

(1978) 11 GUJ CK 0018
In the Gujarat High Court
Case No : Sales Tax Reference No. 1 of 1977

Nowroji N. Vakil and Co.

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 27-11-1978

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 10, 13, 16, 16(1), 2
Gujarat Sales Tax Act, 1969 — Section 10, 10(1), 12, 13, 13(B)

Citation : (1979) 43 GLR 238 : (1979) 43 STC 238

Hon'ble Judges : P.D. Desai, J; B.K. Mehta, J

Bench : Division Bench

Advocate : R.D. Pathak and S.L. Modi, for the Appellant; G.T. Nanavati, instructed by Bhaishanker Kanga and Girdharlal, for the Respondent

Judgement

Desai, J.—This reference made at the instance of the assessee by the Gujarat Sales Tax Tribunal (hereinafter called "the Tribunal") u/s 69 of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Act"), raises a question which has to be resolved ultimately on a true and correct interpretation of the definition of the term "taxable goods" in clause (33) of section 2 of the Act. In order to appreciate the problem in its proper perspective, a few need to be set out.

2. The assessee, which is a company manufacturing stoneware pipes, firebricks and lime, is a registered dealer. In the manufacture of the aforesaid goods, fireclay, which has been loosely referred to as "earth" by the Tribunal, is required to be used as a raw material. The said raw material is taxable goods under the residuary entry 13 of Schedule III at the rate specified therein. The assessee used to purchase the said goods on payment of tax as well as against declarations in form 19 without payment of tax. Out of the goods manufactured by using the goods purchased as aforesaid, certain quantity of goods was sold against a certificate in form C, without recovery of any tax, to the Ahmedabad Electricity Company Ltd., which is a certified electrical undertaking within the meaning of entry 5 of the Schedule to the Government notification dated 29th

April, 1970, issued u/s 49 of the Act.

3. During the course of assessment proceedings of the assessee for the relevant period (6th May, 1970, to Aso Vad 30, S.Y. 2026), the Sales Tax Officer took the view that the assessee, contrary to the certificate given by it in form 19 at the time of purchase, had used the fireclay as raw material in the manufacture of goods for sale which were non-taxable and that, therefore, purchase tax was liable u/s 16 of the Act in respect of such purchases of fireclay. The Sales Tax Officer accordingly levied purchase tax on the turnover of purchases of fireclay made by the assessee against declarations in form 19. Against the levy of purchase tax as aforesaid, the assessee preferred an appeal before the Assistant Commissioner of Sales Tax, which was unsuccessful. Thereupon, a second appeal was carried to the Tribunal, which also failed. At the instance of the assessee, however, the Tribunal has stated a case in respect of the following question :

"Whether, on the facts and in the circumstances of the case and on the correct interpretation of sub-section (33) of section 2 of the Gujarat Sales Tax Act, 1969, the Tribunal is right in deciding that the applicants are liable to pay purchase tax u/s 16 on the ground that certain goods manufactured out of the raw materials purchased on certificates in form 19 were sold to the Ahmedabad Electricity Co. Ltd. against certificates in form C prescribed in entry 5 of the Government notification issued u/s 49 of the Act ?"

4. In order to appreciate the controversy involved in the reference, it would be necessary to refer at the outset to the basic scheme of the Act. The Act levies three kinds of taxes, namely, sales tax, general sales tax and purchase tax, with a view to collecting revenue. Sales tax and general sales tax are leviable on sales of taxable goods and purchase tax is leviable on purchases of taxable goods. The Act envisages that as far as possible there shall be a single point levy.

5. Section 6 is the main charging section. It provides that subject to the provisions of the Act and to any rules made thereunder, there shall be paid by every dealer, who is liable to pay tax under the Act, the tax or taxes leviable in accordance with the provisions of Chapter II. Sections 7, 8, 10, 15 and 16 find place in Chapter II and the different kinds of taxes referred to above are leviable under those sections. Section 7 provides for the levy of sales tax at the first stage on the sales of goods specified in Part A of Schedule II. Section 8 provides for the levy of general sales tax at the last stage on the sales of goods specified in Part B of Schedule II. Section 10 provides for the levy of sales tax and general sales tax (both) on goods specified in Schedule III. Sections 15 and 16 provide for the levy of purchase tax. Broadly speaking, purchase tax is leviable u/s 15 upon a dealer who purchases (otherwise than for resale) taxable goods from a person who is not a registered dealer and, u/s 16, when in respect of purchases of taxable goods under certificates issued under sections 12 and 13, there is found to be a breach of the conditions of the concerned certificate, or when the goods so purchased are resold in the course of inter-State trade or commerce without payment of any tax under the Central Sales Tax Act, 1956.

6. The scheme of the Act involved four inter-relates but distinct concepts which may, for the sake of convenience, be described as : (1) taxable person, (2) taxable turnover, (3) taxable transaction, and (4) taxable goods. It is necessary to expound those concepts in order to appreciate the working of the Act.

