

(2005) 10 AP CK 0055

In the Andhra Pradesh High Court

Case No : Tax Revision Case No's. 153, 154, 158, 163, 167, 170, 171, 172, 173, 174, 175, 177, 178, 179, 180, 181, 184, 185, 186, 189, 191, 194, 195, 196, 197, 199, 200, 201, 202, 203, 204, 205, 207, 209, 210 and 212 of 2004

State of Andhra Pradesh

APPELLANT

Vs

Gouri Shankar Modern Rice Mill

RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 20(2), 5, 5(1), 5(2), 5(5)
Central Sales Tax Act, 1956 — Section 3, 4, 5

Citation : (2006) 147 STC 370

Hon'ble Judges : Ramesh Ranganathan, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : A.V. Krishna Koundinya and K. Raji Reddy, for the Appellant; V. Bhaskar Reddy and P. Srinivasa Reddy, for the Respondent

Judgement

Ramesh Ranganathan, J.—The question of law which arises for consideration, in these batch of tax revision cases filed by the State of A.P. against the order of the Sales Tax Appellate Tribunal in T, A. Nos. 894 of 2002 and batch dated March 31, 2004, is:

Whether gunnies which have suffered tax within the State of A.P. can, u/s 6-C of the Andhra Pradesh General Sales Tax Act, 1957 again be subjected to tax when they are sold along with the contents, despite the prescription in entry 19 of the First Schedule that gunnies, sold with or without its contents, are liable to be taxed only at the point of first sale in the State ?

2 Facts, in brief, are that the respondents, in these batch of tax revision cases, are rice millers and registered dealers under the APGST Act. In respect of some of the assesseees, the Commercial Tax Officers finalized assessments exempting the value of gunnies purchased from local registered dealers in the State. The contention, that under entry 19(iii) of the First Schedule to the APGST Act

gunnies were taxable at the first sale point, was accepted by the assessing authorities and tax was levied only at one per cent u/s 5A of the APGST Act. The Deputy Commissioners (CT) took up revision of assessment, u/s 20(2) of the APGST Act, in so far as it related to exemption of second sale of gunnies from being taxed and, invoking Section 6-C of the APGST Act, 1957 revised the assessment levying tax at four per cent on the turnover of gunnies at the same rate of tax as applicable to the rice contained therein. Aggrieved thereby, the dealers preferred appeals before the Sales Tax Appellate Tribunal. In respect of a few other assesseees, the Commercial Tax Officers themselves followed the reasoning of the Deputy Commissioners (CT) and levied tax at four per cent on the turnover of gunnies sold along with rice. The Deputy Commissioner (CT) dismissed the appeals preferred against such orders of assessment. Aggrieved thereby, the dealers preferred appeals before the Sales Tax Appellate Tribunal (S. T. A. T.). The S. T. A. T. by order dated March 31, 2004 held that Section 6-C of the APGST Act would not apply, to gunnies which had already suffered tax within the State and that APGST suffered gunnies were not liable to be taxed again when they were sold along with rice to the Food Corporation of India.

3. Aggrieved thereby the present batch of T.R.Cs., all of which relate to the assessment years 1997-98 to 2000-2001, are filed by the State of Andhra Pradesh.

4. Sri K. Raji Reddy, Special Standing Counsel for Commercial Taxes, would contend that the non obstante clause in the amended Section 6-C is "notwithstanding anything contained in Sections 5, 5F, 6 and Section 6A" of the Act and when packing material is sold along with goods, it shall suffer tax at the rate at which its contents are to be taxed notwithstanding what has been provided for in Section 5(1) read with the First Schedule to the APGST Act. Learned Special Standing Counsel would submit that, while Section 5(1) is subject to other provisions of the APGST Act and requires tax to be paid at the rates of tax and at the points of levy specified in the Schedules, Section 6-C which relates to levy of tax on packing material is notwithstanding anything contained in Section 5. The rate of tax payable on packing material, when sold along with the goods, would therefore be the same as that of the goods packed or filled, irrespective of whether or not packing material had earlier suffered tax within the State. Learned Special Standing Counsel would submit that though the point of levy is not specifically mentioned in Section 6-C, which only mentions the rate of tax, the point of levy shall be deemed to have been included in the substantive provision of Section 6-C in view of the non obstante clause contained therein. According to the learned Special Standing Counsel, Section 6-C is also a charging section and has an overriding effect over Section 5 (1) of the Act. According to the learned Special Standing Counsel, Section 6-C is divisible into three distinct parts, viz., (1) Overriding provision with non obstante clause employing the words "notwithstanding anything contained in Sections 5, 5F, 6 and 6-A" ; (2) Substantive provision prescribing that "the rate of tax on packing material sold with the goods shall be the same as that of goods packed or

filled" ; and (3) Deeming provision in the form of "whether or not there is separate sale or agreement for sale for the packing material and the goods packed or filled".

5 Learned Special Standing Counsel would further submit that, when gunnies are sold with rice, the deeming provision in Section 6-C would come into operation and since rice is taxed at four per cent, the gunnies which contain rice are also required to be taxed at four per cent. Learned counsel would place reliance on K. C. P. Ltd. v. Commercial Tax Officer [2002] 126 STC 303 (AP) : [2002] 34 APSTJ 198 Premier Breweries Vs. State of Kerala, and Associated Cement Companies Ltd. v. Government of Andhra Pradesh [2001] 121 STC 201 (AP) : [2000] 31 APSTJ 149.

