

(1995) 07 GUJ CK 0052

In the Gujarat High Court

Case No : Special Civil Application No's. 7294, 7864 of 1993 and 158 and 188 of 1995

N.J. Devani Builders Pvt. Ltd. and Another

APPELLANT

Vs

Sales Tax Officer and Others

RESPONDENT

Date of Decision : 05-07-1995

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 2, 3, 4

Citation : (1995) 07 GUJ CK 0052

Hon'ble Judges : Rajesh Balia, J;C.K.Thakker, J

Bench : Division Bench

Advocate : R.D. Pathak and K.H. Kaji, for the Appellant; J.M. Thakore, Advocate-General, M.G. Doshit, of M/s. M.G. Doshit and Co. and Harubhai Mehta, for the Respondent

Judgement

Rajesh Balia, J.—All the four above petitions in substance raise the same issue about effect of sub-clause (b) of clause (29A) of article 366 of the Constitution of India, which has been inserted by 46th Amendment of Constitution on the scheme of section 8 of the Central Sales Tax Act, 1956, in view of the fact that definition of "sale" u/s 2(g) of the CST Act, 1956, has not been amended by the Parliament since. We, therefore, propose to decide all the petitions by a common order after recording facts of each case giving rise to different reliefs claimed in these petitions.

2. Special Civil Application No. 7294 of 1993 :

The petitioner is a dealer and is engaged in the business of executing works contract. He is also a Government contractor. For the purpose of its work as a building contractor, the petitioner is required to purchase building material from outside Gujarat in the course of inter-State trade and commerce. In order to avail the benefit of provisions of section 8(1) for procuring such material at a concessional rate purchaser is required to make declaration in form "C". The petitioner who is a dealer under the Central Sales Tax Act as well as the Gujarat

Sales Tax Act, applied for the book containing "C" forms on August 25, 1992. The petitioner issued reminders on April 16, 1993 and April 20, 1993, but of no avail. By letter dated April 20, 1993, the respondent No. 1 invited petitioners' attention to a public circular issued by the Commissioner on December 3, 1985, which is annexure A3 to the petition stating that in view of the existing legal position such purchases (purchases of goods which have been used in the execution of works contract) cannot be made against form "C". Whether against form "C" in pursuance of the Central Sales Tax Act are applicable to purchasers for use of goods in works contract has been made to contractor (sic). The petitioner, thereafter, again made an application on May 3, 1985, for issuing requisite forms. However, the petitioner did not receive any response thereafter. Hence this application for the following reliefs :

To issue appropriate writ order and/or direction against the

- (i) respondent No. 1 quashing and setting aside letter annexure A2 addressed by the respondent No. 1 to the petition and directing him to forthwith issue the "C" forms book to the petitioner No. 1 in terms of its application;
- (ii) respondent No. 2 quashing and setting aside the public circular dated December 3, 1985 annexure A3 issued by him; and
- (iii) respondent No. 3 directing it to clarify its position in connection with the representation made to it as set out in annexure A2.

3. Special Civil Application No. 7864 of 1993 :

The petitioner No. 1 is a partnership firm and petitioner No. 2 is one of the partners. Petitioner-firm is engaged in the business of works contracts of supplying and fixing the elevators as per the requirements of the customers. The petitioner is required to purchase various materials to be used in the execution of the works of supplying and fixing the elevators from outside the State of Gujarat which fall within the purview of a transaction in the course of inter-State trade or commerce. The petitioner is a dealer registered under the Central Sales Tax Act as well as the State Sales Tax Act with effect from October 24, 1983. The petitioner applied for amendment of its registration certificate under the Central Sales Tax Act by adding 16 items enumerated in annexure A2 as goods intended for resale or for use in the manufacture or process of the goods. The application was moved on July 23, 1993. The Sales Tax Officer informed the petitioner vide his letter annexure A3 that as the registration under the Central Sales Tax Act in the cases of persons engaged in the business of works contract for purchasing goods against declaration form "C" touches many dealers, the decision shall be taken by the Commissioner of Sales Tax. The Commissioner had already issued a circular dated December 3, 1985, stating that regarding purchases in the case of inter-State trade or commerce of the goods to be used in works contract can be made by issuing declaration form "C", a representation has been made to the Government of India for seeking clarification. However, as per the existing legal position such purchases cannot be made against form "C". In view of the

aforesaid, petitioners have filed the present writ petition for obtaining the following reliefs :

To issue appropriate writ order and/or direction against the -

- (i) respondent No. 1 quashing and setting aside his order annexure A3 against the petitioner and directing him to amend the registration certification annexure A1 in terms of the application of the petitioner annexure A2;
- (ii) respondent No. 2 quashing and setting aside the public circular dated December 3, 1985 annexure A4 issued by him; and
- (iii) respondent No. 3 directing it to clarify its position in connection with the representation made to it as set out in annexure A4.

4. Special Civil Application No. 158 of 1995 :

The petitioner is engaged in the business of executing works contract of tyre retreading of its customers. For the purpose of executing the work of retreading the petitioner is required to purchase various materials to be used in the execution of works contract. The materials are required to be purchased from outside the State of Gujarat in the course of inter-State trade and commerce. The petitioner is a registered dealer under the Central Sales Tax Act as well as the Gujarat Sales Tax Act. The petitioner purchased the requisite materials which were entered in the list of goods specified in the certificate of registration under the Central Act by furnishing a declaration in "C" form as required by section 8, sub-section (4) of the CST Act read with rule 12 of the Central Sales Tax (Registration and Turnover) Rules. During the course of assessment under the Central Act, the assessee was informed by the Sales Tax Officer that he breached the conditions of form "C" issued to the petitioner for purchase of goods from outside the State as the goods purchased has been used in the execution of works contract and not for sale within the meaning of the Central Sales Tax Act. Petitioner applied for keeping the assessment pending vide his application dated May 17, 1994 annexure B bringing about that two petitions raising similar issue are pending in the High Court of Gujarat, in case the Commissioner does not favourably consider the application. Reliance was placed by the petitioner on the decisions of the Andhra Pradesh, Bihar and Madras High Courts in this regard referred to in his representation. The respondents replied to the petitioner that in circular dated December 3, 1985 issued by Commissioner, which is annexed as annexure A with the writ petition, it is specifically stated that for the goods used in the execution of the words contract "C" form cannot be used and on the occasion of use of such goods penalty is leviable, therefore, it is not necessary to keep the assessment pending. Thereafter, on December 26, 1994, the Sales Tax Officer issued a show cause notice alleging that "the declaration in form "C" cannot be used in works contract and you have been informed by the letter dated July 20, 1994, for the Commissioner that for the breach of condition of form "C" regarding use of such goods penalty is payable. You have, therefore, committed a default u/s 10(d) of the Central Sales Tax Act, 1956 the penalty

u/s 10-A of the Central Sales Tax Act is to be levied to the extent of one and a half times the tax saved on such purchase against declaration in "C" form".

