submitted that "tax", as defined u/s 2(x) of the Bihar Finance Act includes the sales or purchase tax levied u/s 3 as also additional tax levied u/s 6. The definition being an inclusive definition also includes other levies under the Act in the nature of tax. Relying upon a decision of the Supreme Court in *State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another*, he submitted that while entry 48 in List II of the Government of India Act spoke of "taxes on the sale of goods", entry 54 of List II of the 7th Schedule of the Constitution speaks of "taxes on the sale or purchase of goods". The addition of the word "purchase" permits the State legislature to levy a purchase tax and does not confine its taxing power merely to levying a sales tax. Sale and purchase are merely two ways of looking at the same transaction. Looked at from the point of view of the seller a transaction is a sale, while looked at from the point of view of the buyer the same transaction is a purchase. He submitted that under the sales tax law the seller is entitled to recover the sales tax from the purchaser, and the purchaser in turn may collect the taxes directly from the consumers to whom he may sell the goods. He submitted relying upon the judgment of the Supreme Court in *Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc.*, that the Act was directed towards ensuring levy of tax at least on one transaction of sale of the goods. The fact that in a given case the purchased goods were consigned by the purchaser to his own depots or agents outside the State made no difference to the nature and character of the tax. The earlier judgment of the Supreme Court in *Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another*, was overruled inasmuch as it held that consignment sales were not covered under the concerned sales tax legislation. He submitted that the Bihar Sales Tax Act, 1959, was in force before the Bihar Finance Act, 1981 was enacted. Under the 1959 Act there was no provision for levy of purchase tax, but the same was brought in by an amendment by Act 11 of 1973. Under the amended law it was open to the State Government to notify the commodities on which purchase tax was leviable. However, sugarcane was not a commodity so notified. The liability to pay purchase tax has been created for the first times by Section 4 of the Bihar Finance Act, 1981. He has urged two main submissions in support of his contention that Section 4 of the Bihar Finance Act is not attracted to the purchase of sugarcane by the Petitioners-Companies. He firstly submitted that there were two conditions precedent which must be fulfilled before the purchase tax could be levied u/s 4 of the Bihar Finance Act. Firstly, the purchase should be in circumstances in which no sales tax is payable and secondly that no sales tax has been paid on the sale price of such goods. He submitted that the first conditions was fulfilled. The second condition was not fulfilled inasmuch as purchase tax, which is same as sales tax, has been paid by the Petitioners on the sugarcane purchased by them under the provisions of the Act of 1981. The second submission is that the words "such goods" used in the latter part of the

section must be understood to mean the finished product, namely, sugar, and not sugarcane.

19. To appreciate the submission it is necessary to analyze Section 4. The section postulates that subject to the provisions of Sections 5, 6 and 7, every dealer liable to pay tax u/s 3,

(1) who purchases goods in circumstances in which no sales tax is payable, or

(2) who purchases goods in circumstances in which no sale tax has been paid on the sale price of such goods, and

(3) either consumes such goods in the manufacture of other goods for sale, or

(4) otherwise disposes of such goods in any manner other than by way of sale in the State or sale in the course of Inter-State trade and commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods u/s 12.

It is not disputed that in the instant cases, the goods purchased is sugarcane. It is also not disputed that no sales tax is payable on the sale of sugarcane under the Act. It is, however, submitted that condition No. (2) is not fulfilled, because the Petitioners have paid purchase tax under the Act of 1981. Since, condition No. (2) is not fulfilled, no purchase tax is leviable under the Act. The submission, though attractive, must be rejected. u/s 4 reference to non-payment of sales tax or non-pay ability of sales tax must be understood to mean "non-payment or non-pay ability under the Bihar Finance Act, 1981, and not under any other Act. Sales tax u/s 4 means the sales tax payable under the Bihar Finance Act and not under any other Act, even if sales tax is understood to include purchase tax.

20. If the first two conditions are fulfilled, the third condition is that the goods purchased, namely, sugarcane is (a) either consumed in the manufacture of other goods (sugar) for sale or (b) otherwise disposed of in any manner other than by way of sale in the State or sale in the course of inter-State trade and commerce. Counsel submitted that "such goods" must be understood to mean the finished product, namely, sugar. Therefore, purchase tax will be leviable only if the finished product, namely, sugar is disposed of in any manner other than by way of sale in the State or sale in the course of inter-State trade or commerce. Relying upon a decision of the Supreme Court, reported in K. Ramanathan Vs. State of Tamil Nadu and Another, he submitted that the same word may be used in two different senses in the same section.