6 Sri V. Bhaskar Reddy, learned Counsel for the respondents, would support the order of the Sales Tax Appellate Tribunal and submit that the assessee had purchased empty gunnies from registered dealers within the State paying sales tax thereon, they had sold rice to FCI along with gunnies and as gunnies, with or without goods, are exigible to tax at the point of first sale within the State, the turnover relating to gunnies is not exigible to tax once again. According to the learned Counsel, Section 6-C of the APGST Act would have no application when gunnies have already been subjected to tax as it does not provide for a situation, where packing material is required to be taxed again, even when it had earlier suffered tax within the State. Learned counsel would contend that, under entry 19 of the First Schedule, there is only one commodity, i.e., "gunnies". When it is sold without contents, a particular rate of tax is prescribed and when the same commodity is sold with contents, the rate of tax is the one applicable to its contents. The point of levy, in both situations, is at the point of first sale within the State. When gunnies have already suffered tax under the APGST Act, at the point of first sale within the State, and if the very same gunnies are used for the purpose of sale of rice, it cannot be taxed again as it would then amount to multi-point levy of tax on "gunnies" contrary to what has been specifically provided for in the First Schedule under the heading "goods in respect of which single point tax is leviable u/s 5", whereunder, if gunnies are sold without contents for the first time in the State it attracts four per cent and similarly if gunnies are sold along with contents for the first time in the State, it shall suffer tax at the rate at which its contents are liable to tax. Learned counsel, while conceding that gunnies when purchased from outside the State or manufactured within the State and sold for the first time with its contents, would suffer tax at the same rate at which its contents are to be charged as it amounts to first sale of gunnies within the State, would however contend that in cases where gunnies purchased are those which have already suffered tax, under the APGST Act, and the very same gunnies are used for sale of rice, it cannot be subjected to tax again u/s 6-C of the APGST Act. Learned counsel would submit that Section 6-C of the APGST Act prescribes only the rate of tax on packing material and would apply only when the packing material is liable to tax. If the packing material used, is not liable to tax, it cannot be said that, by virtue of Section 6-C, it can again be

subjected to tax. Learned counsel would submit that when the Legislature deliberately did not mention the words "point of levy" in Section 6-C of the APGST Act, taxing statutes could not be interpreted by adding words thereto so as to make out some presumed object of the Legislature, as the law is well-settled that in case of doubt, an interpretation which is beneficial to the taxpayer must be adopted. Reliance is placed by the learned Counsel on "State of Bombay v. Automobile and Agricultural Industries Corporation [1961] 12 STC 122 (SC)", in this regard.

7. Learned counsel would submit that sale of gunnies, by the respondents, are secondary sales as the gunnies were purchased from registered dealers within the State and therefore the value of gunnies, used as containers for rice, could not be taxed again at their hands. Learned counsel would further submit that Section 6-C, unlike Sections 5, 5-A, 6 and 6-A, is not a charging section even by legal fiction and would place reliance on Govind Saran Ganga Saran v. Commissioner of Sales Tax [1985] 60 STC 1 wherein the Supreme Court held thus:

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

8 Learned counsel would submit that, under the unamended Section 6-C, there was a deemed sale of packing material along with its contents and amendment to Section 6-C has only resulted in its being made explicit as it is now clearly provided that sale of goods would include sale of the containers which contain the goods sold. Learned counsel would submit that since Section 6-C is not a charging section, it does not apply to second sale of gunnies whether sold with, or without, its contents. Learned counsel would also submit that if Section 6-C were interpreted to include second sale of gunnies, it would amount to gunnies being taxed at multiple points which was not the intention of the Legislature since gunnies are included in the First Schedule and not in the Sixth Schedule. Learned counsel would submit that, except for the Sixth Schedule, all other Schedules to the APGST Act relate to goods which are exigible to single point tax and if the Legislature intended to tax gunnies at multi-points, it would have been included in the Sixth Schedule instead of under the First Schedule to the APGST Act.

9 The Sales Tax Appellate Tribunal (hereinafter referred to as, "the Tribunal"), relying on the judgment of this court in Raasi Cement Ltd. v. Commercial Tax Officer [1997] 106 STC 169 : [1997] 24 APSTJ 100 held that even after amendment of Section 6-C, the decision of the Supreme Court in Raj Steel and Others Vs. State of A.P. and Another, holds good and that the burden lies on the assessing officers to establish that the price of the container is a component of

the sale price of the contents and that it is necessary for the assessing authority to go into the question of ingredients of sale or agreements for sale of container, where contents are packed and sold with the packing material, for the purpose of taxing the container under the amended Section 6-C also. The Tribunal held, that u/s 6-C only the rate of tax on packing material has been prescribed and would apply only when gunnies were sold for the first time along with the goods at the rate applicable to the goods contained in it, that Section 6-C did not provide that even if the packing material had already suffered tax it should be taxed again, whenever it is sold along with the goods, at the rate at which the goods are to be charged and if it were to be so interpreted, it would yield absurd results, and may well result in a situation where the very same gunny may have to suffer tax several times whenever it is used though gunnies were treated as single point tax goods.

10 The Tribunal relied on *Raj Steel and Others Vs. State of A.P. and Another*, wherein the Supreme Court held that where the packing material is an independent commodity and the packing material and its contents are sold independently, packing material is liable to be taxed on its own footing and whether a transaction for sale of packing material is an independent transaction or not would depend upon several factors. The Tribunal held that packing material, in the batch of cases before it, i.e., "gunnies" satisfied five such factors mentioned in the judgment in *Raj Steel and Others Vs. State of A.P. and Another*, . It was a commodity having its own identity and was separately classified in the Schedule, it would not undergo any change either at the time of packing or at the time of using the content, it was capable of being reused after the contents had been consumed, it was used for convenience of transport and the quantity of goods was not dependent on the packing. The Tribunal held that the mere fact that the consideration for the packing material had merged with the consideration for the product, would not make the sale of gunnies an integral part of the sale of the product.

11. The Tribunal expressed its inability to agree with the contention that Section 6-C is deemed to have covered the point of levy also in view of the non obstante clause, and held that in the absence of a specific mention regarding the point of levy in Section 6-C of the APGST Act, it could not be said that in view of the non obstante clause, it covered the point of levy also. The Tribunal held that the non obstante clause had been used in Section 6-C with a view to convey that irrespective of the rate of tax fixed, either in the sections or the Schedules or anywhere in the APGST Act, the rate of tax shall be the same rate as applicable to the contents, and therefore APGST suffered gunnies were not liable to be taxed again when these gunnies were sold along with rice to F.C.I. The Tribunal however made it clear that if the dealers had already collected tax on the value of gunnies also from the Food Corporation of India, they were not entitled for refund of tax.

