
(1978) 12 GUJ CK 0003
In the Gujarat High Court
Case No : Sales Tax Reference No. 6 of 1976

Prabhat Solvent Extraction Industries Pvt. Ltd.	APPELLANT
Vs	
The State of Gujarat	RESPONDENT

Date of Decision : 15-12-1978

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 25
Gujarat Sales Tax Act, 1969 — Section 10, 12, 13, 13(B), 15

Citation : (1982) 49 STC 322

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

Bench : Division Bench

Advocate : S.L. Mody, for the Appellant; G.N. Desai and G.T. Nanavati, instructed by Bhaishanker Kanga and Girdharlal, for the Respondent

Judgement

Desai, J.—In this reference made by the Gujarat Sales Tax Tribunal (hereinafter called the "Tribunal") at the instance of the assessee u/s 69 of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Act"), the following four questions of law have been referred to this Court :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that as there was consignment of 50 per cent of manufactured goods and in absence of identifications, the applicant was liable to pay purchase tax u/s 16 of the Gujarat Sales Tax Act, 1969, in respect of 50 per cent of the purchases of soyabean oil made against certificates in form 19 by considering that there was a breach of recitals of such certificates on pro rata basis ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the applicant was liable to penalty u/s 45(1) of the Gujarat Sales Tax Act, 1969, in respect of pro rata breach of certificates in form 19 as worked out above ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that in view of the proviso to rule 42 of the Gujarat Sales Tax

Rules, 1970, no set-off was admissible to the applicant under the aforesaid rule even in respect of tax paid on the purchases of raw materials and processing materials used in the manufacture of goods sold locally or in the course of inter-State trade and on which tax was payable by the applicant ?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the reduction to be made from set-off under the proviso to rule 42 of the Gujarat Sales Tax Rules, 1970, was more than the admissible amount of set-off and hence the applicant was not entitled to any set-off under the above rule ?"

2. Questions Nos. (1) and (2) have not been pressed on behalf of the assessee at the hearing of the reference and the only questions which, therefore, survive for consideration are questions Nos. (3) and (4). Those questions raise an interesting question as to the true and correct interpretation of a proviso attached to rule 42 of the Gujarat Sales Tax Rules, 1970 (hereinafter referred to as "the Rules"), which provides for a deduction to be made under certain circumstances from the aggregate of amounts calculated in accordance with the provisions of the said rule before a drawback, set-off or refund of the whole or any part of the tax is granted to a manufacturer in respect of the tax paid by him on purchases of goods used by him in the manufacture of the finished product. In order to properly comprehend the controversy between the parties in the context of the said two questions, it would be necessary to set out a few facts.

3. The assessee, a private limited company, is running a factory which consists of (a) oil-mill and cotton-seeds crushing plant, (b) solvent extraction plant and (c) vegetable plant. The assessee is a registered dealer and also a recognised dealer under the relevant provisions of the Act. The assessee manufactures, amongst other things, vegetable products. The vegetable products manufactured by the assessee are partly sold within the State for local consumption or in the course of inter-State trade and partly outside the State but within India on consignment basis. For the sake of brevity, the first and second categories of sales mentioned above will be referred to as "local sales" and "consignment sales" respectively with appropriate grammatical variations, if necessary, in the course of this judgment.

4. For the purpose of manufacturing vegetable products, the assessee made purchases of the following, amongst other goods, on payment of tax during the assessment year in question, namely, S.Y. 2027 :

-----				Goods	Tax	paid	Rs.
-----				Soyabean	oil	78,528	Til oil
68,285	Hexine	oil	16,394	Caustic	soda		1,723

5. The assessee effected local sales as well as consignment sales of the vegetable products manufactured during the relevant period by using, inter alia, the above-mentioned taxable goods. The total sales of vegetable products on

consignment basis was to the tune of Rs. 2,05,01,175. It has been found that the aforesaid consignment sale was to the extent of 50 per cent of the total sales of vegetable products effected by the assessee during the said period. It has been further found that the tax paid on the aforesaid goods used in the manufacture of vegetable products is divisible as under :-

		Goods Tax paid				Rs.		Rs.	
on goods used		Tax paid on goods used		in the manufacture of		in the manufacture of		vegetable products sold	
basis		-----		vegetable products sold		locally on consignment		basis	

nullify such set-off. On the facts of the present case, the assessee conceded on the aforesaid basis that set-off of the tax amounting to Rs. 80,188 paid by it on the purchases of goods used in the manufacture of vegetable products sold on consignment basis would not be available to it since 3 per cent of the sale price of the vegetable products sold by it on consignment basis, namely, Rs. 6,15,035 was far in excess of the above-mentioned amount of set-off. However, the set-off in the sum of Rs. 84,742 in respect of tax paid by it on the purchases of goods used in the manufacture of vegetable products sold locally could not be denied to it on the basis that the deduction to the extent of Rs. 5,34,847 (Rs. 6,15,035 less Rs. 80,188 = Rs. 5,34,847) was still required to be made and that it could be validly made from the set-off admissible in respect of tax paid on the purchases of goods used in the manufacture of vegetable products sold locally, that is to say, out of the sum of Rs. 84,742 thus leaving a negative balance. The revenue's stand at all the stages, on the other hand, has been that on a proper construction of the proviso to rule 42, the deduction to the extent of 3 per cent of the sale price of the vegetable products sold on consignment basis is required to be made from the total amount of set-off including the set-off admissible in respect of tax paid on the purchases of goods used by the assessee in the manufacture of vegetable products sold locally and that, accordingly, on the facts and in the circumstances of the present case, in order to effect deduction to the extent of Rs. 6,15,035, it would be competent to the taxing authority not only to deny the claim of set-off in the sum of Rs. 80,188 but also to reject the claim of set-off in the sum of Rs. 84,742. The next question, which emerges on the basis of the aforesaid controversy, therefore, is whether on a true and correct interpretation of the proviso to rule 42, the deduction required to be effected under the said proviso is confined only to that part of set-off which relates to the payment of tax in respect of purchases of goods used by the assessee in the manufacture of vegetable products sold on consignment basis.

8. In order to appreciate the problem in its proper perspective, it would be necessary at the outset to refer to some of the relevant provisions of the Act. The Act levies three kinds of taxes, namely, sales tax, general sales tax and purchase tax. The scheme of the Act, broadly speaking, is to provide, as far as possible, a single point levy. Section 5 provides for exemption from levy of any kind of tax on the sales or purchases of goods specified in Schedule I. Section 6 is the charging section. Section 7 provides for levy of sales tax at the first stage on the sale of goods specified in Part A of Schedule II. Section 8 provides for levy of general sales tax at the last stage on the sale of goods specified in Part B of Schedule II. Section 9 deals with the stage of levy of different kinds of taxes on declared goods, that is to say, declared goods as defined in the Central Sales Tax Act, 1956. Section 10 provides for levy of sales tax and general sales tax (both) on goods specified in Schedule III. The point to be noted at this stage is that in order to ensure, inter alia, single point levy, sections 7, 8 and 10 provide for certain deductions to be made from the dealer's gross turnover of sales of specified goods so as to arrive at the taxable turnover of sales of such goods.