Notices were issued for assessment years 1990-91, 1991-92 and 1992-93 which have been collectively annexed as annexures D1 to D3. The petitioner has challenged the notices and circular dated December 3, 1985 annexure A.

5. Special Civil Application No. 188 of 1995 :

The petitioner in this case is also engaged in the business of executing works of retreading the old tyres. For the purposes of his business, the petitioner purchased materials specified in his certificate of registration under the Central Sales Tax Act in the course of inter-State trade and commerce from outside the State for using such materials in the execution of works contract. In the like circumstances, the petitioner has received show cause notices for levy of penalty u/s 10-A of the Central Sales Tax Act for the assessment years 1988-89, 1989-90, 1990-91 annexures B1 to B3 and for the assessment year 1992-93 marked as annexure C. Petitioners have challenged the validity of notices annexures B1 to B3 and annexure C along with circular dated December 3, 1985 annexure A.

2. A common reply has been made to the Special Civil Applications Nos. 7294 of 1993 and 7864 of 1993. The respondents in addition to adopting returns filed in Special Civil Applications Nos. 7294 of 1993 and 7864 of 1993 have further submitted an additional affidavit in Special Civil Applications Nos. 158 of 1995 and 188 of 1995, stating that "if a dealer purchases goods in the course of inter-State trade or commerce and furnishes "C" form that is to say a declaration in form "C" appended to the Central Sales Tax (Registration and Turnover) Rules, 1957, to the seller in respect of such purchases and uses the goods so purchased in the execution of works contract, such use is not a sale of the goods within the meaning of the Central Sales Tax Act and he is guilty of violation of section 10 of the Central Sales Tax Act and that the dealer is liable, inter alia, for the imposition of penalty u/s 10-A of the Central Sales Tax Act in respect of such violation".

3. The petitioners urged that in view of the definition of "tax on sale" or purchase of goods given under clause (29A) of article 366 and which provided that such transfer of property in goods involved in execution of works contract shall be deemed to be sales, for the purpose of section 8(3) and (4), such use of goods purchased in the course of inter-State trade under a declaration in form "C" in the execution of works contract, are to be treated as resale of the goods and, therefore, the same cannot attract penalty by treating it to be a breach of condition. For the purpose, no amendment in the definition of sale u/s 2(g) of the Central Act is required. The contention is of two-fold dimensions. Firstly that after the amendment in the Constitution by the 46th Amendment whereby clause (29A) was inserted in article 366, the same has to be read as within the ambit and scope of the levy of sales tax whether by State Legislature or by Parliament;

and secondly that even otherwise in the context in which word "resale" has been used in section 8(3)(b) and for the purpose of which a declaration is required u/s 8(4) of the Central Sales Tax Act, the same meaning cannot be attributed to it as required for the levy of tax on sale u/s 6 of the Act inasmuch as it is not the consideration that the subsequent resale of the goods purchased must be subject to levy under the CST Act or for the matter even under the State Sales Tax Act whether the subsequent sales actually attracts levy or not is not relevant.

4. Respondents' plea in substance is that since admittedly the petitioner is purchasing goods for using the same in executing works contract, unless such transfer can be held to be a sale within the meaning of section 2(g) of the Central Sales Tax Act, the respondents are under no obligation to issue "C" form nor any person is entitled to get registration certificate or amendment of it u/s 7 of the CST Act for the purpose of making purchasing under declaration in form "C".

5. It was contended by learned Advocate-General that any provision of Constitution itself does not result in levy of tax, it requires legislative will to impose a tax. Therefore, by amending the Constitution, the definition given in the Constitution for this purpose does not become part of the existing taxing statute unless the respective taxing statutes are accordingly amended. As the Central Sales Tax Act has not been amended, the definition of "sale" given in the Central Sales Tax Act cannot be read to include transfer of property in the goods involved in execution of works as envisaged under article 366(29A) unless the Parliament chooses to amend the Central Act, for any purposes under the Central Sales Tax Act. As the declaration for the purpose of granting benefit of concessional rate of tax u/s 8(1) is required to be furnished in terms of section 8(3)(b) and 8(4) under the provisions of the Central Sales Tax Act, the subsequent sale must be a sale within the meaning of section 2(g) of the Central Act without reading article 366(29A) of the Constitution, as in view of the decision of the Supreme Court in *Gannon Dunkerley & Co.'s case* [1958] 9 STC 353 prior to the 46th Amendment of Constitution, "tax on sale" does not include transfer of property in goods involved in the execution of works contract. The use of materials purchased in the course of inter-State trade and commerce by giving a declaration form "C" in the execution of a works contract does amount to a breach of declaration inviting penal consequences.

6. It would be appropriate to refer to the historical background of the constitutional amendment referred to above in order to understand the controversy in its proper perspective.

7. In *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* [1958] 9 STC 353 (hereinafter "the first Gannon Dunkerley's case"), the question arose in connection with the interpretation of Madras General Sales Tax Act, 1939, which was enacted in exercise of legislative powers under entry 48 of the Government of India Act, 1935, in the List II of the Seventh Schedule. The case arose in connection with the transfer of property in goods involved in execution of a

works contract of construction of building. The court expressed its opinion in the following terms :

"The expression "sale of goods" in entry 48 in List II of Schedule VII of the Government of India Act, 1935, cannot be construed in its popular sense but must be interpreted in its legal sense and should be given the same meaning which it has in the Sale of Goods Act, 1930. It is a nomen juris, its essential ingredients being an agreement to sell movables for a price and property passing therein pursuant to that agreement. In a building contract which is one, entire and indivisible - and that is its norm - there is no sale of goods, and it is not within the competence of the Provincial Legislature under entry 48 to impose a tax on the supply of the materials used in such a contract treating it as a sale. But the parties to the contract might enter into distinct and separate contracts, one for the transfer of materials for money consideration and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is a single instrument embodying them, and the power of the State to separate the agreement to sell from the agreement to do work and render service and to impose a tax thereon cannot be questioned."