7. The identity of the "taxable person" is established by reference to the provisions of section 6, which says that "..... there shall be paid by every dealer, who is liable to pay tax under this Act, the tax or taxes leviable" It is apparent, therefore, that the taxable person must be a dealer who is liable to pay tax under the Act. The word "dealer" is defined in clause (10) of section 2 and, accordingly, any person who buys or sells goods in connection with his business, including the Central Government, a State Government or any local authority and also any society, club or other association of persons which buys goods from or sells goods to its members or to other persons, is constituted a dealer. There are three exceptions to this clause but we need not refer to them for the purposes of the present case. The liability of a dealer to pay any tax arises by virtue of the provisions contained in sections 3, 4, 26 and 30 of the Act. Under sub-section (1) of section 3, every dealer, whose turnover either of all sales or of all purchases made during the specified accounting period exceeds the relevant limit specified in sub-section (4), is liable to pay tax under the Act on such turnover. u/s 4, notwithstanding anything contained in section 3, the liability of a dealer registered under the Central Sales Tax Act, 1956, to pay tax under the Act on sales within the state of Gujarat of the goods purchased by him in the course of inter-State trade or commerce under certain circumstances or on sales of goods manufactured with the use of goods so purchased, is laid down. Section 26 of its various sub-sections enacts special provisions regarding liability to pay tax in cases where a dealer liable to pay tax under the Act dies or transfers his business or when such dealer is a H.U.F. or firm, the joint property of such H.U.F. is partitioned or such firm is dissolved. Under sub-section (3) of section 30, liability to pay tax arises upon voluntary registration of a dealer. The taxable person under the Act, therefore, is a dealer liable to pay tax u/s 3, 4, 26 or 30 of the Act.

8. Section 6 read with sections 7, 8, 10 and 15 contemplates levy of sales tax or purchase tax on the turnover of sales or purchases, as the case may be, of the dealer liable to pay tax under the Act. It is in this context that the term "taxable turnover" has relevance. To compute the taxable turnover, certain deductions are required to be made from the gross turnover of a selling dealer. Provision therefore is made in sections 7, 8 and 10, which permits various kinds of deductions to be made in the circumstances and subject to the conditions therein specified. u/s 13, however, those statutory deductions cannot be made unless the purchasing dealer issues a certificate in the relevant prescribed form. To illustrate the point, let us take the case where sales or resales of certain goods are effected in favour of a recognised dealer. Recognition is granted u/s 32 in the prescribed form and on fulfilment of the prescribed conditions to a registered dealer, who manufactures taxable goods for sale. Under sections 7(iii), 8(iii) and

10(1)(iii) read with section 13(1)(B), the vendor of taxable goods would be entitled to deduct from the turnover of his sales, the sales or resales of certain goods effected in favour of a recognised dealer provided the recognised dealer certifies in the prescribed form 19, inter alia, that the said goods (other than prohibited goods) are purchased by him for use by him as raw or processing materials or as consumable stores in the manufacture of taxable goods for sale by him within the State of Gujarat. This deduction in the case of a recognised dealer is allowed with reference to the end-use of the goods and the certificate to be given in form 19 would afford evidence that the goods are purchased by the recognised dealer for the said purpose. The requirement of such certificate as a condition of deduction is clearly intended to prevent fraud and facilitate administrative efficiency (see *Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others*, . The object and purpose intended to be served by the provision relating to statutory deductions upon furnishing of a certificate in the prescribed form is to ensure a single point levy of sales tax on the goods purchased or sold within the State. The purpose of confining the tax as far as possible to a single point levy is obviously to secure that the goods do not carry with them any unnecessary burden and that the State would at the same time avail of the necessary revenue. Another object seems to be to harmonise the inter-State trade and commerce as well as the export trade (see *Morvi Vegetable Products Ltd. v. M. C. Padia, Sales Tax Officer, Morvi*, Special Civil Application No. 916 of 1973 decided by a Division Bench of this Court consisting of J. B. Metha and T. U. Mehta, JJ., on July 9/10, 1974). The taxable turnover under the Act, therefore, is the turnover which is determined after the statutory deductions are effected from the gross turnover.

9. u/s 6 read with sections 7, 8, 10, 15 and 16, one or the other tax becomes payable by a dealer who is liable to pay tax under the Act in respect of sales or purchases, as the case may be, of taxable goods. Since the liability to pay tax arises upon such sales or purchases taking place, any of those transactions ordinarily would be a "taxable transaction". Not all such transactions, however, invariably give rise to the liability to pay tax under the scheme of the Act. Let us illustrate the point by reference to various transactions. First, where any sale or purchase of any taxable goods taken place within the State in the course of inter-State trade or commerce or in the course of the import of the goods into the territory of India or the export of the goods out of such territory, no tax is payable (see section 87). Second, when sales or resales of certain taxable goods take place in favour of licensed dealer, recognised dealer or commission agent holding a permit, upon such dealer or agent giving the relevant certificate in the prescribed form, no sales tax or general sales tax is payable, except in cases covered by section 12, by virtue of sections 7(iii), 8(iii) and 10(1)(iii) and (iv) and 10(2)(iv) read with section 13(1). Third, there are specified classes of sales or purchases of taxable goods which, by virtue of section 49 might be exempt, inter alia, from payment of the whole of any tax payable under the Act. Under sub-section (1) of section 49, subject to the conditions or exemptions, if any,

specified in relation to them the classes of sales or purchases, enumerated in the said sub-section, are exempt from the payment of the whole of tax payable under the provisions of the Act. Under sub-section (2), subject to such conditions as it may impose, the State Government is authorised, if it considers it necessary so to do in the public interest, to exempt by notification in the official Gazette any specified class of sales or purchases from payment inter alia of the whole of any tax payable under the provisions of the Act. In exercise of those powers, the State Government has issued a notification dated 29th April, 1970, exempting from the payment of the whole of tax, conditionally or unconditionally, several classes of sales or purchases of taxable goods. This illustrative list, which is not intended to be exhaustive, exemplifies that excepting such or similar transactions, all other transactions of sales or purchases, as the case may be, of taxable goods effected by a taxable person are taxable transactions under the Act.