Amongst the various kinds of statutory deductions are included deductions in respect of sales effected in favour of three categories of persons, namely, recognised dealer, licensed dealer and commission agent, in case certain conditions are fulfilled. If sales are accordingly effected in favour of such persons, then the selling dealer would be entitled to deduct from his gross turnover the sales of goods effected in favour of such persons and, consequently, he would not be liable to pay tax which would otherwise have been recoverable from him in respect of such transactions. The conditions upon the fulfilment of which the statutory deduction could be made are to be found in section 13 which provides that there shall not be deduction from the turnover of sales, of sales of goods to a licensed dealer, a recognised dealer or to a commission agent as provided in sections 7, 8 and 10 unless such persons issue certificates in the prescribed form. The assessee in the present case is a recognised dealer and we shall, therefore, confine our attention to the provisions as to deductions in respect of sales effected in favour of such dealers. A recognised dealer is a registered dealer who has been granted recognition u/s 32 which includes a recognition deemed to have been granted under the Act [see section 2(23) and (24)]. Recognition u/s 32 is granted in a prescribed form and on the fulfilment of and subject to certain conditions to a registered dealer who manufactures taxable goods for sale. The vendor of taxable goods to a recognised dealer would be entitled to deduct from the turnover of his sales the sales in favour of recognised dealer, provided the recognised dealer certifies in the prescribed form 19 that the goods, other than prohibited goods, sold to him 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 [see section 13(1)(B) read with form 19].

9. The relevant question, which immediately poses itself, is as to what is the object and purpose intended to be served by the grant of recognition to a registered dealer. In Sales Tax Reference No. 9 of 1962 [Commissioner of Sales Tax v. Ajay Printery (Pvt.) Ltd.], decided by a Division Bench of this Court consisting of J. M. Shelat, C.J. (as he then was), and Bhagwati, J., (as he then was), on 20th November, 1963, this question was examined and answered in the context of the provisions of section 12 read with section 25 of the Bombay Sales Tax Act, 1959, which are broadly speaking, in pari materia with the provisions of sections 13 and 32 of the Act under consideration. Bhagwati, J., speaking for the Division Bench, made the following observations :

"The object of granting recognition appears to be to secure that the cost of manufactured goods to the consumer does not become unduly excessive by reason of the charge of sales tax at the point when the manufacturer purchases the goods used by him in the manufacture or packing of manufactured goods manufactured by him for sale. If the manufacturer is required to pay sales tax to the vendor on the goods purchased by him for use in manufacture or packing of taxable goods manufactured by him for sale, such payment of sales tax would increase the cost of production and consequently result in the increase of the

price of the manufactured goods to the consumer and in addition the consumer would also have to pay sales tax on the sale of the manufacture goods to him. The legislature, therefore, said that in such a case where manufactured goods are taxable, the State should not charge sales tax on the sales of goods used in the manufacture or packing of manufactured goods effected by a registered dealer to a manufacturer so that the manufacturer in his turn does not have to pay any amount to the registered dealer by way of sales tax and the only sales tax chargeable by the State should be sales tax on the sales of manufactured goods. Of course, if manufactured goods are not taxable, the *raison d'être* of the provision would disappear and in such a case the benefit of the provision should not be available and the legislature, therefore, provided that the goods in respect of which exemption is granted should be goods used in the manufacture or packing of taxable goods manufacture by the dealer."

10. The same question was again considered from a different angle in the broader context of the scheme of deductions contemplated by sections 7, 8 and 10 in Special Civil Application No. 916 of 1973 (Morvi Vegetable Products Ltd. v. M. C. Padia, Sales Tax Officer, Morvi) decided by a Division Bench of this Court consisting of J. B. Mehta and T. U. Mehta, JJ., on 9/10th July, 1974. T. U. Mehta, J. (as he then was), speaking for the Division Bench, observed in the decision as follows :

"..... On the close scrutiny of the scheme of the Act as revealed through the above referred provisions of the Act, it is found that the various deductions which are contemplated by sections 7 to 10 are provided with a view to see that, so far as possible, there is only a single point levy of sales tax on the goods purchased or sold in the State. The purpose of confining the tax, so far as possible, to a single point levy, is obviously to ensure that the goods do not carry with them any unnecessary burden of tax, and the State would, at the same time, avail of the necessary revenue. Another object for providing these deductions seems to be to harmonise the inter-State trade and commerce as well as the export trade. It would, therefore, be incorrect to say that the object of the scheme for deductions as revealed from the relevant provisions of the Act is to give tax exemption to raw materials used in manufacture of goods for sale under all circumstances and conditions."

11. It would be necessary to bear in mind the object and purpose underlying the aforesaid provisions as expounded in the two judgments of this Court cited above, when we deal with the question with which we are immediately concerned herein.

12. What happens, however, if a recognised dealer, who has purchased any taxable goods under a certificate given in form 19, acts in contravention of the certificate and uses the goods for another purpose ? The situation is taken care of by the provisions of sections 16 and 45 of the Act. Under sub-section (1) of section 16, it is *inter alia* provided that where any dealer has purchased any taxable goods under a certificate given by him u/s 13, and 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 and, accordingly, he shall include the purchase price thereof in his turnover of purchases in his declaration or return u/s 40 which he is to furnish next thereafter. Under sub-section (3), it is inter alia provided that the purchase tax leviable in respect of any goods specified in Schedule II or Schedule III shall be the aggregate of all taxes which would have been leviable thereon but for the certificate given u/s 13. Section 45 inter alia provides for imposition of penalty upon any dealer who becomes liable to pay purchase tax under the provisions of sub-section (1) of section 16 in addition to the tax payable and the penalty imposed accordingly is correlated with the amount of tax depending upon the circumstance whether the purchase price of the goods has or has not been included in his turnover of purchases as required by sub-section (1) of section 16.

13. It would not be out of place to mention here that section 15 deals with another situation under which purchase tax becomes payable on certain purchases of goods. Under the said section, where a dealer who is liable to pay tax purchases any goods specified in Schedule II or III from a person who is not a registered dealer, then, unless the goods so purchased are resold by the dealer, there shall be levied, subject to the provisions of section 9, a purchase tax at the appropriate rate set out in the relevant schedule in respect of such goods. This section, it would appear, is enacted with a view to ensuring that taxable goods do not escape levy of tax, but at the same time there is in it an in-built safeguard with regard to a single point levy of tax.

14. Before proceeding further, it may be pointed out that section 12 deals with levy of tax at a reduced rate on certain sales. The said section, as it read at the material time, in substance, provided that where any dealer liable to pay tax sells any taxable goods to a licensed dealer or to a commission agent, who issues relevant certificates in the prescribed form, then, notwithstanding anything contained in section 7, 8 or 10, on such sale of goods the selling dealer shall be liable to pay sales tax at the rate of three paise in the rupee, or where a lesser rate is specified in any schedule in respect of those goods, at that lesser rate. Broadly speaking, the sales covered by section 12 are in respect of taxable goods, which are to be consigned within the specified time-limit outside the State for sale or for use in the manufacture of goods for sale outside the State. On a comparison of the provisions of sections 7, 8 and 10, read with section 13, in so far as they concern a recognised dealer, on the one hand, and those of section 12, on the other, it would appear that whereas the sales of taxable goods covered by the first set of sections in favour of a recognised dealer are wholly exempt from levy of any tax in view of the fact that the recognised dealer undertakes to use those goods for manufacture by him of taxable goods for sale within the State of Gujarat, the sales of taxable goods covered by section 12 are not wholly exempt from levy of tax but those sales bear a reduced rate of sales tax at the rate of three paise in the rupee (in case the tax is leviable at a higher rate), which was the rate of sales tax leviable at the material time under the

Central Sales Tax Act, 1956, having regard to the fact that those goods are to be consigned outside the State for sale or for use in the manufacture of goods for sale outside the State.

