

**(1991) 07 GUJ CK 0005**  
**In the Gujarat High Court**

**Case No :** Special Civil Application No's. 6475 of 1987, 650 and 6010 of 1988

The Growth Leasing and Finance Ltd.

APPELLANT

Vs

State of Gujarat

RESPONDENT

**Date of Decision :** 16-07-1991

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 3, 4, 5  
Gujarat Sales Tax Act, 1969 — Section 87

**Citation :** (1992) 85 STC 25

**Hon'ble Judges :** S.D. Dave, J;A.P. Ravani, J

**Bench :** Division Bench

**Advocate :** S.N. Soparkar, for the Appellant; Adv.-General and Rekha Doshit, A.G.P. for Doshit and Co. and B.B. Naik, for the Respondent

## **Judgement**

A.P. Ravani, J.—The petitioners in Special Civil Application Nos. 6475 of 1987 and 650 of 1988 pray for declaration that the Gujarat Sales Tax (Amendment) Act, 1985 (Gujarat Act 14 of 1985) is ultra vires the Constitution of India and further pray for direction to the respondents not to enforce or act in furtherance of the said Act or to demand or to recover any tax from the petitioners on the basis of the said provisions. Petitioner in Special C.A. No. 6010 of 1988, in addition to the aforesaid prayers, prays for declaration that the Constitution (Forty-sixth Amendment) Act, 1982, is beyond the legislative competence of the Parliament and is violative of articles 14, 19(1)(g), 265, 300A and 301 of the Constitution of India. Alternatively, it is prayed that article 366(29A) be declared as beyond the legislative competence of the Parliament and violative of articles 14, 19(1)(g), 265, 300A and 301 of the Constitution of India.

2. At the request, and with the consent, of the learned Advocates appearing for the parties, all the three petitions have been heard together and are being disposed of by this common judgment and order.

3. With a view to overcome the difficulties encountered by different State Legislatures in imposing and levying sales tax on certain transactions the

parliament amended the Constitution by Constitution (Forty-sixth Amendment) Act, 1982. In particular the Parliament introduced clause (29A) in article 366. By introduction of this clause, the Parliament enlarged the definition of "sale". The transactions which were not strictly speaking "sale" were sought to be brought within the scope of the expression "sale or purchase of goods". Clause (29A) introduced in article 366 by the Constitution (Forty-sixth Amendment) Act, 1982, reads as follows :

"(29A) "tax on the sale or purchase of goods" includes -

- (a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
- (b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;
- (d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
- (f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration;

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made."

It may be noted that together with the aforesaid amendment, the Parliament also inserted other items in the Union List in the Seventh Schedule, i.e., entry 92B was inserted which enabled the Central Government to levy tax on the consignment of goods where such consignment takes place in the course of inter-State trade or commerce. Articles 269 and 286 were also suitably amended. In substance the object of the aforesaid amendment was to see that the State revenues are augmented to a considerable extent.

4. After the aforesaid amendment of the Constitution, the State Legislature of Gujarat passed the Gujarat Sales Tax (Amendment) Act, 1985. By the said amendment, definition of "dealer" [section 2(10)], definition of "goods" [section 2(12)] (sic) and the definition of "sale" [section 2(28)] have also been amended while provision is made with regard to "specified sale" by introducing its

definition in section 2(30-C). Definition of "turnover of specified sales" has been provided in section 2(36-A). As far as the liability of a dealer to pay tax on the turnover of specified sales is concerned, provision has been made by inserting new section i.e., section 3-A. The amendment brought about by the State Legislature widened the definition of "sale". In substance the State legislation has been brought in line with the constitutional amendment introduced by way of Constitution (Forty-sixth Amendment) Act, 1982.

5. The grievance of the petitioner is that by inserting separate definition clause in section 2(30-C) of "specified sale" and making separate and distinct provision as regards the turnover of specified sale and for the liability to pay tax on turnover of such specified sales, right to use any goods has been treated separately without any rational basis whatsoever. On account of this separate treatment, transactions which formed part of the definition clause of "specified sale" [section 2(30-C)] have been excluded from the benefits of deductions or set-off which are otherwise available in respect of all other transactions of sale. Even in the transactions of sale which have been deemed to be sale on account of the amendment in the Constitution and insertion of clause (29A) in article 366, all other deemed sales are entitled to deductions while transactions of transfer of the right to use any goods have been treated separately. For such separate treatment and for depriving the benefits of deduction or set-off, there is no rational basis. Therefore, the provisions made by the State Legislature in definition clause as well as regarding the liability to pay tax on specified sales should be declared ultra vires the Constitution and illegal and void.

