

(1986) 07 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1397 of 1984, etc.

Saraswati Udyog

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 08-07-1986

Acts Referred:

Central Sales Tax Act, 1956 — Section 5
Constitution of India, 1950 — Article 14, 19, 226, 227, 246
Punjab General Sales Tax Act, 1948 — Section 4B

Citation : (1987) 65 STC 148

Hon'ble Judges : Prem Chand Jain, C.J.; Sukhdev Singh Kang, J

Bench : Division Bench

Advocate : R.C. Dogra and P.S. Saini, for the Appellant; B.L. Bishnoi, Additional Advocate-General and Suresh Mange, for the Respondent

Final Decision : Dismissed

Judgement

Sukhdev Singh Kang, J.—At issue in this bunch of writ petitions (i.e., C.W.Ps. Nos. 1397 and 3186 of 1984 and 2748, 2948 and 2949 of 1985) under Articles 226/227 of the Constitution of India is the constitutional validity of 9, 24 and 27 of the Haryana General Sales Tax Act, 1973 (for brevity's sake, hereinafter referred to as the "Haryana Act") because, petitioners allege, they violate the provisions of Articles 14, 19(1)(g), 286 and 300A of the Constitution of India and are repugnant to the provisions of Section 12 of the Haryana Act. Also under challenge are the orders of the Assessing Authorities holding that goods purchased by the petitioners and either sold by them in the same condition or used by them in the manufacture of other goods and such finished goods are sold to exporters who, in turn, exported such goods or the finished goods out of the territory of India, were exigible to purchase tax u/s 9 of the Haryana Act.

2. A thumb-nail sketch of the facts will help in understanding and determining the forensic controversy raised in these writ petitions.

3. Messrs. Saraswati Udyog, Jagadhri (petitioner in C.W.P. No. 1397 of 1984) is a

partnership concern engaged in the business of manufacture and sale of aluminium utensils. It is registered under the Haryana Act and the Central Sales Tax Act, 1956 (for short the "Central Act"). The petitioner sells the utensils to the exporters who, in turn, export these finished goods out of the territory of India. The petitioner filed returns for the assessment year 1982-83 and disclosed its gross turnover. No tax liability was created under the Haryana Act in relation to the sales to the tune of Rs. 69,174.57 as the same were accepted to be made in the course of the export out of India under Sub-section (3) of Section 5 of the Central Act and they were admissible for exemption u/s 27(1)(a)(ii)(iv) of the Haryana Act. However, later on, relying on the recent decision of this Court in *Murli Manohar and Company v. State of Haryana* STI 1981 P & H 112 the Assessing Authority, Jagadhri, assessed the petitioner-firm on the estimated purchase value of raw material, to the tune of Rs. 52,000 which was used in the manufacture of goods sold in the course of export.

4. Messrs. Minaxci Industries, Hissar (petitioner in C.W.P. No. 3186 of 1984) is a partnership concern engaged in the manufacture of guar gum and guar dall from guar and is registered as a dealer under the Haryana and Central Acts. The petitioner filed returns for the assessment year 1981-82 and deposited the tax in accordance therewith. The goods manufactured by the petitioner were exported out of India through certain other firms of Bombay. Similarly, the guar gum manufactured by the petitioner out of guar was also exported out of the country through exporters. The Assessing Authority has imposed purchase tax u/s 24(3) of the Haryana Act on the purchase value of guar and other raw materials. The petitioner has also been burdened with the liability to pay interest on the tax amount u/s 25(5) of the Haryana Act.

