
(1984) 12 BOM CK 0025
In the Bombay High Court
Case No : Writ Petition No. 21 of 1984

Rapidur (India) Private Limited	Vs	APPELLANT
The Union of India and another		RESPONDENT

Date of Decision : 12-12-1984

Acts Referred:

Central Sales Tax Act, 1956 — Section 10(1), 12, 6, 6(1A), 8

Citation : (1985) 59 STC 165

Hon'ble Judges : G.D. Kamat, J; D.M. Rege, J

Bench : Division Bench

Judgement

Rege, J.—This writ petition is by a company registered as a small-scale industry with the Government of Goa, Daman and Diu, against the order of assessment dated 28th December, 1983 passed by the 2nd respondent under the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Sales Tax Act"). The assessment order pertains to the year ending December, 1978. The petition raises a question of interpretation of section 8(2A) of the Central Sales Tax Act as amended in 1972 which came into force on 1st April, 1973.

2. Few relevant facts before considering the rival contentions may be stated first.

The petitioners are a small-scale industry registered with the Directorate of Industries, Government of Goa, Daman and Diu and hold a certificate of registration No. 56/03/01980. According to the petitioners they are manufacturers of plaster of paris bandages. Section 10(1) of the Goa Sales Tax Act provides that "no tax shall be payable under this Act on the sale of goods specified in the Second Schedule, subject to the conditions and exception, if any, set out therein". Second Schedule to the said Act contains several entries specifying exemption from sales tax. In exercise of powers contained in section 10(2) of the said Goa Sales Tax Act by a notification dated 4th February, 1971 the Government of Goa incorporated entry 68 in the said Second Schedule. The said entry 68 was thereafter amended by another notification dated 2nd November, 1982. It inter alia exempted totally from local sales tax the sales of all

goods manufactured by a small-scale industry registered with the Government under the Goa, Daman and Diu Sales Tax Act, 1964 as amended from time to time, for a period of five years from the date of first sale on or after the validity of the registration.

3. The petitioners who are the registered small-scale industry, having their sales totally exempt from local sales tax, claimed also exemption from Central sales tax, in respect of their such part of turnover as related to inter-State sales of their said goods, u/s 8(2A) of the Central Sales Tax Act. Accordingly the petitioners by their letter dated 10th December, 1983 to the Sales Tax Officer claimed such exemption. However, the Sales Tax Officer by his order of assessment dated 28th December, 1983 rejected the petitioners' claim and held that the petitioners were liable for payment of Central sales tax in respect of such turnover as related to inter-State sales and assessed them for the sales tax liability under Central sales tax for Rs. 69,735.10. After giving credit of Rs. 53,722.75 already paid he demanded from the petitioners a sum of Rs. 16,012.35. It is against this order that the petitioners have directly filed this writ petition.

4. Although it has been stated by the respondents - Government in their affidavit-in-reply that the petitioners' petition was not tenable as the petitioners have not exhausted all the remedies available to them under the Central Sales Tax Act, the learned Government Pleader has not addressed us on the said contention. We also feel that since this matter rests upon a question of interpretation of section 8(2A) of the Central Sales Tax Act, as applicable to the facts of this case and involves a question of jurisdiction, this Court can entertain their petition without sending the petitioners now to exhaust alternate remedies.

5. Before we deal with the merits of the contentions we may point out that in this petition, apart from the prayer for quashing the said order, the petitioners have also claimed in prayer (b)(iv) of the petition an order for refund of a sum of Rs. 6,43,928.34 already levied and collected by the Government under the Central Sales Tax Act for the assessment year 1979 and the period 1978 to 1983. However, at the stage of admission the learned counsel for the petitioners Shri Hidayatulla made a statement on instructions that the petitioners did not wish to press the said prayer for refund and therefore this Court granted rule only in respect of relief in the petition other than the relief for refund claimed in paragraphs 16(b)(iv) of the petition.

