

(2006) 04 KL CK 0017

In the High Court Of Kerala

Case No : W.A. No's. 433 and 434 of 2000

Peekay Re-Rolling Mills (P) Ltd.

APPELLANT

Vs

Assistant Commissioner (Assessment)

RESPONDENT

Date of Decision : 07-04-2006

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 5, 5A
Constitution of India, 1950 — Article 286, 286(2), 286(3)
Finance Act, 1978 — Section 37
Kerala General Sales Tax Act, 1963 — Section 10, 19(1), 4, 5(1), 5(1)(1)

Citation : (2006) 2 KLT 687 : (2007) 5 VST 241

Hon'ble Judges : K.S. Radhakrishnan, J;K.M. Joseph, J

Bench : Division Bench

Advocate : Joseph Vellapally and C.P. Mohammed Nias, for the Appellant; Raju Joseph Spl. Government Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

K.M. Joseph,

1. A seminal issue arises for our consideration in these Writ Appeals filed by the same person. The appellant is a registered dealer under the Kerala General Sales Tax Act (hereinafter referred to as "the State Act"). The appellant purchased goods which are declared goods within the meaning of Section 14 of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act"). Sales tax is imposed on the said goods at 4 per cent u/s 5(1) of the State Act. However, by virtue of an exemption granted u/s 10 of the State Act, the dealer who sold the goods to the appellant stood exempted from payment of tax u/s 5(1) of the State Act. The appellant filed the Writ Petitions challenging Ext.P1 notice issued purporting to be u/s 19(1) of the State Act alleging that purchase turnover of ingots taxable u/s 5A has escaped assessment for the year 1994-1995 and proposing to assess to the best of judgment and Ext.P2 notice calling upon it to furnish details of purchase turnover u/s 5A for the years mentioned therein and to remit the tax with interest. An amendment of the Writ Petition was allowed

during the pendency of the appeal by which a prayer was added as follows:

Declare that the State cannot enact a provision under its power under Entry 54 of State List of the Constitution providing for more than one definite taxable point in so far as goods declared by Section 14 of C.S.T. Act, 1956 as of special importance to inter State Trade and Commerce and consequently Section 5 A of the KGST Act is inapplicable/inoperative in so far as Iron and Steel, which is charged for levy u/s 5(1)(1) read with II Schedule of the said Act and hence not taxable at any alternative point and the operation if any of Section 5 A of KGST Act on the purchase point besides the sale point in respect of the same goods is ultra vires Article 286 of the Constitution readwith Section 15 of CST Act, 1956.

Section 5A reads as follows:

5A. Levy of purchase tax:

(1) Every dealer who, in the course of his business, purchases from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under this Act, in circumstances in which no tax is payable under Sub-section (1), (3), (4) or (5) of Section 5) and either,

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) uses or disposes of such goods in any manner other than by way of sale in the State; or

(c) despatches them to any place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce; shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on the taxable turnover relating to such purchase for the year at the rates mentioned in Section 5.

(2) Notwithstanding anything contained in Sub-section (1), a dealer (other than a casual trader or agent of a non-resident dealer) purchasing goods, the sale of which is liable to tax u/s 5, shall not be liable to pay tax under Sub-section (1) if his total turnover for a year is less than two lakh rupees.

The learned Single Judge disposed of the Writ Petitions directing, inter alia, the appellant to file objections to Exts.PI and P2 notices and ordering that the appellant can raise all the contentions taken in the Writ Petitions. It is against the said Judgments that these Writ Appeals have been filed.