5. Messrs. Sat Narain Saksaria and Company, Hansi, petitioner in the remaining three writ petitions (i.e., C.W.Ps. Nos. 2748, 2948 and 2949 of 1985) is a partnership firm carrying on the business of purchase and sale of cotton within the State of Haryana as also in the course of inter-State trade or commerce and export out of the territory of India. The cotton is exported strictly in pursuance of form H certificates of export issued by the exporters under Rule 12(10) of the Central Sales Tax (Registration and Turnover) Rules. The petitioner filed the returns for the assessment years 1979-80, 1980-81 and 1981-82 and disclosed the purchases made. The petitioner claimed that it had exported cotton out of the territory of India against form H certificates of export and the sales fall within the meaning of Sub-section (3) of Section 5 of the Central Act. The Assessing Authority allowed deductions on the aforesaid sales. The Joint Excise and Taxation Commissioner issued notice u/s 41 of the Haryana Act and, relying upon the decision of this Court in *Murli Manohar's* case STI 1981 P & H 112 set aside the orders of the Assessing Authority holding that cotton sent out of the territory of India in terms of the provisions of Sub-section (3) of Section 5 of the Central Act was liable to purchase tax u/s 9 of the Haryana Act. The Assessing Authority levied purchase tax on the purchases made by petitioner and directed the petitioner to pay interest thereon. It has also held the petitioner liable to pay

penalty u/s 50 of the Haryana Act.

6. The petitioners challenge the orders of the Assessing Authorities imposing purchase tax on the goods purchased by them in the State of Haryana because such goods were used by the petitioners in Civil Writ Petitions Nos. 1397 and 3186 of 1984 for the manufacture of aluminium utensils and guar gum respectively and had sold the finished goods to exporters at Bombay who, in turn, had exported those goods out of the country. The petitioner in the other writ petitions, (i.e., Civil Writ Petitions Nos. 2748, 2948 and 2949 of 1985), who is a trader in cotton, had purchased cotton bales in the State of Haryana on the strength of form H certificates of export issued by the exporters under the Regulations without paying any purchase tax. They had sold these bales of cotton to exporters at Bombay who, in turn, had exported them out of the country. These purchases by the petitioner were inextricably connected with the ultimate export of the goods by the exporters and had taken place in the course of trade as defined by Section 5(3) of the Central Act. In view of the clear provisions of Article 286 of the Constitution, the State Legislature had no authority to legislate in relation to the sale and purchase of goods in the course of export. The Assessing Authorities had relied upon the provisions of Sections 9 and 24 of the Haryana Act to impose tax on the transactions of purchase made by the petitioners. These provisions are beyond the legislative competence of the State Legislature and are violative of Article 286 of the Constitution. The provisions of Sections 9, 24 and 27 of the Haryana Act, in so far as they exempt the transactions of purchase made by the assesseees from purchase tax when such goods are purchased within the State of Haryana and are used within the State in the manufacture of finished goods which are disposed of by way of sale in the course of export out of the territory of India within the meaning of Sub-section (1) of Section 5 of the Central Act but they do not extend the benefit of exemption from purchase tax to the purchase of such goods used in the manufacture of finished goods which are disposed of by way of sale in the course of export out of the territory of India as envisaged by Sub-section (3) of Section 5 of the Central Act, are discriminatory and violative of Article 14 of the Constitution. By imposing an unreasonable restriction on trade, they offend Article 19 of the Constitution and contravene the provisions of Article 300A *ibid*. They further contend that Sections 9 and 24 of the Haryana Act are inconsistent with Section 12 of the said Act and are repugnant to Section 5(3) of the Central Act. In the alternative, it is pleaded that Sub-section (3) is an extension of Sub-section (1) of Section 5 and the former is in the nature of a proviso to the latter. Consequently, the purchases made by the petitioners which are covered by Sub-section (3) of Section 5 shall be deemed to be the purchases made within the meaning of Sub-section (1) of Section 5 of the Central Act. It is further urged that the decision of a learned single Judge of this Court in *Murli Manohar's* case STI 1981 P & H 112 holding that such purchases of raw materials used in the manufacture of any other goods which are sold to the exporters outside the State of Haryana and which, in turn, are exported out of the territory of India do not

take place in the course of export within the meaning of Sub-section (1) of Section 5 of the Central Act are exigible to purchase tax, does not lay down correct law and needs reconsideration and is liable to be set aside.