8. This position of law continued to remain in force so far as the levy of tax on the sale or purchase by the State Legislature under item 54 of List II of the Seventh Schedule under the Constitution, until by the 46th Amendment clause (29-A) in article 366 was inserted defining "tax on sale or purchase of goods". By the aforesaid amendment various transactions, which under different decisions of the Supreme Court were not being treated as sales for the purpose of levy of tax, were brought within the scope of "tax on sale or purchase of goods" by defining the expression "tax on sale or purchase of goods", the relevant part for the purposes read as under :

Article 366 :

"In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say -

clause (29A) "tax on the sale or purchase of goods" includes -

(a)

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract :

(c) to (f)

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made."

9. The validity of this amendment was challenged before the Supreme Court in Builders Association of India v. Union of India [1989] 73 STC 370 on the ground that the Legislature of less than one half of the States were in existence at the relevant time, had not ratified the Bill which ultimately became the 46th Amendment before the President gave his assent. It was urged that such ratification was necessary since the provisions of 46th Amendment have the effect of enlarging the scope of entry 54 of List II of the Seventh Schedule of the Constitution by empowering the levy of sales tax on the turnover relating to the transactions referred to in sub-clauses (a) to (f) of clause (29A) of article 366 of the Constitution which they could not have done before 46th Amendment. This contention was factually found to be incorrect by their Lordships. The other contention raised in the petition was whether such transfer of property in goods involved in the execution of works now deemed to be "sale" is subjected to discipline under article 286 of the Constitution. The court noticing the fact that even in the first Gannon Dunkerley's case [1958] 9 STC 353 (SC) the transfer of property in goods involved in the execution of works contract were not altogether excluded from the ambit of levy, held as under :

"Even after the decision of this Court in the The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., it was quite possible that where a contract entered into in connection with the construction of a building consisted of two parts, namely, one part relating to the sale of materials used in the construction of the building by the contractor to the person who had assigned the contract and another part dealing with the supply of labour and services, sales tax was leviable on the goods which were agreed to be sold under the first part. But sales tax could not be levied when the contract in question was a single and indivisible works contract. After the 46th Amendment, the works contract which was an indivisible one is by a legal fiction altered into a contract which is divisible into one for sale of goods and the other for supply of labour and services. After the 46th Amendment, it has become possible for the States to levy sales tax on the value of goods involved in a works contract in the same way in which the sales tax was leviable on the price of the goods and materials supplied in a building contract which had been entered into in two distinct and separate parts as stated above."

10. Referring to the issue about such deemed sale being subject to discipline of article 286 of the Constitution, the court further said, "when the law creates a legal fiction, such fiction should be carried to its logical end. There should not be any hesitation in giving full effect to it. If the power of tax a sale in an ordinary sense is subject to certain conditions and restrictions imposed by the Constitution, the power to tax a transaction which is deemed to be a sale under article 366(29A) of the Constitution should also be subject to the same restrictions and conditions".

11. It may also be noticed that initially under entry 54 of the State List, State had the exclusive power to levy tax on sale and purchase of goods other than

newspapers. Article 286 placed prohibition on the States' power to levy tax on transaction of sale or purchase of goods which had taken place outside the State or in the course of the import of goods into or export of the goods out of the territory of India. The Explanation to clause (1) of article 286 laid down tests for determining when a sale or purchase of goods is deemed to take place in a State. Clause (2) of article 286 prohibited the power of the State Legislature to levy tax on sale or purchase of goods that has taken place in the course of inter-State trade or commerce except in so far as the Parliament by any law otherwise provided. That is to say the tax on inter-State trade or commerce, though within the competence of State Legislature, could not have been levied by the State unless authorised by Parliament. Sub-clause (3) provided control of Parliament on goods declared to be of special importance. The Bombay High Court came to the conclusion that definition of "sale" under the Bombay Sales Tax Act was so wide to include the three categories of the sale exempted by article 286 of the Constitution from the imposition of tax by the State and were, therefore, void. The decision of the Bombay High Court was reversed by majority in *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, . Doubts were raised about the correctness of the said decision and the issue was reconsidered by the apex Court in *Bengal Immunity Company Limited v. State of Bihar* [1955] 6 STC 446. The court held that each clause of article 286 namely, clauses (1)(a), (1)(b), (2) and (3) were enacted to deal with different topics and one could not be projected or read into another. The prohibitions imposed by article 286 of the Constitution on the taxing power of the States were independent and separate and each one of them have to be got over before a State Legislature could impose tax on transaction of sale or purchase of goods. The court also came to the conclusion that once situs of sale or purchase was determined, by legal fiction created under Explanation to article 286(1)(a) that a transaction was outside the State, as a matter of course that State could never tax the transaction. It was after this decision that the Parliament taking into consideration the recommendation of the Taxation Enquiry Commission, passed the Constitution (Sixth Amendment) Act, 1956, by which the Seventh Schedule to the Constitution as well as the entry 54 in the Second List was amended conferring exclusive powers on the Parliament to levy taxes on the sale or purchase of goods which took place in the course of inter-State trade or commerce. Article 269(3) had provided that the Parliament may by law formulate principles for determining tax when a sale or purchase takes place in the course of inter-State trade and commerce. It is with this scenario the Central Sales Tax Act, 1956, came to be enacted by the Parliament which received the assent of the President on December 5, 1956. Thus, the Central Sales Tax Act came into force for the purpose of laying down the test when the sale or purchase of goods takes place outside or inside a State, to levy tax on sale or purchase of goods that had taken place in the course of inter-State trade and commerce; to lay down the principles for determining when a transaction can be said to have taken place in the course of inter-State trade and commerce and also for laying down restrictions and conditions in regard to the levy of tax and other incidence of tax

on sale and purchase of goods which have been declared by Parliament by law to be of special importance in inter-State trade and commerce in terms of clause (3) of article 286. By 46th Amendment, the transactions which have been deemed to be the sales for the purposes of tax on sale and purchase of goods have also been subjected to conditions laid down under clause (3) of article 286 by inserting sub-clause (b) therein. This, we have pointed out for the purpose of making it clear that the Central Sales Tax Act is not enacted merely for the purpose of levying tax on the sale and purchase that has taken place in the course of inter-State trade and commerce but also for the purpose of articles 286 and 269.

12. It is in the aforesaid context, we have to examine the issues raised before use. It would be relevant to reproduce relevant provisions of section 8 of the Central Sales Tax Act at the outset.