12. Before we proceed to examine the respective contentions, it is necessary to

refer briefly to the provisions of the APGST Act more particularly Section 6-C, both prior to and after its amendment.

13. Section 6-C was introduced by the APGST (Amendment) Act (Act No. 11 of 1984), and then read as follows:

6-C. Levy of tax on packing material.—Notwithstanding anything in Sections 5 and 6-A, where goods packed in any materials are sold or purchased, the materials in which the goods are so packed shall be deemed to have been sold or purchased along with the goods and the tax shall be leviable on such sale or purchase of the materials at the rate of tax, if any, as applicable to the sale, or, as the case may be, purchase of goods themselves.

14 In *Raj Steel and Others Vs. State of A.P. and Another*, the Supreme Court held that Section 6-C provides, by legal fiction, that the packing material shall be deemed to have been sold along with the goods, and although there was no sale of packing material it would be deemed that there was such a sale, in which event, Section 6-C declared that tax would be leviable on such deemed sale of the packing material at the rate of tax applicable to the sale of the goods themselves. The Supreme Court held that Section 6-C could, at best, be regarded as a provision by way of clarification of the existing legal situation, and the contention that a rate applicable to the packing material in the Schedule should be applied to the sale of such packing material in a case u/s 6-C, could not be accepted since in fact that there was no such sale of packing material and it was only by legal fiction, and for a limited purpose, that such sale could be contemplated.

15 Section 6-C was substituted, by A.P. Act No. 22 of 1995, with effect from April 1, 1995. The amended Section 6-C reads as follows:

6-C Levy of tax on packing material.—Notwithstanding anything contained in Section 5, Section 5F, Section 6 and Section 6A, the rate of tax on packing material sold with the goods shall be the same as that of the goods packed or filled, whether or not there is separate sale or agreement for sale for the packing material and the goods packed or filled.

16 In *Raj Steel and Others Vs. State of A.P. and Another*, the Supreme Court held that a transaction of sale may consist of a sale of the product and a separate sale of the container housing the product with respective sale considerations for the product and the container separately ; or it may consist of a sale of the product and a sale of the container but both sales being conceived of as integral components of a single sale transaction ; or what may yet be a third case, it may consist of a sale of the product with the transfer of the container without any sale consideration thereof. The question in every case would be a question of fact as to what are the nature and ingredients of sale.

17 When the Supreme Court decided *Raj Steel and Others Vs. State of A.P. and Another*, on May 16, 1989, referring to the three modes of the sale of contents

and the containers, the unamended Section 6-C was in force and the commodity "gunnies" was enumerated under entry 157 of the First Schedule to the APGST Act. It was subsequently, by Act No. 30 of 1997, that entry 157 was omitted with effect from May 12, 1997 and "gunnies" were brought under entry 19(iii) of the First Schedule to the APGST Act under two distinct and different sub-headings, namely, "gunnies without contents" under sub-entry (a) and "gunnies with contents" under sub-entry (b).

18. It would be appropriate to refer, in juxtaposition, to the provisions of Section 6-C as it stood before its amendment and as it now stands after its amendment.

Unamended provision	Amended provision
6-C. Levy of tax on packing material. Notwithstanding anything in Sections 5 and anything contained in 6-A, where goods packed in Section 5, Section 5F, any materials are sold or Section 6 and Section 6A, purchased, the materials the rate of tax on packing in which the goods are so material sold with the goods packed shall be deemed to shall be the same as that of have been sold or purchased the goods packed or filled, along with the goods and the whether or not there is tax shall be leviable on such separate sale or agreement sale or purchase of the for sale for the packing materials at the rate of tax, material and the goods if any, as applicable to the packed or filled. sale, or, as the case may be, purchase of goods themselves.	6-C. Levy of tax on packing material. Notwithstanding anything in Sections 5 and anything contained in 6-A, where goods packed in Section 5, Section 5F, any materials are sold or Section 6 and Section 6A, purchased, the materials the rate of tax on packing in which the goods are so material sold with the goods packed shall be deemed to shall be the same as that of have been sold or purchased the goods packed or filled, along with the goods and the whether or not there is tax shall be leviable on such separate sale or agreement sale or purchase of the for sale for the packing materials at the rate of tax, material and the goods if any, as applicable to the packed or filled. sale, or, as the case may be, purchase of goods themselves.

19. Sri K. Raji Reddy, learned Special Standing Counsel would place reliance on Premier Breweries Vs. State of Kerala, to contend that as Section 5(5) of the Kerala General Sales Tax Act is in pan materia with the amended Section 6-C of the APGST Act, 1957 the APGST suffered gunnies are liable to be taxed again when they are sold along with their contents. On the other hand, Sri V. Bhaskar Reddy, learned Counsel for the respondents, would place reliance on Raasi Cement Ltd. [1997] 106 STC 169 : [1997] 24 APSTJ 100 wherein this court, referred to Section 5(3-D) of the Karnataka Sales Tax Act, 1957 which had come up for consideration before the apex Court in Vasavadatta Cements v. State of Karnataka [1996] 101 STC 168. In Raasi Cement Ltd. [1997] 106 STC 169 : [1997] 24 APSTJ 100 this court, on examining the amended Section 6-C with reference to Section 5(3-D) of the Karnataka Sales Tax Act, 1957 held that notwithstanding the phraseology of the amended Section 6-C, the assessing authority had to determine in each case the ingredients of the contract of sale relating to containers and also the intention of the parties in accordance with the judgment in Raj Steel and Others Vs. State of A.P. and Another, .