6. In Special C.A. No. 6010 of 1988, the petitioner has also challenged the legality and validity of the Constitution (Forty-sixth Amendment) Act. The same has been challenged, inter alia, on the ground that the amendment affects the basic structure of the Constitution and that the requisite number of State Legislatures have not ratified the constitutional amendment passed by the Parliament. At the time of hearing of the petition, the learned counsel for the petitioners has not pressed the challenge to the competence of the Parliament to pass the Constitution (Forty-sixth Amendment) Act, 1982 and the challenge to the legality and validity of the constitutional amendment has been given up. The learned counsel for the petitioners stated that in view of the decision of the Supreme Court in the case of Builders Association of India and Others Vs. Union of India (UOI) and Others, , the challenge to the constitutional amendment does not survive. In the aforesaid decision, the Supreme Court has rejected the petition of Builders Association of India by which the legality and validity of the 46th Amendment to the Constitution was challenged. In view of this concession, no further discussion on this point is necessary.

7. The learned counsel for the petitioners contends that the Sales Tax Amendment Act (14 of 1985) in so far as it seeks to levy tax on "transfer of right to use any goods" which may take place outside the State of Gujarat and/or in the course of inter-State trade or commerce, is invalid. There is no substance in

this contention. The transactions in goods which take place in the course of inter-State trade or commerce are subject to the limitations and restrictions imposed by the Central Sales Tax Act, 1956. Therefore it is obvious that the State Legislature cannot seek to levy tax on inter-State transactions. Such is the express provision of section 87 of the Gujarat Sales Tax Act, 1969. It is provided therein that nothing in the Act or in the Rules made thereunder shall be deemed to impose or authorise the imposition of tax on any sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce or outside the State or in the course of the import of the goods into the territory of India or the export of the goods out of such territory. It is also provided in the said section that the provisions of the Act and the Rules are required to be read and construed accordingly. Explanation to the said section provides that as to whether a sale or purchase takes place in the course of inter-State trade or commerce, or outside the State or in the course of the import of the goods into the territory of India or export of the goods out of such territory, shall be determined in accordance with the principles specified in sections 3, 4 and 5 of the Central Sales Tax Act, 1956. In view of this express provision, we asked the learned counsel for the petitioners to point out any provision in the Sales Tax Amendment Act (14 of 1985) by which the State Legislature seeks to levy tax on transfer of right to use goods which takes place outside the State of Gujarat or in the course of inter-State trade or commerce. No such provision has been pointed out to us. In view of this position, there is no substance in this contention. Hence the contention fails.

8. It was contended that liability of tax on the transfer of right to use any goods has been created by inserting section 3A in the Act. Section 3A, inter alia, provides for taxing the transfer of right to use goods specified in Schedule IV to the Act. In Schedule IV to the Act item No. 9 is plant and machinery. It is submitted that plant and machinery is immovable property. Section 2(12) defines "goods" which means all kinds of movable property (not being newspapers or actionable claims or stocks, shares or securities) and all materials, articles and commodities including standing timber and things attached to or forming part of the land, which are agreed to be served before sale or under the contract of sale. It is contended that by placing plant and machinery in Schedule IV, in essence, the State Legislature is trying to tax transfer of rights in immovable property.

9. The contention cannot be accepted for the simple reason that as to whether a particular plant and machinery would be considered to be immovable property or not would depend upon the facts and circumstances of each case. At the time when the plant and machinery are to be leased out and an agreement to sell the right to use the plant and machinery is being entered into or executed, the plant and machinery would ordinarily not be fixed with the land or in building. In that state both plant and machinery would be chattel, and not immovable property. Therefore, simply because plant and machinery is shown as item of goods to be taxed as specified sale, as defined in the Act, it cannot be said that the immovable property or something which is not goods as defined in the Act is

sought to be taxed. As such plant and machinery in all cases would not be annexed to the land and building. Unless the facts and circumstances in a particular case show that they are intended to be part of the land or building, and unless it is positively proved that they have been so annexed, they do not cease to be chattel or goods. In all cases one will have to take into consideration the degree or mode of annexation of the plant and machinery to the land and building and also the object of such annexation. Thus it would depend upon the facts of each case. In view of this position, the contention that by the amended provisions in the Act, immovable property which is not goods is sought to be taxed has no merits and the same fails.