15. The next material section to which reference must be made is section 51. The material portion of the said section, which is relevant for the purposes of the decision of this case, needs to be read :

"The State Government may by rules provide, that -

(a) in such circumstances and subject to such conditions as may be specified in the rules a drawback, set-off or refund of the whole or any part of the tax -

(i) paid or levied or leviable under the Bombay Sales Tax Act 1959 (Bom. LI of 1959), in respect of any earlier sales or purchases of goods which are held in stock by a dealer on the appointed day, be granted to such dealer, or

(ii) paid or levied or leviable in respect of any earlier sale or purchase of goods under this Act or the Bombay Sales Tax Act, 1959 (Bom. LI of 1959), be granted to the purchasing dealer."

16. It would appear on a bare reading of the material part of the aforesaid provision that it empowers the State Government to enact rules providing inter alia for "a drawback, set-off or refund of the whole or any part of the tax" paid or levied or leviable in respect of any earlier sale or purchase of goods under the Act or the Bombay Sales Tax Act, 1959, to be given to the purchasing dealer "in such circumstances and subject to such conditions as may be specified". The section, in other words, authorises the State Government to frame rules for granting to the purchasing dealer a drawback, set-off or refund of the whole or any part of the tax paid or levied or leviable in respect of any earlier sale or purchase of goods under this or the previous Act in circumstances and subject to conditions which may be specified in the rules.

17. We do not propose to enter into consideration of the rather difficult questions as to what is the nicety of distinction between drawback, set-off and refund. However, we are concerned in the present case with "set-off" to be given to a purchasing dealer. We must, therefore, try to ascertain the meaning of at least that word in the said context. It appears to us, having regard to the context and collocation and setting of the said word in the scheme of section 51, that "set-off" means adjustment or deduction from the tax payable by a purchasing dealer to the Government of the amount to be returned to such purchasing dealer in respect of the purchase tax paid by him or as representing the amount of sales tax or general sales tax collected from him by his vendor.

18. The question, which immediately confronts itself for consideration is : what was the need of providing for rules being framed by the Government for the purpose of granting a drawback, set-off or refund ? The answer is not difficult to find if the object, purpose and scheme of the Act discussed above is borne in mind. The Act levies different kinds of taxes on sales and purchases of goods

with the end in view of collection of revenue. While enacting the Act, however, the legislature was conscious of the diverse factors such as that though the tax was payable by the dealer, the incidence of tax and the consequential economic burden would fall upon the ultimate consumer, that there was need to safeguard the interests of trade and industry within the State which should not be subjected to such a burden as to put them out of existence or out of market in competition with the trade and industry outside the State and that the goods upon which tax could be levied were of wide variety, for example, goods of vital necessity to the consuming public within the State, goods which figure prominently in inter-State trade or commerce or in the course of foreign trade and goods which are to be used by a manufacturer as raw or processing materials or consumable stores in the manufacture of taxable goods. With a view to taking care of all these diverse factors, the legislature has devised a scheme which provides several safeguards. It is not as if every transaction of sale or purchase is made liable to be taxed under the Act. Sales or purchases of taxable goods made by a dealer in the course of business of buying or selling, which constitute him a dealer, alone are liable to be taxed, provided his turnover exceeds the prescribed limits. The provision aiming at single point levy, of which statutory deductions are an integral part, and the provisions relating to exemptions and taxes being levied at reduced rates in respect of certain commodities, also underline the same objective. Besides specifying in Schedule I goods on the sales or purchases of which no tax shall be payable subject to the conditions and exceptions, if any, set out against those goods, power has been given to the State Government under sub-section (2) of section 5 to add to or enlarge any entry in Schedule I, or to relax or omit any condition or exception specified therein by notification in the official Gazette. Under sub-section (1) of section 49, specified classes of sales or purchases are exempted from the payment of the whole of the tax subject to certain conditions and under sub-section (2) the State Government is empowered, "if it considers it necessary so to do in the public interest", to exempt any specified class of sales or purchases from payment of the whole or any part of any tax payable under the provisions of the Act, by notification in the official Gazette, subject to such conditions as it might impose. Even those safeguards were, however, not considered sufficient because the legislature could not possibly have contemplated each and every contingency which may arise and the diverse factors which may have their inter-play in the modern complex commercial transactions. Section 51 was, therefore, enacted whereunder power was given to the State Government to frame rules providing for grant of a drawback, set-off or refund in such circumstances and subject to such conditions as may be specified. An illustration based upon the very rule which is under consideration herein will highlight this point. Take the case of a recognised dealer, who purchases from an unregistered dealer goods for use by him as raw or processing materials or consumable stores in the manufacture of taxable goods for sale by him locally. In such a case, the purchasing dealer would have to pay purchase tax to the Government u/s 15 and he would not be able to get the advantage of purchasing goods without payment

of tax upon furnishing the relevant certificate and the result, therefore, would be that his manufacturing cost would, to that extent, rise. This might, in conceivable cases, make it difficult for him to stand in competition in the market of manufactured goods. In order to meet with such or similar situations, for which the Act itself makes no provision, the State Government has been invested with the power to frame rules to grant a drawback, set-off or refund, as the case may be, under such circumstances and subject to such conditions as it may think fit to specify, and the State Government, in exercise of the powers, has enacted rule 42 inter alia to take care of the situation covered by the above illustration. It would thus appear that the provisions relating to the grant of a drawback, set-off or refund, as the case may be, to a dealer under certain circumstances and subject to certain conditions, are an integral part of the taxation structure under the Act (see Commissioner of Sales Tax v. Burmah Shell Refineries Ltd. [1978] 41 STC 337 Guj and Commissioner of Sales Tax v. Bharat Pulverising Mills Pvt. Ltd. [1976] 38 STC 491 Guj).

19. Against this background, let us now turn to the provisions of rule 42 with which we are immediately concerned in the present case. We shall set out the said rule, as it stood at the material time, in so far as it is relevant for the purposes of the present case :-

"Drawback, set-off or refund of tax for the goods purchased by a manufacturer. - In assessing the tax payable by a manufacturer (hereinafter referred to as the "assessee"), the Commissioner shall, subject to the general conditions of rule 47, and further conditions specified below, grant him a drawback, set-off or as the case may be refund, of the whole or any part of the tax in respect of the purchases of goods used by him in manufacture :-

Conditions. - (1) The assessee is a registered dealer as defined in clause (25) of section 2 of the Act,

(2) the goods purchased are taxable goods other than those falling within the category of prohibited goods as defined in clause (21) of section 2 of the Act :

Provided that

Provided further that

Provided also that

(3) the said goods have been used by the assessee within the State, as raw or processing materials or as consumable stores in the manufacture of taxable goods as defined in clause (33) of section 2 of the Act, and

(4) the goods so manufactured have been sold by the assessee in the State of Gujarat or in the course of inter-State trade or commerce or of export out of the territory of India or have been transported by the assessee outside the State of Gujarat but within India, to his own place of business, or to the place of business of his agent, and sold there.