6. On the aforesaid undisputed facts the contention of the learned counsel for the petitioners mainly was that exemption from local sales tax granted to their sales under entry 68 of the Second Schedule to the Goa Sales Tax Act was general and the same was not covered under the explanation to section 8(2A) of the Central Act. Therefore the petitioners were also entitled u/s 8(2A) of the Central Act to exemption from sales tax also under the Central Sales Tax Act in respect of that part of their turnover as related to inter-State transaction. In support of his said contention the learned counsel has relied on various decisions of different Courts,

including a decision of the Supreme Court. It may be pointed out at the outset that all the said decisions were concerned with the provisions of section 8(2A) along with the explanation of the Central Sales Tax Act prior to its amendment which came into force on 1st April, 1973 constituting a change in the structure of the said section 8(2A) leaving the explanation intact.

7. As against this, the contention of the learned Government Pleader was that in view of the amendment section 8(2A), the exemption granted to the petitioners under the said entry 68 of the Second Schedule to the Goa Sales Tax Act was not general and hence without going to the qualifications laid down in the explanation to that section, the petitioners would not be entitled to the benefit of section 8(2A) itself.

8. To appreciate the said basic rival contentions initially the provisions of section 8(2A) as it stood before the amendment prior to 1st April, 1973 and as it was after such amendment as well as the said entry 68 of the Second Schedule to Goa Sales Tax Act be set out.

Prior to its amendment which came into force on 1st April, 1973 section 8(2A) of the Central Sales Tax Act stood as under :

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

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

After its amendment on 1st April, 1973 the said section 8(2A) was worded as under :

"Section 8(2A) Notwithstanding anything contained in sub-section (1A) of section 6 or sub-section (1) [or clause (b) of sub-section (2)] of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than (four per cent.) (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation. - "For the purposes of this sub-section a sale or purchase of any

goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods."

The said entry 68 of the Second Schedule to the Goa Sales Tax Act so far relevant reads as follows :

"Any goods manufactured, processed or assembled in this territory by any small-scale industry, at the point of sale made by such industry, for a period of five years from the date of first sale of the goods manufactured, processed or assembled, effected by the said small-scale industry on or after the date of validity of its registration under the Goa, Daman and Diu Sales Tax Act, 1964 as amended from time to time."

9. It is not disputed in this case that the petitioners' industry is a registered small-scale industry, a certificate of which has been annexed to the petition and that the assessment year in respect of which exemption is claimed was within five years from date of the first sale on the registration. Therefore the petitioners can claim under the said entry 68 total exemption for local sales tax in respect of sales effected by them of their produce.

10. On these admitted facts therefore it would now be convenient to first deal with the various decisions relied upon by the learned counsel for the petitioners, which as pointed out above, are admittedly based on the above-quoted provisions of section 8(2A) of the Central Sales Tax Act with its explanation as it stood before its amendment. The first in line is the decision of the Madhya Pradesh High Court in the case of Commissioner of Sales Tax, Madhya Pradesh v. Kapoor Dori Niwar and Co., Gwalior [1968] 22 STC 152. In that case the facts were :

The assessee, M/s. Kapoor Dori Niwar and Company, Gwalior, a registered dealer engaged in the manufacture and sale of niwar, in assessment proceedings under the Central Sales Tax Act, 1956 (hereinafter referred to as the Act) for various periods claimed exemption from Central sales tax in respect of certain inter-State sales under the provisions of section 8(2A) of the Central Sales Tax Act, on the ground that the said sales were exempt from sales tax generally under the State Act. The claims were rejected by the assessing officer. So also the appeals to the Deputy Commissioner of Sales Tax. However, the Appellate Tribunal allowed the assessee's appeals against which the Government came to the High Court.

11. u/s 12 of the said M.P. General Sales Tax Act, 1958 the State Government, subject to such restrictions and conditions as may be specified, by notification, could exempt in whole or in part class of dealers or any goods or class of goods from the payment of tax under the 1958 Act for such period as may be specified in the notification. In exercise of the powers conferred by the said section, the State Government issued a notification on 1st April, 1959 exempting from

payment of sales tax, sales of niwar by a dealer registered under the Act of 1958 for a period of one year from the date of the notification, which period was later extended up to 31st March, 1963. The question for consideration of the Court was whether the exemption granted under the State Act under the said notification was granted generally or was circumscribed by specified circumstances or specified conditions as provided in the explanation to the said section 8(2A).