10. Out of the four concepts referred to above, the only one that is statutorily defined is "taxable goods". We shall presently come to the definition of the said term in clause (33) of section 2. Before we do so, however, it might be mentioned that taxable goods are specified in Schedules II and III. The sales or purchases of those goods bear tax at the rate specified against each of those goods. It might be noted at this stage that entry 13 of Schedule III is a residuary entry and that thereunder all goods other than those specified from time to time in section 18 (sugarcane) and in Schedules I and II and in the preceding entries of Schedule III are covered. This brings into focus Schedule I, which enumerates goods, the sale or purchase of which is free from all taxes. This schedule is enacted u/s 5. Sub-section (1) of the said section provides that subject to the conditions or exceptions (if any) set out against each of the goods specified in column 3 of Schedule I, no tax shall be payable on the sales or purchases of any goods specified in that schedule. Sub-section (2) provides that the State Government may, by notification in the official Gazette, add to or enlarge, any entry in Schedule I or relax or omit any condition or exception specified therein; and thereupon the said schedule shall be deemed to be amended accordingly. The foregoing discussion would show that all goods other than those specified in Schedule I are taxable goods. Ordinarily, therefore, the term "taxable goods" should have been defined in the Act as meaning goods other than those on the sale or purchase of which no tax is payable u/s 5. Such was the definition of the said term in section 2(33) of the Bombay Sales Tax Act, 1959, which was the law in force immediately prior to the enactment of the present Act in the area now comprised in the State of Gujarat. The definition of the term "taxable goods" in clause (33) of section 2 of the present Act is, however, different. It reads as follows :

"(33) "taxable goods" means goods other than those on the sale or purchase of which no tax is payable u/s 5 or section 49 or a notification issued thereunder."

11. It would appear, therefore, that the words of exclusion in the definition of the

term "taxable goods" are now more extensive. The legislature has taken in the exclusion clause not only those goods the sale or purchase of which is exempted from payment of all taxes by virtue of the inclusion of such goods in Schedule I, but also those goods which are the subject-matter of transactions of sale or purchase, as the case may be, which have been exempted from the payment of the whole of any tax under the provisions of section 49(1) and (2). The enlarged exclusion clause has the effect of giving a more restrictive meaning to the words "taxable goods" in the present Act. In other words, the range of taxable goods for the purposes of the Act is narrower. In defining the said term accordingly, the legislature must be presumed to have acted deliberately inasmuch as it has departed from the definition of the said term as contained in the Bombay Sales Tax Act, 1959. It is manifest, therefore, that all goods other than (a) those to whom exemption attaches by virtue of their inclusion in Schedule I and (b) those that are the subject-matter of transactions of sale or purchase, as the case may be, which are wholly exempt from payment of any tax u/s 49(1) and (2), are taxable goods.

12. One more thing before we proceed to deal with the question in hand. u/s 5, the exemption need not necessarily be unqualified. The opening words of sub-section (1) of section 5 make it clear that the exemption is subject to the conditions or exceptions, if any, set out against each of the goods specified in column 3 of Schedule I. It would thus appear that Schedule I might include goods which, for the sake of convenience, may be described as (1) "generally exempted goods" and (2) "conditionally exempted goods". In the first category will fall goods the sale or purchase of which is free from all taxes without any qualification. To illustrate, reference may be made to entry 4 in Schedule I, which exempts eggs from the levy of all taxes without any condition or exception. In the second category will fall goods, the sale or purchase of which is free from all taxes subject to (a) exceptions or (b) conditions. The conditions may confine the exemption (i) to a particular variety of goods, or (ii) to the specified seller, or (iii) to the specified purchaser, or the exemption may be made dependent upon the end-use of the product and so on and so forth. To illustrate, under entry 1(b), the sale or purchase of khari and butter biscuits is free from all taxes except when sold in packets or sealed containers. This is an illustration of exemption subject to exception. Under entry 6(b), the sale or purchase of wood of limda, pipila, baval and vadla sold in a form other than firewood is free from all taxes when sold for the purpose of being used as firewood or for the purpose of manufacturing agricultural implement, carts, bullock-carts and spare parts thereof. This is an illustration of exemption confined to a variety of goods and made relatable to its use. Entry 6(c) deals with coal gas and the sale or purchase thereof is free from all taxes when sold by a gas supply company to a local authority for consumption by such local authority for the purposes of street lighting. This is an example of exemption dependent not only upon the end-use of the goods but also confined to specified seller and buyer. It is clear, therefore, that Schedule I does not include only those goods which are generally exempt

but also those which are conditionally exempt.

13. Similar is the position in relation to exemption u/s 49. Under sub-section (1) exemption is made subject to the conditions or exemptions, if any, specified in relation to the classes of sales or purchases enumerated therein. Accordingly, sales to or by specified persons or agencies are exempt from the payment of the whole of the tax depending upon the end-use of the goods. Under sub-section (2) also, exemption may be subject to conditions which the State Government may impose. The schedule to the notification dated 29th April, 1970, issued by the State Government under sub-section (2) contains instances of transactions of sales or purchases, as the case may be, or of both, in specified goods which are generally exempt as also instances where such transactions, in order to be wholly exempt from payment of any tax, have to satisfy certain conditions. To illustrate, under entry 35, sales or purchases of ropes made by hand from yarn waste are exempt from the whole of tax without any condition. This is an illustration of an unqualified exemption to a transaction of sale and purchase (both) of the specified commodity. Another instance of a similar nature, but where the unqualified exemption is confined only to the sale transactions, is to be found in entry 25, which relates to mechanically produced cattle feed. As an illustration of conditional exemption reference may be made to entry 5 with which we are immediately concerned in the present case. Thereunder, sales of goods other than prohibited goods by a registered dealer to an electrical undertaking certified for the purpose by the Commissioner are exempt from the whole of tax provided the electrical undertaking furnishes to the selling dealer a certificate in form C stating inter alia that the goods purchased are required for use in the generation or distribution or both of electrical energy by the undertaking. This is an exemption to the transaction of sale alone and that too if the sale is in favour of a specified purchaser for a specified use. These various illustrations point in the direction that, like exemptions u/s 5, u/s 49 sale and/or purchase or (sic) (2) conditionally exempted transactions of sale and/or purchase.