20. In order to appreciate the rival contentions in this regard, it is appropriate to extract the relevant provisions, contained in the Karnataka Sales Tax Act, the Kerala General Sales Tax Act and the Andhra Pradesh General Sales Tax Act, in juxtaposition:

— Section 6-C of Section 5(5) of the Section 5(3-D) of the the APGSTAd Kerala

Notwithstanding anything contained in Sub-section (1) or in this Act, where in Section 5, Sub-section (2), goods sold or section 5F, but subject to sub-section (6), where goods contained in containers or are rate of tax on containers or are packed in any packing material in any packing materials, materials, liable to sold with the the rate of tax and tax under this Act, goods shall be the point of levy the rate of tax and the same as that applicable to such the point of levy of the goods packed containers or packing applicable to turn or filled, whether materials, as the case - over of such or not there is may be, shall, whether the containers or separate sale or price of the containers or packing materials, agreement for sale the packing materials is as the case the for the packing charged separately or not, containers or the material and the be the same as those packing materials goods packed or applicable to goods shall, or whether the price filled. contained or packed, of the containers Note : This section and in determining or of the packing is substituted by turnover of the goods materials may be, Act No. 22 of 1995 the turnover in or whether is charged with effect from from tax, then, the for the same as those April 1, 1995. materials shall be applicable to goods included therein. Section contained or packed: Where the sale or purchase Proviso that no of goods contained in any tax under this sub-section (6). sale or purchase sections shall be containers or packed leviable if in any packing materials the sale separately is exempt respect of or not, be or purchase the containers charge of of goods contained in such containers or packing such containers materials shall also or packed in such packing be exempt from tax. materials is exempt from tax under this Act. Note: Inserted with effect From April 1, 1986.

21. Section 5(5) of the Kerala General Sales Tax Act, specifically mentions that the rate of tax and point of levy shall be the same as applicable to the goods contained in the packing material, and that in determining the turnover of the goods, the turnover in respect of the containers or packing materials shall be included therein (Emphasis supplied). Similarly Section 5(3-D) of the Karnataka Sales Tax Act provides that the rate of tax and the point of levy applicable to the turnover of the packing material shall be the same as applicable to the goods packed, whether the packing material has already been subjected to tax under the Act or not (emphasise supplied). Section 6-C neither provides for the point of levy and the determination of turnover as prescribed in Section 5(5) of the Kerala General Sales Tax Act nor does it provide, as is prescribed in Section 5(3-D) of the Karnataka Sales Tax Act that, whether the packing material has already been subjected to tax under the Act or not, the rate of tax and the point of levy applicable to the container shall be the same as the goods placed therein.

22. The Tribunal held that the A.P. State Legislature did not choose to specifically state that irrespective of the point of levy, packing material is to be charged again when it is sold along with the goods at the same rate at which the goods

are to be charged, while the Karnataka State Legislature, as early as on April 1, 1986 had, in Section 5(3-D), specifically prescribed that the rate of tax and the point of levy applicable to the turnover of the packing material shall be that of its contents, whether the packing material had already been subjected to tax or not, the A.P. State Legislature did not choose to introduce such words in Section 6-C of the APGST Act, obviously for the reason that they did not intend to tax packing material once again when it was sold along with the goods, in case the packing material had suffered tax earlier under the APGST Act. The Tribunal held that if the A.P. State Legislature had intended to levy tax on packing material, more than once, they would have specifically provided for the same in the amended Section 6-C of the APGST Act, which came into force from April 1, 1995 and that the law laid down in Premier Breweries Vs. State of Kerala, had no application to the amended Section 6-C of the APGST Act, as the principle laid down in Raj Steel and Others Vs. State of A.P. and Another, had not been overruled and had only been distinguished for the reason that the corresponding provisions in the Kerala General Sales Tax Act and the A.P. General Sales Tax Act were not similar. The Tribunal held that in so far as the principle laid down in Raj Steel and Others Vs. State of A.P. and Another, is concerned, this court in Raasi Cement Ltd. [1997] 106 STC 169 : [1997] 24 APSTJ 100 had held that the principles laid down therein holds good even after amendment of Section 6-C of the APGST Act.

23. Before examining the question as to whether absence of the words, "... and the point of levy applicable...and in determining the turnover of the goods the turnover in respect of the containers or packing materials shall be included therein" in Section 5(5) of the Kerala General Sales Tax Act and "...and the point of levy applicable...whether the container or the packing materials have already been subjected to tax under this Act or not ..." in Section 5(3-D) of the Karnataka Sales Tax Act, in Section 6-C of the APCST Act would, as has been held by the Tribunal, result in APGST suffered gunnies not being liable to be taxed again u/s 6-C, when they are sold along with its contents, the judgments relied on by both counsel would require to be considered.

24 In Vasavadatta Cements [1996] 101 STC 168 the constitutional validity of Section 5(3-D) of the Karnataka Sales Tax Act, was in question. The Supreme Court held that the observation in Raj Steel and Others Vs. State of A.P. and Another, wherein the unamended Section 6-C of the APGST Act, was under consideration, was equally applicable to Section 5(3-D) of the Karnataka Sales Tax Act and the liability for sales tax, on the gunny bags used for packing the cement sold by the dealers, had to be considered having regard to the facts of each case, after determining what are the ingredients of the contract and the intention of the parties in accordance with the decision in Raj Sheel Raj Steel and Others Vs. State of A.P. and Another, .