10. The learned counsel for the petitioners contended that the definition of "turnover of specified sales" in clause (36-A) of section 2 of the Act read with the definition of "sale price" in section 2(29) do not make any distinction between the price of the goods and other components such as interest and service charges. It is submitted that therefore the definition is required to be read down or it is required to be struck down. Sale price as defined u/s 2(29) means the amount of valuable consideration paid or payable to a dealer for any sale made, including any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof. The cost of insurance for transit or the cost of installation when such cost is separately charged is excluded from such consideration. However, the valuable consideration paid or payable in respect of sale transactions which have been taken within the enlarged meaning of the term "sale" is also included in the "sale price". Turnover of specified sales as defined in section 2(36-A) means the aggregate of the amounts of sale price received by a dealer referred to in sub-clause (h) of clause (10) in respect of any specified sale made during a given period. Clause (h) of definition of term "dealer" [section 2(10)] indicates that any person who transfers the right to use any goods for any purpose, whether or not for a specified period for cash, deferred payment or other valuable consideration would also be a dealer.

11. It is difficult to comprehend and understand the contention raised by the learned counsel for the petitioners. The price of a commodity may have several components. It would ordinarily include the monetary equivalence of the intrinsic worth of the goods. In addition to the intrinsic worth of the goods, a businessman may also include interest, service charges, profit and may also take into consideration several other factors such as rights relating to equipment and machinery. From a given unit of price in relation to a particular piece of goods, it would be impossible to segregate the components of price which would be equivalent to the intrinsic worth of the goods. This intrinsic worth may in Economics be called as "value". In common parlance people do not make such fine distinction between the value of the goods and price of the goods. But technically speaking there is difference in the meaning of the two terms. Intrinsic worth of a commodity or intrinsic worth of the service rendered can be said to be the value of the goods or that of the services rendered. On the other hand the amount paid as the consideration for the goods received or services obtained

would be the price of the goods purchased or services received. But in real practice, it may sometimes happen that intrinsic worth of the goods may be in far excess of the amount paid. Sometimes it may be far less. Further probe in this direction may lead to examination of somewhat abstract concept of consumers surplus and all that.

12. However, in reality it would never be possible to segregate the different elements of price of goods. To say that the Legislature should make distinction between the value of the goods and other components of the price of the goods such as interest, service charges, profit and rights relating to the equipment and machinery has no merits whatsoever, for to do so would mean attempting to do something which is impossible or intractable. All the aforesaid components can vary from dealer to dealer and from purchaser to purchaser. Some dealer may add interest, profit, service charges, etc., while determining the price. Some dealers may not take all these factors into consideration and may be content with lesser rate of interest or lesser margin of profits. They may not charge any amount whatsoever for services. There may be consideration which may weigh with different dealers differently. The Legislature cannot be expected, nor it is supposed, to embark upon to do something which is impossible and then land itself into enacting law which cannot be implemented at all. In view of this position, the contention has got to be rejected as having no merits.

13. The learned counsel for the petitioners submitted that levy of sales tax on transactions of lease executed prior to August 6, 1985 (designated date) although the lease period might not have expired on the designated date and the lease may be in operation even after August 6, 1985, is illegal. The contention raised is on the ground that the tax on such transactions will be retrospective. However, at the time of argument, the learned counsel for the petitioners stated that in view of the averment made in para 10 of the affidavit in reply that the tax is not retrospective, this ground is not pressed.

14. In our opinion also there is no substance in the contention that the tax would be retrospective. Simply because the tax is sought to be levied on something which has happened in the past, levy of the tax would not be retrospective. There is some misconception as regards the meaning of the term "retrospective". Craze on Statute Law, seventh edition, has stated the meaning of the term "retrospective" which reads as follows :

"A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past. But a statute "is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing"."

The aforesaid meaning of the term retrospective has been approvingly adopted by the Supreme Court in the case of D.G. Gose and Co. (Agents) Pvt. Ltd. Vs.