14. Against this backdrop, let us now turn to section 16, the levy of purchase tax whereunder has given rise to this reference. The material part of section 16 may be quoted :

"16. (1) Where any dealer has purchased any taxable goods under a certificate given by him u/s 13, and

(a) contrary to such certificate, the goods are used for another purpose,

then such dealer shall be liable to pay tax on the purchase price of the goods purchased under such certificate"

15. On an analysis of the material part of sub-section (1) quoted above, it is found to have the following ingredients : (1) the person who has purchased the goods must be a dealer; (ii) the goods purchased must be taxable goods; (iii) the purchase must have been made against a certificate given by such dealer u/s 13 and (iv) contrary to such certificate the goods are used for another purpose.

If the above ingredients are satisfied then section 16(1) can be invoked and the concerned dealer will become liable to pay tax on the purchase price of the goods purchased under the certificate.

16. Section 16 is intended to provide, inter alia, the consequence of the purchasing dealer not complying with the declaration contained in the certificate furnished by him to the selling dealer. To illustrate, let us take the case of a recognised dealer who purchases taxable goods against certificate in form 19 declaring, inter alia, that the goods are purchased by him for use as raw or proceeding materials or consumable stores in the manufacture of taxable goods for sale. The selling dealer will be granted deduction in respect of such sale. If the goods so purchased are utilised by the recognised dealer for some other purpose contrary to the certificate, the object and purpose of giving deduction to the selling dealer would be defeated. Even so, it would not be right to withdraw the deduction granted to the selling dealer for a breach of faith committed by the purchasing dealer. It stands to reason that the tax which is lost to the revenue by reason of deduction granted to the selling dealer should be recoverable from the recognised dealer. If no deductions were granted to the selling dealer, he would be liable to pay tax on the sale made by him and, ultimately, the incidence of that tax would be passed on to the purchasing dealer, but by reason of the deduction allowed to the selling dealer, the purchasing dealer escapes this incidence of tax and, therefore, section 16 in substance enacts that where the purchasing dealer acts contrary to the certificate, the selling dealer shall not be made liable to pay the tax and that he shall continue to have his deduction but the price of the goods purchased shall be included in the turnover of purchases of the purchasing dealer and purchase tax shall be levied upon him. The taxable transaction accordingly remains the same, namely, the sale of the goods against the certificate, but the tax levied is differently named and the taxable person is also different. The main object of section 16, it would appear, is to plug the leakage and to prevent evasion of tax. The subsidiary object is to ensure that the deduction made by the purchasing dealer in the certificate given by him is carried out and that he acts in conformity therewith. In interpreting such a provision, a construction which would defeat its purpose and effect and lead to taxable goods escaping levy of tax should be avoided. Even if more than one construction is possible, then that which preserves its workability and efficacy should be preferred to the one which would render it otiose or sterile (see *State of Tamil Nadu v. Kandaswami* ([1975] 36 S.T.C. 191 198 (S.C.)) and *Polestar Electronic (P.) Ltd. v. Additional Commissioner* ([1978] 41 S.T.C. 409 419, 420 (S.C.))).

17. Coming now to the dispute in the present case, the controversy is confined to the satisfaction of the fourth ingredient of section 16(1). In other words, the parties are at variance only on the issue, whether, on the facts and in the circumstances of the case, the goods purchased against the certificate in form 19 were used by the assessee, contrary to such certificate, for another purpose. That renders it necessary to ascertain, in the first place, the contents of the

certificate in form 19 and, in the next place, the contravention of the said certificate which is said to have taken place.

18. The material part of the certificate in form 19 is in the following terms :

"..... and that the goods purchased by me/the said and specified in bill/cash memo/invoice No. dated of M/s. address will be used by me/the said s raw/or processing materials or consumable stores in the manufacture of taxable goods, viz.,, for sale me/the said and that such sale shall not take place outside the State of Gujarat."

19. There is no dispute that the certificate in the aforesaid terms was furnished by the assessee to the selling dealers at the time of purchasing fireclay. The assessee accordingly held out an assurance that the fireclay purchased by it will be used by it as raw material in the manufacture of taxable goods, namely, stoneware pipes, firebricks and lime for sale. The question then is whether this assurance was carried out or whether in breach thereof the assessee used the goods for another purpose.

20. The assessee contends that it has used the fireclay purchased against certificate for the manufacture of the specified goods, namely, stoneware pipes, firebricks and lime, all of which were taxable goods when manufactured. Merely because such taxable goods ultimately came to be sold to a certified electrical undertaking without recovery of tax because such transaction of sale was exempt under entry 5 of the Schedule to the Government notification issued u/s 49(2), it cannot be said that the manufactured goods were not "taxable goods". In any case, contends the assessee, only generally exempted goods u/s 5 or goods which are the subject-matter of generally exempted transactions of sale and purchase u/s 49, are not taxable goods within the meaning of section 2(33) and since the manufactured goods in the present case do not fall in any of the said two categories, they do not cease to be taxable goods. According to the assessee, therefore, contrary to the certificate the goods are not used for another purpose and section 16 is not attracted so as to justify the levy of purchase tax.