Extent of drawback, set-off, etc., shall be the amount calculated in accordance with clauses (A) and (B) hereunder, subject to the proviso :-

(A)

(B) For the purchases of goods on or after the appointed day. - (i) In respect of the purchases made on or after the appointed day from a registered dealer without giving any certificate under sections 12 and 13 of the Act,

(a) the amount of sales tax or of general sales tax or as the case may be, of both recovered separately, under the Act,

(b) the amount calculated in accordance with the formula hereunder where the amount of sales tax or of general sales tax or as the case may be, of both has not been so recovered separately :-

FORMULA $9P \times R \div 100 + R$ [Where "P" means the purchase price of the goods and "R" means the rate of sales tax or of general sales tax or of both (whichever has not been recovered separately), applicable to the respective goods under the Act, at the relevant time of purchase thereof] :

Provided that the assessee proves to the satisfaction of the Commissioner that the relevant tax leviable under the Act has been paid, or has become payable on an earlier transaction in the same goods and produces a certificate in form 40 issued by the dealer from whom such goods were purchased by the assessee, stating inter alia that the sale of the same goods has been or will be included in his turnover of sales and the amount of the tax payable, if any, by him under the Act, on such turnover has been or as the case may be, will be paid within the time laid down in rule 31,

(ii) the amount of purchase tax paid or payable u/s 15 or 16 of the Act :

Provided that the aggregate of the amounts, if any, calculated in accordance with the clauses (A) and (B) above, shall be granted to the assessee after deducting therefrom three per cent of the sale price of the goods which have been manufactured, where the sale of the said goods is made at any place within India but outside the State of Gujarat, the goods having been transported there by the assessee to his own place of business or to the place of business of his agent or or after the appointed day."

20. The opening part of rule 42 contains a mandate addressed to the Commissioner to grant certain relief while assessing the tax payable by an assessee who is a manufacturer. It is apparent, therefore, that the rule, which is cast in mandatory language, operates in the case of an assessee who is a manufacturer. The relief has to be granted in the form of a drawback, set-off or refund, as the case may be, of the whole or any part of the tax in respect of the purchases of goods used by him in manufacture. It would thus appear that the relief, in any of the three specific forms, might extend to the whole or it might be confined to any part of the tax, that is to say, sales tax, general sales tax or

purchase tax, in respect of goods purchased and used by such an assessee in manufacture. The grant of such relief, however, is subject to two kinds of conditions : (1) general conditions specified in rule 47, and (2) further conditions specified in rule 42 itself. The general conditions need not detain us in this case because they are admittedly satisfied. We shall, for the purpose of this case, analyse the further conditions specified in rule 42 itself. The first of such conditions is that the assessee must be a registered dealer under the Act. The second condition is that the goods purchased must be taxable goods other than those falling within the category of prohibited goods as defined in the Act. We will skip over the provisos attached to the second condition because they are not relevant for the purposes of this case. The third condition is that the goods in question must have been used by the assessee within the State, as raw or processing materials or as consumable stores, in the manufacture of taxable goods as defined in the Act. The fourth condition is that : (1) the goods so manufactured must have been sold by the assessee, (a) in the State of Gujarat, or (b) in the course of inter-State trade or commerce, or (c) in the course of export out of the territory of India, or (2) such goods must have been transported by the assessee outside the State of Gujarat but within India, to his own place of business, or to the place of business of his agent, and sold there. Having analysed these conditions, let us now turn to their purpose and effect.

21. The purpose of introducing conditions Nos. (1) and (2) is apparent. Unless the assessee is a registered dealer and unless the goods purchased by him are taxable goods, the question of granting him a drawback, set-off or refund, as the case may be, in the course of his assessment proceedings cannot possibly arise.

22. The third condition has two limbs. First, the goods in question must have been used by the assessee as raw or processing materials or as consumable stores in the manufacture of taxable goods and, second, such use must have been made by the assessee within the State. This condition is analogous to, though not identical with, the provisions of section 13(1)(B). The said sub-section, as we have seen earlier, inter alia, provides for a certificate in the prescribed form 19 being furnished by a manufacturer, who is a recognised dealer, to a registered dealer from whom he purchases goods, other than prohibited goods, to the effect that the 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. Upon furnishing such a certificate, the recognised dealer can purchase such goods without payment of any tax because u/s 7, 8 or 10, as the case may be, the selling dealer is entitled to deduct the sale of such goods from his gross turnover. We have also seen the twofold object of granting recognition to the purchasing dealer and consequential deduction to the selling dealer. It is possible, however, to envisage situations in which the provisions of section 13(1)(B) cannot be availed of by a manufacturer who is a recognised dealer. Take, for example, the case of a recognised dealer who purchases raw materials from a dealer who is not a registered dealer, for the purposes specified in section 13(1)(B). Take also,

for example, the case of a recognised dealer who purchases raw materials from a registered dealer on payment of tax because he is unable to certify at that stage that the goods sold to him are purchased by him for use by him as raw materials in the manufacture of taxable goods for sale within the State of Gujarat but who ultimately sells the manufactured goods within the State of Gujarat. In both the above-mentioned cases, the recognised dealer will have paid tax on the raw materials, although if he had purchased the raw materials from a registered dealer, in the first case, or upon furnishing certificate, in the second case, he could have purchased those goods without payment of tax. By virtue of the third condition read with the first part of the fourth condition prescribed in rule 42, such a recognised dealer would be entitled to claim a set-off of the whole of the tax in respect of the purchases of raw materials made by him and thereby he would be placed in the same position as if he had purchased the raw materials from a registered dealer or against a certificate in form 19. This, however, is not the only category of cases which would be covered within the ambit of rule 42, for the third condition has a broader sweep and it takes in the case even of a manufacturer who is not covered by section 13(1)(B). Whereas for the applicability of section 13(1)(B) the manufacturer must be a recognised dealer, for the purposes of the satisfaction of the third condition read with the first condition the manufacturer need not be a recognised dealer but only a registered dealer. Another important point of distinction is that whereas u/s 13(1)(B) read with form 19 the recognised dealer has to certify that the finished product, which is taxable goods, has been manufactured by him for sale within the State of Gujarat, for the purposes of the satisfaction of the third condition it is not necessary that the finished product, which is taxable goods, must have been sold in the State of Gujarat. It is sufficient if it is shown that the goods purchased by the manufacturer, be they raw or processing materials or consumable stores, have been used by him within the State. In fact, the fourth condition to which we shall immediately turn specifically contemplates the manufactured goods being sold in the State of Gujarat or being transported outside the State of Gujarat but within India to the manufacturer's or his agent's place of business and sold there. Of course, by reason of the proviso, which falls for interpretation herein, the extent of relief by way of set-off would not be similar in the two class of cases, namely, cases where the manufactured goods are sold within the State and cases where such goods are sold outside the State but within India. The relief in the latter class of cases will be granted after making certain deductions. That aspect will be examined later. Suffice it to say for the present that it would appear that the third condition places a manufacturer, who is a registered but not a recognised dealer and who manufactures taxable goods for sale within the State of Gujarat, in the same position as a recognised dealer, so far as the relief in respect of tax paid on the purchases of goods covered by section 13(1)(B) is concerned, provided other conditions specified in rules 42 and 47 are satisfied. Not only that but the third condition, when read with the last part of the fourth condition and the proviso, also takes in cases not covered by section 13(1)(B) such as when finished product being taxable goods is sold outside the State of

Gujarat and provides for relief in respect of tax paid on the purchases of goods used in the manufacture of even such product, though at a lesser rate.