"8. Rates of tax on sales in the course of inter-State trade or commerce. -

(1) Every dealer, who in the course of inter-State trade or commerce -

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3);

shall be liable to pay tax under this Act, which shall be four per cent of his turnover.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1) -

(a) in the case of declared goods, shall be calculated at twice the rate applicable to the sale or purchase of such goods inside the appropriate State; and

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher;

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

(2-A) Notwithstanding anything contained in sub-section (1-A) of section 6 or in sub-section (1) or clause (b) of sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name), shall be nil or, as

the case may be, shall be calculated at the lower rate.

Explanation. - For the purposes of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

(3) The goods referred to in clause (b) of sub-section (1) -

.....

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power;

(c)

(d)

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner -

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government :

Provided that the declaration referred to in clause (a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

(5)"

13. From the perusal of the aforesaid provisions it is clear that while sub-sections (1), (2) and (2-A) deals with the taxing event that has arisen on account of sale in the inter-State trade or commerce and is chargeable to tax as per section 6 of the Central Act, sub-section (3) does not deal with the taxing event. Since sub-section (1) prescribes the rate of Central Sales tax in the case of goods of the description referred to in sub-section (3), sub-section (3) is for the purpose of identifying the goods which are subject to the provisions of section 8(1) to be taxed under the Central Sales Tax Act at the rate prescribed therein. The taxing event is sale or purchase of those goods at that point of time. Sub-section (3)(b)

only declares that such are the goods which have been specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf for use by him in the manufacture or processing of goods for sale or the mining or in the generation or distribution of electricity or any other form of power. Sub-section (4) further provides that in order to attract the applicability of sub-section (1) of taxing such goods at 4 per cent, i.e., to say specified low rate, the dealer selling the goods has to further submit to the prescribed authority a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority. In case the goods are sold to the Government, not being registered dealer, a certificate signed by a duly authorised officer of the Government is to be submitted. Thus, firstly in order to attract the provisions of sub-section (1) to an inter-State sale or purchase, such goods must be sold to a registered dealer, secondly such goods must be specified in the certificate of the purchaser as goods being intended for resale or for use by him in the manufacture or processing of goods for sale and the second condition is that the purchaser must submit a declaration in the prescribed form to that effect to the seller which could be furnished by the seller to the prescribed authority. Rules 3 to 8 of the Central Sales Tax (Registration and Turnover) Rules, 1957, govern the question of registration, rules 9 and 10 govern its amendment and cancellation. Rule 12 prescribes the form of declaration required u/s 8(4).

14. At the time of purchase of the goods in the course of inter-State trade and commerce what exactly shall be done by the purchaser on a future date, is not relevant. What is relevant at the time of purchase is that such purchase is intended for resale of the goods or to be used in manufacture of goods for sale by the purchaser. Such intention should be manifested in a declaration by him in the prescribed form "C". It is also not required that such subsequent sales of the manufactured goods or resale of the purchased commodities as such must be subject to Central Sales Tax Act attracting the provisions of the Central Sales Tax Act at the subsequent stage. Therefore, at the time of attracting the provisions of section 8(1) for the purpose of levying tax thereunder, the question whether the subsequent transaction or dealing by the purchaser shall or shall not be a sale within the provisions of section 2(g) of the Central Sales Tax Act attracting tax liability thereunder is not relevant. Even if the subsequent sale is an intra-State sale attracting the provisions of the appropriate State law, it will be still fulfilling the conditions of sub-section (3)(b). The purchaser of goods may utilise such goods for reselling within the State or outside the State or sale in the course of inter-State trade or commerce or in the manufacture or processing of goods for sale. In that even if subsequent sale is made which comes within the purview of inter-State sale within the meaning of section 3 of the Central Act then two distinct questions will arise - one whether it will attract levy u/s 6, second whether there is any breach of declaration. We are concerned with only the latter. It is wholly premature and irrelevant at the stage of considering the

question of entering certain goods in the list of goods to be specified in the certificate of registration of the registered dealer as being intended for resale by him or for use in the manufacture or processing of goods for sale to examine that whether such subsequent sale will amount to a sale within the meaning of the Central Sales Tax Act attracting the provisions of the Central Sales Tax Act to such subsequent transactions. The question may be germane only on such subsequent event having taken place. Then a question may be raised whether a registered dealer who has got certain goods specified in his registration certificate as intended for resale by him or intended by him to be used in manufacture or processing of goods for sale and having given such declaration in form "C" read with rules, has fulfilled the conditions of purchasing goods at the specified rate under sub-section (1) or has committed any breach of such condition of his declaration inviting penal consequences under relevant provisions of the Act and Rules.

15. The concessional rate u/s 8(1) is attracted in two contingencies. Firstly if the dealer sells any goods to Government and secondly if he sells goods described u/s 8(3) to a registered dealer. In this connection, section 7 is illuminating which deals with requirement of registration. Relevant part of section 7 reads as under :

"Registration of dealers. - (1) Every dealer liable to pay tax under this Act shall, within such time as may be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify, and every such application shall contain such particulars as may be prescribed.

(2) Any dealer liable to pay tax under the sales tax law of the appropriate State, or where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in that State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under this Act, apply for registration under this Act to the authority referred to in sub-section (1), and every such application shall contain such particulars as may be prescribed.

Explanation. - For the purposes of this sub-section, a dealer shall be deemed to be liable to pay tax under the sales tax law of the appropriate State notwithstanding that under such law a sale or purchase made by him is exempt from tax or a refund or rebate of tax is admissible in respect thereof."

16. Under sub-section (1) of section 7 of the Central Act, a dealer who is liable to pay tax under the Central Act is under an obligation to obtain a certificate of registration. Under sub-section (2), any dealer liable to pay tax under the Sales Tax Act of appropriate State or where no such law is in force in the appropriate State or part thereof, any dealer having a place of business in that part of the State may notwithstanding that he is not liable to pay tax under the Central Act apply for registration under the Act. Thus, as far as registration is concerned, the applicants' liability to sales tax under the Central Act or the State Act is not a

foundational fact. Section 8(1) does not further envisage that in order to attract provisions of that section that purchaser, registered dealer, must be a dealer liable to pay sales tax. What is required for determination of goods for the purposes of section 8(1) is that they should have been specified in the registration certificate. It is only a person indulging in inter-State trade becomes liable to tax under the Act and he is under obligation to obtain certificate of registration u/s 7(1), otherwise any person whether he is liable to pay tax under the sales tax law of appropriate State, and even in cases where he is not liable to pay tax because of the absence of any law in force in the appropriate State where he is having a place of business, can apply for registration under the Central Act and obtain the same, i.e., notwithstanding a person would be liable to pay Central sales tax or is not exigible to the Central sales tax, he can obtain a registration. Such registration enures for the purposes of section 8(3)(b) and (4) for purchasing the goods from any other dealer registered under the Central Sales Tax Act, who is liable to pay tax under the Central Sales Tax Act for the purpose of securing the benefit of section 8(1). Therefore, when the liability to charge under the Central Act by a person seeking registration under the Central Sales Tax Act is not an essential ingredient for securing registration, the question of subsequent intended sale attracting the provisions of the Central Sales Tax Act does not remain germane while considering the application u/s 7 either for the grant of registration certificate or for seeking amendment of it for including certain goods to be specified in the certificate of registration as purchasing goods intended to be resold or used in the manufacture or process of the goods for sale.