21. The revenue contends, on the other hand, that the fact that the manufactured goods were taxable goods when manufactured is not relevant and that the declaration in the certificate being that the goods purchased will be used in the manufacture of taxable goods for sale, if the manufactured product when sold is not taxable within the meaning of section 2(33), the goods must be held to have been used, contrary to such certificate, for another purpose. According to the revenue, on the plain natural meaning of the language of section 2(33), there was no basis for the proposition that taxable goods are only those which are generally exempted goods u/s 5 or goods which are the subject-matter of generally exempted transactions of sale and purchase u/s 49 and that the construction of section 2(33) suggested by the assessee is not possible unless words are added, altered or modified, which it was plainly unnecessary to do.

When it is found, therefore, that the fireclay purchased by the assessee against certificate is used as raw material in the manufacture of goods, a portion of which was sold against certificate in form C to a certified electrical undertaking without recovery of tax in view of entry 5 of the Schedule to the Government notification u/s 49(2), it cannot be said that the fireclay is used by the assessee in the manufacture of "taxable goods for sale" and that, under such circumstances, it has been rightly held that the fireclay having been used contrary to the certificate for another purpose, namely, for manufacture of non-taxable goods, purchase tax has leviable u/s 16 on the assessee's turnover of purchases relatable to the fireclay so purchased and used.

22. For the reasons which follow, we are of the opinion that the contention of the revenue is sound and that it must prevail.

23. It has to be borne in mind that the declaration in the certificate is that "the goods purchased will be used in the manufacture of taxable goods for sale". The manufactured goods, therefore, must be taxable goods for sale, that is to say, they must not only have been manufactured for sale but they must also be taxable goods whose character as to exigibility must have been retained till the stage of sale. The liability to pay purchase tax arises u/s 16(1) read with section 6 where a dealer "has purchased" any taxable goods under a certificate and contrary to such certificate the goods "are used" for another purpose. The use of the expression "has purchased" in relation to taxable goods purchased under a certificate is significant. This is the use of the verb "purchase" in the present perfect tense. It denotes a completed past transaction connected through its consequence with the present moment, that is to say, the moment when the question of levy of purchase tax arises on the ground of breach of the declaration as to its end-use contained in the certificate. Similarly, the use of the expression "are used" in the context in which it occurs is also significant. Its use accordingly indicates that it is at the point of time when the question of levy of purchase tax arises that it has to be seen whether the goods are used for another purpose contrary to the certificate. In view of the language used in the certificate as well as in section 16(1) and the content and collection, the intention at the time of purchase or the taxable nature of the goods when manufactured are wholly irrelevant factors. What has to be seen is : (1) Whether taxable goods were purchased against the certificate and (2) whether such goods are used as per certificate in the manufacture of goods for sale which were exigible to tax at the point of sale. If the first question is answered in the affirmative and the second in the negative, then section 16 would come into the picture and purchase tax would become leviable upon the turnover of purchases of the purchasing dealer.

24. This literal and grammatical construction is justified not only by the language of the statutory provision and that of the declaration in the certificate in form 19, but also by the object and purpose of the relevant enactment, namely, that if the manufactured goods bear levy of tax, the goods used in the manufacture must

not be subjected to sale tax, but if the manufactured goods are not taxable goods when sold, then the tax which is lost to the revenue should be recoverable from the defaulting manufacturer by the levy of purchase tax. The contention of the assessee in this behalf, if accepted, would defeat this salient objective and render the remedial provision of section 16 inoperative and lead to evasion of tax. We are, therefore, unable to accept the first prong of the submission of the assessee.

25. The words "taxable goods" are defined in the precise and clear terms in section 2(33). Accordingly, all goods "other than those on the sale or purchase of which no tax is payable u/s 5 or section 49 or a notification issued thereunder" are taxable goods. As explained earlier, the definition has the effect of giving a restrictive meaning to the words "taxable goods". The exclusion clause narrows down the range of taxable goods. The scope and ambit of the exclusion clause is plain and explicit. On a literal reading of the exclusion clause it is manifest that it taken in all goods, which are exempt either generally or conditionally u/s 5 and also those goods which are the subject-matter of transactions of sales or purchases which are exempt either generally or conditionally u/s 49. There is no indication, external or internal, which requires that the clause should be construed in a constricted or restricted manner so as to cut down its operation. We do not see any good reason to add to or alter or modify the exclusion clause by reading the word "generally" in between the words "is" and "payable" in the exclusion clause as suggested by the assessee. It is a settled rule of construction that where the statute's meaning is clear and explicit, words cannot be interpolated. In the first place, in such a case, they are not needed. If they should be interpolated, the statute would more than likely fail to express the legislative intent, as the thought intended to be conveyed might be altered by the addition of new words. They should not be interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted word, interpolation is improper, since the primary source of the legislative intent is in the language of the statute [see Crawford on Construction of Statutes (1940) Ed., at page 269, cited with approval in Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, . Besides, no hardship, injustice, absurdity or anomaly will arise if words, as suggested by the assessee, are not added or read into the exclusion clause, It has been pointed out earlier that u/s 5 goods can be and are exempted generally as also conditionally and it is not as if the goods which find place in Schedule I are all exempted without exceptions or conditions. Similar is the case with regard to total exemptions in respect of transactions of purchases or sales u/s 49. By giving to the exclusion clause its plain natural meaning without any addition of words or alteration of its structure, therefore, no inequitable result is produced. All goods, the sales or purchases, of which are generally or conditionally free from the whole of the tax u/s 5 or 49, are treated similarly by excluding them from the range of taxable goods. The legislative intent, therefore,

is clear from the exclusion clause, as it stands, namely, to group together all such goods and to exclude them from the purview of taxable goods. To read the exclusion clause otherwise would bring about a distortion of the legislative intent by introducing an artificial dichotomy between generally exempted goods and conditionally exempted goods or between goods which are the subject-matter of transactions which are generally exempted and those that are conditionally exempted. Such exercise is not warranted by the context and collection.