23. The fourth condition relates to the sale of the manufactured goods in the making of which the taxable goods have been used as raw or processing materials or as consumable stores. Four kinds of sales of the finished product are envisaged by the said condition, namely, (1) sale within the State of Gujarat, (2) sale in the course of inter-State trade or commerce, (3) sale in the course of export out of the territory of India, and (4) sale outside the State of Gujarat but within India by transportation of the manufactured goods to the manufacturer's own place of business or to the place of business of his agent. As indicated earlier, the fourth condition read along with third condition enlarges the scope of rule 42 and takes in cases not covered by section 13(1)(B). The last part of the fourth condition in terms permits a set-off being given even in cases where the manufactured goods are sold on consignment basis, though the rate of relief, as earlier observed, is on the reduced scale by virtue of the proviso. The point to be noted at this stage is that the fourth condition makes a clear classification or categorisation of different kinds of sales of the manufactured goods and the claim of set-off would be entertained only if, amongst other things, the sale of the manufactured goods falls in one or the other class or category. The rationale behind providing the relief in all these cases is the same which governs the enactment of the provisions of section 13(1)(B) read with sections 7, 8 and 10, which provide for corresponding statutory deduction, namely, that the cost of manufactured goods to the consumer does not become unduly excessive by reason of the charge of tax at the point when the manufacturer purchases the goods for use by him in the manufacture of taxable goods and that, as far as possible, there is a single point levy of sales tax on the goods purchased or sold in the State to avoid unnecessary burden of tax and that there is harmonisation of intra-State and inter-State trade and commerce as well as the export trade.

24. Having prescribed the aforesaid four conditions, rule 12 proceeds to lay down the extent of drawback, set-off or refund. The amount to be granted by way of a drawback, set-off or refund, as the case may be, is to be calculated in accordance with clauses (A) and (B) and the calculation is expressly made subject to the proviso. We are not herein concerned with clause (A) nor directly with the working of the formula in clause (B). Clause (B), which alone we shall briefly consider, deals with goods purchased on or after the appointed day from a registered dealer without giving any certificate under sections 12 and 13 of the Act. It provides, in substance, that in respect of such purchases the amount of drawback, set-off or refund, as the case may be, shall be : (a) the amount of sales tax or of general sales tax or, as the case may be, of both, recovered separately under the Act, (b) the amount calculated in accordance with the formula prescribed in the said clause, where the amount of sales tax or of general sales tax or, as the case may be, of both, has not been so recovered separately, and (c) the amount of purchase tax paid or payable u/s 15 or 16 of the Act. It would thus appear that depending upon, the facts of each case, the

amount calculated in accordance with clause (B) might consist of the aggregate of the amount of (a) + (b) + (c) or any one or two of them. During the first few years after the enactment of the Act, in certain cases, the aggregate amount might have consisted even of one or more of the different heads (a), (b) and (c) comprised in clauses (A) and (B).

25. The point to be noted at this stage is that in calculating the amount in accordance with clauses (A) and (B), the deduction contemplated by the proviso which immediately follows must be given effect to. This would be so not only because of the enactment of the proviso, the normal function of which is to qualify or create an exception in the preceding enactment, but also because of the express words "subject to the proviso" to be found in the heading preceding clauses (A) and (B). The rule-making authority by adopting this two-pronged device has underscored the importance of the proviso in the calculation of the amount of drawback, set-off or refund, as the case may be.

26. That takes us to the proviso, the true and correct interpretation of which is the bone of contention between the parties hereto. The proviso is in two parts. The first part prescribes the consequence which must ensue upon the fulfilment of the condition or existence of the situation mentioned in the second part. It would be convenient, therefore, to refer first to the second part. That part refers to the state of affairs where the sale of "the said goods", that is to say, "the goods which have been manufactured" (that being the expression used in the first part while describing the goods) is made at any place within India but outside the State of Gujarat, upon the goods having been transported there by the assessee (manufacturer) to his own place of business or to the place of business of his agent on or after the appointed day. It would thus appear that his part of the proviso is identical with the last part of the fourth condition and that the former contemplates the existence of the same condition or situation which is prescribed in the latter. It is true that the last part of the proviso speaks of sale being made "on or after the appointed day" and that those words and not to be found in the last part of the fourth condition. However, the satisfaction of the condition is implicit even in cases covered by the last part of the fourth condition if the formula for working out a drawback, set-off or refund, as the case may be, enacted in clauses (A) and (B) is borne in mind. Those two clauses deal with a situation where the goods used by the manufacturer as raw or processing materials or as consumable stores were held in stock on the appointed day [see clause (A)] or such goods are purchased on or after the appointed day [see clause (B)]. Either of these two conditions can be satisfied only if the goods are manufactured after the appointed day and, therefor, necessarily sold after the said day. The conclusion is, therefore, inevitable that the last part of the fourth condition and the second part of the proviso both deal with a contingency where identical conditions must exist or similar situations must prevail. The logical corollary, therefore, is that in cases where the last part of the fourth condition is satisfied - and in such a case alone - the proviso would necessarily be attracted. The amount of drawback, set-off or refund, as the case may be, to be granted in

such cases will be subject to the deduction prescribed in the first part of the proviso.

27. The question that was debated for sometime at the hearing of the reference was whether, in order to invoke the proviso, it is necessary that the sale of the entire goods, which have been manufactured, should take place in the manner laid down therein, that is to say, on consignment basis, or whether even if a portion of the goods, which have been manufactured, is sold on consignment basis, the proviso would be attracted. We are, however, not called upon to decide that question, because for the purposes of this case, the assessee was prepared to proceed on the basis that the proviso would be attracted even if a portion of the manufactured goods is sold in the manner prescribed in the last part of the proviso. Both the sides were agreed that in such an event, it would be permissible to bifurcate the manufactured goods into two distinct parts and that the deduction to be made from the drawback, set-off or refund, as the case may be, should be to the extent of only 3 per cent of the sale price of that portion of the manufactured goods which have been sold in the manner prescribed in the last part of the proviso. In other words, for the purposes of this case, there is no dispute between the parties on two points : first, that the proviso would be attracted even if a portion of the manufactured goods is sold on consignment basis and, second, that in a case of that nature, the deduction to be effected in accordance with the proviso must be equivalent to 3 per cent of the sale price of the goods sold on consignment basis. We are, therefore, not called upon to express any opinion on these questions and we shall proceed to decide the reference on the basis of the agreement between the parties as to the permissibility of bifurcation and confinement of the extent of deduction as aforesaid.

28. Taking up now the first part of the proviso, what it provides is that in cases where the condition prescribed or situation referred to in the last part of the proviso is found to exist, "the aggregate of the amounts, if any, calculated in accordance with the clauses (A) and (B)" shall be granted to the assessee (manufacturer) after deducting "therefrom" three per cent of the sale price of the goods which have been manufactured. "The deduction, therefore, has to be made "therefrom", that is to say, "from the aggregate of the amounts, if any, calculated in accordance with the clauses (A) and (B)". It is on the interpretation of these quoted words that the parties before us have joined issue and it would be convenient at this stage to refer to their rival submissions.