2. We heard Shri Joseph Vellapally, learned senior counsel appealing on behalf of the appellant and also Shri Raju Joseph, learned Special Government Pleader for Taxes, Government of Kerala. It is contended on behalf of the appellant that in view of the legal position, relegating the appellant to pursue its remedy before the Authorities, is futile and would result in miscarriage of justice. According to him, it would not be open to the appellant to urge the contentions available to it in these Appeals, before the Authorities and what is more, even if matters

reached this Court in the form of a Revision u/s 41 of the State Act. The contention of the appellant in short is this: Article 286(3) of the Constitution provided as follows:

286. Restrictions as to imposition of tax on the sale or purchase of goods. --

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of. -

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce;

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in Sub-clause (b), Sub-clause (c) or Sub-clause (d) of Clause (29-A) of Article 366 be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

Section 15 of the Central Act enacts the restriction contemplated in Article 286. It read as follows at the relevant time:

15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State:-- Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions namely:

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage:

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of Inter-State trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of Inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of Inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State.

(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in Sub-clause (i) of Clause (i) of Section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy;

(ca) Where a tax on sale or purchase of paddy referred to in Sub-clause (i) of Clause (i) of Section 14 is leviable under that law and the rice procured out of such paddy is exported out of India, then, for the purposes of Sub-section (3) of Section 5, the paddy and rice shall be treated as a single commodity;

(d) each of the pulses referred to in Clause (vi-a) of Section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law.

On the strength of the said provision, it is contended that there cannot be a levy of tax on declared goods more than once and at a rate higher than four per cent. Under the State Act, there is a levy of tax on the goods in question which are undoubtedly declared goods. In such circumstances, it is impermissible for the State to have imposed a further levy in the form of purchase tax u/s 5A of the, State Act, runs the argument for the appellant. He would submit that Section 5A would be palpably unconstitutional and the only way of keeping it alive would be to read down the provisions of Section 5A to the effect that purchase tax is permissible on goods other than declared goods. In other words, he would contend that Section 5A has to be read down to mean that purchase tax cannot be levied on declared goods. He would submit that this is not an argument which is available to the appellant before the Authorities and even before this Court in a Revision. We are inclined to agree with the learned Counsel for the appellant that the contention which he canvasses may not be available to him in proceedings under the State Act and hence we proceed to consider the contention of the appellant on merits.

3. The contention of the appellant is sought to be buttressed by referring to the following decisions:

- (1) Shanmuga Traders and Others Vs. State of T.N. and Others, .
- (2) Collector of Central Excise, Hyderabad etc. etc. Vs. M/s. Vazir Sultan Tobacco Company Limited, Hyderabad Etc. Etc.,
- (3) Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd.,
- (4) The State of Tamil Nadu v. M.K. Kanda Swami and Ors. 1975 STC 36 191.

In fact the appellant would submit that the issue must be treated as concluded in his favour on the strength of the decision of the Apex Court in Shanmuga Traders and Others Vs. State of T.N. and Others, . In the said decision, the question that was posed was the validity of the Circular issued by the State of Tamil Nadu, by which tax was purported to be levied at more than one point by the State on declared goods. It is essential to refer to the Circular which is reproduced in the Judgment. It reads as follows:

In the reference first cited, it was clarified that since the first sales of ferrous scrap by the Tamil Nadu Electricity Board are exempt from tax, no tax is leviable on the subsequent local sales of the scraps purchased from the Tamil Nadu Electricity Board. This clarification was reiterated in the references second and third cited in individual cases. These clarifications were issued on the basis of TA No.240 of 1986 dated 30.9.1988 in the case of India Metal Industries v. State of T.N. But the High Court, Madras in the case of Vasu General Traders v. State of T.N. held that since the exemption in relation to a particular sale would not be available to other subsequent sales, the taxing statutes had to operate in respect of other sales. The Government decided that the decision rendered by the High

Court in the case of Vasu General Traders can be restricted only to that case and need not be treated as a general proposition of law. The Government letter (MS No. 446 CT and RE dated 29.10.1991) in which the abovesaid decision was informed to the Commissioner of Commercial Taxes has been communicated to all dcs in the reference cited. On a further point raised by DC (OT) Madurai for reconsideration of the clarification issued in the reference cited that there was no need to revise the said clarification issued in the reference dated 30.7.1991.