State of Kerala and Another, . Mere absence of an earlier taxing statute cannot be said to create a vested right under any existing law that it shall not be levied in future with effect from a date anterior to the passing of the Act. In the aforesaid case, the Supreme Court held that by imposing the building tax from an earlier date no new obligation or disability has been attached in respect of any earlier transaction or consideration. In view of this position of law, simply because lease which has been executed prior to the designated date, and which is in operation after the designated date has also been subjected to tax, it cannot be said to be retrospective. However, no further discussion on this point is necessary in view of the fact that the contention has not been pressed.

15. The learned counsel for the petitioners submits that the expression "specified sale" defined in section 2(30-C) of the Act is nothing but part of sale as defined in clause (29-A) of article 366 of the Constitution. Therefore, in his submission all incidents which may be present in case of "sale" should follow in case of "specified sale" also and the classification in two different parts is without rational basis and it has no connection with the object to be achieved. Hence the classification is bad and the same should be held to be illegal and void.

16. In order to understand the aforesaid contention one may have to look at clause (29A) of article 366 of the Constitution. By inserting clause (29A) in article 366, six different types of transactions which are not otherwise sale, have been deemed to be "sale" within the extended meaning given by clause (29A) of article 366 of the Constitution. When the State Legislature amended the Gujarat Sales Tax Act by Act 14 of 1985 and introduced certain amendments in the Act, the State Legislature amended the definition of "sale", the definition of "dealer" and that of "goods" (sic). By this very amendment the definition of "specified sale" and "turnover of specified sales" have been introduced and provision is made for levying tax in respect of turnover of specified sales.

17. It is evident that by making the aforesaid provisions, the Legislature has given special or different treatment to transactions relating to right to use any goods for any purpose whether or not for a specified period, for cash, deferred payment or other valuable consideration. This type of sale is covered by sub-clause (d) of clause (29A) of article 366 of the Constitution while in the amended Act such transactions are not included in the definition of "sale" occurring in clause 2(28). But the same has been introduced separately in clause (30-C) of section 2 and it has been labelled as "specified sale". Transaction of such specified sale would not be eligible to claim deductions which are otherwise available to all other transactions of sale. It is contended that transfer of right to use goods is also deemed sale as is the case in respect of other sale falling within the sub-clauses (a), (b), (c), (e) and (f) of clause (29A) of article 366. It is argued that there is no justification to make further classification or mini classification and treat one deemed sale separately from other deemed sales which are covered by clauses (a), (b), (c), (e) and (f) of clause (29A) of article 366.

18. In support of the aforesaid contention, the learned counsel for the petitioner has relied upon a decision of the Supreme Court in the case of Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, . In para 11 of the judgment, certain principles have been indicated for judging the validity or otherwise of an Act and/or a notification, the challenge to which is founded on article 14 of the Constitution. It is, inter alia, observed that article 14 forbids discrimination, but it does not forbid reasonable classification for the purpose of legislation. To pass the test of permissible classification two conditions must be fulfilled, i.e., (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. It is further observed that the classification may be founded on different basis, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

19. In para 12 of the judgment, the Supreme Court has indicated five classes of legislations. In class (i) the statute which may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to notice of the court, and in class (ii) statutes which may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances. In classes (iii), (iv) and (v), the statutes which have been mentioned therein are not relevant for the purpose of deciding the questions involved in these petitions. The learned counsel for the petitioners submits that in the instant case, the legislation falls in class (ii). It is submitted that there is no rational basis for the classification and that there is no nexus with the objects sought to be achieved by such classification.

20. It is further submitted that even with regard to the taxing statutes the aforesaid principles would be applicable. In support of this contention, the learned counsel for the petitioners has relied upon the following decisions of the Supreme Court :

1. Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another,
2. KHANDIGE SHAM BHAT AND ANOTHER Vs. AGRICULTURAL Income Tax OFFICER, KASARAGOD, AND ANOTHER., .
3. State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others, .

Relying upon the aforesaid decisions, it is submitted that even the taxing statutes are not immune from the provisions of article 14 of the Constitution. The observations made by the Supreme Court in the case of KHANDIGE SHAM BHAT AND ANOTHER Vs. AGRICULTURAL Income Tax OFFICER, KASARAGOD, AND

ANOTHER., , to the effect that if there is equality and uniformity within each group, the law will not be condemned as discriminative, though arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. Taxation law is not an exception to this doctrine. In the case of State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others, of the report, the Supreme Court has observed to the effect that a statutory provision may offend article 14 of the Constitution both by finding differences where there are none and by making no difference where there is one. Reliance was also placed on certain observations made by the Supreme Court in the case of Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, .

