

(1982) 03 GUJ CK 0018
In the Gujarat High Court
Case No : Sales Tax Reference No. 14 of 1979

The State of Gujarat

APPELLANT

Vs

Wood Polymer Ltd.

RESPONDENT

Date of Decision : 05-03-1982

Acts Referred:

Central Sales Tax Act, 1956 — Section 4(2)
Gujarat Sales Tax Act, 1969 — Section 10, 12, 13, 13(B), 15

Citation : (1982) 50 STC 229

Hon'ble Judges : D.C. Gheewala, J; B.K. Mehta, J

Bench : Division Bench

Advocate : J.R. Nanavati, Government Pleader, instructed by H.V. Chhatrapati, of Bhaishanker Kanga and Girdharlal, for the Appellant; K.H. Kaji and S.L. Modi and N.I. Mody, for the Respondent

Judgement

Mehta, J.—What is the scope and width of rule 42-A of the Gujarat Sales Tax Rules, 1970 (hereinafter referred to as "the Gujarat Rules"), in the context of the set-off claimed by a new industry of sales tax paid on the purchases of raw materials used in the manufacture of goods sold outside the State is a moot point arising in this reference. Shortly stated, the facts leading to this reference are as under :

The assessee-company which is the opponent herein established a factory for manufacturing decorative laminated sheets and industrial laminates in the State of Gujarat. It is common ground that it is a new industry within the meaning of rule 42-A of the Gujarat Rules, and a certificate under item No. 53 of the Government notification issued u/s 49 of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Gujarat Act"), was issued in that behalf with effect from 1st February, 1971. The assessee-company has got its selling depots at various places outside the State of Gujarat, namely, Calcutta, Bombay, Delhi, Coimbatore, Bangalore, Hyderabad and Madras. It is also an admitted position that the assessee-company sold its products partly in the State and partly in the course of inter-State trade and commerce as well as through its selling depots

outside the State. The assessee-company was required to purchase raw materials for its use in the manufacture of its products. These raw materials were purchased partly on the strength of declaration in Z form and partly on payment of tax from the Gujarat State during the assessment period commencing from 1st April, 1971, to 31st March, 1972. The aggregate value of the products manufactured by the assessee-company in the said assessment period was to the tune of Rs. 34,08,847.00. It is also not in dispute that out of the aforesaid goods, the goods of the value of Rs. 28,70,274.00 were sold outside the State through its sales depots at the aforesaid places while goods worth Rs. 5,38,273.00 were sold either in the State or in the course of inter-State trade and commerce. It should be also noted that out of the raw materials purchased on the strength of Z form the materials of the value of Rs. 51,409.00 were used in the manufacture of decorative laminated sheets sold on consignment basis in the aforesaid assessment period. In the course of the assessment, the assessee-company, therefore, claimed a set-off of the tax paid on the purchases of the raw materials to the tune of Rs. 12,722.88 under rule 42-A of the Gujarat Rules.

2. The Sales Tax Officer rejected this claim as he was of the view that set-off was admissible under rule 42-A only if all the conditions mentioned therein were satisfied, and inasmuch as the assessee-company sold the goods worth Rs. 28,70,274 outside the State, it was not entitled to claim set-off to that extent. He was also of the opinion that the assessee-company had committed a breach of the declaration in form Z inasmuch as 85 per cent of the goods manufactured by the assessee-company were consigned and sold outside the State. He, therefore, levied purchase tax of Rs. 4,060.04 and disallowed the set-off. He also decided to levy penalty of Rs. 2,850 u/s 45(6) of the Gujarat Act since the difference between the amount of tax assessed and the amount of tax paid exceeded 20 per cent.

3. The assessee-company, therefore, carried the matter in appeal before the Assistant Commissioner of Sales Tax (Appeals), who dismissed the said appeal on the same grounds with the result that the matter was carried in second appeal before the Gujarat Sales Tax Tribunal.