7. The respondents have resisted these writ petitions and have filed separate returns. They have controverted the main pleas raised by the petitioners. It has been clarified that in all these cases the petitioners made the purchases of goods within the State of Haryana and sold those very goods or finished goods manufactured out of those goods to exporters who, in turn, had exported them out of the territory of India within the meaning of Sub-section (3) of Section 5 of the Central Act. These purchases were, therefore, not exempt from purchase tax and were exigible to tax u/s 9 of the Haryana Act. The provisions of Sections 9, 24 and 27 of the Haryana Act were perfectly legal and valid. They fully accord with the provisions of Article 286 of the Constitution. They are not in conflict with the provisions of Articles 14, 19 and 300A of the Constitution. There was no conflict, inconsistency, hiatus or repugnancy between the provisions of Sections 9, 24 and 27 of the Haryana Act on the one hand and Section 12 of the Haryana Act and Section 5(3) of the Central Act on the other. Murli Manohar's case STI 1981 P & H 112 had been correctly decided.

8. Civil Writ Petition No. 1397 of 1984 came up for hearing before I.S. Tiwana, J. and the petitioner raised the same very pleas as noticed earlier. The learned Judge prima facie found merit in these contentions, but was of the view that it was not possible for him, while sitting singly, to take a view different from the one taken in Murli Manohar's case STI 1981 P & H 112. He also felt that the issues For full reports : See T.G. Venkataraman, etc. Vs. State of Madras and Another, involved in the case were likely to arise in a large number of cases. He, therefore, directed that the papers be placed before the learned Chief Justice for decision by a larger Bench. Similar orders were passed by him in the remaining writ petitions. That is how these writ petitions are before us.

9. In order to appreciate the rival contentions it will be apposite to read the relevant provisions of the Constitution and the two Acts in so far as they have a bearing on the issues raised :

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

(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place-

(a) outside the State ; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Clause (1).

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

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

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

10. Section 5 of the Central Act:

5. When is a sale or purchase of goods said to take place in the course of import or export.-(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

(3) Notwithstanding anything contained in Sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after and was for the purpose of complying with, the agreement or order for or in relation to such export.

11. Sections 9, 12, 24 and 27 of the Haryana Act are in the following terms :

9. Liability to pay purchase tax.-(1) Where a dealer liable to pay tax under this Act,-

(a) purchases goods, other than those specified in Schedule B, from any source in the State and uses them in the State in the manufacture of goods specified in Schedule B ; or

(b) purchases goods, other than those specified in Schedule B, from any source in the State and uses them in the State in the manufacture of any other goods and either disposes of the manufactured goods in any manner otherwise than by way of sale in the State or despatches the manufactured goods to a place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export outside the territory of India within the meaning of Sub-section (1) of Section 5 of the Central Sales Tax Act, 1956 ; or

(c) purchases goods, other than those specified in Schedule B, from any source in the State and exports them, in the circumstances in which no tax is payable under any other provision of this Act, there shall be levied, subject to the provisions of Section 17 a tax on the purchase of such goods at such rate as may

be notified u/s 15 :

Provided that no tax shall be leviable under this section on scientific goods and guar gum, manufactured in the State and sold by him in the course of export outside the territory of India within the meaning of Sub-section (3) of Section 5 of the Central Sales Tax Act, 1956 ; and

(2) Notwithstanding anything contained in this Act or the Rules made thereunder, if the goods leviable to tax under this section are exported in the same condition in which they were purchased, the tax shall be levied, charged and paid at the station of despatch or at any other station before the goods leave the State and the tax so levied, charged and paid shall be provisional one and the same shall be adjustable towards the tax due from the dealer on such purchase as a result of assessment or reassessment made in accordance with the provisions of this Act and the rules made thereunder on the production of proof regarding the payment thereof in the State.

(3) ...

(4) ...

(5) ...

12. No tax payable in case of inter-State trade, etc.-Notwithstanding anything contained in this Act, a tax on the sale or purchase of goods shall not be imposed under this Act,-

(i) where such sale or purchase takes place outside the State;

(ii) where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territory of India; or

(iii) where such sale or purchase takes place in the course of inter-State trade or commerce.