12. It was contended on behalf of the assessee that the exemption granted to the sale of niwar by a registered dealer under the said notification was without restriction or limitation so far as the sale by a registered dealer as a class were concerned and were therefore generally exempt so as to come within the provisions of section 8(2A). The Government Advocate however contended that under the said notification the exemption was not general but was under specified circumstances or specified conditions falling under the explanation. Negating the said contention of the Government the Court observed :

No doubt under the notification sales effected by an unregistered dealer were not exempted from tax. The exemption was granted in respect of sales of niwar by a class of dealers, namely, registered dealers. So far as sales of niwar by registered dealers are concerned, the exemption is general, universal and without any restriction or condition. The expression "exempt only in specified circumstances or under specified conditions occurring in the explanation to sub-section (2A), means such circumstances or conditions the non-existence or non-performance of which precludes the grant of exemption; so that if those circumstances do not exist or those conditions are not performed, then the sales of goods cannot be exemption from tax even if they are effected by a class of dealers to whom exemption is granted and during the period for which exemption is granted". The said notification does not prescribed any such conditions or circumstances with regard to grant of exemption on sales of niwar by registered dealers. It must be noted that sub-section (2A) of section 8 of the Act does not speak of exemption under the State sales tax law of sale or purchase of any goods by all dealers. It says "if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax".

13. The next decision was of the Allahabad High Court in the case of Hindustan Safety Glass Works (P.) Ltd. v. State of Uttar Pradesh [1974] 34 STC 209. In that case the facts were as under :

"The petitioner-company manufactured toughened glasses and mirrors in its factories at Allahabad and Calcutta. It had a branch at Delhi. In the normal course of business, it effected certain inter-State sales of toughened glasses manufactured by it at Allahabad. Under a notification issued by the State Government in exercise of its powers u/s 3-A of the U.P. Sales Tax Act, 1948 sales of mirror and safety glasses were liable to sales tax either at the point of sale by the importer of such goods or at the point of sale by the manufacturer

thereof. Subsequently a notification was issued by the State Government u/s 4-A of the Act exempting toughened glasses and mirrors manufactured by the petitioners at Allahabad from payment of sales tax for a period of three years. The petitioners claimed that the turnover of sales of toughened glasses and mirrors manufactured by them being generally exempt from tax under the U.P. Act by reason of the said notification their inter-State sales were also exempt from Central sales tax u/s 8(2A) of the Central Sales Tax Act, 1956."

14. The Sales Tax Officer disallowed the claim and the petitioners thereupon filed a petition under article 226 of the Constitution challenging the validity of the order. The Court there on the facts held that "for purposes of section 8(2A) of the Central Act, sales of mirrors and toughened glasses manufactured by the petitioner was under no condition and in no circumstances liable to be taxed in the petitioner's hands. Normally it would be taken that the sale of such goods by the petitioners was exempt from tax generally unless it could be shown that such goods belonged to the class specified in the explanation to section 8(2A). As the toughened glasses and mirrors manufactured by the petitioner did not fall in such a category the turnover of the sales of those goods in the hands of the petitioner was not liable to tax even under the Central Act. The stipulation in the notification that the turnover of such sales would, for a period of three years, be exempt from payment of sales tax did not amount to exempting the turnover of such goods from tax under specified circumstances or specified conditions".

15. The Court further pointed out that "although the exemption was granted to a particular person in respect of certain goods, it was general in respect of the sales effected by that person and although it was for a particular period, such exemption cannot fall within the explanation "specified circumstances or specified conditions" appearing in the explanation to the said section".

16. While dealing with the qualifications in the explanation to section 8(2A) the Court pointed out, "the exemption u/s 4-A has been granted in respect of a particular class of goods, i.e., mirrors and safety glasses manufactured by the petitioner. So far as this class of goods is concerned, it has not been laid down anywhere that the sale of goods would be liable to be taxed on the fulfilment or non-fulfilment of any condition".