25 The constitutional validity of amended Section 6-C was in question in Raasi Cement Ltd. [1997] 106 STC 169 : [1997] 24 APSTJ 100 and a declaration was

sought that the amended Section 6-C had no application in respect of transactions of sale or purchase of containers which were specifically dealt with under item 157 of the First Schedule. The division Bench of this court, while holding Section 6-C as a constitutionally valid piece of legislation, held:

Section 6-C provides that the rate of tax on packing material sold with the goods shall be the same as that of the packed or filled goods, whether or not there is separate sale or agreement for sale for the packing material and the goods packed or filled. Though neither the underlined words nor their substance was part of unamended Section 6-C of the Act, the purport of the same is incorporated in Section 5(3-D) of the KST Act, by enacting "whether the price of the container or of the packing material is charged for separately or not". This leads us to the enquiry as to whether the presence of those words will make any difference in interpreting Section 6-C. We are unable to accede to the contention of the learned Government Pleader that by incorporating the underlined¹ words in the impugned provision the enquiry into the question of fact with regard to ingredients of sale and intention of the parties, directed by the Supreme Court in *Raj Sheet's* case [1989] 74 STC 379 in each case is dispensed with and that in view of those words now it is not necessary for the assessing authority to go into the question of ingredients of sale or agreement for sale of container where contents (goods) are packed and sold with the packing material (container) and the intention of the parties for the purpose of taxing the container under the impugned provision as in *Vasavadatta Cements*" case [1996] 101 STC 168 the Supreme Court held:

...we are of the view that the High Court was in error in construing the provisions of Section 5(3-D) to hold that the Legislature has thought it fit and convenient to treat the sale of goods contained in a container as an integrated, single transaction of sale of the goods and that it makes it unnecessary to analyse the components of a particular sale and enter upon investigation to find out the real price at which the packing material is purported to have been sold, and separate it from the computation of the turnover regarding the particular goods which was packed in the packing materials or housed in the container...

That point is *res integra* and we cannot but hold that irrespective of incorporating the underlined¹ words in the impugned provision treating the first mode of sale on the same footing as the second mode of sale, noted above, wherein the price of the container is treated as a component of the sale price of the contents in goods packed or filled, the assessing authority is not absolved of the obligation of determining what are the ingredients of the contract and the intention of the parties in accordance with the decision of the Supreme Court in *Raj Shed's* case [1989] 74 STC 379 as also in *Vasavadatta Cements's* case [1996] 101 STC 168.

26. The question which arose for consideration, in *Premier Breweries Vs. State of Kerala*, was as to whether the value of packing material could be included in the value of its contents for the purpose of levy of tax u/s 5(5) and (6) of the Kerala General Sales Tax Act. The Supreme Court held that in *Vasavadatta Cements*

[1996] 101 STC 168 the court had overlooked the marked dissimilarity between pre-amended Section 6-C of the APGST Act and Section 5(3-D) of the Karnataka Sales Tax Act and that Sub-sections (5) and (6) of Section 5 of the Kerala General Sales Tax Act had to be construed uninfluenced by the decision in *Raj Steel and Others Vs. State of A.P. and Another*, . The Supreme Court held thus:

Moreover, the packing materials as such are not being taxed under Sub-section (5) of Section 5 of the Act. The subject-matter of tax are the goods packed in the containers. In calculating the turnover of the goods, packing materials will have to be taken into account. The packing materials will be taxed at the same rate and at the same point as the goods contained in the packing material. This is because the goods are sold packed in containers and are charged accordingly. This is a rule of computation of the turnover of the goods. If no tax is ultimately found leviable on the goods then no tax can be levied on the containers in which the goods are contained.

27. The constitutional validity of entry 18 of the First Schedule, as introduced by A.P. Act No. 27 of 1996 was the subject-matter of challenge in *Associated Cement Companies Ltd.* [2001] 121 STC 201 (AP) : [2000] 31 APSTJ 149. While upholding the vires of the said entry, the division Bench of this court held thus:

...The new Section 6-C introduced by Act No. 22 of 1995 is almost in *pari materia* with Sub-sections (5) and (6) of Section 5 of the Kerala General Sales Tax Act which was interpreted by the Supreme Court in *Premier Breweries v. State of Kerala* [1998] 108 STC 598. Sub-sections (5) and (6) of Section 5 of the said Act reads as under:

5(5) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), but subject to Sub-section (6) where goods sold are contained in containers or are packed in any packing materials, the rate of tax and the point of levy applicable to such containers or packing materials, as the case may be, shall, whether the price of the containers or the packing materials is charged separately or not be the same as those applicable to goods contained or packed, and in determining turnover of the goods, the turnover in respect of the containers or packing materials shall be included therein.

5(6) Where the sale or purchase of goods contained in any containers or packed in any packing materials is exempt from tax, then, the sale or purchase of such containers or packing materials shall also be exempt from tax.

The situation is the same here. The legal position enunciated above will apply with full force to the interpretation of Section 6-C and entry 18 of the First Schedule to the APGST Act. The decision in *Premier Breweries Vs. State of Kerala*, establishes beyond doubt that there is nothing anomalous or incongruous in prescribing the same rate of tax for the packing materials as well as the goods packed irrespective of the fact whether they are charged for and sold separately....

28. The constitutional validity of amended Section 6-C, of the APGST Act, was again the subject-matter of challenge in *K.C.P. Ltd. v. Commercial Tax Officer* [2002] 126 STC 303 : [2002] 34 APSTJ 198 and while rejecting the challenge, the division Bench of this court held:

...section 6-C of the APGST Act, unmistakably and without giving any scope for any other interpretation, has legislatively declared that the rate of tax on packing material sold with the goods should be the same as that of the goods packed or filled, whether or not there is separate sale or agreement for sale for the packing materials and goods packed or filled (emphasis supplied by the court).... Even if there is a separate agreement of sale in respect of the goods packed and the packing material, the assessing authority is left with no discretion to tax, the container and the goods packed separately by virtue of the deeming clause introduced in the provisions of Section 6-C of the APGST Act.... In *Premier Breweries Vs. State of Kerala*, on considering the provisions of Section 5(5) of the Kerala General Sales Tax Act which is in pari materia with the provisions of Section 6-C of the APGST Act and after referring to the two cases in *Raj Steel and Others Vs. State of A.P. and Another*, and *Vasavadatta Cements Vs. State of Karnataka* and another, the Supreme Court opined that the point of tax and rate of tax on containers and packing material shall be the same as that of the goods sold even where containers or packing materials are sold separately.

29. In none of the aforementioned judgments, has the question raised in the present batch of tax revision cases, arisen for consideration. It is therefore necessary to consider this question in the light of the scheme of the APGST Act and the provisions therein.