29. The assessee contended : (1) that the second part of the proviso is, in terms, identical with the last part of the fourth condition and that, therefore, it is only in cases where the last part of the fourth condition is satisfied that the proviso would become operative, (2) that the proviso must be read as an integral whole and that, accordingly, the two parts of the proviso must be read as operating co-extensively and converging the same field, (3) that, therefore, the second part of the proviso, which enacts the condition for the applicability of the proviso, must

be read as an integral part of the first part of the proviso, and (4) that, accordingly, the deduction to be effected under the proviso must be confined to the drawback, set-off or refund, as the case may be, to be granted in respect of the tax paid on the purchases of goods used in the manufacture of goods sold on consignment basis outside the State but within India. The argument, in terms, was that in cases where a portion of the goods manufactured has been sold on consignment basis, the deduction should be effected only from that portion of the drawback, set-off or refund, as the case may be, which is relatable to the tax paid in respect of the purchases of goods used in the manufacture of goods sold on consignment basis and that if the amount, which is required to be deducted, is in excess of the amount from which deduction has to be effected accordingly, the balance should not be allowed to be projected into the drawback, set-off or refund, as the case may be, relatable to the tax paid in respect of the purchases of goods used in the manufacture of goods sold locally.

30. The revenue contended, on the other hand : (1) that the second part of the proviso merely describes the situation, the existence of which gives rise to the applicability of the proviso, (2) that when such a situation is found to exist, the power to make deduction under the proviso can be legitimately exercised and such deduction can be made from the aggregate of the amounts of drawback, set-off or refund, as the case may be, admissible to the assessee, and (3) that the deduction under the first part of the proviso, on its plain meaning, could not be confined only to the drawback, set-off or refund, as the case may be, to be granted to the assessee in respect of the tax paid on the purchases of goods used in the manufacture of goods sold on consignment basis outside the State but within India. Such a dichotomy or bifurcation, according to the revenue, was not permissible and, therefore, in cases where a portion of the goods manufactured has been sold on consignment basis, the deduction could be made not only from that portion of the drawback, set-off or refund, as the case may be, which was relatable to the tax paid in respect of the purchases of goods used in the manufacture of goods sold on consignment basis but it could be effected also from the drawback, set-off or refund, as the case may be, relatable to the tax paid on purchases of goods used in the manufacture of goods sold locally.

31. Before proceeding to deal with these rival submissions, it would be convenient to dispose of an incidental argument which was vehemently urged on behalf of the revenue. The contention was that the construction for which the assessee contends is not open, because that point is concluded by the decision of this Court in the case of Morvi Vegetable Products Ltd. (Special) Civil Application No. 916 of 1973 decided on 9/10th July, 1974 - Gujarat High Court). Our attention was invited on behalf of the revenue to the fact that in that case also the assessee had effected local sales as well as consignment sales of goods in the manufacture of which it had used tax-paid goods and that when the question of granting set-off to the assessee arose during the course of its assessment proceedings for the relevant period, the deduction made under the proviso to rule 42 was not confined merely to the set-off relatable to the tax paid on the

purchases of goods used in the manufacture of goods sold on consignment basis but the negative balance was realised by effecting deduction from the set-off relatable to the tax paid on the purchases of goods used in the manufacture of goods sold locally. Our attention was also invited to the specific plea raised in the memo of writ petition in that case to the effect that on a true and correct interpretation of the said proviso, the sales tax authorities were not entitled to make any deduction from the set-off relatable to the tax paid on the purchases of goods used in the manufacture of goods sold locally. It was urged that if the decision in the said case is read against the aforesaid background, it would be abundantly clear that a contention similar to the one raised herein by the assessee was rejected by this Court in that case and that, therefore, the point is no longer *res integra*.

32. We are unable to accede to this submission made on behalf of the revenue. It is true that the assessee, who was the writ petitioner in *Morvi Vegetable Products Ltd.*'s case (Special Civil Application No. 916 of 1973 decided on 9/10th July, 1974 - Gujarat High Court), had, *inter alia*, raised a plea similar to the one which is advanced on behalf of the assessee herein under almost identical circumstances in the memo of writ petition. However, as it often happens, that plea does not appear to have been pressed into service at the hearing and, as is apparent from the very first paragraph of the judgment of this Court in that matter, the assessee appears to have confined his challenge there to the vires of the proviso on the grounds that the said proviso infringes the equality clause of article 14 and also offends articles 286 and 301 of the Constitution of India. In para 6 of the judgment, this Court formulated three distinct grounds of challenge and those grounds were also confined to the vires of the proviso. That apart, when one reads the whole judgment, it is manifest that the only question which was there considered by this Court was as to the constitutionality of the proviso and that the attention of this Court was not invited to nor focused on the true and correct interpretation of the proviso. It was assumed, for the purposes of the decision of that case, that the deduction under the proviso was properly made and it is only on the basis of such assumption that the question as to the constitutionality of the proviso, operating in the manner as it did, was examined. The said decision does not, therefore, foreclose the decision of the question as to what is the true and correct interpretation of the proviso. It is one thing to say that a decision operates as *res judicata* as between the parties, even by invoking the principle of constructive *res judicata*. It is another thing to say that the decision operates as a judicial precedent so as to preclude a court of co-ordinate jurisdiction from considering the point which was not actually decided therein. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from it. It is not a profitable task to build upon a judgment without examining as to what it actually decides. In our opinion, therefore, the decision in *Morvi Vegetable Products Ltd.*'s case (Special Civil Application No. 916 of 1973 decided on 9/10th July, 1974 - Gujarat High Court) does not

preclude consideration of the issues raised herein and the said decision cannot be legitimately pressed into service to prevent this Court from deciding the question as to the true and correct interpretation of the proviso.

33. Let us now turn to the task of the construction of the material part of the proviso. At this stage, it may be recalled that the single point levy, of which statutory deductions are an integral part, is the thread that runs through the fabric of the Act. The provisions relating to the grant of drawback, set-off or refund, as the case may be, to a dealer under certain circumstances and subject to certain conditions are complements and supplements of such scheme. Rule 42 is enacted with a view to giving a relief in anyone of those three specified forms to an assessee who is a manufacture in respect of tax paid on the purchases of goods used by him in the manufacture. To qualify for the relief, four conditions specified in the said rule (in addition to the general conditions specified in rule 47) have to be satisfied and the relief has to be quantified in accordance with the prescribed formula of which the proviso is an integral part. Those conditions, as earlier pointed out, are closely interdependent in their working. It would thus appear that not only the Act and the Rules relating to drawback, set-off or refund including rule 42 are a part of an integrated scheme, which aims to attain a basic objective; but also that the different parts of rule 42 themselves are closely interrelated, each portion working in close union with the other. Indeed, as found earlier, the last part of the fourth condition and the second part of the proviso both deal with a contingency where identical conditions must exist and similar situation must prevail. Under the circumstances, the interpretation of the proviso, which occurs in such context and setting must be made *ex visceribus actus*, that is to say, the intention of the legislature in enacting the proviso must be found by reading the statute as a whole. The rule of construction which is firmly established is that every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter. The principle that the statute must be read as a whole is equally applicable to different parts of the same section or rule. The section or rule must be construed as a whole whether or not one of the parts is a saving clause or a proviso. It is an elementary rule, as pointed out by the Supreme Court in *The State of Bihar Vs. Hiralal Kejriwal and Another*, , that construction of a section is to be made of all the parts together and that it is not permissible to omit any part of it; the whole section should be read together. Sub-sections in a section must be read as parts of an integral whole and as being interdependent, each portion throwing light, if need be, on the rest (see *Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd.*, . Indeed, as Viscount Simonds said in *Attorney-General v. H. R. H. Prince Ernest Augustus of Hanover* [1957] 1 All ER 49 (HL) :

"No one should profess to understand any part of a statute or of any other document before he has read the whole of it. Until he has done so, he is not entitled to say that it, or any part of it, is clear and unambiguous."