It is not possible to interpret the provision in the manner commended by the learned Counsel. Section 4 of the Bihar Finance Act is concerned with the levy of purchase tax. The goods purchased must mean sugarcane in the instant cases and when the section uses the words "such goods", it refers to such goods purchased namely, sugarcane. If no tax is either payable or paid on such sugarcane, and the sugarcane is consumed in the manufacture of other goods, such as sugar, purchase tax is leviable on the purchase price of the sugarcane.

The section clearly distinguishes between the raw material, namely, sugarcane and the finished product, namely, sugar by using different words. Use of the words "and either consumes such goods in the manufacture of other goods for sale" itself discloses that the manufactured product is described as "other goods". Obviously, therefore, in the latter part of the section, where ever the words "such goods" are used, it must refer to sugarcane and not sugar Counsel submitted that if "such goods" referred to the raw material, namely, sugarcane, the same was entitled to exemption from payment of tax u/s 7 of the Act. We have not been shown any exemption order passed u/s 7 of the Act as regards sugarcane. Even assuming that an exemption has been granted in respect of sale of raw material under the notification Annexure 1, it implies that the tax was leviable under the provision of the Act, because the question of exemption will arise only if the charging section imposes the levy. Therefore, by substituting the words "such goods" for sugarcane and "other goods" for sugar, the section would read to the following effect, namely, every dealer liable to pay tax u/s 3, who purchases sugarcane in circumstances in which no sales tax is payable or has been paid on the sale price of such sugarcane, and either consumes such sugarcane in the manufacture of sugar for sale or otherwise disposes of the sugarcane in any manner other than by way of sale in the State or sale in the course of inter-State trade of commerce, shall be liable to pay tax on the purchase price of sugarcane at the same rate at which it would have been leviable on the sale price of sugarcane u/s 12. Admittedly, the Petitioners are dealers and purchase sugarcane on which no sales tax is either payable or has been paid under the Act. The sugarcane is consumed in the manufacture of sugar for sale. The sugarcane is not disposed of either by way of sale in the State or sale in the course of inter-State trade or commerce. All the conditions are, therefore, fulfilled and consequently the liability to pay purchase tax u/s 4 cannot be denied.

21. It was then submitted that the sugar industry being an Industry, the control of which by the Union is declared by Parliament by law to be expedient in public interest, and is a scheduled industry specified in the First Schedule of the Industries (Development and Regulation) Act, 1951, even if the taxing power under entry 54 of List II is with the States, that power cannot be exercised in such a manner as to destroy an item of legislation in List I. The taxing power cannot be so exercised as to cripple that industry Counsel submitted that various legislations control and regulate the sugar industry. He referred to the Industries (Development and Regulation) Act, 1951, under which orders are issued from time to time as also the Essential Commodities Act under which Sugarcane (Control) Order, 1966 was issued fixing the price of sugar, Similarly Sugarcane Control Order was passed. With a view to equitable distribution of sugar and its availability at fair prices the proportion of levy sugar and free sale sugar was fixed. The free sale sugar provides the cushion for neutralising the loss incurred on levy sugar and the liability incurred by way of heavy taxation. He submitted that in all other States purchase tax was levied at the rate of only rupee per

quintal, but in the State of Bihar it comes to Rs. 3.75. If purchase tax is payable on sugarcane at the rate of 8 percent together with surcharge, about 10 percent will have to be paid by way of purchase tax on the value of the sugarcane purchased by the Sugar Mills. This will only increase the cost of raw material and will consequently increase the cost of production of sugar. This increased cost of production is not taken into account while fixing the proportion between levy sugar and free-sale sugar. In the State of Bihar additional market fee at the rate of one percent is charged. With such heavy taxes, the factories which may otherwise earn profits will incur losses. He, therefore, submitted that though the legislative competence of the Bihar Legislature is not disputed, and even though the validity of the Bihar Finance Act is not challenged, the executive action of the Bihar Government in implementing the Act is arbitrary and unreasonable. The imposition of purchase tax at the rate of 8 percent is excessive and the Government must exercise the special powers vested in it to impose lesser tax, so that the sugar industry in Bihar is not wiped off. He has referred to Annexure-15, the statement prepared by the Petitioner showing the crippling effect of the purchase tax on the Petitioner-Company in C.W.J.C. No. 2530 of 1993. He, therefore, submitted that the power to impose purchase tax must not be exercised in such manner as to cripple an industry which has been declared by Parliament by law to be of such significance that its control by the Union is expedient in public Interest.