17. The ratio of the said two decisions was referred to with approval by the Supreme Court in its decision of the case of Indian Aluminium Cables Ltd. Vs. State of Haryana, In that case exemption from the State sales tax was granted in respect of "sales to an undertaking supplying electric energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910 of goods for use by it in the generation or distribution of such energy". The assessee had claimed exemption by reason of the said provisions for the inter-State sales of poles and cables.

18. It may be pointed out that the said decision quotes the amended provision of section 8(2A) of the Central Sales Tax Act while approving the ratio of the

decisions of the said two High Courts, viz., Madhya Pradesh and Allahabad, which were based on section 8(2A) before its amendment. Because of that the learned counsel for the petitioners contended that the Supreme Court was approving the ratio of the said decisions of the Madhya Pradesh and Allahabad High Courts which was in respect of section 8(2A) before its amendment as being applicable also to cases arising u/s 8(2A) after the amendment. In our view it is clear from the decision of the Punjab and Haryana High Court from whose decision the Supreme Court was hearing the said appeal, that the said High Court was in fact concerned only with the provisions of section 8(2A) before its amendment. The quotation by the Supreme Court of the amended section 8(2A) appears to be an inadvertent error. The said decision of the Supreme Court therefore cannot be read in the manner the learned counsel for the petitioners wants it to be read. However, the said decision of the Supreme Court approved the ratio of the above-quoted decisions of the Madhya Pradesh and Allahabad High Courts, but held that one the nature of the notification before it the assessee's sale of pole and cables was covered by the explanation as the specified circumstances were sales to an undertaking supplying electrical energy to the public under the Indian Electricity Act, 1910 and the specified conditions were that the goods were to be for the use by the undertaking in the generation or distribution of such energy. Finally the Court observed :

"General exemption means that the goods should be totally exempt from tax before similar exemption from the levy of Central sales tax can become available. Where the exemption from taxation is conferred by conditions or in certain circumstances, there is no exemption from tax generally."

18-A. The same view was reiterated in two other subsequent decisions, one of the Allahabad High Court had the other of Himachal Pradesh. The decision of the Allahabad High Court was in the case of Poysha Industrial Co. Ltd. v. Commissioner of Sales Tax [1977] 40 STC 455. The Court there was dealing with a notification issued under the U.P. Sales Tax Act, 1948, providing that "the turnover was exempted from the payment of sales tax in respect of sanitary cans manufactured by the assessee during the period of three years". The question was whether the said exemption granted to the assessee was general. The Court following the affricated decisions held that the turnover of the assessee was exempt generally from State sales tax in view of the notification and consequently, its inter-State sales were also exempt from Central sales tax u/s 8(2A) of the Central Act.

18-B. The same view was taken by the Punjab and Haryana High Court in the case of Himachal Conductors Pvt. Ltd. Deputy Excise and Taxation Commissioner, Himachal Pradesh (South Zone), Simla- [1978] 42 STC 440. In that case the State had granted certain incentives by way of exemption from local sales tax to registered small scale industries. The Court there was required to consider whether the conditions imposed for claiming exemption fell within the explanation to section 8(2A) as being specified circumstances or specified

conditions. The court following the ratio of the aforecited decisions held that none of the conditions constituted specified circumstances or specified conditions so as to bring them within the explanation.

19. The learned Government Pleader however has relied on the decision of Kerala High Court in the case of Deputy Commissioner of Agricultural Income Tax and Sales Tax, Central Zone, Ernakulam v. N. S. Moos [1975] 36 STC 169 , taking a contrary view. That decision was also on the provisions of section 8(2A) prior to its amendment. However in view of the subsequent decision of the Supreme Court in Indian Aluminium Cables Ltd. Vs. State of Haryana, , the said view of the Kerala High court cannot now stand.

20. On the ratio of the said decisions therefore it was clear that under entry 68 of the Second Schedule to the Goa Sales Tax Act exemption granted to the registered small-scale industries, which the petitioners admittedly were, from the State sales tax for a specified period would be general and could not be said to be granted under specified circumstances or specified conditions merely because it was restricted to sale by registered small-scale industry, so as to be covered by the explanation. Further in all the said decisions, the Courts had considered the question of "general exemption" under the local Act only in connection with and in the light of qualifications under the explanation providing inter alia for exemption being under specified circumstances or specified conditions.