4. The assessee-company contended before the Tribunal that it is not necessary under rule 42-A of the Gujarat Rules that the manufactured goods should have been sold locally or in the course of inter-State trade or commerce or export to qualify itself for claiming set-off of the tax paid on the raw materials used in the manufacture of the goods for sale. In other words, the contention of the assessee-company was that having regard to rule 42-A in the context of the scheme of the set-off in the Act the term "sale" should not have been construed as defined in the Gujarat Act but it should be interpreted to mean as sale in its generic sense. The Tribunal traced the legislative history for the insertion of rule 42-A in the Gujarat Rules, and having regard to the entire context of the scheme of set-off agreed with the assessee-company that it satisfied all the conditions prescribed in rule 42-A to qualify itself for set-off and it did not commit any

breach of the conditions of the declaration in Z form, namely, that it purchased the raw materials for the use in the manufacture of the goods for sale which should not be restricted to sale inside the State or in the course of inter-State trade or commerce or export since otherwise the legislative intent of granting concessional incentives to the new industries would be defeated. The Tribunal, therefore, held that the assessee-company was entitled to set-off of the amount of tax paid on the raw materials purchased for the use in the manufacture of its products and was also not liable to pay any purchase tax since there was not breach of any conditions with the result that there was no difference in the tax assessed and the tax paid which would expose it to the liability of penalty. The Tribunal therefore allowed the set-off and set aside the order of purchase tax and penalty.

5. The State, being aggrieved with this order of the Tribunal, sought the reference which was granted and the following three questions have been referred to us for our opinion at the instance of the State Government u/s 69 of the Gujarat Act :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the order of the Assistant Commissioner of Sales Tax levying purchase tax u/s 50 of the Gujarat Sales Tax Act, 1969 instead of setting it aside to the extent of 15 per cent of the tax levied ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in allowing set-off under rule 42-A of the Gujarat Sales Tax Rules, 1970, in respect of the whole amount of tax paid on the purchases of raw materials instead of only 15 per cent thereof which were used in the manufacture of goods for sales in the assessment year 1971-72 ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in removing the penalty imposed u/s 45(6) of the Gujarat Sales Tax Act, 1969, by the sales tax authorities ?"

6. Before we set out the rival contentions, it is profitable to reproduce the relevant part of rule 42-A so far as material for the purpose of this reference :

"42-A. Drawback, set-off or refund of tax for goods purchased by a certified manufacturer establishing a new industry. - In assessing the tax payable by a certified manufacturer (hereinafter referred to as the assessee) who establishes a "new industry" the Commissioner shall, subject to general conditions of rule 47 and further conditions specified below, grant him drawback, set-off or refund of the whole or any part of the tax in respect of the purchases of raw materials, processing materials and machinery or packing materials used by him in manufacture of goods for sale.

Explanation. - In this rule, "new industry" means and includes an industry which has been commissioned at any time during the period from 1st April, 1970, to 31st March, 1975 (both days inclusive); but shall not include -

(i)..... (ii).....

Conditions :

(1)..... (2)..... (3)..... (4)

The goods purchased are taxable goods as defined in clause (33) of section 2 of the Act.

(5)..... (6) The goods purchased have actually been used by the assessee within the State as raw materials or processing materials or as machinery in the manufacture of any goods for sale or as packing materials in the packing of goods so manufactured.

(7) A manufacturer who established a new industry after 13th March 1973, shall be entitled to any drawback, set-off or refund of tax under this rule so long as he has not availed of the benefit under the Government scheme under which interest-free loans are given to new industries.

..... Extent of drawback, set-off, etc., shall be the aggregate of the amounts calculated in accordance with clauses (A), (B) and (C) hereunder. - (A) In respect of the purchases made from a registered dealer without giving any certificate u/s 12 or 13 of the Act or any certificate u/s 49 of the Act,

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

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

FORMULA $9P \text{ Multiplied by } R \text{ ----- } 10 \quad 100 + R$

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

Provided

(B) The amount of purchase tax paid or payable u/s 16 of the Act.

(C) The amount of purchase tax paid or payable u/s 15 of the Act for a period prior to the date of this rule."

7. It should also be noted at the outset that it is common ground between the parties that all the general conditions prescribed under rule 47 of the Gujarat Rules as well as the particular conditions mentioned in rule 42-A, except condition No. (6) have been complied with. It is, therefore, not necessary to refer to the general conditions or the special conditions other than condition No. (6) in order to answer this reference. The material part of rule 42-A, which has a bearing on the question of the construction, has been set out so that the rival

contentions can be appreciated in proper perspective.