26. The question can be examined from yet another angle. As earlier pointed out, the object and purpose of giving deduction to the selling dealer when the goods are purchased against a certificate by a recognised dealer, inter alia, is to ensure single point levy of sales tax on the goods purchased or sold in the State and to secure that the goods manufactured for sale within the State do not carry with them any unnecessary burden of tax. When such dealer certifies that the taxable goods purchased by him will be used as raw or processing materials or as consumable stores in the manufacture of taxable goods and that he will sell such manufactured goods within the State of Gujarat, the State is assured of its revenue in the form of sales tax or general sales tax or both, as the case may be, leviable on the manufactured goods. Upon a manufacturer certifying accordingly in the prescribed form, therefore, the legislature has provided for a deduction being made from the taxable turnover of the selling dealer in respect of the sales in favour of such purchasing dealer. The effect of such deduction would be that the sale of those goods will not be exigible to tax. If, instead of using such goods in the manufacture of taxable goods, the purchasing dealer uses them in the manufacture of goods which are not exigible to tax when sold, there is no reason why the goods which went into the manufacture of such non-taxable goods should not be made to bear the levy of purchase tax in the hands of the purchasing dealer. It is immaterial for that purpose whether the manufactured goods are generally or conditionally exempt or the transactions of sales or purchases of those goods are generally or conditionally exempt. If, in the course of assessment proceedings of the purchasing dealer, it is found that the manufactured goods when sold were, in fact, not subjected to levy of tax, there would be no justification in allowing the taxable goods which went into the manufacture of such goods escaping the levy of tax. By reading the words "taxable goods" in the manner in which the assessee contends and by assigning to those words the meaning which he canvasses, section 16, which is enacted to plug leakage and prevent evasion of tax, would become ineffective in cases where, by virtue of the conditional exemption, the purchasing dealer in fact sells the manufactured goods without having to pay sales tax or general sales tax or both, as the case may be. Such an interpretation, which not only goes against the general scheme of the Act but also defeats or renders sterile the provisions of section 16 in such cases, cannot, possibly be placed upon the relevant provisions of the Act.

27. The assessee heavily relied upon the decision in *The State of Tamil Nadu Vs. M.K. Kandaswami and Others*, but it is of no assistance. The Supreme Court

was there concerned with the interpretation and scope of section 7-A of the Madras General Sales Tax Act, 1959, which authorities the levy of purchase tax and more particularly with the true meaning of the words "goods (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable u/s 3, 4 or 5 ..." occurring in sub-section (1) thereof. The High Court of Madras had taken the view that the expression "goods the sale or purchase of which is liable to tax under this Act" and the phrase "purchases in circumstances in which no tax is payable u/s 3, 4 or 5," were a contradiction of terms. The Supreme Court reversed this view upon an examination of the scheme of the Act. It was explained that when section 7-A(1) spoke of "goods, the sale or purchase of which is liable to tax under this Act", it referred to goods mentioned in the First Schedule of the Act, the sale or purchase of which was liable to tax at the rate and at the point specified in the schedule. The said words qualified the term "goods" and by necessary implication excluded goods, the sale or purchase of which was totally exempt from tax at all points under the relevant provisions of that Act. Therefore, all goods, which were "taxable goods", that is to say, the goods the sale or purchase of which is generally taxable under the Act, were meant to be covered by the expression "goods, the sale or purchase of which is liable to tax under this Act". The other expression, namely, "purchases in circumstances in which no tax is payable u/s 3, 4 or 5", referred to cases where in the circumstances of a given case taxable goods did not attract tax at the time of a particular sale or purchase u/s 3, 4 or 5. In the facts of all the cases before the Supreme Court, the purchases were made by the dealers of goods, the sale or purchase of which was generally liable to tax under the Act, but because the cases were covered by section 3, 4 or 5, no tax was suffered in respect of the sale of those goods by the sellers. According to the Supreme Court, since those goods were dealt with after their purchase by the purchasing dealers in the manner prescribed in section 7-A, the provisions of section 7-A could have been and were rightly invoked by the taxing authorities. In terms the Supreme Court held :

""Goods, the sale or purchase of which is liable to tax under this Act" in section 7-A(1) means "taxable goods", that is, the kind of goods, the sale of which by a particular person or dealer may not be taxable in the hands of the seller but the purchase of the same by a dealer in the course of his business may subsequently become taxable. We have pointed out and it needs to be emphasised again that section 7-A itself is a charging section. It creates a liability against a dealer on his purchase turnover with regard to goods, the sale or purchase of which though generally liable to tax under the Act have not, due to the circumstances of particular sales, suffered tax u/s 3, 4 or 5, and which, after the purchase, have been dealt by him in any of the modes indicated in clauses (a), (b) and (c) of section 7-A(1)."

28. The Supreme Court, therefore, reversed the decision of the Madras High Court and held that there was no contradiction in terms between the two phrases used in section 7-A and that the provisions of the said section were fully

workable.