24. Rights and liabilities of registered dealers.-(1) Every dealer registered under this Act shall be entitled to purchase, without payment of sales tax, the following goods within the State, on the authority of his certificate of registration by giving to the dealer, from whom the goods are purchased, a declaration duly filled and signed by him, containing such particulars, on such form, obtained from such authority, as may be prescribed and in case such form is not available with such authority, in such manner as may be prescribed,-

(a) any goods, other than those leviable to tax at first stage of sale u/s 17 or Section 18, for the purpose of-

(i) resale in the State ; or

(ii) sale in the course of inter-State trade or commerce :

Provided that a dealer registered under this Act, shall also be entitled to

purchase barley, without payment of sales tax on the authority of his certificate of registration, on furnishing to the selling registered dealer, a declaration referred to above, for sale by him in the course of export outside the territory of India within the meaning of Section 5 of the Central Sales Tax Act, 1956 ; and

(b) containers and packing materials and other goods (excluding those liable to tax at the first stage of sale u/s 17 or Section 18) specified in his certificate of registration for use by him in the manufacture, in the State, of any goods other than those specified in Schedule B, for the purpose of-

(i) sale in the State ; or

(ii) sale in the course of inter-State trade or commerce ; or

(iii) sale in the course of export out of the territory of India within the meaning of Sub-section (1) of Section 5 of the Central Sales Tax Act, 1956 :

Provided that a dealer registered under this Act, shall also be entitled to purchase, without payment of sales tax, on the authority of his certificate of registration, goods mentioned in Clause (b) above, on furnishing to the selling registered dealer a declaration referred to above, for use by him in the manufacture, in the State, of scientific goods and guar gum for the purpose of sale by him in the course of export outside the territory of India within the meaning of Sub-section (3) of Section 5 of the Central Sales Tax Act, 1956.

(c) any goods, other than those leviable to tax at the first stage of sale u/s 17 or Section 18, for use in the execution of a works contract in the State.

(2) Notwithstanding anything contained in form S.T. 15 or the certificate of registration issued under this Act or the Rules made thereunder, no dealer shall be entitled to claim the right envisaged in Sub-section (1) so renumbered, for the period from the first day of April, 1976 to the third day of September, 1979, in contravention of the provisions of Sub-section (1) so renumbered.

(3) Notwithstanding any other provisions of this Act or any judgment, decree or order of any court or other authority to the contrary, if a dealer who purchases goods, without payment of tax, under Sub-section (1) and fails to use the goods so purchased for the purposes specified therein, he shall be liable to pay tax, on the purchase value of such goods, at the rates notified u/s 15, without prejudice to the provisions of Section 50 :

Provided that the tax shall not be levied where tax is payable on such goods under any other provision of this Act.

27. Taxable turnover.-(1) In this Act, the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom his turnover during that period-

(a) on account of-

(i) ...

(ii) ...

(iii) ...

(iv) sale of goods falling u/s 12:

Provided that in the case of sale falling under Sub-section (3) of Section 5 of the Central Sales Tax Act, 1956 the dealer effecting such sale shall furnish to the assessing authority a declaration duly filled and signed by the dealer transacting the sale falling under Sub-section (1) of Section 5 of the Central Sales Tax Act, 1956 containing such particulars, on such form and obtained from such authority by the dealer transacting the sale falling under Sub-section (3) of Section 5 of that Act, as may be prescribed and in case such form is not available with such authority, in such manner, as may be prescribed :

Provided further that no such deduction shall be admissible to the dealer transacting sale falling under Sub-section (3) of Section 5 of the Central Sales Tax Act, 1956, if it is found that the particulars furnished in the declaration were incorrect or incomplete or the person making purchase from him failed to effect the sale in the course of export out of the territory of India within the meaning of Sub-section (1) of Section 5 of that Act;

(v) ...

(b) on account of purchase of goods which are specified in Schedule C and are sold during the year :

(i) ...

(ii) ...

(iii) in the course of export out of territory of India within the meaning of Sub-section (1) of Section 5 of the Central Sales Tax Act, 1956 ;

(iv) ...

(c) on account of purchase of goods which are referred to in Schedule D and are sold during the year-

(i) ...

(ii) in the course of export out of the territory of India within the meaning of Sub-section (1) of Section 5 of the Central Sales Tax Act, 1956 ;

(d) ...

(e) ...

(2) ...

(3) ...

12. Section 9 is the charging section. The taxing event is the purchase of goods

by the dealers in the State of Haryana. The incident of tax is the transactions of purchase. Section 9 envisages imposition of purchase tax and not a tax on sale of goods sold by the petitioners to exporters who, in turn, export those goods out of the territory of India.