21. If the matter were to rest on the provisions of section 8(2A) before its amendment as quoted above then the learned Government Pleader has not disputed that on the ratio of the said decisions the exemption from sales tax granted to the petitioners as registered small-scale industries in respect of sales by them of their produce, would be "general" and not under specified circumstances or specified conditions so as to be covered by the explanation.

22. However his basic contention was that before coming to the qualifications provided under the explanation to section 8(2A) under its altered or amended provisions, the exemption from sales tax granted to the petitioners under entry 68 cannot be considered to be general so as to come under the said section 8(2A).

23. According to the learned Government Pleader while the provisions of section 8(2A) before its amendment provided inter alia "if under the sales tax law of the appropriate State the sale of any goods by a dealer" is exempt from tax generally, the amended section 8(2A) altered the said provisions by providing "in so far as the turnover of any part thereof relates to the sale of goods, the sale of which is under the sales tax law of the appropriate State exempt from tax generally". According to him therefore while under the provisions of section 8(2A), before the amendment "sale of goods by a dealer" was to be exempt from tax generally, under the amended section 8(2A) only, sale was to be exempt generally. He has therefore argued that in order to claim general exemption under the amended section 8(2A) what was required to be shown was that the

sale was exempt from local sales tax totally at all stages and not only in respect of the sale of goods by a dealer as was the case under the provisions of section 8(2A) prior to its amendment.

24. Firstly it was doubtful whether the approach of the learned Government Pleader in considering the question of the sales being exempted generally under the State law only under the provisions of section 8(2A) without going to the explanation to the said section was correct. The object of the explanation which has remained the same under the old as well as amended provisions of section 8(2A) was to point out cases where the exemption cannot be general. These cases were where (1) exemption was under specified circumstances, (2) it was under specified conditions, (3) where tax was levied on the sale of goods at specified stages or (4) where tax is levied otherwise than with reference to the turnover of the goods. Explanation lays down cases where the exemption granted ceased to be general. In our view therefore the provisions of section 8(2A) were to be read along with the explanation to determine what exemption could be general and what not. If the exemption was conferred with the qualification mentioned in the explanation it would cease to be general but not otherwise. All the aforesaid decisions including the said decision of the Supreme Court in *Indian Aluminium Cables Ltd. Vs. State of Haryana*, have dealt with the question of general exemption only in reference to the qualifications contained in the explanation. In that case, on the said explanation to section 8(2A) which remained unaltered the exemption of the nature contained in entry 68 of the Second Schedule to the Goa Sales Tax Act would not on the ratio of the said decisions constitute any specified circumstance or specified condition as mentioned in the explanation and would therefore be a general exemption.

25. Even otherwise the contention of the learned Government Pleader based on the change of wording of section 8(2A) also cannot be accepted. It was the contention of the learned Government Pleader that the change of the expression "sale of goods by a dealer being exempted generally" as appearing in section 8(2A) before its amendment to "sale of which was exempt from tax generally" appearing in the amended section 8(2A) would constitute a total change in the concept of general exemption as envisaged in the said section 8(2A), before its amendment.

26. In our view the said difference in the language of section 8(2A) both before and after its amendment would not make any difference to the concept of general exemption.

27. The said difference in the wording of section 8(2A) before and after its amendment, was only due to the result of a complete change in the structure of section 8(2A). Under the provisions of section 8(2A) as it stood before the amendment, initial reference was to the exemption under the State Sales Tax Act which was to be general and thereafter there was reference to the Central Sales Tax Act permitting corresponding exemption from Central sales tax for inter-State sales. However in the amendment of section 8(2A) the first reference was