34. In construing the proviso, we must be guided by these principles.

35. Now, as earlier observed, the dispute centres round the correct interpretation of the expression in the proviso which says that "the aggregate of the amounts, if any, calculated in accordance with the clauses (A) and (B)" shall be granted to the assessee (manufacturer) after deducting "therefrom" three per cent of the sale price of the goods which have been manufactured. The word "therefrom" has reference to the preceding words which have been quoted above and underlined. The moot question, therefore, is as to what precisely is the meaning of the words "the aggregate of the amounts calculated in accordance with the clauses (A) and (B)". Do those words mean the aggregate of the amounts of drawback, set-off or refund, as the case may be, admissible to an assessee in respect of the tax paid by him on the purchases of goods used in the manufacture of goods sold by him : (1) in the State, (2) in the course of inter-State trade or commerce or export out of the territory of India, or (3) on consignment basis, in cases where the sale of the manufactured goods takes place in more than one of the aforesaid three modes, as contended by the revenue ? Or, as contended by the assessee, do these words mean the aggregate of the amounts of sales tax, general sales tax or purchase tax, as the case may be, paid on the purchases of goods used in the manufacture of goods sold on consignment basis ? If the construction suggested by the revenue is accepted, then the negative balance of the amount of deduction can be realised by effecting corresponding reduction in the amount of drawback, set-off or refund, as the case may be, admissible in respect of the tax paid on the purchases of goods used in the manufacture of goods sold in the State or in the course of inter-State trade or commerce or of export out of the territory of India. If, on the other hand, the construction for which the assessee pleads is accepted, the deduction will have to be made only from the totality of the amount of sales tax, general sales tax or purchase tax (if more than one of such taxes is paid) and the negative balance of the amount of deduction cannot be realized by effecting corresponding reduction in the amount of drawback, set-off or refund, as the case may be, admissible in respect of the tax paid on the purchases of goods used in the manufacture of goods sold in the State or in the course of inter-State trade or commerce or of export out of the territory of India. The question, in the first place, therefore, is whether the suggested alternative constructions are possible and if so, which one should be preferred to the other ?

36. Now, we are conscious that if there is one principle of interpretation more well-settled than any other, it is that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. The primary source of the legislative intent being in the language of the statute. The primary source of the legislative intent being in the language of the statute, the rule of literal construction, which is firmly established and has received judicial

recognition in numerous cases, must be adhered to [see *Polestar Electronic (Pvt.) Ltd. v. Additional Commissioner, Sales Tax* [1978] 41 STC 409 421 (SC)]. However, as earlier pointed out, the conclusion that the language used by the legislature being plain, the statute is capable of construction according to its natural meaning can only be truly arrived at by studying the statute as a whole. Therefore, while construing the relevant words in the proviso on the basis of the rule of literal construction, it will have to be borne in mind that : (1) the proviso is attracted only in a case where the manufactured goods are sold on consignment basis, (2) the proviso would be attracted even if a portion of the manufactured goods is sold on consignment basis, and (3) the deduction to be effected in accordance with the proviso in a case where only a portion of the manufactured goods is sold on consignment basis must be equivalent to three per cent of the sale price of the goods so sold. In other words, in determining the true ambit and scope of the words "the aggregate of the amounts, if any, calculated in accordance with the clauses (A) and (B)" on a literal construction, the in-built limitations and outer limits of the proviso, in which these find place, must necessarily have a play.

37. Against the aforesaid background, it appears to us, for the following reasons, that the construction for which the assessee contends is the only possible construction on the rule of literal interpretation. The words "the aggregate of the amounts" are qualified by the words "calculated in accordance with the clause (A) and (B)". We must, therefore, turn to clauses (A) and (B) and find out which are the specified amounts that enter into the process of calculation under those two clauses. Those specified amounts, so far as clause (B) is concerned, are : (1) the amounts of (i) sales tax, (ii) general sales tax, (iii) both (in case where both are recovered) or (iv) purchase tax, as the case may be, when recovered separately at the time of purchase of goods used in manufacture, or (2) the amount calculated in accordance with the prescribed formula where the amount of sales tax or of general sales tax or of both, as the case may be, has not been so recovered separately. Substantially similar provision with only slight suitable modification is to be found in clause (A). It is thus clear beyond doubt that "the aggregate of the amounts" calculated in accordance with the clauses (A) and (B) are the amounts of the aforesaid various taxes paid on the purchases of goods used in the manufacture. Since the proviso is attracted only in a case where the manufactured goods are sold on consignment basis and requires a deduction to be made only to the extent of 3 per cent of the sale price of the goods so sold from the aggregate of the amounts calculated under clauses (A) and (B), it appears clear on a contextual reading that the aggregation to be made is merely that of the amounts of various taxes, if any, paid on the purchases of goods used in the manufacture of goods sold on consignment basis. The word "aggregate" exhausts itself once such aggregation takes place. If any further aggregation, namely, the aggregation of the amounts of various taxes paid on the purchases of goods used in the manufacture of goods on consignment basis and otherwise than on consignment basis was contemplated, the legislature would have

specifically provided for such further aggregation. In our opinion, therefore, on a literal construction of the relevant expression in the context and setting in which it appears in the proviso read along with all the other material parts of rule 42, the only meaning which could be assigned to the said expression is the one for which the assessee contends. The construction suggested on behalf of the revenue will require addition, alteration or modification of the relevant expression so as to provide for a further aggregation which, in our opinion, it is plainly unnecessary to do because even without that, the relevant provision is intelligible, reasonable, workable and reconcilable with the rest of the statute.

38. Even assuming, however, that on the plain natural meaning of the relevant expression the construction suggested by the assessee and the revenue are both possible, the question which immediately arises is as to which out of the two constructions should be preferred. It is well-established that the words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view [see *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, . If there are two possible constructions of a statute, therefore, then, that which is in consonance with the object and purpose of the enactment and accords with reason and justice must be preferred.

39. Now, as seen earlier, the provisions in the Act relating to the grant of recognition to a manufacturer and those relating to deductions to be effected when taxable goods are purchased by a recognised dealer against the certificate for use in manufacture, have been enacted to confine, as far as possible, the tax to a single point levy so that the manufactured goods do not carry with them any unnecessary burden of tax and the State would at the same time avail of the necessary revenue. An incidental object also is to harmonise the inter-State trade and commerce as well as the export trade. The legislature could not, however, have possibly contemplated and provided for each and every contingency in which its intervention is necessary to achieve the aforesaid objects. The State Government was, therefore, empowered to enact rules providing for grant of a drawback, set-off or refund in such circumstances and subject to such conditions as may be specified. Rules have accordingly been enacted and those rules are an integral part of the taxation structure under the Act. In construing those rules, therefore, that construction must be preferred which carries out the aforesaid objects which the legislature has in view. The construction suggested on behalf of the revenue, if accepted, would not only be in disharmony with the scheme of the Act but it would also defeat the aforesaid objects. On the other hand, if the construction suggested on behalf of the assessee is accepted, it would serve the aforesaid objects including the one that taxable goods do not escape levy of tax and that the State avails of the revenue which is legitimately due to it. Let us illustrate how this would happen.