13. Section 9 came for consideration before a Division Bench of this Court in *Bata India Ltd. v. State of Haryana* [1983] 54 STC 226 wherein it was observed :

Neither the original purchase of goods nor the manufacture thereof into the end-product by itself attracts purchase tax and consequently are not even remotely the taxable events. What directly and pristinely attracts the tax and can be truly labelled as the taxing event u/s 9(1)(b) of the Act is the three-fold exigency of: (i) disposal of the manufactured goods in any manner otherwise than by way of sale in the State; or (ii) despatch of the manufactured goods to a place outside the State in- any manner otherwise than by way of sale in the course of inter-State trade or commerce ; or (iii) disposal or despatch of the manufactured goods in the course of export outside the territory of India. It is these three exigencies alone which are the taxable events in the amended Section 9(1)(b) of the Act. Consequently, in a statute where the taxable event is the despatch or consignment of goods outside the State, the same would come squarely within the wide sweep of entry No. 92-B and thus excludes taxation by the States.

14. This formulation by the Division Bench did not find favour with the Full Bench in *Des Raj Pushap Kumar Gulati Vs. The State of Punjab and Another*, . The Bench posed-a question-"as to whether Section 9(1)(b) of the Haryana Act and the corresponding provisions of the Punjab Act envisage levying of tax on the purchases of goods or, inter alia, on the despatch of such goods within the State of Haryana otherwise than by way of sale in the course of inter-State trade or commerce?" Their Lordships after exhaustively examining and analysing the history of the legislation, the provisions of the statutes and decisions of various High Courts and the Final Court having a direct bearing on the issues, more particularly, the decision of the Supreme Court in *The State of Tamil Nadu Vs. M.K. Kandaswami and Others*, given in the context of the provisions of Section 7 of the Madras General Sales Tax Act, 1959, the relevant portion whereof in substance is in pari materia with Section 9 of the Haryana Act, came to the conclusion :

The judicial consensus as already noticed in regard to the identical provision of the taxing statutes of other States that the tax in question is a purchase tax, i.e., the taxing event is the purchase of the given goods and not their despatch outside the State, which view finds affirmation in the high authority of *The State of Tamil Nadu Vs. M.K. Kandaswami and Others*, apart, but, even if two views were possible (1) that it was a tax on despatch of goods and (2) that the incidence of tax was on purchase of goods which are being despatched out of the State, then too the construction which helps in making effective the remedial measures against the mischief that it sought to curb has to be adopted. Otherwise too, when two constructions are possible, one that saves the statute

from being declared ultra vires has to be adopted.

When thus viewed, the impugned provision of Section 9(1) of the Haryana Act admittedly related to a topic of taxation which was covered by entry 54 of List II of the Seventh Schedule to the Constitution of India and therefore, the Haryana and Punjab States' Legislatures were within their legislative right to enact the given provisions.

15. It was also held that the decision of Division Bench in *Bata India Limited Vs. The State of Haryana and Another*, did not lay down the correct law and overruled the same. It was further held that the provisions of Section 9(1) and also its reincarnate in the form of Section 9(1)(b) as a result of amending Act No. 11 of 1984 as also the provisions of Section 4B of the Punjab General Sales Tax Act, 1948 were intra vires. In view of this authoritative pronouncement on the scope and ambit of Section 9 of the Haryana Act, it cannot be held that the taxing event there under is the sale made by the petitioners to the exporters. The incidence of tax falls on the transactions of purchase of goods by the petitioners in the State of Haryana. Tax has not been levied on the transactions of sale by the petitioners to the exporters. The clear and unambiguous language of Section 9 is not susceptible to the interpretation that the tax thereunder is levied on the transactions of sale in the course of trade or commerce within the meaning of Sub-sections (1) and (3) of Section 5 of the Central Act. Section 24 of the Haryana Act carves out exceptions one of which incorporates the principles enshrined in Section 9 of the said Act. Section 27 defines "taxable turnover". The State Legislature was fully competent under Article 246(3) of the Constitution of India to legislate regarding taxes on the purchase and sale of goods as enumerated in entry 54 of List II of the Seventh Schedule to the Constitution of India. They are not repugnant to Section 5(3) of the Central Act. The incidence of taxation under the two sections is entirely different.