17. In that view of the matter, in our opinion the issuance of circular by the Commissioner refusing to entertain such application or prohibiting the use of "C" form by the purchasers of the goods in the course of inter-State sale which is intended to be used by him in the execution of works contract on the anvil of there being no amendment u/s 2(g) pursuant to 46th constitutional amendment is not founded on any sound rationale, and cannot be sustained.

18. It is noticed, and there is no dispute between the parties, that since the commencement of 46th Amendment by which the aforesaid definition of tax on sale of goods was inserted, the State of Gujarat has amended the Gujarat Sales Tax Act, and as per the amended definition under the Gujarat Sales Tax Act, a transfer of property in the goods involved in the execution of the works contract amounts to sale within the meaning of that Act and attracts levy of tax under the Gujarat Sales Tax Act. A person purchasing the goods in the course of inter-State trade and commerce for selling the same "intra-State" or "outside the State" is also eligible and entitled to use and furnish a declaration in form "C" and in that event also there is no breach of the condition, if they do so, though in that event no provision of the Central Act is at all attracted. Holding otherwise will result in very anomalous and absurd result that even though a dealer is held liable to pay tax under State law on such subsequent transaction and he pays such tax duly, yet as per claim of Revenue he will be held guilty of committing breach of declaration, because such sales are not sales u/s 2(g) of the CST Act. This is

obviously not the intended object. Therefore, the definition of section 2(g), assuming that it does not include the transfer of property in the goods involved in the execution of works contract without amendment, cannot be read into the provisions of section 8(3)(b) for the purposes of determining the nature of subsequent transactions by the purchaser at a future date which may or may not be a transaction attracting the provisions of the Central Sales Tax Act.

19. In this connection, we may usefully refer to a decision of the Madras High Court in *Larsen & Toubro Limited v. Commercial Tax Officer* [1992] 85 STC 422. The court held :

"That the question whether the goods had been rightly purchased for any one of the approved and permitted purposes and whether there was sufficient compliance or non-compliance or violation of the terms of the registration certificate or as to whether the "C" forms issued had been misused by the registered dealer had to be considered only at the subsequent and appropriate stage and in accordance with section 10-A of the Central Sales Tax Act."

20. As a result of the aforesaid conclusion, the court directed that "the petitioners were entitled to have themselves registered as dealers u/s 7(2) of the Central Sales Tax Act, 1956, and consequently are entitled to the supply of "C" forms for use in their purchase of goods in the course of inter-State sale or trade or commerce at the concessional rate".

21. A Bench of the Andhra Pradesh High Court in *Unitech Ltd. v. Commercial Tax Officer* [1991] 83 STC 207 reached the same conclusion when it said :

"..... the question whether a particular "C" form has been issued rightly or wrongly is not a question which is relevant at this stage."

22. In *Beekay Engineering Corporation v. State of Bihar* [1992] 87 STC 509, a Bench of the Patna High Court held that a works contractor is a dealer entitled to be benefit of purchasing goods on payment of tax at concessional rates as prescribed u/s 8(1)(b) of the Central Sales Tax Act, 1956, on furnishing a declaration form "C".

23. The aforesaid decisions fortify the conclusion to which we have reached.

24. In *Gannon Dunkerley & Co. v. State of Rajasthan* [1993] 88 STC 204 question that arose before their Lordships of the Supreme Court was whether the provisions of sections 3 4 and 5 of the Central Act were applicable to transfer of property in goods involved in execution of work as such. The contention raised was similar to one which is raised before us that without amending the definition of "sale" u/s 2(g) of the Central Act in accordance with clause (29A) of article 366, the transfer of property in goods involved in execution of works, does not come within the purview of "sale" under the Central Act and, therefore, the provisions of sections 3 4 and 5 which relate to determination of situs of "sale" and determination of the fact whether a particular sale would be a sale in the course of inter-State trade or sale in the course of export cannot be made

applicable to such transaction. The court repelled the contention and observed :

"The question is whether in the absence of an amendment in the Central Sales Tax Act specifically applying its provisions to a transfer of property in goods involved in the execution of a works contract, the provisions of sections 3 4 and 5 contained in Chapter II can be held applicable to such a transfer. In this context, it may be mentioned that prior to the Forty-sixth Amendment, a distinction was being made between a "works contract" which was entire and indivisible and a works contract composed of two distinct and separate contract - one, for transfer of materials and other, for payment of remuneration for services and for work done. The non-availability of the legislative power of the State under entry 54 of the State List, as construed by this Court in the *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.,* , was confined, in its application, to works contracts falling in the first category, i.e., contracts which were entire and indivisible and it was permissible for the States to impose tax on sale or purchase of goods where the parties had entered into distinct and separate contracts one for the transfer of materials and other for payment of services and for work done."

25. For arriving at this conclusion, the court relied on the following observation of its earlier decision in *Builders Association case* [1989] 73 STC 370 (SC) :

"After the 46th Amendment, the works contract which was an indivisible one is by a legal fiction altered into a contract which is divisible into one for sale of goods and the other for supply of labour and services. After the 46th Amendment, it has become possible for the States to levy sales tax on the value of goods involved in a works contract in the same way in which the sales tax was leviable on the price of the goods and materials supplied in a building contract which had been entered into in two distinct and separate parts."

26. Thus, by taking recourse to the well-known doctrine of interpreting statutes to interpret a word in the context in which it has been used, the court held that for the applicability of provisions of sections 3 4 and 5 of the Central Act, it was not dependent on the amendment in the Central Sales Tax Act but it was applicable in view of the amended provisions of the Constitution as interpreted by the Supreme Court in *Builders Association case* [1989] 73 STC 370. It may be noticed that the court made it clear that since the question of inter-State levy of tax u/s 6 of the Central Act is not an issue in the cases before it, it did not propose to go into that question.