The High Court of Madras in its judgment dated 13.3.1991 on TC No. 6 of 1991 filed by Royal Steel Traders, Madras following its earlier judgment in the case of Vasu General Traders has held that a sale has reference to taxable sale for the purpose of TNGST Act and not sales, which are exempted, and that since the Tamil Nadu Electricity Board was exempted, the first taxable sale was made only by the assessee. The clarification issued in the Commissioner of Commercial Taxes, reference cited are against the findings of the High Court of Madras in the case of Vasu General Traders and Royal Steel Traders.

In the circumstances stated, it is held that when a person purchases scrap from the Tamil Nadu Electricity Board and sells, he is effectively the first seller liable for tax. This may be earlier purchase tax u/s 7-A of the Tamil Nadu General Sales Tax Act on this further sale depending on what that purchaser is doing with scraps. At any rate, it can no longer be considered second seller in not liable to tax. The Deputy Commissioners are requested to instruct the Assessing Officers that from the date of issue of this clarification, they will have to do all fresh assessments under this clarification and they need not open old assessments already completed under the earlier classification.

The clarification issue in this Office reference cited, exempt the fourth reference, are hereby cancelled.

It was this Circular which was in challenge. The goods in question, namely iron and steel which were sold by the Tamil Nadu Electricity Board, were covered by the Notification exempting the same under the Madras Act and, therefore, exempt from the tax payable under the Madras Act. The Court refers to Sections 14 and 15 of the Central Act. The IIInd Schedule to the State Act required payment of tax on iron and steel at the point of first sale in the State. Paragraphs 12 and 14 are also referred to which read as follows:

We do not think that the conclusion reached by the Madras High Court in the order under appeal can be upheld. The goods with which we are concerned being declared goods, they can only be taxed at a single point, that is, only one sale in the State can be subjected to tax. It is for the State to determine whether the single point should be the point of first sale in the State or the last sale in the State or any intermediate sale in the State. If the single point is fixed by the State at, say, the point of first sale and the State exempts the first sale from payment of tax, either by a general provision or a specific provision applicable to a class of seller, the particular seller or the goods sold may not be subjected to

tax at either that point of first sale or any subsequent sale in the State,

14. There is no warrant for the emphasis that would appear to have been placed by the Madras High Court on the phrase "taxable sale". The State Act does not fix the single point of the levy at the first taxable sale; it fixes it at the point of first sale". The impugned circular cannot validly shift the point of levy from the first sale to a subsequent sale and it is, therefore, bad in law.

4. Shri Joseph Vellapally would submit that while it is true that it was the validity of the Circular which was in consideration, the ratio decidendi declared by the Court should go to clinchingly decide the appeal in favour of the appellant. It is pointed out that the Apex Court on the one hand rejected the contentions of the assessee in respect of goods which were not declared goods, but in relation to declared goods, the point was decided in favour of the assessee. Shri Joseph Vellappilly would then refer to the decision of the Apex Court in Kanda Swamy's case 1975 Vol. 36 STC 191. He would submit that the said decision is an authority for the proposition that Section 5A which is in paramateria with Section 7 of the Tamil Nadu General Sales Tax Act is an independent charging section. Once it is found that Section 5A is an independent charging Section, it would attract the frown of Section 15 of the Central Act as also Article 286 of the Constitution, it is contended, for the reason that taxes are levied more than once, once u/s 5(1) and thereafter u/s 5A, on declared goods. In Kanda Swamy's case, Section 7A of the Madras State Act fell for consideration. Purchase turnover was sought to be taxed. The Court held as follows:

We are unable to accept this interpretation which would render Section 7-A(1) wholly nugatory. With due respect, it seems to us that in arriving at this erroneous interpretation, the learned Judges mixed up the concept of goods liable to tax with the transactions liable to tax under the Act. The scheme of the Act involves three interrelated but distinct concepts which may conveniently be described as "taxable person", "taxable goods" and "taxable event". All the three must be satisfied before a person can be saddled with liability under the Act. Nevertheless, the distinction between them, if overlooked, may lead to serious error in the construction and application of the Act.