Non obstante clause:

30. Section 6-C has a non obstante clause. A non obstante clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over such other provisions of the Act as are mentioned in the non obstante clause. It is equivalent to saying that inspite of the provisions of the Act mentioned in the non obstante clause, the provision following it will have full operation or the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment or the provision in which the non obstante clause occurs. (Principles of Statutory Interpretation?9th Edition?Justice G.P. Singh ; *State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others*, . Normally the use of a phrase by the Legislature in a statutory provision like "notwithstanding anything to the contrary contained in this Act" is equivalent to saying that the Act shall not be an impediment to the measure. Use of such expression is another way of saying that the provision in which the non obstante clause occurs would wholly prevail over other provisions in the Act. Non obstante clauses are to be regarded as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of principal enacting provision to which the non obstante clause is attached. *State of Bihar and Others Vs. Bihar Rajya*

M.S.E.S.K.K. Mahasangh and Others, and Iridium India Telecom Ltd. Vs. Motorola Inc., . While interpreting a provision containing a non obstante clause it should first be ascertained what the enacting part of the section provides, on a fair construction of the words used according to their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in the other provisions which is inconsistent with the section containing the non obstante clause. (Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, ; A.V. Fernandez Vs. The State of Kerala,). A clause beginning with the expression "notwithstanding anything contained in some particular provision in the Act" is more often than not appended to a section in the beginning with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision of the sections mentioned in the non obstante clause. It is equivalent to saying that inspite of the provision of the sections, mentioned in the non obstante clause, the enactment following it will have its full operation. [The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another,].

31. On a natural and ordinary meaning being accorded and on a fair construction of the words used in the enacting part of Section 6-C it is clear that the rate of tax on packing material sold with the goods shall be the same as that of the goods packed or filled. As, in the present batch of cases, the rate of tax, on the rice sold to F.C.I. is four per cent the same rate of tax of four per cent shall be applicable to the gunnies sold along with the rice. Further, in view of the non obstante clause contained therein, the enacting part of Section 6-C shall, in the case of conflict, have an overriding effect over the provisions of Section 5(1) of the APGST Act.

32. Since levy of tax on packing material, u/s 6-C, is notwithstanding anything contained in Sections 5, 5-F, 6 and 6-A of the APGST Act, it is necessary to refer to those sections also:

5. Levy of tax on sales or purchases of goods.?(1) Save as otherwise provided in this Act, every dealer shall pay a tax under this Act for each year on every rupee of his turnover of sales or purchases of goods in each year irrespective of the quantum of his turnover at the rates of tax and at the points of levy specified in the Schedules.

[Sub-section (1) substituted for Sub-sections (1) and (2) by Act No. 4 of 1989]

(3) For the purpose of this section and the other provisions of this Act, the turnover which a dealer shall be liable to pay tax shall be determined after making such deductions from his total turnover, and in such manner as may be prescribed.

(4) The taxes under this section shall be assessed, levied and collected in such manner, as may be prescribed : Provided that:

(i) in respect of the same transaction, the buyer or the seller but not both, as determined by such rules as may be prescribed, shall be taxed:

(ii) where a dealer has been taxed in respect of the purchase of any goods, in accordance with the rules referred to in Clause (i) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him.

5F. Levy of tax on transfer of property in goods involved in the execution of works contract. Notwithstanding anything contained in Section 5 or Section 6, every dealer shall pay a tax under this Act for each year, on his turnover of transfer of property in goods whether as goods or in some other form, involved in the execution of works contract:

Provided that tax shall be paid at the rate of four paise on every rupee of his turnover pertaining to declared goods, if the goods have not suffered tax earlier, and no tax shall be payable on the turnover pertaining to declared goods, if such goods have suffered tax earlier under this Act and are transferred from the contractor to the contractee in the same form in which they were purchased by the contractor: Provided further that no tax shall be levied on the turnover of transfer of property in goods, specified in the Fourth Schedule to the Act, involved in the execution of works contract, if such goods are transferred from the contractor to the contractee in the same form in which they were purchased by the contractor:

Provided also that no such tax shall be leviable on the turnover of transfer of property in goods whether as goods or in some other form involved in the execution of works contract, if such transfer from the contractor to the contractee constitutes a sale in the course of inter-State trade or commerce u/s 3 or an outside the State sale u/s 4, or a sale in the course of import or export u/s 5 of the Central Sales Tax Act, 1956 but does not include the goods either obtained or purchased from other States and used in the execution of works contract:

Provided also that no tax shall be payable under this section on the turnover relating to the amounts paid to a sub-contractor as consideration for the execution of works contract whether wholly or partly subject to the production of proof that such sub-contractor is a registered dealer liable to tax under the Act and that the turnover of such amount is included in the return of turnover filed by such subcontractor.

6. Tax in respect of declared goods. Notwithstanding anything contained in Section 5, the sales or purchases of declared goods by a dealer shall be liable to tax at the rate, and only at the point of sale or purchase specified against each in the Third Schedule on his turnover of such sales or purchases for each year irrespective of the quantum of his turnover in such goods ; and the tax shall be assessed, levied and collected in such manner as may be prescribed:

Provided that where any such goods on which a tax has been so levied are sold

in the course of inter-State trade or commerce, and tax has been paid under the Central Sales Tax Act, 1956, in respect of the sale of such goods in the course of inter-State trade or commerce, the tax so levied, shall be reimbursed to the person making such sale in the course of inter-State trade or commerce, in such manner and subject to such conditions as may be prescribed.

6-A. Levy of tax on turnover relating to purchase of certain goods.:

Every dealer, who in the course of business:

(i) purchases any goods (the sale or purchase of which liable to tax under this Act) from a registered dealer in circumstances in which no tax is payable u/s 5 or u/s 6, as the case may be, or

(ii) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a person other than a registered dealer, and

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

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

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall pay tax on the turnover relating to purchase aforesaid at the same rate at which but for the existence of the aforementioned circumstances, the tax would have been leviable on such goods u/s 5 or Section 6.