27. In *Printers (Mysore) Ltd. v. Assistant Commercial Tax Officer* [1994] 93 STC 95, the court was called upon to interpret the meaning of word "goods" as used in section 8(3)(b) read with the definition of "goods" given in the Central Act. The court was to consider whether publishers of the newspapers registered under Sales Tax Act are entitled to benefit of section 8(1) read with section 8(3)(b) of that Act after the amendment in 1958 of the definition of "goods" in clause (d) of section 2 of the Central Sales Tax Act, which excluded the newspaper from the

scope of that expression. It was argued that newspapers having been excluded from the definition of "goods" cannot fall within the scope of specified goods u/s 8(3)(b) so as to get the benefit of concessional rate u/s 8(1)(b). Resorting to contextual reading, the court observed that "it is well-settled that where the context does not permit or where it would lead to an absurd or unintended result, the definition of an expression need not be mechanically applied."

28. The court observed that expression "goods" occurred on four occasions in section 8(3)(b). After noticing the object of the exclusion of newspaper from the definition of goods, the court held as under :

"..... there is no doubt, it has to be understood in the sense it is defined in clause (d) of section 2. Indeed, when section 8(1)(b) speaks of goods, it is really referring to goods referred to in the first half of section 8(3)(b), i.e., on first three occasions. It is only when section 8(3)(b) uses the expression "goods" in the second half of the clause, i.e., on the fourth occasion that it does not and cannot be understood in the sense it is defined in section 2(d). In other words, the "goods" referred in the first half of clause (b) in section 8(3) refers to what may generally be referred to as raw material (in cases where they were purchased by a dealer for use in the manufacture of goods for sale) while the said word "goods" occurring for the fourth time (i.e., in the latter half) cannot obviously refer to raw material. It refers to manufactured "goods", i.e., goods manufactured by such purchasing dealer - in this case, newspapers. If we attach the defined meaning to "goods" in the second half of section 8(3)(b), it would place the newspapers in a more unfavourable position than they were prior to the amendment of the definition in section 2(d). It should also be remembered that section 2 which defines certain expressions occurring in the Act opens with the words "in this Act, unless the context otherwise requires". This shows the wherever the word "goods" occurs in the enactment, it is not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in clause (d). Ordinarily, that is so. But where the context does not permit or where the context requires otherwise, the meaning assigned to it in the said definition need not be applied. If we keep the above consideration in mind, it would be evident that the expression "goods" occurring in the second half of section 8(3)(b) cannot be taken to exclude newspapers from its purview. The context does not permit it."

29. Thus, keeping in view the object and purpose, the court read the very same expression in the very sub-section the word "goods" to mean differently.

30. As we have discussed above, the context in which the term "resale" has been used in section 8(3)(b) makes it obvious that the term sale or resale u/s 8(3)(b) has not been used as sale or resale within the meaning of the Central Sales Tax Act to attract levy thereunder but it has been used in general sense vis-a-vis their dealing by a registered dealer at a later date. A registered dealer under the Central Act as we have seen, is not necessarily a person to whom levy under the Central Act applies. Central Act has not been legislated merely to levy sales tax

in exercise of entry 92-A of List I of Schedule VII but also to give effect to provisions of articles 286 and 269. Even if there is no sales tax law in the State, where a dealer has place of business and he is registered u/s 7(2) of the Central Sales Tax Act, sales by a registered dealer to such a registered dealer will attract provisions of section 8(1).

31. Learned counsel for the Revenue has placed reliance on Deputy Commissioner of Agricultural Income Tax and Sales Tax (Law), Ernakulam v. P. K. Biriymma [1991] 83 STC 276 (Ker). The decision supports the contention of the Revenue. It arose in the following circumstances. Certain items of equipments used in the tyre retreading business were included in the certificate of registration of the respondent, a dealer under the Central Act. Subsequently on the ground that tyre retreading involves execution of works contract hence does not amount to "sale" as defined in section 2(g) of the Central Act, the items included in the registration certificate were cancelled. The Tribunal allowed the revision filed by the dealer by holding that by virtue of 46th Amendment, the sale included transfer of property in goods involved in works contract. Reversing the decision of the Tribunal the court held :

"..... It is true that by the Forty-sixth Amendment to the Constitution, article 366, clause (29A) has been redrafted and it gives appropriate authority to the competent Legislatures to make provisions for the taxation of transfer of property in the execution of works contract. But, the fact still remains that the appropriate Legislatures should amend the law to take within the relevant statutory provision the content of article 366, clause (29A). That has not been done in section 2(g) of the Central Sales Tax Act. The relevant provisions of the Central Sales Tax Act have not been amended or varied to take within its fold the extended definition inserted in article 366, clause (29A) of the Constitution."

32. With utmost respect, we have not been able to persuade ourselves to agree. From the perusal of the decision, it appears that the matter was argued on the abstract principle that Constitution confers power to tax and unless that power to tax is exercised by appropriate Legislature, there is no taxation by the provisions of the Constitution itself.

33. As has been noticed by the Supreme Court in Gannon Dunkerley & Co.'s case [1993] 88 STC 204, while considering the question of required declaration of intended resale or sale of goods manufactured by use of the purchased goods, the question of levy of tax on the subsequent inter-State or intra-State sale under the Central Sales Tax Act, it is not called upon to decide the levy on further intended transaction under the Central Sales Tax Act at the moment of considering levy of tax on inter-State sale u/s 8(1). There is no doubt that such transaction is an inter-State sale within the meaning of that Act and is subject to levy. Now what the purchaser would intend to do in future with those goods has relevance on the rate of tax to be levied on such transactions. That intended dealing with the goods is to find place on record by way of declaration in the prescribed form "C" by the purchaser. It is only declaration of an intention of