to the exemption under the Central sales tax while making reference to general exemption under the State law in the latter part of the said section. It may be born in mind that basis of the sales tax was, that the said tax was levied on the sale by a dealer. If one looks to the provisions of amended section 8(2A) in its first part itself reference is made to tax payable by a dealer on his turnover under the Central Sales Tax Act. In view of the said initial reference to the dealer in the first part of section 8(2A), it was not necessary to mention again the word "dealer" while providing that "the sale of which was under the sales tax law of the appropriate State exempt from tax generally. General exemption under the State law as mentioned in the second part of the section had reference to the payable by a dealer on his turnover. Therefore the absence of the word "dealer" in the amended section 8(2A) in connection with the general exemption from sales tax would not make any difference in the purport or effect of the said section 8(2A) both before and after its amendment. What was suggested was that the "sale of goods by a dealer" as mentioned in section 8(2A) before amendment meant a sale by a specified dealer as under entry 8 which provided for sale by a registered small-scale industry, while the absence of the said explanation under amended section 8(2A) meant the sale of goods being exempted generally irrespective of the sale being by a dealer. In our view the provisions of section 8(2A) would not permit of such a construction. Essentially under the Sales Tax Act sales tax is charged only on a sale by a dealer. Therefore because of the absence of the use of the word "dealer" in the amended section 8(2A) as against the use of the words "sale of goods by a dealer" in section 8(2A) before its amendment, no particular significance could be attached and no different interpretation could be given. Although in some of the aforesaid decisions it was observed that the absence of the word "dealer" in the amended section 8(2A) was of significance, with respect we are unable to find any such significance from the absence of the word "dealer" from the amended section 8(2A). In our view, therefore the ratio of the decisions relied upon by the learned counsel for the petitioners including the Supreme Court decision in *Indian Aluminium Cables Ltd. Vs. State of Haryana*, would be equally applicable also to cases arising under the amended section 8(2A).

28. In support of his said contention the learned Government Pleader has relied upon the decision of the Supreme Court in the case of *International Cotton Corpn. (P) Ltd. Ors. Vs. Commercial Tax Officer, Hubli, and Others*, In that case the Supreme Court was considering only the provisions of amended section 8(2A) in juxtaposition with the provisions of section 6(1A) both the which were interest at the same time to get over the decision of the Supreme Court in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, . The Supreme Court there was dealing only with the contention of the applications that sub-section (2A) of section 8 as amended which was inserted at the same time as sub-section (1A) of section 6 had the effect of impliedly repealing section 6(1A) which provided that "notwithstanding no tax was leviable on a dealer for the sale of goods under the State sales tax law, the dealer would be liable for the inter-

State sales of the said goods under the Central sales tax laws". The Court there held that both the provisions could be read harmoniously and that non obstante clause in section 8(2A) did not mean by itself that the effect of sub-section (1A) of section 6 was obliterated. In that connection only the Supreme Court dealt with the provisions of section 8(2A). After negating the contention based on the words used in the section, that "the transactions of purchase being generally exempt from the tax whenever the goods are taxable at the point of sale and simultaneously the transactions of sale are exempt from tax generally whenever goods are taxable at the point of purchase" the Court in that connection while dealing with section 8(2A) observed at page 11 of the Report as under :

"The plain meaning of the said sub-section is that it under the sales tax law of the appropriate State no tax is levied either at the point of sale or at the point of purchase at any stage the tax under the Act shall be nil. Reading section 6(1A) and section 8(2A) together along with the explanation the conclusion deducible would be this : Where the intra-State sales of certain goods are liable to tax, even though only at one point, whether of purchase or of sale, a subsequent inter-State sale of the same commodity is liable to tax, but where that commodity is not liable to tax at all if it were an intra-State sale the inter-State sale of that commodity is also exempt from tax. Where an intra-State sale of a particular commodity is taxable at a lower rate than 3 per cent. then tax on the inter-State sale of that commodity will be at that lower rate. A sale or purchase of any goods shall not be exempt from tax in respect of inter-State sales of those commodities if as an intra-State sale the purchase or sale of those commodities is exempt only in specified circumstances or under specified conditions or is leviable on the sale or purchase at specified stages. On this interpretation section 6(1A) as well as section 8(2A) can stand together."