21. The aforesaid observations are to be read in proper context. Article 14 of the Constitution is certainly applicable to taxing statutes also. However, as held by the Supreme Court in later decisions, the scope of classification in taxation is greater and the same cannot be termed as discriminatory unless it is shown that it is palpably arbitrary. In order to understand the correct legal position, reference may be made to the following decisions of the Supreme Court :

1. V. Venugopala Ravi Varma Rajah Vs. Union of India and Another, .
2. Video Electronics Pvt. Ltd. and Another and Weston Electronics Ltd. and Another Vs. State of Punjab and Another, .
3. Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others, .
4. Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, .

However, it is not necessary to go into the details of all the aforesaid decisions for the purpose of understanding the correct legal position. It would be suffice to refer to the observations made by the Supreme Court in the case of Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others, . of the judgment, the Supreme Court has, inter alia, observed as follows :

"The scope for classification permitted in taxation is greater and unless the classification made can be termed to be palpably arbitrary, it must be left to the legislative wisdom to choose the yardstick for classification, in the background of the fiscal policy of the State to promote economic equality as well."

22. In the case of Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, of the judgment it is, inter alia, observed that having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy, Legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events, etc., for taxation. The tests of the vice of discrimination in a taxing law are accordingly less rigorous. In examining the allegations of hostile, discriminatory treatment what is looked into is not its phraseology, but the real effect of its provisions. A Legislature does not have to

tax everything in order to be able to tax something. If there is equality and uniformity within each group, the law would not be discriminatory. The Legislature can exercise an extremely wide discretion in classifying items for tax purposes so long as it refrains from clear and hostile discrimination against particular persons or classes. It could be seen from the aforesaid decisions of the Supreme Court that the courts have recognised that the Legislature has wide discretion in selecting the persons, the subject-matter and also applying different rates of taxes. The only limitation is that it should refrain from making palpably hostile discrimination.

23. In view of the aforesaid settled legal position, the question which needs to be decided in this case is - has the Legislature violated the provisions of article 14 by treating separately the "transfer of right to use goods". The learned Advocate-General appearing for the State has submitted that different treatment has been given to specified sale, i.e., transfer of right to use goods specified in Schedule IV to the Act for administrative convenience. Thus the submission implies that for the purpose of administrative convenience this classification is made. If so, is the classification based on rational basis or is it intelligible ? If one looks at the enlarged definition of "sale" introduced by way of clause (29A) in article 366 of the Constitution, which has again been incorporated in the amended provisions of the Act (Act 14 of 1985), it becomes evident that in the cases of transfer falling in clauses (a), (b), (c), (e) and (f) at one or other stage, property in goods passes to the purchaser. In case of works contract, at some stage the property in goods passes on to the purchaser. In case of hire-purchase, the same result occurs. In case of supply of goods, the goods either get consumed or get destroyed. In any case, either the goods do not remain in existence and/or right of ownership in the goods does not remain with the vendor. It is only in case of the sale covered by sub-clause (d) of clause (29A) of article 366 that the ownership of the goods remains with the vendor. After all the ownership of goods is nothing but a bundle of rights. Out of this bundle of rights, right to use and right to possess the goods are transferred in favour of the purchaser. Such transactions are covered by sub-clause (d) of clause (29A) which are again separately treated by introducing definition of "specified sale" in section 2(30-C) of the Act. Thus there is intelligible difference between the sales covered by clauses (a), (b), (c), (e) and (f) on the one hand and the transactions covered by sub-clause (d) on the other hand. The distinguishing feature that the ownership right remains with the vendor is not present in all other types of transactions. Thus it is evident that there is intelligible difference between the specified sale [section 2(30-C)] and the sale covered by definition in section 2(28).