8. At the time of hearing of this reference, Mr. J. R. Nanavati, the Government Pleader, appearing on behalf of the State, urged the following contentions in support of the view canvassed on behalf of the State :

(1) On a true construction and effect of rule 42-A, the assessee-company is not entitled to set-off of the tax paid on the raw materials purchased for the purposes of their use in the manufacture of the goods for sale inasmuch as the term "sale" cannot be construed de hors its legislative dictionary which defines it to mean "a sale of goods made within the State" as provided in section 2(28) of the Gujarat Act.

(2) The Tribunal committed a substantial error of law in upholding the claim of set-off of the assessee-company in disregard to the aforesaid dictionary meaning by trying to spell out the repugnancy by travelling outside the provision contained in rule 42-A and comparing it with different schemes of drawback contained in the other provisions of the Gujarat Rules each of which is complete code by itself.

(3) The Tribunal also committed an error of law by reference to the different entries in the Schedule to the Gujarat Act and the corresponding declaration forms concerning the words "for manufacture of goods for sale," since it would be misleading because there is no employment of precise expression of dominant legislative intent manifested in the definition of "sale".

(4) The Tribunal also misconstrued the words "for manufacture of goods for sale" in reading more than what is warranted, as to mean "for manufacture of goods intended for sale".

(5) The Tribunal committed an error of law in holding that the assessee-company had not committed any breach of the declaration in form Z to the effect that the raw materials were required for use in the manufacture of the goods for sale though the substantial portion of the sales was outside the State. The Tribunal ought to have appreciated that the words used in the Rules of which the forms are integral part must bear the same meaning as given in the Act in view of section 20 of the Bombay General Clauses Act.

(6) In any case, the Tribunal was not justified in allowing the entire claim of set-off and setting aside the order levying purchase tax in its entirety.

9. These contentions have been sought to be repelled by Mr. K. H. Kaji, the learned counsel for the assessee-company, by urging that since the court is called upon to construe the rule where the words defined in the Act are employed, the entire context of the scheme of set-off contained in the Rules should be looked into for finding out whether the context required to depart from the meaning ascribed to the word in the legislative dictionary in a given statute. In the submission of Mr. Kaji, it is not necessary to establish the repugnancy by examining merely the provisions because the legislative mandate to refer to its

dictionary is only if the context does not indicate otherwise. He urged that there was internal indication as well as external guidance to show that situs of sale was not required to be confined only within the boundaries of the State of Gujarat for earning set-off by the new industry under rule 42-A of the Gujarat Rules.

10. It is in this background of the rival contentions that we have to consider as to whether the impugned order of the Tribunal is, on the facts and in the circumstances of the case, correct.

11. The controversy between the parties centres round the question as to what meaning should be ascribed to the words, "in respect of the purchases of raw materials....used by him in manufacture of goods for sale" employed in the main enactment of rule 42-A. Special condition No. (6), inter alia, enjoins that to qualify for set-off under rule 42-A the goods purchased by an assessee must have actually been used within the State as raw materials in the manufacture of any goods for sale. It is not in dispute that the tax-paid goods or tax-free goods on declaration purchased by the assessee-company herein were used as raw materials within the State for the manufacture of its products. The only controversy is whether the assessee-company satisfies the general condition prescribed in the main enactment as well the special condition that such use must be for manufacturing the goods for sale in the sense that the sale is actually made within the State. The first question which, therefore, arises is as to what is the definition of the term "sale" in the Gujarat Act. Section 2(28) of the Gujarat Act, at the relevant time of the assessment under reference, read as under :

"2. In this Act, unless the context otherwise requires, -

(28) "sale" means a sale of goods made within the State, for cash or deferred payment or other valuable consideration, and includes any supply by a society or club or an association to its members on payment of a price or fees or subscription, but does not include a mortgage, hypothecation, charge or pledge, and the words "sell", "buy" and "purchase" with all their grammatical variations and cognate expressions, shall be construed accordingly;

Explanation. - For the purposes of this clause, sale within the State includes a sale determined to be inside the State in accordance with the principles formulated in sub-section (2) of section 4 of the Central Sales Tax Act, 1956."