dealing with the goods in future in a particular manner. There is no inhibition that such declaration should be such as to bring it within the ambit and scope of levy by the Central Sales Tax Act. Therefore, the question of the exigibility of such transactions under the Central Sales Tax Act by exercise of amending powers is not the question germane for deciding the application of dealer seeking amendment of a registration certificate for inclusion of certain articles which he intends to purchase for resale in future or being used in manufacture or processing of another article for sale in future. Nor such an enquiry is relevant to consider the demand for supply of "C" form in terms of rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957. The provisions of section 7, more particularly, sub-section (2) appears to have not been brought to the notice of the court which makes it abundantly clear that for seeking registration, a dealer need not be subject to levy of tax or other provisions under the Central Sales Tax Act. If it is so, his transactions need not be sales within the meaning of the Central Sales Tax Act. Not only that, if a person who is not subject to States laws, that is to say if there is contingency envisaged in sub-section (2) that there may be no State laws levying sales tax, he may still obtain registration certificate under the CST Act. This makes it abundantly clear that a certificate of registration may be obtained by any dealer from the appropriate authority either under sub-section (1) or sub-section (2) even if any of his transaction does not fall within the definition of "sale" of goods under the Central Sales Tax Act inviting attractions of the provisions of levy in that Act. That is also the ratio of decision in Gannon Dunkerley case [1993] 88 STC 204 (SC) wherein provisions of sections 3 4 and 5 of the Central Sales Tax Act were held applicable notwithstanding there being no amendment to section 2(g) for determining whether the transaction amounts to sale in the course of inter-State trade or determining the situs of sale, or whether it is a sale in the course of export outside country.

34. The decision in our opinion which clinches the issue is in Gannon Dunkerley's case [1993] 88 STC 204 (SC) emphasising the need to contextual interpretation of the provisions of section 8(3)(b) so as not to defeat the purpose and object of the provision. Under the scheme of the CST Act, section 6 is the charging section which levies tax on every sale or purchase which is made in the course of inter-State trade or commerce. Section 3 provides when a sale can be said to take place in the course of inter-State trade or commerce. Section 4(1) defines when a sale or purchase of goods takes place outside a State. Section 4(2) defines when a sale or purchase of goods takes place within a State, Section 5 determines when is a sale or purchase of goods said to take place in the course of import, section 6A places burden of proving that goods have moved from one State to another not by reason of sale, not attracting the liability under the CST Act on the person who claims so. Section 7 deals with registration of dealers under the CST Act. Section 8(1), (2) and (2A) prescribes rates of tax to be levied on sale or purchase of goods attracting charge. Section 8(3) specifies sale and purchase of which goods in the course of inter-State trade or commerce attract

provisions of section 8(1)(b). The requirement of section 8(3)(b) above identity of the goods is to be as specified in registration certificate for intended use in future by such registered dealer and intention of purchase have further to be evidenced by a declaration as to fulfilment of criterion in terms of section 8(4). Section 9 provides for machinery to levy and collect tax and penalties. Any tax payable under the CST Act has to be collected by the State from which the movement of goods commenced. u/s 3 a sale or purchase of goods is deemed to take place in the course of inter-State trade or commerce, if the sale or purchase occasions the movement of goods or is effected by transfer of documents of title to the goods during the movement from one State to another. Generally the machinery of levy and collection of tax applicable in the State from which the movement has occasioned is made applicable. Under sub-section (3) of section 9, the proceeds in any financial year of any tax including any penalty levied and collected is assigned to and retained by that State and the proceeds attributable to Union territories forms part of consolidated fund of India. This makes it obvious that in substance, the tax under the CST Act is levied and collected for the purpose of State in which situs of such transaction is located, though levy is by Parliament keeping in view the importance of free-flow of trade by subjecting the same to a uniform law.

35. From the scheme, it is clear that in the first instance, it has to be determined in which State the sale is deemed to have taken place. That gives that State authority to levy and collect the tax. Once that is determined, the question arises whether as a result of such transaction movement has taken place from that State to another. If that is so, the transaction shall be in the course of inter-State trade or commerce and levy and charge shall have to be in accordance with the CST Act. If not, it shall have to be determined in accordance with State law. May be a sale within the State occasion movement of goods and becoming sale transaction in the course of inter-State trade or commerce be not subjected to levy under the CST Act yet it does not cease to be a sale of goods.

36. A question arose before the apex Court in *Onkarlal Nandlal v. State of Rajasthan* [1985] 60 STC 314 that a sale in the course of inter-State trade or commerce cannot be termed as a resale within the State as required in form No. S.T.-17 prescribed under the Rajasthan Sales Tax Rules, 1955 and the goods must be deemed to have been used for purposes other than the declared purpose in form 17. A question very similar to one posed before us. The apex Court did not countenance the argument. Honourable Bhagwati, C.J., speaking for the court said :

"Even an inter-State sale must have a situs and the situs may be in one State or another. It does not involve any contradiction in saying that an inter-State sale or purchase is inside a State or outside it. The situs of a sale may fall for consideration from more than one point of view. It may require to be considered for the purpose of determining its exigibility to tax as also for other purposes. A sale which is in the course of inter-State trade or commerce cannot be taxed by

a State Legislature even if its situs is within the State, because the State Legislature has no legislative competence to impose tax on a sale in the course of inter-State trade or commerce. That can be done only by Parliament. Therefore, if a question arises whether a sale is exigible to tax by the State Legislature, it may have to be considered whether it is a sale in the course of inter-State trade or commerce. The same sale in another context may have to be examined from a different point of view for determining where its situs lies and whether it is a sale inside a State or outside the State. Therefore, there is no incompatibility in the same sale being both a sale in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956, as also a sale inside the State in accordance with the principles laid down in sub-section (2) of section 4 of the Central Act. All that the opening words "Subject to the provisions contained in section 3" in sub-section (1) of section 4 of the Central Act intend to convey is that even where a sale is determined in accordance with sub-section (2) of section 4 of the Central Act to take place inside a State and therefore outside all other States, it would not exclude the applicability of section 3 of the Central Act and if it satisfies the requirements of that section, it would still be a sale in the course of inter-State trade or commerce taxable under the provisions of the Central Act. If a sale fulfils the requirements of sub-section (2) of section 4 of the Central Act, it shall be deemed to be a sale within the State and it will be so also for the purpose of the declaration in form No. S.T. 17."

37. A later decision of the Supreme Court reported in *State of Orissa Vs. Johrimal Gajanand*, has been brought to our notice taking a contrary view to the one which has been taken by the apex Court in *Onkarlal Nandlal's case* [1985] 60 STC 314. With utmost respect, we notice that in this decision, the decision rendered in *Onkarlal Nandlal's case* [1985] 60 STC 314 (SC) which was a decision of larger Bench has not been brought to the notice of their Lordships of the Supreme Court deciding the later case. The law in this connection is settled that where there are two conflicting decisions of the Supreme Court, a decision by larger Bench, if not considered and overruled by a later decision, is binding on all courts.