"Taxable person" is a "dealer" as defined in Section 2(g). "Taxable event" is the "sale or purchase of "goods" effected during the accounting period although the tax liability is enforced only after quantification is effected by assessment proceedings. "Sale" is defined in Section 2(n) as;

Every transfer of the property in goods by one person to another in the course of business for cash or for deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge.

It may be remembered that Section 7-A is at once a charging as well as a remedial provision. Its main object is to plug leakage and prevent evasion of tax. In interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book, should be eschewed. If more

than one construction is possible, that which preserves its workability and efficacy is to be preferred to the one which would render it otiose or sterile. The view taken by the High Court is repugnant to this cardinal canon of interpretation.

The Court also referred to the decision of this Court in *Malabar Fruit Products Co. v. Sales Tax Officer* (1972) 30 STC 537. The Court noted that Section 5A of the State Act is identical with the impugned provision, namely Section 7A of the Madras Act. He also relied on the decision of the West Bengal Taxation Tribunal reported in *Suresh Chand Agarwal v. Commercial Tax Officer and Ors.* (1998) STC 609. Therein, the Court was dealing with declared goods which were purchased locally from the registered dealers against declarations and against payment of sales tax at one per cent. The dealer, it appears, on a misconception of law, paid purchase tax of two per cent. He claimed refund. The claim though rejected by the authorities, was allowed by the West Bengal Taxation Tribunal. In the course of its Judgment, the Tribunal held as follows:

11. We feel that Mr. Saha's arguments do not carry much conviction as the very same point was argued before this Tribunal in the case of *Jindal (India) Ltd. v. State of West Bengal* (1990) 76 STC 367; (1990) 23 STA 60. There also, it was contended by the learned advocate for the respondents that sale and purchase of the same goods at the same stage constituted a single composite stage and it was competent for the State Legislature to impose sales tax and purchase tax on the same stage on the transaction without violation of Article 286(3) of the Constitution of India and. Section 15(a) of the Central Sales Tax Act. The Supreme Court cases reported in *Govind Saran Ganga Saran v. Commissioner of Sales Tax* (1985) 60 STC 1 State of Orissav. *Titaghur Paper Mills Co. Ltd.* (1985) 60 STC 213 and *Rajasthan Commercial Corporation v. Sales Tax Commissioner* (1986) 63 STC 314 relied on by Mr. Saha were not only referred to by this Tribunal but they really formed the basis of the decision of this Tribunal in that case. Referring to the decision of the Supreme Court in *State of Orissa v. Titaghur Paper Mill Co. Ltd.* (1985) 60 STC 213 this Tribunal observed that it was held in that case "that where goods have already been made liable to purchase tax u/s 8 of the Orissa Act, no sales tax can be levied in respect of the same transaction." The Orissa Act which was under examination of the Supreme Court in *State of Orissa v. Titaghur Paper Mills Co. Ltd.* (1985) 60 STC 213 laid down the following proviso in Section 8 of the said Act "provided that the same goods shall not be taxed at more than one point in the same series of sales or purchases by successive dealers." The Tribunal also observed that "the learned State representative attempted to distinguish between a "Stage" and a "point" but neither *State of Orissa v. Titaghur Paper Mills Co. Ltd.* (1985) 60 STC 213 nor *Rajasthan Commercial Corporation v. Sales Tax Commissioner* (1986) 63 STC 314 did so. In those judgments these two words were used synonymously. Therefore, the Tribunal had come to the finding that "having regard to the language of Section 15(a) of the Central Sales Tax Act and the ratio of the decisions of the Supreme Court discussed above, we are of the view that the State Legislature has no power to impose both sales tax and purchase tax on the

same declared goods at the same stage although the sale and the purchase may constitute one composite transaction.