22. The submission advanced on behalf of the Petitioners may be relevant for the framers of the law and the State Government in the matter of evolving a taxation policy. It is well-settled that an Industry, the control of which by the Union is declared by Parliament by law to be expedient in public interest though governed by laws made by Parliament, the power to levy taxes on the sale or purchase of goods other than newspapers, subject to the provision of entry 92-A of List I, is vested in the State legislature. The products of such declared industries, therefore, may be taxed under entry 54 of List II of the 7th Schedule by the States. To what extent such taxes shall be levied is essentially a matter of legislative policy. The rate of tax cannot be a matter of judicial review unless it be shown that the same is either confiscatory or expropriatory. Since the State legislature has authority to levy tax on the sale or purchase of goods, the levy of purchase tax on sugarcane purchased by the Petitioner-Companies cannot be assailed on the ground that it would adversely affect the profitability of sugar industry, and would have a crippling effect on the economy of such industries. The question as to whether in reality the imposition of purchase tax has crippling effect on the sugar industry, is a question to which we have not applied our mind, as we do not consider it necessary to do so for the disposal of these writ petitions, and nothing said in the foregoing paragraphs should be understood to imply that this Court has found as a fact that the levy of purchase tax has a crippling effect on the sugar Industry. The matter requires much deeper consideration than what is possible in a writ proceeding, because the profitability of the sugar industry is dependent upon so many other factors. If the argument

advanced by Counsel for the Petitioners is accepted, the workmen of the industry cannot demand a hike in wages nor can the Electricity Board impose a higher tariff for supply of electrical energy. In any event, these are matters for the legislature and the State Government to consider while framing taxation policy of the State.

23. It was then submitted that the Union of India has passed a law, known as the Additional Duties of Excise (Goods of Special Importance) Act, 1957, under which additional duty has been levied on the goods described in column (3) of the first Schedule which includes sugar. u/s 4 of the Act during each financial year, there shall be paid out of the Consolidated Fund of India to the States in accordance with the provisions of the Second Schedule such sums, representing a part of the net proceeds of the additional duties, levied and collected during that financial year, as are specified in that Schedule. Under Schedule two a certain percentage of levy is earmarked for the State of Bihar. The second Schedule also provides that if during the concerned financial year there is levied and collected in any State a tax on the sale or purchase of the goods described in column (3) of the First Schedule, or one or more of them by or under any law of that State, no sums shall be payable to that State under this paragraph in respect of that financial year, unless the Central Government by special order otherwise directs. It appears from the preamble of the Act that the same has been enacted to provide for the levy and collection of additional duties of excise on certain goods and for the distribution of a part of the net proceeds thereof among the States in pursuance of the principles of distribution formulated and the recommendations made by the Finance Commission. Learned Counsel for the Petitioners drew our attention to Articles 162, 252, 263, 269(2), 272, 280 and 301 of the Constitution of India and submitted that where a solemn understanding or agreement is reached between the States and the Union and there is a constitutional agreement, the same must be honored in the larger interest. The State of Bihar, therefore, cannot be permitted to take the benefit under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, and at the same time levy and collect tax on the sale or purchase of the goods described in column (3), namely, sugar. He submitted that sugar, tobacco, textiles were selected to be the goods of special importance," and since they were taxed at different rates in different States, the Inter-State Council constituted under Article 263 of the Constitution of India decided that the Central Government may frame appropriate, legislation in lieu of sales tax imposed by the States. The matter was ultimately entrusted to the Finance Commission, which submitted its report in the year 1957. It Was on the basis of this report that the Additional Duties of Excise (Goods of Special Importance) Act, 1957 was enacted in 1989. From the statement of objects and reasons it appears that the object of the Act was to impose additional duties of excise in replacement of sales taxes levied by the Union and States on sugar, tobacco and mill made textiles, and to distribute the net proceeds of these taxes, except the proceeds attributable to Union territories, to the States. The States which levy a tax on the sale or purchase of these commodities after 1st April,

1958 do not participate in the distribution of net proceeds.