29. The assessee contends that there is a close parallel between section 7-A of the Madras Act and section 16 of our Act. Under both the sections the purchasing dealer is made liable to pay purchase tax in respect of taxable goods, the sale of which would have been normally subjected to sales tax in the hands of the selling dealer, but which due to the circumstances under which the particular sale took place have not suffered such tax when it is found that after the purchase such goods have been dealt with by the purchasing dealer in any of the modes indicated in clause (a) or (b) or (c) of section 7-A(1) or section 16(1) or (2), as the case may be. Section 7-A(1) uses the words "goods the sale or purchase of which is liable to tax under this Act" while describing such goods. Section 16 refers to those goods as "taxable goods", but in view of the definition of the said words in section 2(33), such goods are "goods other than those on the sale or purchase of which no tax is payable u/s 5 or section 49 or a notification issued thereunder". The argument against the aforesaid background was that taxable goods having been defined in almost similar language in both the sections with this difference only that section 7-A contains a positive definition whereas section 2(33) contains a negative definition, all the observations made in *The State of Tamil Nadu Vs. M.K. Kandaswami and Others*, in the context of the expression goods, the sale or purchase of which is liable to tax under this Act" must proprio vigore apply while construing the expression "goods, other than those on the sale or purchase of which no tax is payable" in section 2(33). Accordingly, the Supreme Court having held that taxable goods within the meaning of section 7-A(1) meant "the goods, the sale or purchase of which is generally taxable under the Act" or goods other than those "the sale or purchase of which is totally exempted from tax at all points under the Act". The same meaning must be given to the words "taxable goods" in section 16 of our Act and, for that reason, even the exclusion clause in section 2(33) must be construed as excluding only those goods on the sale or purchase of which no tax is "generally" payable u/s 5 or section 49 or a notification issued thereunder.

30. We are of the view that this involved exercise which the assessee wants us to undertake in order to interpret words whose meaning is plain is not warranted for more than one reason. It must be remembered that the sales tax law in each State has its own scheme and that it is couched in the language which suitably carries out such scheme. It is, therefore, not right or proper to build upon some observations in a judgment delivered in the context of the sales tax law of one State while considering the provisions of the sales tax law of another State, although the relevant provision might prima facie appear to be dealing with a comparable situation. That apart, in *The State of Tamil Nadu Vs. M.K. Kandaswami and Others*, , the question which arose for consideration was entirely different. The question there was whether the relevant expressions in section 7-A(1), namely, "goods, the sale or purchase of which is liable to tax under this Act" and "purchases ... in circumstances in which no tax is payable u/s 3, 4 or 5" were a contradiction in terms. It is in that context that the Supreme

Court held that there was really no antithesis between the two and that whereas the former covers goods the sale or purchase of which is generally taxable under the Act or goods other than those the sale or purchase of which is totally exempt from tax, the latter covers goods whose particular sale or purchase does not attract tax by virtue of the circumstances mentioned in section 3, 4 or 5, although such goods are otherwise taxable. The words "generally" and "totally" are thus used in contradistinction to "particular" to bring into focus the distinct concepts which are conveyed by the two relevant expressions in the Madras Act. The distinction which was there made by the use of those words will be better appreciated, by way of an analogy, in the context of section 16 of our Act by distinguishing taxable goods, that is to say, goods other than those on the sale or purchase of which no tax is payable u/s 5 or section 49 or a notification issued thereunder, on the one hand, and taxable goods, the particular sale of which has not suffered any tax on account of the statutory deductions required to be made under sections 7, 8 and 10 from the turnover of sales of the selling dealer, on the other, by describing the former as "generally" or "totally" exempted goods and the latter as taxable goods, the "particular" sale of which has not suffered any tax because of special circumstances. It would thus appear that the words "generally" and "totally" used for defining taxable goods in *The State of Tamil Nadu Vs. M.K. Kandaswami and Others*, do not signify what the assessee believes they do. Besides, it cannot be overlooked that the relevant expression in section 7-A(1) of the Madras Act, which defines taxable goods is not as precise as the definition of "taxable goods" in section 2(33) of our Act. The exclusion clause in section 2(33), as explained earlier, taken in not only goods, the sale or purchase of which is free from any tax (generally or conditionally), but also goods which are the subject-matter of transactions of sale and purchase which are wholly exempt from tax (generally or conditionally). In view of the precise meaning accordingly of the words "taxable goods" in our Act and in view of the different language employed to define such goods in the two Acts, it is in any case not possible to read the word "generally" in section 2(33) in the manner suggested by the assessee. In our opinion, therefore, the decision in *The State of Tamil Nadu Vs. M.K. Kandaswami and Others*, is of no assistance to the assessee.

31. An alternative argument was also advanced on behalf of the assessee and the argument was that the word "or" occurring between the words "sale" and "purchase" in the exclusion clause in section 2(33) must be read as "and" and that, accordingly, only those goods the sale and purchase (both) of which are wholly exempt from tax were intended to be covered by the exclusion clause. The argument, in other words, was that where either sale or purchase (one and not both) or any goods is exempt from the levy of any tax, those goods do not cease to be taxable goods within the meaning of section 2(33). In the present case, for example, under entry 5 of the notification dated 29th April, 1970, the sale of goods by a registered dealer to an electrical undertaking certified for the purpose by the Commissioner alone is exempt. The sale and purchase (both) of the goods covered by entry 5 are not wholly exempt and, therefore, the goods in

question being not totally exempt, they are not covered by the exclusion clause.