On the strength of the said decision, learned Counsel for the appellant would contend that the word "stage" is to be read as "point". In other words, the tax if it is levied at one point, then it cannot be levied at another stage which, if read as the same point, will render the tax levied u/s 5A both illegal and unconstitutional as violative of the Central Act and the Constitution for the reason that tax was already levied on the same declared goods u/s 5 of the State Act at the point of first sale in the State. This, he would submit, would be impermissible, in view of the principle laid down in the decision of the Calcutta West Bengal Tax Tribunal's case. Learned Counsel for the appellant also relied on a decision of a Division Bench of this Court in *Premier Steels and Ors. v. Assistant Commissioner (Assessment) and Ors.* 1995 97 STC 395. Therein, what fell for consideration is as follows: The Vith Schedule was introduced to the State Act. The goods in the said Schedule were subjected to tax at each point of sale. It could be treated as a predecessor of the present value added tax. The goods so subjected to multi-point tax included declared goods. The Division Bench of this Court proceeded to hold as follows:

10. While a plain reading of Sections 14 and 15 of the CST Act imposes a restriction on the rate and stage the impugned amendment, in spite of the said restriction makes it clear that the tax is leviable at all points of sale in the State. The imposition of multi-point system of levy is made clear by reading of the circular issued by the Board of Revenue explaining the system of multi-point levy. The new system, according to the State known as value added tax, envisages taxation of value added to the commodity at every point of sale. That means the new system of levy could not exist without imposition of multi-point levy. The new system, according to the State known as value added tax, envisages taxation of value added to the commodity at every point of sale. That means the new system of levy could not exist without imposition of multi-point taxation which is clearly a contravention of the mandatory restriction of the CST Act.

Learned Counsel for the appellant made emphasis on the following passage:

By a combined reading of Sections 14 and 15 of the CST Act the restrictions that imposed are:

- (i) In respect of declared goods a tax either on sale or purchase alone can be levied; and it cannot be on both sale and purchase.
- (ii) The rate of tax should not exceed 4 per cent,
- (iii) The tax can be levied only at one definite stage.

The essence of a single point fixation or one stage fixation consists of fixation of single point or stage. In other words, in respect of the declared goods, what is left to the State's domain is to determine whether the tax is to be imposed at

the point of first sale or purchase or at any one of the successive points of sale or purchase.

He would contend, therefore, that either sale or purchase could be rendered exigible to tax, but not both. This principle would stand violated, if tax is held permissible u/s 5A of the State Act on the strength of the declared goods being exempt from tax u/s 5 of the State Act. The fact that tax was not payable u/s 5 by reason of the exemption granted, could not detract from the levy of tax meaning imposition of tax u/s 5(1) and a further levy in the sense of imposition of tax u/s 5 A on the same declared goods is impermissible, it is contended. Learned Counsel for the appellant also relied on the decision in Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., . What was in focus was the meaning of the word "levy" in Article 265 of the Constitution. The Court held as follows:

The term "levy" appears to us to be wider in its import than the term "assessment". It may include both "imposition" of a tax as well as assessment. The term "imposition" is generally used for the levy of a tax or duty by legislative provisions indicating the subject matter of the tax and the rates at which it has to be taxed. The term "assessment", on the other hand, is generally used in this country for the actual procedure adopted in fixing the liability to pay a tax on account of particular goods or property or whatever may be the object of the tax in a particular case and determining its amount. The Division Bench appeared to equate "levy" with an "assessment" as well as with the collection of a tax when it held that when the payment of tax is enforced, there is a levy". We think that although the connotation of the term "levy" seems wider than that of "assessment", which it includes, yet, it does not seem to us to extend to "collection". Article 265 of the Constitution makes a distinction between "levy" and "collection". We also find that in N.B. Sanjana, Assistant Collector of Central Excise, Bombay and Others Vs. The Elphinstone Spinning and Weaving Mills Company Ltd., at p.2045 this Court made a distinction between "levy" and "collection" as used in the Act and the Rules before us. It said there with reference to Rule 10:

We are not inclined to accept the contention of Dr. Syed Mohammad that the expression "levy" in Rule 10 means actual collection of some amount. The charging provision Section 3(1) specifically says, "There shall be levied and collected in such a manner as may be prescribed the duty of excise...". It is to be noted that Sub-section (i) uses both the expressions "levied and collected" and that clearly shows that the expression "levy" has not been used in the Act or the Rules as meaning actual collection.