12. The crux of the problem therefore is whether the context of rule 42-A requires that this meaning of the word "sale" as given in the legislative dictionary of the Gujarat Act is not appropriate for purposes of determining the claim of set-off under rule 42-A. Is it necessary that in order to find out what should be the meaning of the words "for manufacture of goods for sale" in rule 42-A we should confine ourselves merely to the provision contained in rule 42-A or is it permissible to refer to the different provisions of the Rules and/or the Act containing the scheme of set-off and other relevant provisions in connection therewith ?

13. In *Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur*, a question arose whether the definition of the word "person" occurring in section 3(42) of the General Clauses Act, 1897, could be imported into section 4 of the Partnership Act. The Supreme Court, speaking through Das, C.J., held that it was difficult to say that there was anything repugnant in the context of section 4 of the Partnership Act where the word "persons" was used to exclude application of the definition of the word "person" given in section 3(42) of the General Clauses Act. The Supreme Court, therefore, posed this question as to whether there was anything repugnant in the subject of partnership law which would exclude the application of that definition to section 4 of the Partnership Act and on consideration of the entire subject of partnership law, the Supreme Court negated that the definition of the word "person" in the General Clauses Act should be imported into section 4 of the Partnership Act.

14. The Supreme Court in *Dhandhaniah Kedia and Co. Vs. The Commissioner of Income Tax*, refused to import the definition of "previous year" as given in section 2(11) of the Income Tax Act, 1922, for purposes of determining the words "six previous years" in the proviso to section 2(6A)(c) and held that it would be repugnant to the word "dividend" to do so. The Supreme Court supported its above view by considering the policy underlying section 2(6A)(c) of the Income Tax Act, 1922. In *Vanguard Fire and General Insurance Co. Ltd., The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another*, the Supreme Court was concerned with the question as to whether the word "insurer" in section 33 of the Insurance Act, 1938, would also include a person who has closed his business since the definition of the word "insurer" in section 2(9) meant "any body corporate carrying on the business of insurance". In that context, the Supreme Court held as under :

"It is well-settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances."

15. When the legislative dictionary meaning of a word in a statute can be departed from is succinctly stated in *Crawford's Statutory Construction- Interpretation of Laws*, para 208, page 361, under the caption "Legislative Definitions and Interpretation Clauses," in the following terms :

"208. The legislature has the power to embody in the statute itself a definition of its language as well as rules for its construction. These are usually binding upon

the court, since they form a part of the statute, even though in the absence of such a definition or rule of construction, the language would convey a different meaning. But the meaning of the legislature, as revealed by the statute considered in its entirety if contrary to the expression of the interpretation clause or the legislative definitions will prevail over them"

16. In view of this settled legal position, we do not think that the learned Government Pleader was justified in urging the contentions Nos. (2) and (3) that the Tribunal was not justified in considering the entire context of the subject of drawback or in referring to the object or the policy or the other relevant provisions in that behalf. As the Supreme Court pointed out, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances.

17. We have, therefore, to address ourselves whether, having regard to the context, the collocation and the object of the words relating to the matter, namely, drawback contained in rule 42-A and the similar schemes of drawback in different provisions, the Tribunal was justified in upholding the claim of set-off of the assessee-company.

18. At the outset it would be profitable to refer broadly to the taxation scheme contained in the Gujarat Act. Section 3 is a charging section which provides for incidence and levy of tax and, inter alia, prescribes the limits of turnover having regard to the nature of business of a dealer for purposes of his liability under the Gujarat Act. Section 5 provides exemption from levy of any kind of tax on sales or purchases of goods specified in Schedule I. Section 6 provides that every dealer, who is liable to pay tax under the Act is a taxable person. Every dealer being liable to pay tax under the Act is obliged to possess a valid registration certificate to enable him to carry on his business as such. Section 31 enables a registered dealer whose turnover of sales of goods to other registered dealers or which are exported by him to any place outside the State or outside the territory of India, to obtain a licence which may authorise him to certain deductions and concessions. Similarly if the value of all taxable goods manufactured for sale by a registered dealer exceeds Rs. 3,000 u/s 32, he may obtain recognition certificate which will enable him to certain deductions and concessions. In the same way, a registered dealer acting as a commission agent can obtain a permit if his turnover of bona fide purchases on behalf of his principal exceeds the prescribed limit u/s 33. Sections 7 and 8 provide for levy of sales tax or general sales tax, as the case may be, on the goods specified in Parts A and B respectively of Schedule II to the Gujarat Act. Section 10 provides for levy of sales tax and general sales tax on the goods specified in Schedule III. Section 9 prescribes the stage of levy on sales tax, general sales tax or purchase tax on declared goods. It should be noted that sections 7, 8 and 10 provide for certain deductions to be made for purposes of ascertaining taxable turnover so as to achieve the purpose of single point levy as envisaged in the aforesaid scheme. Sections 15 and 16