24. Once there is rational basis or intelligible criteria for making distinction between different types of sale, the question arises, is there any nexus with the object sought to be achieved. The learned counsel for the petitioners submitted that for introducing the Amendment Act (Act 14 of 1985) no object is discernible. In the Statement of Objects and Reasons, merely the summary of the amended provisions is reproduced. Of course there is reference to the budget speech of

the Chief Minister. It is submitted that even in the budget speech there is nothing to indicate as to what is the object of the amendment. However, in the budget speech there was mention about the proposed amendment and that the revenue of the State would be augmented by about 40 crores of rupees. Thus from the budget speech of the Chief Minister, it becomes evident that by the proposed amendment, the State sought to augment the revenue of the State. The learned counsel for the petitioners submitted that such is not the case placed before the court in the affidavit-in-reply nor there is any such submission on behalf of the learned counsel appearing for the State. Therefore, it is argued that it is not open to the court to discern special object and refrain from invalidating the provisions of the Act. The contention cannot be accepted. It is not for the Executive Government to say what was the intention of the Legislature. It is for the court to discern the intention of the Legislature. Once a piece of legislation leaves assembly hall, it is for the court and the court alone to decide what the statute means.

25. In this connection reference may be made to a decision of the Supreme Court in the case of Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, of the judgment, the Supreme Court has, inter alia, observed that in the ultimate analysis the courts are not really concerned themselves with the hallowness or the self-condemnatory nature of the statements made by the respondents to justify and sustain the legislation. The deponents of the affidavits filed in court may speak for the parties on whose behalf they swear to the statements. They do not speak for the Parliament (or the State Legislature). No one may speak for the Parliament and Parliament is never before the court. After the Parliament has said what it intends to say, only the court may say what the Parliament meant to say. None else. Once a statute leaves the Parliament House the court is the only authentic voice which may echo the Parliament. This, the court will do with reference to the language of the statute and other permissible aids. The executive Government may place before the court their understanding of what the Parliament has said and intended to say or what they think was Parliament's object and all the facts and circumstances which in their view led to the legislation. When they do so, they do not speak for Parliament. No Act of Parliament may be struck down because of the understanding or misunderstanding of Parliamentary intention by the executive Government or because the Government's spokesman does not bring out relevant circumstances but indulge in empty and self-defeating affidavits. They do not and they cannot bind Parliament. Validity of legislation is not to be judged merely by affidavits filed on behalf of the State but by all the relevant circumstances which the court may ultimately find and more especially by what may be gathered from what the Legislature has itself said.

26. The Supreme Court has reiterated the aforesaid principles again in the case of State of Tamil Nadu v. State of Karnataka reported in Judgment Today 1991 (2) SC 322. In this judgment, the Supreme Court has approvingly quoted the following passage from Francis Bannion's "Statutory Interpretation" :

"It is the function of the court alone to declare the legal meaning of an enactment. If anyone else (such as the draftsman of the provision) purports to lay down what the meaning is the court will tend to react adversely, regarding this as an encroachment upon its constitutional sphere."

Another passage quoted reads as follows :

"Under the British Constitution, the function of determining authoritatively the meaning of a parliamentary enactment is entrusted to the judiciary. In the words of Richard Burn they have the exposition of Acts, which must not be expounded "in any other sense than is truly and properly the exposition of them". This is but one aspect of the court's general function of applying the relevant law to the facts of the case before it. The starting point is, therefore, to consider this function."

27. In view of the aforesaid settled legal position, there is no merit in the contention raised by the learned counsel for the petitioners. It is not only the function of the court, but it is also the obligation of the court to discharge its function of discerning the intention of the Legislature and interpreting the laws in accordance with the provisions of the Constitution. In discharging this function, the court is bound to look at the provisions of the Constitution and the provisions of the statute in its entirety. Reading the provisions of the statute, the classification is discernible. The object sought to be achieved by such classification is also clear. The object is twofold. One, the administrative convenience and another to augment the revenue of the State. In fairness to the learned counsel appearing for the State, it must be stated that as far as the first object is concerned, he has put forth his argument to the effect that different treatment is given to "specified sales" for the purpose of administrative convenience. Be that as it may. The fact remains that there is intelligible classification and it has nexus with the object sought to be achieved.

28. In above view of the matter, the argument that on account of the different treatment given to specified sales and the turnover thereof and by depriving the claim of set-off and/or reduction in case of resale, there is hostile discrimination in case of transactions of transfer of right to use in specified goods has no merits and the same is hereby rejected.

29. No other contention is raised.

30. In the result, the petitions fail and all the three petitions are rejected. Rule discharged.

31. Petitions dismissed.