Learned Counsel also relied on the decision of the Apex Court in Collector of Central Excise, Hyderabad etc. etc. Vs. M/s. Vazir Sultan Tobacco Company Limited, Hyderabad Etc. Etc., . Section 37 of the Finance Act, 1978 provided for levy of special duty of excise in addition to the existing excise duties. The Tribunal upheld the contention of the assessee that the goods purchased or

manufactured before 1.3.1978 from which day the provision was to remain in force, though removed after the said date, were not subject to special duty. The Court held as follows:

In view of the provision of Entry 84 of List I of the Seventh Schedule to the Constitution of India, the special excise duty is relatable to Entry 84 and, therefore, must be on the manufacture or production of goods. Once the levy is not there at the time when the goods are manufactured or produced in India, it cannot be levied at the stage of removal of the said goods. The idea of collection at the stage of removal is devised for the sake of convenience. It is not as if the levy is at the stage of removal; it is only the collection that is done at the stage of removal. Admittedly, the special excise duty is an independent duty of excise separate and distinct from the duties of excise levied by the Central Excises and Salt Act, 1944. This levy came into effect only on and from 1-3-1978 which means that the goods produced prior to that date were not subject to such levy. Therefore, the levy cannot attach nor can it be realised because such goods are removed on or after 1-3-1978. The provisions of the Central Excise Act and the Rules, do not say otherwise.

Shri Joseph Vellapally would contend that-it cannot be said that there is no levy of sales tax at the point of first sale of steel under the State Act, as contemplated u/s 15 of the Central Act, by reason of the exemption granted to the dealer selling steel to the appellant. He would submit that it is found that there is no levy of sales tax at the point of first sale under the State Act u/s 5(1), then, the consequence would be that Section 5A would have no application as the first principal condition for invoking Section 5A is that the sale or purchase of goods sought to be taxed u/s 5A is liable to tax u/s 5. He would contend that nonpayment or recovery of tax on taxable goods on account of the exemption does not make those goods non-taxable or not subject to levy of tax, and that an exemption does not change the character of the goods, but only exempts from payment of tax otherwise levied and payable. He would also point out that the effect of an exemption u/s 9 is that the goods are not taxable and it would have been a different position and there being an exemption u/s 9. He would point out that the exemption has been granted in this case u/s 10 which only has the effect of taking away the requirement of paying the tax by the exempted dealer and does not change the character of the goods from taxable goods to non-taxable goods. He would further contend that Section 5A is not a provision by which charge u/s 5 on a particular transaction of sale is postponed and merely recovered u/s 5A. Section 5A is a separate charging section imposing tax at different points or stages from the tax imposed u/s 5. The point of levy contemplated under the State Act is synonymous with the stage of levy in Section 15 of the Central Act, it is contended.

5. Shri Raju Joseph, learned Special Government Pleader for Taxes, on the other hand, submitted that there is absolutely no merit in the contention of the appellant. He highlighted the words in Section 15 of the Central Act which

provide that the tax shall be payable at the rate not more than four per cent. He would further submit that there is only one levy, treating the word "levy" as meaning imposition of tax. He would contend that in fact Sections 5 and 5A of the State Act have to be read together and Section 5A cannot have a separate existence. He would point out that the decision of the Apex Court in *Shanmuga Traders and Others Vs. State of T.N. and Others*, turned on the challenge to a Circular whereunder tax was sought to be levied at more than one point. In regard to *Kanda Swami's case* 1975 STC 36191 *supra*, it is his contention that in fact the provisions of Sections 5 and 5A are to be read together and Section 5A does not have an independent existence. He would, in other words, submit that there is no violation either of Article 286 or Section 15 of the Central Act.