provide for levy of purchase tax. Broadly stated, the liability to purchase tax arises when the goods are purchased from a person who is not a registered dealer or when the goods purchased on certificate are used for the purpose or in a manner contrary to the said certificate. Amongst the various kinds of statutory deductions in respect of the sales effected in favour of the aforesaid three categories of persons, namely, (i) recognised dealer, (ii) licensed dealer and (iii) commission agent, are included. The conditions prescribed for earning the aforesaid statutory deductions are to be found in section 13 of the Gujarat Act which, inter alia, provides that unless a licensed dealer, recognised dealer or a commission agent, as the case may be, does not provide certificate in the prescribed form, he would not be entitled to the deductions under sections 7, 8 and 10.

19. Since in the present case, we are concerned with a case of a recognised dealer, we will confine our attention to the deductions available to such dealer for purposes of determining his taxable turnover. A vendor of taxable goods to a recognised dealer is entitled to deduct from the gross turnover of his sales, the sales in favour of the recognised dealer on the latter furnishing certificate in the prescribed form 19 that the goods other than prohibited goods, sold to him are purchased by him for the use by him as raw or processing material or as consumable stores in the manufacture of taxable goods for sale by him within the State of Gujarat [vide section 13(1)(B) read with form 19]. It is necessary at this stage to refer shortly to section 12 which provides a reduced rate of tax on certain sales in favour of a licensed dealer or a commission agent. In order to avail of this concessional rate, a licensed dealer has to certify that the goods would be despatched in the same form within the prescribed period to his own place of business outside the State for sale, or for the use by him in the manufacture of goods for sale outside the State, and that he is a registered dealer under the Central Sales Tax Act in respect of that place of business. Similarly a commission agent holding a permit has to certify that he has purchased it on behalf of the Central Government or on behalf of a dealer registered under the Sales Tax Act for purposes of resale or use in the manufacture of goods for sale outside the State by his said principal, and that the goods would be despatched within the prescribed period. A combined reading of sections 12 and 13, therefore, indicates that whereas the sales of taxable goods in favour of a recognised dealer are wholly exempt from the levy of any tax if the recognised dealer undertakes to use those goods for manufacture by him of taxable goods for sale within the State of Gujarat, the sales u/s 12 are only entitled to concessional rate of tax as prescribed. If, therefore, a recognised dealer, or a licensed dealer, or a commission agent holding a permit purchasing any taxable goods or certificate uses the goods for the purpose or in a manner contrary to his assurance in the certificate, he would be liable to pay purchase tax and also expose himself to the liability of penalty. This is what has been precisely provided for in section 16(1)(a). Section 51 provides for drawback, set-off and refund of the tax paid. It reads as under :

"51. The State Government may by rules provide, that -

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

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

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

(b) for the purpose of the levy of tax under any of the provisions of this Act, the sale price or purchase price shall, in the case of any class of sales or purchases, be reduced to such extent, and in such manner, as may be specified in the rules."

20. Chapter VII of the Gujarat Rules prescribes the conditions, the manner and the extent of the grant of drawback, set-off or refund. Shortly stated, rule 41 is in nature of transitional provision providing for drawback, set-off or refund of tax for the goods held by a licensed dealer in stock on the appointed day. Rule 42 is a provision for drawback, set-off or refund of tax for the goods purchased by a manufacturer. Rule 42-A, which is inserted in the Rules with effect from 11th November, 1970, provides for drawback, etc., of tax for the goods purchased by a manufacturer establishing new industry. Rule 43 provides for drawback, set-off or refund of general sales tax for the goods purchased by a licensed dealer. Rule 44 provides for drawback, set-off or refund of tax for the purchases of goods sold in the course of inter-State trade or commerce or export out of India or to a place outside the State of Gujarat by a registered dealer. It is really the width and scope of rule 42-A with which we are concerned in this reference. The *raison d'être* of the necessity for providing drawback, set-off or refund in the Gujarat Rules has been explained by a Division Bench of this Court to which I was a party, speaking through P. D. Desai, J., in *Prabhat Solvent Extraction Industries Pvt. Ltd. v. State of Gujarat* [1982] 49 STC 322 (Sales Tax Reference No. 6 of 1976 decided on 15th December, 1978) in the following terms :