16. It has not been shown as to how Sections 9, 24 and 27 of the Haryana Act infringe Articles 19(1)(g) and 300A of the Constitution of India. It is well-settled that imposition of reasonable sales or purchase tax does not violate the provisions of Articles 19(1)(g) and 300A of the Constitution of India.

17. Section 9 of the Haryana Act does not in any way violate Article 14 of the Constitution of India. A concession has been extended by this provision to dealers who directly export goods out of the territory of India. Such dealers do not utilise the services of any other agency or export house for exporting their goods out of the territory of India. The State Legislature in its wisdom exempted the raw material used in the manufacture of goods exported out of India within the meaning of Sub-section (1) of Section 5 of the Central Act and have not extended this benefit to the purchase of raw material used in the manufacture of goods ultimately exported out of India not by the dealer but an export house within the meaning of Sub-section (3) of Section 5 of the Central Act. Generally speaking, courts are not concerned with the policy underlying a taxing statute or whether a particular tax could have been imposed in a different way or in a way

that the court might think more just and equitable. The amount, the rate and the selection of the subject-matter of tax, of course, within its legislative competence, is a matter exclusively within the legislative judgment. The economic wisdom of a tax is within the exclusive province of the legislature. The purchases of goods which are exported out of India by the dealers directly and the purchases of goods which, in the ultimate analysis, go out of the shores of the country, through the aegis of export houses form two separate and distinct classes based on an intelligible differentia. It seems that the Haryana Legislature wanted to encourage dealers to directly export their goods so that they could be sold at reasonable prices in the fiercely competitive international market. The goods which are routed to the foreign trade through the export houses are saddled with the profits and service charges of the export houses and become costlier than the goods exported directly by the dealers. There is no discriminatory treatment between the two. In deciding whether a taxation law is discriminatory or not, it is necessary to bear in mind that the State has a wide discretion in selecting persons or objects it will tax and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only when within the range of its selection the law operates unequally and that cannot be justified on the basis of any valid classification that it would be violative of Article 14 of the Constitution of India. The power of the legislature to classify is of wide range and flexible so that it can adjust its systems of taxation. In determining the constitutional validity of a taxing statute on the anvil of Articles 14, 19 and 300A of the Constitution of India the Court has to keep in mind the solitary principle enunciated by the final Court in *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, that the power conferred on the court to strike down a taxing statute, if it contravenes the provisions of Articles 14, 19 or 301 has to be exercised with circumspection, bearing in mind that the power of the State to levy taxes for the purpose of governance and for carrying out its welfare activities is a necessary attribute of sovereignty and, in that sense, it is a power of paramount character.

18. There is another decision of the final Court in *T.G. Venkataraman, etc. Vs. State of Madras and Another*, which has a direct bearing on the issue. In that case, the assessee had challenged the notifications issued by the State Government under Sections 59(1) and 17(1) of the Madras General Sales Tax Act, 1959, whereby the transactions of sale of cane jaggery became liable to sales tax and sale of palm jaggery remained exempt from liability to pay sales tax with effect from 1st January, 1968. The notification u/s 59(1) received legislative sanction by Madras Act No. 2 of 1968. These notifications were challenged on the ground that they discriminated between sales of similar articles. This contention was not accepted and their Lordships of the Supreme Court held that:

cane jaggery and palm jaggery were not commodities of the same class; the methods of their production were different; they reached the consumers through different channels of distribution ; the price at which they were sold differed; and

they were consumed by different sections of the community. In imposing liability to tax on transactions of sale of cane jaggery and in exempting sales of palm jaggery, no unlawful discrimination denying the guarantee of equal protection of the laws was practised.

19. The principle of reasonable classification, which is included in the doctrine of equality, is also applicable to taxation laws. There is a reasonable classification between the dealers who are direct exporters and the dealers who sell their goods through exporters. Similar differentia has been accepted in *T.G. Venkatamman's case* [1969] 24 STC 1 (SC) by the final Court. There is a reasonable nexus between the classification and the object to be achieved. The securing of adequate finance to the States to carry on their administration, maintenance of law and order and promotion of developmental and welfare activities is the object of taxation. So, the attack on the ground of discrimination also fails.