6. The decision of the Apex Court in *Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd.*, is an authority for the proposition that the word "levy" wide as it is, comprehending imposition of tax and assessment, it does not embrace within its scope collection of tax. But, it is to be seen that the Court was considering Article 265 of the Constitution which provides that no tax shall be levied and collected except by the authority of a law made by the State. It is to be noted that the very same pattern of phraseology as is found in Article 265 differentiating levy and collection is to be found in Articles 268, 269, 270 and 272. But, we find that Article 277 only uses the word "levy". Article 277 reads as follows:

277. Savings.- Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

Considering the scope of the word "levy" used in Article 277, the Apex Court held as follows in *The Town Municipal Committee, Amravati Vs. Ramchandra Vasudeo Chimote and Another*, .

The last portion of Article 277 uses the words "continue to be levied" and "to be applied to the same purposes". By reason of this collocation between the concept of the levy and of application of the proceeds of the tax, the Constitution makers intended the word "levy" to be understood as including the collection of the tax, for it is only when a tax is collected that any question of its application to a particular purpose would arise. It is apparent that if the words "levied" were understood in the sense of an imposition that is charging of a tax there could be no "application" of the proceeds of the tax to the same purposes as at the commencement of the Constitution. (S) AIR 1956 MP 177 Approved.

Thus, the word "levy" as used in Article 277 has been interpreted by the Apex Court as meaning "collection". In Article 286, in fact, the word used is "system of

levy". The power of the State Legislature to impose tax is derived from the entries in the State List and in this case, it is traceable to entry 54 of the State list. Therefore, on the one hand, we have to safeguard the power of the State meaning the State Legislatures to raise revenue by resort to garnering revenue as is sanctioned in law. But, on the other hand, we have to give full effect to the restrictions which the founding-fathers of the Constitution enabled the Central Legislature to impose on declared goods and which are enshrined in Section 15 of the Central Act.

7. We feel that there cannot be any doubt in the light of the decision of the Apex Court in *Kanda Swami's* case (1975 STC 36 191) that the appellant is correct in contending that Section 5A of the State Act enacts an independent charging Section. As far as the decision of the Division Bench of this Court is concerned, the question that fell for decision was the validity of imposition of tax at more than one point on declared goods. No doubt, in the course of the same, the Court did observe that tax can be levied in respect of declared goods, either on sale or purchase. We feel that the dictum laid down in the said decision may not advance the case of the appellant in the facts of these cases. True, it is that the West Bengal Taxation Tribunal has taken the view that the word "stage" is synonymous with the word "point".

8. We may notice a few other decisions rendered by the Apex Court. In *Govind Saran Ganga Saran v. Commissioner of Sales Tax and Ors.* 1985 60 STC 1 the Apex Court was considering the effect of a State Act not prescribing either in the parent statute or by the statutory delegate, the single point at which tax is to be levied. The Court took the view that "the single point at which the tax may be imposed must be a definite ascertainable point so that both the dealer and the Sales Tax Authorities may know clearly the point at which tax is to be levied." In the course of the Judgment, the Court held as follows:

Where the turnover of such goods is subjected to tax under the sales tax law of a State, Section 15 prescribes the maximum rate at which such tax may be imposed and requires that such tax shall not be levied at more than one point. The two conditions have been imposed in order to ensure that inter-State trade or commerce in such goods is not hampered by heavy taxation within the State occasioned by an excessive rate of tax or by multi-point taxation. Section 15 enacts restrictions and conditions which are essential to the validity of an impost by the State on such goods. If either of the two conditions are not satisfied, the impost will be invalid. Now in order that tax should not be levied at more than one stage it is imperative that the sales tax law of the State should specify either expressly or by necessary implication the single point at which the tax may be levied.

The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at

which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity.

The Court also referred to the case of Bhavani Cotton Mill's case supra. This has been followed in Rajasthan Commercial Corporation and Anr. v. Sales Tax Commissioner and Ors. 1986 63 STC 314. In Rattan Lal and Co. and Anr v. The Assessing Authority and Anr. 1970 25 STC 136 the Apex Court after referring to Section 15 of the Central Act held as follows:

The section provides that in respect of declared goods the tax (sale or purchase) shall not exceed the prescribed limit and shall not be levied at more than one stage and shall be refunded to persons from whom it is collected if the goods are sold in the course of inter-State trade or commerce.