32. We are afraid, this argument, which also is inspired by the observations in *The State of Tamil Nadu Vs. M.K. Kandaswami and Others*, and is another facet of the submission just considered, is equally untenable. In the first place, the rule of construction which we have pointed out above does not permit any such alternation. The word "or" is normally disjunctive and "and" is normally conjunctive. The reading of "or" as "and" is not to be resorted to unless one is obliged or some other part of statute or the clear intention of it requires that to be done. It is only if the literal reading of the word produces an unintelligible or absurd result that "and" may be read as "or" or "or" for "and". It is not shown that any such result will be produced here if the word "or" is not read as "and". The only argument which was urged in this context was that there is not a single entry in the notification issued u/s 49 which exempts the transaction of purchase of any manufactured goods from a registered dealer from the levy of the whole of tax and that, therefore, if the word "purchase" is read disjunctively from the word "sale", the said word would be rendered redundant or superfluous. In our opinion, this is not the correct way of looking at the matter. The fact that there is not a single entry in the notification u/s 49, which exempts such transaction of purchase from the whole of tax cannot ordinarily have any effect on the interpretation of section 2(33). Ordinarily, subordinate legislation made under the statute cannot be referred to for the purpose of construing a provision in the statute itself unless it is to have effect as if enacted in the statute. When a statute does not contain such a provision, it is clear that subordinate legislation cannot alter or vary the meaning of the statute itself where it is unambiguous. Indeed, it is doubtful whether such legislation can be referred to for the purpose of construing an expression in the statute, even if the meaning of the expression is ambiguous (see *Halsbury's Laws of England*, 3rd Edn., Vol. 36, at page 401). That apart, the fact that at present there is no entry exempting purchase of any manufactured goods from a registered dealer is not conclusive. such an entry may be introduced hereafter. The meaning of the relevant words in section 2(33) cannot depend upon such a transitory circumstance.

33. In the next place, this argument is somewhat misconceived as it looks at the transaction of sale or purchase, as the case may be, in a disjointed manner. The sale or purchase, as the case may be, of goods results in change of ownership from one person to another. That must by its very nature be a bilateral transaction with the seller on the one hand and the purchase on other other. It is only when there is a contract to which both are parties that there can be sale or purchase, as the case may be. When, therefore, either sale or purchase in respect of a class of goods or a class of transactions is exempted, there is in reality no tax payable at either end of the transaction so long as the conditions of exemption are and continue to be satisfied. In that sense, therefore even if the word "or" is read disjunctively and the exemption is read as having been attached either to purchase or to sale alone, what happens in substance and reality is that both the parties to the transaction are not liable to pay tax. It is

only when the conditions or any one of them attached to the exemption are or is contravened that the question of taxing the transaction would arise. There is no reason why, under such circumstances, the seller or purchaser, as the case may be, should not be made liable to pay the tax, for, the *raison d'être* of granting the benefit has in such a case disappeared. Take, for instance, the case in hand. The exemption attaches to the transactions of sale of the goods covered by entry 5 provided that conditions therein laid down are satisfied. Once those conditions are satisfied and they continue to be observed, though the exemption, so far as that particular transaction is concerned, attached merely to sale in a literal sense, neither sale nor purchase gives rise to liability to pay tax till and so long as the conditions continue to be satisfied. It is only if there is breach of any condition, that the transaction will be taxed u/s 50(1). If this is appreciated, the whole emphasis on the disjunctive character of the word "or" and the compulsive need of its being read as "and" is rendered academic. In our opinion, therefore, even this alternative argument has no merit.

34. It was lastly contended that on account of the contravention of the declaration in the certificate, a manufacture is exposed not only to the liability to pay purchase tax but also to penalty u/s 45(1) and that if the words "taxable goods" are interpreted as above, penalty will also become leviable although at the time of purchase of the goods or at the stage of manufacture of the finished goods, it might never have been in contemplation of the manufacturing dealer that those goods would be the subject-matter of a voluntary or involuntary transaction of sale or purchase, which is conditionally exempt. Such an interpretation will bring about great hardship. In our opinion, this argument can be rejected on the grounds which we have already indicated earlier. But the more potent and fatal answer is that the contention proceeds upon an assumption which is wholly unwarranted. u/s 45(1), imposition of penalty in cases where any dealer becomes liable to pay purchase tax under the provisions of sub-section (1) or (2) of section 16, is not a necessary or unavoidable consequence. Penalty will not be imposed merely because it is lawful to do so. An order imposing penalty u/s 45(1) is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed thereunder unless the concerned dealer either acted deliberately in contravention of the certificate or in conscious disregard of the declaration or was guilty of conduct contumacious or dishonest. Section 45(1) confers the power in relation to imposition of penalty on a high officer and it is a discretionary power to be exercised judicially on a consideration of all the relevant circumstances (see *Hindustan Steel Ltd. Vs. State of Orissa*,). It would thus appear that even in cases where a dealer becomes liable to pay purchase tax under sub-section (1) of section 16, for having acted in contravention of the certificate issued at the time of purchase of any taxable goods, the authority will have to consider all the facts and circumstances of the case and act judicially in the exercise of his discretion before imposing penalty. This discretion, like other judicial discretions, will have to be exercised with vigilance and circumspection according to justice, commonsense and sound judgment. The discretion is to

know through law what is just (see Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another, . Having regard to this well-settled legal position, there is no basis for the apprehension voiced on behalf of the assessee that in all cases penalty will come to be imposed causing hardship even in bona fide cases. In fact, this very case is an instance on the point for no penalty is leviable.

35. On the basis of the foregoing discussion, we are of the opinion that the view taken by the Tribunal in the instant case is correct, namely, that since fireclay purchased by the assessee against certificate in form 19 was used by it in the manufacture of stoneware pipes, firebricks and lime, which were ultimately sold against form C to the Ahmedabad Electricity Co. Ltd., which is a certified electrical undertaking, without payment of any tax, the assessee was liable to pay purchase tax u/s 16 in respect of the goods covered by the certificate in form 19.

36. The question referred to us by the Tribunal is, therefore, answered in the affirmative, that is to say, in favour of the revenue and against the assessee. The assessee will pay the costs of this reference to the State of Gujarat.

37. Reference answered in the affirmative.