29. These observations would not help in the interpretation of the amended provisions of section 8(2A) on the basis contended by the learned Government Pleader. On the contrary the Court being award of the explanation to section 8(2A) had considered the provisions of section 6(1A) with section 8(2A) along with its explanation and at the end of the said observations pointed out that the inter-State sale would not be exempt from sales tax if as provided in the explanation it was exempt only in specified circumstances or on specified conditions or the tax is leviable on sale at a specified stage . As we have pointed out above, on the ratio of the decisions cited above, exemption granted to registered small-scale industry for their sales under entry 68 of the Second Schedule to the Goa Sales Tax Act could not be considered to be an exemption under specified circumstances or specified conditions so as to be covered by the explanation. Use of the expression "at any stage" in the said observations appears to have reference to the qualification in the explanation, viz., tax levied at a specified stage.

30. We may however point out that the Supreme Court in its later decision in the case of Indian Aluminium Cables Ltd. Vs. State of Haryana, while considering the

expression "exempt from tax generally", as appearing in section 8(2A) before amendment had as stated earlier, observed at page 112 of the Report :

"General exemption means that the goods should be totally exempt from tax before similar exemption from the levy of Central sales tax can become available. Where the exemption from taxation is conferred by conditions or in certain circumstances, there is no exemption from tax generally." As pointed out above in that case the Court held that exemption from local sales tax to registered dealers was general and as not being circumscribed by either specified circumstances or specified conditions. Under the circumstances the said contention of the learned Government Pleader as regards the interpretation of the amended section 8(2A) cannot be accepted.

31. The learned Government Pleader has further contended that in this case since subsequently sales of the goods manufactured by the registered small-scale industry were liable for sale tax in respect of sales by other dealers, the tax was levied on the said goods at a specified stage, and therefore the petitioners' sales came within the explanation to section 8(2A). He has further contended that u/s 8 of the Goa Sales Tax Act, sales tax was leviable on the taxable turnover at the point of sale to the consumer or to a person other than a registered dealer. The said section 8 itself, therefore, according to the learned Government Pleader, specified the subsequent stage at which the tax was leviable so as to come within the explanation to section 8(2A). In our view the said contentions cannot be accepted. Firstly explanation to section 8(2A) requires the levy of sales tax on such goods at a specified stage. The said explanation therefore in terms speaks about levy of tax which could be only by a notification specifying the stage at which the tax was leviable. Proviso to section 8 of the Goa Sales Tax Act empowers the Government by notification in the Official Gazette to specify the first or any other point of sale of successive dealers at the point at which goods or class of goods may be taxed.

32. The explanation as well as the said proviso to section 8 of the Goa Sales Tax Act would required that by a notification sale of the petitioners' good which were exempt from tax at the first sale by them were taxed at a subsequent specified stage. Admittedly there was no notification by the Government providing for levying tax on the sale of the petitioners' goods at any subsequent stage.

33. Further, annexure I to the said Goa Act shows that the Government of Goa, acting u/s 8 of the Goa Sales Tax Act mentioned above, had issued various notifications providing in case of various items mentioned therein that sales tax would be leviable at the first point of sale. Item 8 of the said annexure I provides for all the items under the First Schedule. It excludes the sales under item 68 of the Second Schedule under which the sales of the petitioners' product were covered. There is no other notification providing for levying of sales tax on the sale of goods covered by entry 68 as such, at any other specified stage. That apart, the goods manufactured by the petitioners, viz., plaster of paris bandages, by themselves are also not covered under the First Schedule to the Goa Sales

Tax Act. There was therefore nothing to hold that in respect of sale of goods covered under entry 68 of the Second Schedule exempting the sale of their goods by the petitioners who are registered small-scale industry from local sales tax, the Government had levied sales tax on the sales of the said goods at any other specified stage. The contention of the learned Government Pleader therefore that since in respect of the sales covered under entry 68 of the Second Schedule sales tax was payable at a later stage in respect of the said sales, sales tax was levied at a specified stage so as to cover the said sales under the explanation, cannot be accepted.

34. In the result, the petition succeeds. Rule is made absolute in terms of prayer (a) and (b)(i), (ii) and (iii) to the petition. Under the circumstances of the case there will be no order as to costs.

An oral application made by the learned Government Pleader for leave to appeal to the Supreme Court is rejected.