In Bhiwani Cotton Mills Ltd. v. The State of Punjab and Anr. 1967 20 STC 290 the Apex Court dealt with the provision in a State Act where there was possibility of tax being imposed on purchase at more than one stage on declared goods. The Court considered the question whether there was a contravention of Section 15(a) of the Central Act. In the course of the Judgment, the Court held as follows:

If the Central Act makes it mandatory that the tax can be collected only at one stage, in our opinion, it is not enough for the State to say that a person, who is not liable to pay tax, must nevertheless, pay it in the first instance, and then claim refund, at a later stage.

We may at once also notice the provisions of Section 15(b) and 15(c) of the Central Act. Therein also, the word used is "tax levied". Section 15(b) provides for reimbursement of the tax levied under the State Act when tax has been paid under the Central Act in respect of the sale of goods in the course of Inter State trade or commerce. If levy is understood as meaning merely imposition of tax, and not comprehending collection, in a situation where there has been a mere imposition, it would be an anomalous position, namely, by the mere fact of imposition even without culminating in assessment and collection of tax under the State Act, the amount is directed to be reimbursed to the person who effects sale in the course of Inter-State trade. In other words, the word "levy of tax", in our view, cannot be understood as imposition of tax without it culminating in collection of tax. In a case where there is an exemption u/s 10 of the State Act as in the facts of these cases, though there is an imposition of tax u/s 5, there is no collection of tax. We feel that in the context in which the word "levy" is used, juxtaposed by the company of words it keeps, "levy" cannot be understood without it as not meaning "collection of tax" also.

9. Likewise, Section 15(c) of the Central Act provides that the tax levied under a State Act in respect of the sale or purchase of paddy (declared goods), the tax

leviable on the rice procured under such paddy is to be reduced by the amount of tax levied on such paddy. When tax is not collected for the reason that it is not payable, though there is an imposition of tax, it cannot be said that there is yet a levy within the meaning of Section 15(a) of the Central Act. Therefore, there is no transgression of either Article 286 of the Constitution or of Section 15(a) of the Central Act, when tax is levied u/s 5 A which levy is conditioned in fact on tax not being payable, though there is an imposition of tax u/s 5 of the State Act. Apparently, the object of Section 5A is to provide against multi-point taxation, so that the price of the declared goods is kept at a reasonable level. In Stroud's Judicial Dictionary, "levy" also "signifies to collect or exact, as to levy money, sometimes, to set up anything, as to levy a mill". We feel that in the sense in which the word "levy" is used, there is no violation of the prohibition in Section 15(a) of the Central Act that the "levy" cannot be at more than one stage. It cannot be said that the "stage" or the "point" at which tax is levied u/s 5A is unascertainable or unspecified. There is no contention in that direction. The only contention is that tax is imposed notwithstanding that there is an exemption u/s 10 of the State Act, at the point of first sale in the State and, therefore, when tax is imposed u/s 5A at another point other than the point of first sale, Section 15(a) stands violated. We do not think that in the scheme of Section 5A of the State Act, we would be justified in accepting this contention. Section 5A provides for a levy on purchase only in the circumstances on which no tax is payable and further conditioned by the existence of circumstances provided in Clauses (a) to (c) of Section 5A. We find that the observations made by the Supreme Court in Shanmugha Traders's case *supra*, in paragraph 12, came to be made in the facts of the case. The single point of levy was at the point of first sale and not at the point of first taxable sale. The impugned Circular, the Court held, could not validly shift the point of levy from the first sale to a subsequent sale. Consequently, we find no merit in these Writ Appeals, for the reason that we find that the notice is not vulnerable for the reason that it is in violation of Section 15(a) of the Central Act or Article 286 of the Constitution of India. The provisions of Section 5A of the State Act are not ultra vires Section 15(a) of the Central Act or Article 286(2) of the Constitution of India.

The Writ Appeals fail and they are dismissed.