38. Here also the requirement of section 8(3)(b) is not that intended resale must be a sale of goods in the course of inter-State trade or commerce. An intra-State sale in terms of local sales tax laws fulfils the condition of section 8(3)(b) and declaration in form "C" as well. If as a result of such sale within the State has occasioned movement of such goods to another State, it being passing into the realm of section 3 of the CST Act may not be exigible to State tax, yet it continues to remain a sale within State within the meaning of section 4(2) of the CST Act, and sufficient to fulfil the condition of resale of goods by the purchaser as required u/s 8(3)(b) and under the declaration. Therefore, the meaning of sale in the context in which it has been used in sub-section (3)(b) of section 8 cannot be wedded to the definition u/s 2(g) of the Act. Thus keeping the total scheme of the Act in view, we are of the opinion that, like sections 3 4 and 5 as

in Gannon Dunkerley's case [1993] 88 STC 204 (SC), for the purpose of section 8(3)(b) also even in the absence of any amendment having been made in the Central Sales Tax Act (after 46th Amendment) expressly including transfers of property in goods involved in execution of intra-State sale be applicable to such transfers. Else it would lead to very anomalous result that while fixing the situs if such transfer will be a sale within the State of Gujarat and since on such sale having occasioned movement of goods by applying section 3 it will pass into the realm of sale in the course of inter-State trade or commerce taking it outside the purview of State levy yet while considering the provisions of the CST Act. It shall not be a sale at all for any purpose if the argument of Revenue is to be accepted, attracting no provision of the CST Act at all.

39. As we have noticed, law is well-settled now that each provision under article 286 operates independently in separate field and one cannot be projected everywhere, therefore, while entry 92-A gives Central Act exclusive power to levy tax on sale and purchase of goods in the course of inter-State trade and commerce, article 286 has empowered the Parliament to legislate/to enact the law formulating principles for determining when a sale or purchase of goods takes place outside the State or in the course of export of goods out of the territory of India which also implies determination of when a sale or purchase takes place within the State. This provision makes it abundantly clear that the Central Act is enacted not only for the taxing sale and purchase in the Inter-State trade and commerce but also laying down principles when a sale or purchase takes place outside the State or within the State, consequence of which is that the State Legislature is not empowered to impose a tax on sale or purchase of goods which has taken place outside the State. Thus, the prohibition on the State to legislate for imposition of tax is two-fold; one that it cannot be imposed on a sale or purchase which is in the course of inter-State trade or commerce, i.e., by virtue of entry 54 in the second List of the Seventh Schedule, it cannot impose a tax on sale or purchase of goods which has taken place outside the State and it may not be even a sale or purchase in the course of inter-State trade and commerce, therefore, various provisions of the Central Sales Tax Act have been enacted for other purposes also. It is not the case of anybody that subsequent sale envisaged u/s 8(3)(b) must necessarily be a sale attracting levy of the Central Sales Tax Act but it can be a sale attracting levy of State law in which State sales have taken place. In the case of such sales, the intended sale must be a resale within the definition of the State law in which such sale has taken place according to the situs determined in accordance with the provisions of the Central Sales Tax Act. For such determination definition of "sale" under article 366(29A) has to be read even without amendment of the CST Act as per the apex Court. It is also not in dispute that sale of goods of commodity in any way other than enumerated in article 366(29A), if it is a sale attracting levy of State law and is sale within the meaning of that Act such sale is covered by the provisions of section 8(3)(b). This also leads to the conclusion that if transfer of property in goods involved in execution of works is a sale

within the meaning of State law within which the sale has taken place, such case will also be covered by section 8(3)(b) as resale.

40. The learned counsel for the Revenue has referred to a decision of Punjab Breweries Limited v. State of Punjab [1993] 90 STC 211. We may at the outset state that this was not a case in which provisions of section 8(3)(b) were called upon to be interpreted by their Lordships of the Punjab and Haryana High Court. It was a case in which their Lordships were called upon to decide whether in a case where transfer of a work has resulted in movement of goods, would be exigible to the tax under the Central Sales Tax Act. This was the question which was left open by their Lordships while deciding the question whether sections 3 4 and 5 of the Central Act are applicable for determining the situs and nature of the sale under sections 3, 4 and 5. The case is, therefore, clearly distinguishable. As in the present case also, we are not concerned with the question, whether the transfer of property in goods involved in execution of retreading the tyres resulting in sale has resulted in sale attracting levy u/s 6 of the CST Act. We refrain from expression any opinion thereon.

41. As a result of the aforesaid discussion, we hold that at the time of considering the registration of a dealer u/s 7 or considering for amending the list of goods to be specified in the certificate of registration for the purpose of section 8(3)(b) and for issuing "C" forms in terms of section 8(4) of the CST Act read with rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, the question whether ultimate intended sale by the dealer will be or will not be assessable to the sales tax is not relevant and the authority is not justified in refusing to amend the certificate of registration on that ground or for refusing supply of "C" form to be used by purchaser dealer for furnishing the same to the seller, whose transaction is presently under consideration and is subject to levy under the Central Sales Tax Act and provisions of section 8(3) of the Act. We further hold that in the context of purpose of section 8(3)(b) as distinct from levy u/s 6, for which we express no opinion, the transfer of property in goods which are purchased in the course of inter-State trade or commerce under a declaration in "C" form on their subsequently being involved in the execution of works contract amounts to resale of such goods and does not amount to breach of declaration to that effect given in form "C". Consequently, such transfer does not attract penalty provision.

42. Accordingly, circular dated December 3, 1985, is quashed and -

(a) Petition No. 7294 of 1993 is allowed. The respondents are directed to issue "C" form to the petitioners as and when applied for without reference to circular dated December 3, 1985 annexure A3 to other provisions of the Rules;

(b) Petition No. 7684 of 1993 is allowed. Respondents are directed to consider the application of the petitioner for amending the certificate of registration and grant the application if there is no other impediment without taking into consideration the circular issued by the Commissioner annexure A4. We further

direct the respondents that after amending the certificate of registration, the petitioner may be supplied with requisite "C" form subject to rules in this regard. This should be done within a fortnight of receipt of rule;

(c) The petition No. 158 of 1995 is allowed. The notices annexures D1 to D3 and any proceeding, if any, taken in pursuance thereof, are quashed; and

(d) The petition No. 188 of 1995 is allowed. The notices annexures B1, B2, B3 and C and any proceedings, if any, taken in pursuance thereof, are quashed.

43. There will be no order of costs in each case. Rule made absolute accordingly. Petitions allowed.