40. We have seen above that on a conjoint working of the parent provisions of

the Act and the provisions of rule 42, a manufacturer who purchases taxable goods for use only in the manufacture of goods sold locally will not have to pay tax on such purchases. Rule 42, however, has a broader sweep as explained earlier and it grants relief even to a manufacturer who sells the manufactured goods on consignment basis. Is it conceivable that in the process of enlarging the scope of relief, rule 42 would take away even that relief to which a manufacturer would have been entitled thereunder in the absence of such enlargement ? And that is exactly what would happen if the construction suggested on behalf of the revenue is accepted and the instant case is an illustration in point. Even assuming for the time being that the last part of the fourth condition had not been enacted and that the assessee had sold a portion of the goods manufactured by him on consignment basis, the assessee could have bifurcated the manufactured goods into two distinct parts and he would have been still entitled to a set-off of the whole of the tax paid by him on the purchases of goods which have been used in the manufacture of goods sold locally. However, if the construction suggested on behalf of the revenue is accepted, the result which follows upon the enactment of the last part of the fourth condition and the proviso is that when the manufactured goods are partly sold locally and partly on consignment basis by the assessee, he would, in certain cases like the present, lose the whole or part of the set-off to which he is entitled even in respect of the tax paid on the purchases of goods used in the manufacture of goods sold locally, because the negative balance of the deduction to be effected would project itself into such set-off. The consequence would be that there will be multi-point levy of tax and the manufactured goods sold locally will bear unnecessary burden of tax. It is required to be borne in mind that rule 42 including the proviso, in substance, is a beneficent provision and that its interpretation should be such as would advance the remedy. The construction suggested by the revenue, besides working inconvenience and hardship, defeats the very purpose of rule 42 and it is also opposed to reason and justice and is inconsistent with the general scheme of the Act.

41. The construction suggested on behalf of the assessee, on the other hand, does not suffer from any such infirmities and it attains the objective. This is so because on the assessee's interpretation, (a) the drawback, set-off or refund admissible in respect of goods used in the manufacture of goods sold otherwise than on consignment basis is not affected and (b) at the same time, in cases where the deduction to be made is equal to or more than the drawback, set-off or refund relatable to goods used in the manufacture of goods sold on consignment basis, the whole of such drawback, set-off or refund will stand withdrawn with the resultant effect that goods so sold will continue to bear the full levy of tax which was initially recovered. The recovery of the tax due is thus ensured and the State does not stand to lose the revenue to which it was legitimately entitled.

42. It would thus appear that on the construction suggested on behalf of the revenue, in cases like the present, not only the tax paid on the sale or purchase

of goods used in the manufacture of goods sold on consignment basis will continue to be levied but also some excess amount will be recovered by reduction of the drawback, set-off or refund admissible in respect of goods used in the manufacture of goods sold locally. Such a construction by which the proviso oversteps its legitimate object must be eschewed; it cannot, in any case, be preferred to the construction for which the assessee contends which accords with the object and makes the working of the proviso just and reasonable.

43. One more factor, which has its own significance, requires to be recapitulated. Even the revenue agrees that the scheme of bifurcation is implicit in the proviso to make it workable. Indeed, it is the case of the revenue that where manufactured goods are sold both locally as well as on consignment basis, it would be permissible to bifurcate the manufactured goods into two distinct parts and that in such a case the deduction to be made from the drawback, set-off or refund, as the case may be, should be to the extent only of three per cent of the sale price of that portion of the manufactured goods which has been sold on consignment basis. The revenue, however, wants to stop short of bifurcation at that stage and it is not prepared to correlate the deduction to be made accordingly with that part of the drawback, set-off or refund, as the case may be, which pertains to the tax paid on the purchases of goods used in the manufacture of goods sold on consignment basis. It is difficult to appreciate as to why the bifurcation implicit in the proviso should be confined within such limited field and why it should not be taken to its logical terminal point, especially when the plain language and the object of the proviso justify its extension to the ultimate end. No reasons, much less any cogent reason, have been advanced on behalf of the revenue for not giving to the scheme of bifurcation a full play.

44. On the basis of the foregoing discussion, we reach the conclusion that the deduction to be effected under the proviso must be confined to the drawback, set-off or refund, as the case may be, to be granted in respect of tax paid on the purchases of goods used in the manufacture of goods sold on consignment basis outside the State but within India. Therefore, in cases where a portion of the goods manufactured has been sold on consignment basis, deduction should be effected only from that portion of the drawback, set-off or refund, as the case may be, which is relatable to the tax paid in respect of the purchase of goods used in the manufacture of goods sold on consignment basis and that if the amount which is required to be deducted is in excess of the amount from which deduction has to be effected accordingly, negative balance should not be allowed to be projected into the drawback, set-off or refund, as the case may be, relatable to the tax paid in respect of purchases of goods used in the manufacture of goods sold locally.

45. We may indicate that in the view which we are taking, we derive support from the decision of the Bombay High Court in *Commissioner of Sales Tax Vs. Jai Hind Oil Mills Co.*, . The question which there arose for consideration was similar to the one involved herein. The language of the provisions with which the court

was there concerned is not completely identical with that of the provisions with which we are herein concerned; yet, by and large, their substance and object are the same. The headnote of the Reports correctly sets out the ratio and, for the sake of brevity, we may only reproduce the headnote to appreciate the core of the decision :

"The reduction under clause (iii) of the first proviso to the explanation to rule 41 of the Bombay Sales Tax Rules, 1959, is to be made only from the drawback, set-off or refund, ad the case may be, due to a dealer in respect of the purchase of goods used in the manufacture of taxable goods for sale or as packing materials or containers for such manufactured goods in cases where such manufactured goods have been sold in the manner provided for in the explanation to rule 41 read along with clauses (i) and (ii) of the proviso."

46. Be it noted that the explanation to rule 41 had provided that for the purposes of the said rule, the word "sale", with all its grammatical variations, shall include the sale of manufactured goods despatched by the dealer to his own place of business or to his agent outside the State and actually resold there and that under clause (iii) of the first proviso to the explanation, reduction to the extent of one per cent of the sale price of the goods so despatched was required to be made from the amount of drawback, set-off or refund, as the case may be, due to the assessee. The Bombay High Court held that such reduction could be made only from the drawback, set-off or refund due to a dealer in respect of tax paid on the purchases of goods used in the manufacture of goods so despatched. The said decision, therefore, buttresses the view which we are inclined to take.

47. In accordance with the aforesaid view, we answer the questions referred to us as follows :

Question No. (1) : Not pressed.

Question No. (2) : Not pressed.

Question No. (3) : In the negative, that is to say, in favour of the assessee and against the revenue.

Question No. (4) : In the negative, that is to say, in favour of the assessee and against the revenue.

48. The State of Gujarat shall pay the costs of this reference to the assessee.

49. Reference answered accordingly.