24. From the material placed before us it appears that on the recommendation of the Inter-State Council and the Finance Commission the aforesaid Act had been passed with a view to distribute the collection of additional excise duty to the participating States, who do not levy sales tax or purchase tax on the specified commodities including sugar. It cannot be disputed that the said Act is referable to entry 84 of List 1 of the 7th Schedule. In any event the said Act has not been enacted in exercise of legislative authority that may be conferred under Article 252 of the Constitution of India. It is not the case of the Petitioners that the said Act was passed by the Parliament legislating for two or more States by consent on a matter with respect to which the Parliament had no power to make laws for the States. It is also not the case of the Petitioners that the aforesaid Act had been enacted under Article 249 of the Constitution of India which empowers the Parliament to legislate with respect to a matter in the State List in the national interest. The levy of additional excise duty is referable to the legislative entry 84 in the Union List, and is not referable to any entry in the Concurrent List, so that the legislation by Parliament may supersede a law enacted by the State legislature. The aforesaid law provides for a scheme under which additional duty of excise is levied, and collected by the Central Government for distribution amongst the participating States which do not levy sales tax or purchase tax on the specific commodities including sugar. Such a law cannot have the effect of superseding a valid law enacted by State legislature in exercise of its legislative power under entry 45 of List II of the 7th Schedule. The special feature of a federal Constitution is the distribution of powers between the Union and the States. So far as India is concerned, the Constitution provides for the distribution of powers. The Parliament has legislative competence to legislate on subject included in List I, and similar is the authority of State legislatures in respect of subject enumerated in List II. So far as List III is concerned, which is the Concurrent List, the State legislatures as well as the Parliament have legislative competence to legislate on the subject enumerated therein, the general rule being that in case of inconsistency, laws enacted by the Parliament shall supersede the laws enacted by the State legislature, subject to the provision of Clause (2) of Article 254 of the Constitution. I cannot conceive of any law made by Parliament, except those relating to subjects in the Concurrent list and those enacted in exercise of authority under Articles 249, 250 and 252 of the Constitution which can override a law enacted by the State legislature in exercise of its legislative authority on any subject enumerated in List II of 7th Schedule. It may be that the Central Government may induce the State Governments to follow a particular policy by offering grants in-aid or by offering to share any benefit pursuant to a law made by Parliament, such as the aforesaid Act which levies additional excise duty for the distribution amongst participating States. It is open to a State to follow the policy advocated by the Union with a view to derive benefit as promised, but it is equally open to the States not to accept the benefit, and to legislate independently on subjects included in list II of the 7th

Schedule. The Additional Duties of Excise (Goods of Special Importance) Act, 1957 cannot, therefore, curtail or abrogate the competence of the State legislature to enact laws under entry 54 of List II imposing taxes on the sale or purchase of goods. It is also apparent from a mere perusal of the Act that if a State decides to impose sales tax or purchase tax on the special commodities mentioned in the Schedule to the Act, it forfeits its right to share in the net proceeds of the additional duties levied and collected under the said Act. The writ jurisdiction of this Court cannot be invoked to compel the State of Bihar to share the benefit under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Moreover, the goods specified under the first Schedule of the said Act is sugar, whereas purchase tax is levied u/s 4 of the Finance Act on the purchase of sugarcane, which is quite distinct from sugar.

25. It was then submitted that heavy imposition of sales/purchase tax impedes free flow of trade and commerce and is, therefore, violative of Article 301 of the Constitution of India. It has not been shown that there is any discrimination in the matter of levy of tax between the goods manufactured/produced in the State and the goods imported from outside. In the absence of any discrimination, mere levy of purchase tax cannot be held to impede free movement or transport of goods. The Supreme Court in *Andhra Sugars Ltd. and Another etc. Vs. State of Andhra Pradesh and Others*, repelled a similar submission in the following words:

...But the tax levied u/s 21 does not discriminate against any imported cane. u/s 21, the same rate of tax is levied on purchases of all cane required for use, consumption or sale in a factory. There is no discrimination between cane grown in the State and cane imported from outside. As a matter of fact, under the Act the factory can normally buy only cane grown in the factory zone. A non-discriminatory tax on goods does not offend Article 301 unless it directly impedes the free movement or transport of the goods. In *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, Gajendragadkar, J. speaking for the majority said:

We are, therefore, satisfied that in determining the limits of the width and amplitude of the freedom guaranteed by Article 301 a rational and workable test to apply would be: Does the impugned restriction operate directly or immediately on trade or its movement? It is the free movement of the transport of goods from one part of the country to the other that is intended to be saved, and if any Act imposes any direct restrictions on the very movement of such goods it attracts the provisions of Article 301, and its validity can be sustained only if it satisfied the requirement of Article 302 or Article 301 Part XIII.