Schedules?to be read as an extension of the section in the main act:

33. u/s 5(1) of the APGST Act the tax payable by a dealer on his sales turnover shall be at the rates of tax and at the points of levy specified in the Schedules. The Schedule is as much a part of the statute and is as much an enactment as any other part. ("Craies on statute law" Seventh Edition; "Statutory Interpretation" : Second Edition : F. A. R. Bennion). A Schedule is an extension of the section which includes it. Material is put in a Schedule because it is too lengthy or detailed to be conveniently accommodated in a section. It is often found convenient to incorporate part of the operative provisions of an Act in the form of a Schedule. The Schedule is often used to hive off provisions which are too long or detailed to be put in the body of the Act. (Statutory Interpretation : Second Edition : F. A. R. Bennion). To simplify the presentation of statutes it is the practise for their subject-matters to be divided wherever appropriate between sections and Schedules, the former setting out matters of principle and introducing the latter and the latter containing all matters of detail. This is purely a matter of arrangement and a Schedule is as much a part of the Statute and as much an enactment as is the section by which it is introduced. (Halsbury's Law of England, 4th Edition, Volume 44, para 822).

Expression "Notwithstanding" in contra distinction to the phrase "Save as

otherwise provided

34. Since the Schedules are parts of the relevant sections in the main enactment, the First Schedule to the APGST Act, must be held as part of Section 5. Section 5(1) starts with the words "save as otherwise provided in the Act".

35. The expression "save as otherwise provided by or under the Act" would mean, "save as otherwise expressly barred by or under the Act". (State of Rajasthan and Others Vs. Shri Noor Mohammad,). It is a simple provision which merely subjects the provisions of the subject section to the provisions of the other section. Where there is no clash, the phrase does nothing : if there is collision, the phrase shows that the other section is to prevail. The phrase provides no warranty of universal collision. (Clark (C&J) Ltd. v. Inland Revenue Commissioners [1973] 2 All ER 513). It is well settled that the expression "notwithstanding" is in contradistinction to the phrase "subject to", the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject. (Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram,).

36. Since both Sections 5(1) and the First Schedule would apply, save as otherwise provided in Section 6-C, and the provisions of Section 6-C, would apply, notwithstanding anything to the contrary in Sections 5(1) and the First Schedule, the conflict between Section 5(1) read with the First Schedule on the one hand and Section 6-C on the other, would necessitate (1) Section 6-C having full operation inspite of Sections 5(1) and the First Schedule ; and (2) Section 5(1) and the First Schedule yielding place to Section 6-C of the APGST Act. As a result, the rate of tax on gunnies shall be the same as that of the goods filled therein, i.e., rice, notwithstanding the prescription in entry 19(iii)(b) of the First Schedule that its point of levy shall be at the point of first sale in the State. Absence of the words, specified in Section 5(5) of the Kerala General Sales Tax Act, or Section 5(3-D) of the Karnataka Sales Tax Act, is therefore of no consequence and the application of Section 6-C cannot be restricted only to the point of first sale within the State.

37. Sri V. Bhaskar Reddy, learned Counsel for the respondents, would submit that the scope of Section 6-C is limited only to cases where the First Schedule prescribes different rates of tax for the goods and the packing material and in such a situation, in view of Section 6-C, the rate of tax applicable to the goods shall be the rate of tax applicable to the packing material. Learned counsel would contend that the provisions of Section 6-C should be read in context and must be held not to affect the point of levy prescribed in the First Schedule. We express our inability to agree with this submission. Section 5(1) specifically provides that the tax payable by a dealer shall be at the rates of tax and at the point of levy specified in the First Schedule. The non obstante clause in Section 6-C is notwithstanding anything contained in Section 5(1), (which would include the point of levy prescribed in the First Schedule). Similarly Section 5(1), (which would include the point of levy), is save as otherwise provided in Section 6-C.

Section 6-C would therefore apply notwithstanding the point of levy prescribed in the First Schedule.

38. Sri V. Bhaskar Reddy, learned Counsel for the respondents, would however, contend that such a construction would render the very prescription in entry 19(iii)(b) of the First Schedule redundant and that no provision of a statute, much less a fiscal statute, can be read in such a manner. Would not accepting this submission, we ask ourselves, result in adding words in Section 6-C, to the effect that "it shall apply only at the point of levy specified in the Schedule", which construction is equally impermissible ? Our answer is an emphatic yes. While different provisions of a taxing statute are to be harmoniously construed so as to give effect to all of them without reducing any part thereof redundant, it cannot, normally, go so far as to require words to be supplied to some of the provisions to bring about harmony. There is undoubtedly a conflict, and Section 6-C [in view of the non obstante clause and the expression "save as otherwise provided" in Section 5(1)], must prevail over the point of sale prescribed in entry 19(iii)(b) of the First Schedule.

39. The contention that Section 6-C is not a charging section cannot also be accepted. We are unable to appreciate the distinction sought to be made by Sri V. Bhaskar Reddy, learned Counsel for the respondents, between Sections 5, 5-B, 5-C, 5-F, 6 and 6-A on the one hand and Section 6-C on the other. The expression "shall pay tax" used in Sections 5, 5-B, 5-C, 5-F, and 6-A and "shall be liable to tax" used in Section 6 are not dissimilar to the expression "tax shall be levied and collected" as used in Section 6-C. Further the heading of Section 5 is "levy of tax on sale or purchase of goods", that of Section 5-A is "levy of tax on turnover", Section 5-F is "levy of tax on transfer of property in goods involved in the execution of works contract", Section 6-A is "levy of tax on turnover relating to purchase of certain goods" and Section 6-C is "levy of tax on packing material". Thus Sections 5, 5-A, 5-F, 6-A and 6-C are provisions which relate to levy of tax. If Sections 5 and 5-A are to be held as charging sections we see no reason, in the absence of any discernible distinction, to hold that Section 6-C is not.