20. It was contended that Section 5(3) of the Central Act was only an extension of Section 5(1) of that Act. It was in the nature of a proviso to the principal clause contained in Sub-section (1) of Section 5. Both form part of the same integral whole, i.e., Section 5. Sub-section (3) of Section 5 cannot exist independently of Sub-section (1) of Section 5. Therefore, Sections 9 and 24 of the Haryana Act should be interpreted in the light of this construction. Then the use of expression "in the course of export" as envisaged by Sub-section (1) of Section 5, by necessary implication, will include the sales and purchases of goods made in the course of export as envisaged by Sub-section (3) of Section 5. We are not impressed by this argument. Parliament enacted Section 5 in pursuance of powers vested in it by Clause (2) of Article 286 of the Constitution of India. It formulated a principle for determining when a sale or purchase of goods took place in the course of export of goods out of the territory of India and enshrined this principle in Sub-section (1) of Section 5. When the final Court interpreted the expression "in the course of export" in *Serajuddin and Others Vs. The State of Orissa*, Parliament formulated another principle and incorporated the same in Section 5 in the form of Sub-section (3). It was devised to mitigate the difficulties of small and medium manufacturers and traders who, for the export of their goods, have to depend on so experienced trade houses who possess the special expertise of carrying on export trade. It was provided that the last sale or purchase preceding the sale or purchase occasioning the export of goods out of the territory of India shall also be deemed to be a sale or purchase in the course of export. This principle is not a corollary of the first one incorporated in Section 5(1). It deals with an entirely different situation. The apex Court had held that sales by the manufacturers or traders to the exporters, who sold those goods to the foreign buyers, even if inextricably connected with the final sales, were not sales and purchases in the course of export. It was thereafter that the second principle declaring the last sale or purchase preceding the sale or purchase of goods occasioning their export out of the territory of India was deemed to be sales in the course of export was framed. This principle is not an extension of the

first one, nor is Sub-section (3) a proviso to Sub-section (1) of Section 5 of the Central Act. The two principles are separate and independent of each other. By no acceptable canon of interpretation the provisions of Sub-section (3) of Section 5 can be transplanted in Sub-section (1) of Section 5 as used in Sections 9 and 24 of the Haryana Act. The decision of the final Court in Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, relied upon by the petitioners, does not in any way support this contention. In that case, their Lordships had explained the ambit and scope of Sub-section (3) of Section 5 of the Central Act after upholding its constitutional validity and held that Sub-section (3) of Section 5 formulates a principle of general applicability in regard to penultimate sales provided they satisfied the specified conditions mentioned therein and it does not at all create a legal fiction. The question as to whether Sub-section (3) of Section 5 was only an extension of or a proviso to Sub-section (1) of Section 5 of the Central Act was neither canvassed nor decided in that case. Sub-section (3) had been enacted and incorporated in Section 5 of the Central Act by the Central Sales Tax (Amendment) Act, 1976 (No. 103 of 1976) with effect from 1st April, 1976. Before that date, in Sections 9, 24 and 27 of the Haryana Act the expression "in the course of export out of the territory of India" had been used. After the incorporation of Sub-section (3) in section 5 of the Central Act, the Legislature of the State of Haryana, by Act No. 44 of 1976, amended sections 9, 24 and 27 with effect from April 1, 1976 and substituted the expression "in the course of export out of the territory of India" with the words "in the course of export out of the territory of India within the meaning of Sub-section (1) of Section 5 of the Central Sales Tax Act, 1956". The legislature in its wisdom consciously extended the benefit of exemption from purchase tax u/s 9 of the Haryana Act to the purchases of certain goods which were used in the manufacture of other goods and the manufactured goods, as the case may be, were sold to foreign buyers. They did not want to extend this concession to the purchases of goods sold to the exporters and then exported out of the territory of India. As seen earlier, this was within the legislative competence of the State Legislature. This express taxation policy of the State Legislature, which is otherwise valid, cannot be defeated by resort to any abstract rules of construction.

21. For the foregoing reasons, we find no merit in these writ petitions. We also affirm the ratio in Murli Manohar's case STI 1981 P & H 112. The writ petitions are dismissed but with no order as to costs.