This interpretation of Article 301 was not dissented from in *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, . Normally, a tax on sale of goods does not directly impede the free movement or transport of goods. Section 21 is no exception. It does not impede the free movement or transport of goods and is not violative of Article 301.

26. It was also submitted that despite odds some of the sugar factories have

earned nominal profits in the State of Bihar. With the levy of purchase tax they may now incur losses year after year. It was, therefore, submitted that imposition of purchase tax is confiscatory in nature and violative of Article 19(1) (g) of the Constitution of India. The proposition so broadly stated is not acceptable. There may be several reasons for the Sugar factories not performing well in the State of Bihar. It is not necessary for us to enumerate the large number of factors which may affect the working of a sugar factory. The loss of profitability or the incurring of losses may be on account of the general economic climate prevailing in the State or may be on account of labour problems or on account of lack of funds, or even on account of managerial inefficiency. It is not for this Court to speculate as to why the sugar factories in the State of Bihar have not been doing well, though in some other States their performance has been commendable. We cannot jump to the conclusion that if purchase tax is levied on purchase of sugarcane by the sugar mills, that by itself will result in the closure of all sugar mills, as they are not in a position to meet the liability of purchase tax. The same argument can be advanced against the levy of any tax or duty. By itself the levy of tax, which obviously imposes a liability, cannot be said to be confiscatory, and there is no material on record to even establish prima facie that the levy of purchase tax is confiscatory in nature.

27. It was submitted that in any event the rate of purchase tax payable by the Petitioners is only two percent, and not eight percent, as demanded by the authorities. In this connection our notice was drawn to the notification dated 3.2.1986 (Annexure-1 in C.W.J.C. No. 2530/93). The aforesaid notification is said to have been issued in exercise of powers conferred by Sub-section (1) of Section 13 of the Bihar Finance Act, whereby the Governor of Bihar has been pleased to direct that the rate of sales tax payable under Sub-clause (i) of Clause (b) of the said Sub-section of the aforesaid section of the said Act on sale of the raw materials required directly for use in the manufacture or processing of goods for sale, excluding such raw materials which had already undergone any manufacturing or production process, and which are required for further assembly, shall be at the rate of two per centum. I am not persuaded to go into this question as to whether the said notification will apply to the tax on purchase of sugarcane by the Petitioners, because this matter has not been gone into by the sales tax authorities. Moreover, there are certain conditions u/s 13 which must be fulfilled before the Petitioners can take advantage of the said notification if applicable. It was open to the Petitioners to raise this question before the assessing authorities, and even now it will be open to them to raise this question in appeal revision or review, as the case may be. They will be well-advised to raise this question before the authorities under the Act rather than to urge this submission as regards rate of tax for the first time before this Court.

28. Lastly, it was submitted that the authorities have imposed penalty as matter of course on the mere ground that the purchase tax had not been paid on the purchase of sugarcane. Referring to the judgment of the Supreme Court in Hindustan Steel Ltd. Vs. State of Orissa, it was contended that there was not

even an allegation that the conduct of the Petitioners was either dishonest or contumacious. The Petitioners acted under a bonafide belief that having paid purchase tax under the Act of 1981, they were not required to pay purchase tax once again under the Bihar Finance Act. The Petitioners have referred to several orders of the assessing authorities who themselves did not impose purchase tax under the Bihar Finance Act, because they also understood Section 4 in the same manner as understood by the Petitioners. It was therefore, submitted that imposition of penalty be quashed.

29. Against the imposition of penalty the Petitioners have remedy under the Bihar Finance Act. It is true that penalty should not be imposed as a matter of course. However in the absence of any material before us, and in the absence of such plea being raised before the assessing authorities, it would not be prudent to Investigate this aspect of the matter in writ proceeding. The Petitioners may seek their remedy under the provisions of the Bihar Finance Act before the appropriate authorities.

30. I, therefore, find no merit in the writ petitions, and the same are, accordingly, dismissed. However, this will not preclude the Petitioners from moving the appropriate authorities under the Bihar Finance Act for determination of rate of purchase tax payable in view of the notification dated 3rd February, 1986 (Annaxure-1 in C.W.J.C. No. 2530/93) as also from challenging the order imposing penalty before the appropriate authorities under the Act is accordance with law. However, nothing said in this judgment should be construed as expression of any opinion on these issues.

There will be no order as to costs.

N.K. Sinha, J.

I agree.