40. Sri V. Bhaskar Reddy, learned Counsel for the respondents, would urge, rightly so, that the interpretation placed by us on Section 6-C would result in gunnies being taxed at multiple points. If that is what the Legislature intended, by providing a non obstante clause in Section 6-C, and in subjecting Section 5(1) to the other provisions of the APGST Act including Section 6-C, such a consequence would indeed be the result and must be accepted.

41. It is also true, as contended by Sri V. Bhaskar Reddy, learned Counsel for the respondents, that entry 19(iii) was inserted, in the First Schedule, by Act No. 30 of 1997 with effect from May 12, 1997 after Section 6-C was amended by Act No. 22 of 1995 with effect from April 1, 1995. As referred to supra, prior to May 12, 1997 "gunnies" were enumerated under entry 157 of the First Schedule and the point of levy then was also at the point of first sale in the State. The First

Schedule, when "gunnies" were under entry 157 and now under entry 19(iii), details goods in respect of which single point tax is leviable u/s 5. While bringing "gunnies" under entry 19(iii) from entry 157 with effect from May 12, 1997 the State Legislature did not choose to amend Section 6-C or to omit the non obstante clause therein. By Act No. 30 of 1997 "gunnies" are now classified as two sub-entries under entry 19(iii), "gunnies when sold without contents" under entry 19(iii)(a) and "gunnies when sold with contents" under entry 19(iii)(b). This sub-classification is obviously to bring gunnies, which are packing material, in tune with the requirements of Section 6-C. Since the point of levy of tax on gunnies, both prior to its amendment, under entry 157, and after the amendment with effect from May 12, 1997 under entry 19(iii), is at the point of first sale, nothing turns on its amendment by Act No. 30 of 1997, while interpreting Section 6-C of the APGST Act.

42. Sri V. Bhaskar Reddy, learned Counsel for the respondents, would submit that the interpretation placed on Section 6-C, by the Tribunal, is a possible interpretation beneficial to the taxpayer, and should therefore be accepted. Learned counsel would place reliance on the judgment in *State of Bombay v. Autorriobile and Agricultural Industries Corporation* [1961] 12 STC 122 wherein the Supreme Court held thus:

The courts in interpreting a taxing statute will not be justified in adding words thereto so as to make out some presumed object of the Legislature. It is settled law that in case of doubt, that interpretation of a taxing statute which is beneficial to the taxpayer must be adopted.

43. It is no doubt true that any ambiguity in the language of a provision in a tax/fiscal statute should be resolved in favour of the assessee. It is however well-settled that where the language of the section is clear and no ambiguity arises, it is not for courts to create an ambiguity by interpretation as preliminary to the grant of relief to the taxpayer to which he would not otherwise be entitled. (*General Commercial Corporation Ltd., Madras Vs. Commr. of Income Tax, Madras*, and *Commissioner of Wealth-tax, Bihar and Orissa Vs. Kripashankar Dayashanker Worah*,).

Hardship is of no consequence while interpreting provisions of a tax statute

44. Since the language of Section 6-C is plain and unambiguous, the provisions thereof must be enforced and it is, normally, not the concern of courts to examine its reasonableness or consider its consequences. In a taxing statute one has to look at what is clearly said. There is no equity about a tax. There is no intendment. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly on the language used (*Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64). If the meaning of the provision is reasonably clear, courts have no jurisdiction to mitigate harshness. [*Canadian Eagle Oil Co. v. King* [1945] 2 ALL ER 499 (HL) and *Inland Revenue Commissioners v. Ross and Coulter, Re Bladnoch Distillery*

Co. [1948] 1 ALL ER 616 (HL)]

45. Lord Halsbury as early as 1901, in *Cooke v. Charles A. Vogeler Co.* [1901] AC 102 (HL) stated the law:

...a court of law, has nothing to do with the reasonableness or unreasonableness of a provision of a statute except so far as it may hold it in interpreting what the Legislature has said. If the language of a statute be plain, admitting of only one meaning, the Legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should lead to absurd or mischievous results. If the language of this sub-section be not controlled by some of the other provisions of the statute, it must, since its language is plain and unambiguous, be enforced, and your Lordships' House sitting judicially is not concerned with the question whether the policy it embodies is wise or unwise, or whether it leads to consequences just or unjust, beneficial or mischievous.

46. In *Keshavji Ravji and Co. v. Commissioner of Income Tax* : [1990]183ITR1(SC) , the Supreme Court observed:

...As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the Legislature cannot then be appealed to whittle down the statutory language which is otherwise unambiguous. If the intendment is not in the words used it is nowhere else. The need for interpretation arises when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the Legislature....

Artificial and unduly latitudinarian rules of construction which, with their general tendency to "give the taxpayer the breaks", are out of place where the legislation has a fiscal mission.

47. After referring with approval to the aforesaid judgments, the Supreme Court in *Orissa State Warehousing Corporation Vs. Commissioner of Income Tax*, , held thus:

Be it noted that individual cases of hardship and injustice do not and cannot have any bearing for rejecting the natural construction by attributing normal meanings to the words used since "hard cases do not make bad laws".

In fine thus, a fiscal statute shall have to be interpreted on the basis of the language used therein and not de hors the same. No words ought to be added and only the language used ought to be considered so as to ascertain the proper meaning and intent of the legislation. The court is to ascribe the natural and ordinary meaning to the words used by the Legislature and the court ought not, under any circumstances, to substitute its own impression and ideas in place of the legislative intent as is available from a plain reading of the statutory provisions.

48. We therefore hold that gunnies which have suffered tax within the State of A.P. can, u/s 6-C of the APGST Act, again be subjected to tax when sold along with its contents despite the prescription in entry 19(iii) of the First Schedule that gunnies, sold with or without its contents, are liable to be taxed only at the point of first sale in the State.

49. These batch of tax revision cases are accordingly allowed and the order of the Sales Tax Appellate Tribunal set aside. There shall however be no order as to costs.