"..... The Act levies different kinds of taxes on sales and purchases of goods with the end in view of collection of revenue. While enacting the Act, however, the legislature was conscious of the diverse factors such as that though the tax was payable by the dealer, the incidence of tax and the consequential economic burden would fall upon the ultimate consumer, that there was need to safeguard the interests of trade and industry within the State which should not be subjected to such a burden as to put them out of existence or out of market in competition with the trade and industry outside the State and that the goods upon which tax could be levied were of wide variety, for example, goods of vital necessity to the consuming public within the State, goods which figure prominently in inter-State trade or commerce or in the course of foreign trade and goods which are to be used by a manufacturer as raw or procession

materials or consumable stores in the manufacture of taxable goods. With a view to taking care of all these diverse factors, the legislature has devised a scheme which provides several safeguards Even these safeguards were, however, not considered sufficient because the legislature could not possibly have contemplated each and every contingency which may arise and the diverse factors which may have their inter-play in the modern complex commercial transactions. Section 51 was, therefore, enacted whereunder power was given to the State Government to frame rules providing for grant of a drawback, set-off or refund in such circumstances and subject to such conditions as may be specified. An illustration based upon the very rule which is under consideration herein will highlight this point. Take the case of a recognised dealer, who purchases from an unregistered dealer goods for use by him as raw or processing materials or consumable stores in the manufacture of taxable goods for sale by him locally. In such a case, the purchasing dealer would have to pay purchase tax to the Government u/s 15 and he would not be able to get the advantage of purchasing goods without payment of tax upon furnishing the relevant certificate and the result, therefore, would be that his manufacturing cost would, to that extent, rise. This might, in conceivable cases, make it difficult for him to stand in competition in the market of manufactured goods. In order to meet with such or similar situations for which the Act itself makes no provision, the State Government has been invested with the power to frame rules to grant a drawback, set-off or refund, as the case may be, under such circumstances and subject to such conditions as it may think fit to specify, and the State Government, in exercise of the powers, has enacted rule 42 inter alia to take care of the situation covered by the above illustration. It would thus appear that the provisions relating to the grant of a drawback, set-off or refund, as the case may be, to a dealer under certain circumstances and subject to certain conditions, are an integral part of the taxation structure under the Act (see *Commissioner of Sales Tax v. Burmah Shell Refineries Ltd.* [1978] 41 STC 337 and *Commissioner of Sales Tax v. Bharat Pulverising Mills Pvt. Ltd.* [1976] 38 STC 491)."

21. Having considered the rationale underlying the provisions for drawback, set-off or refund, we have to address ourselves to the question as to what is the object and purpose of providing for drawback, set-off or refund of tax for the goods purchased by a certified manufacturer establishing a new industry as prescribed in rule 42-A. The Appellate Tribunal has found that with a view to achieve the objective of decentralisation of industries and rapid industrialisation of the State, the Government of the State of Gujarat decided to give some incentives to the new industries to be established within a prescribed distance from the cities like Ahmedabad, Baroda, Surat, Bhavnagar, Rojkot and Jamnagar. The Tribunal has also found that the State Government, with a view to give impetus and encouragement for the formation of new industries established away from the urban areas, decided to give some additional concession to the new industries by way of set-off also in the case of purchases of raw materials, etc.,

made on payment of tax for the use in the manufacture of the goods by the new industries certifying the compensation. It is in the context of this object and purpose found by the Tribunal in providing special concession to the new industries that we have to construe rule 42-A and answer the question referred to us in that light.

22. On analysing rule 42-A, we find that it is divided into 4 parts. The first part pertains to the legislative mandate of set-off to the new industries and is contained in the main enactment. The second part consists of definition of "new industry" prescribing what would be the industries which could qualify themselves as new industries and what industries are not within the ambit of the term "new industry". The third part consists of the conditions under which the drawback, set-off or refund is available to the new industries and the 4th part consists of the extent of such drawback, set-off or refund. The main enactment comprising the first part of the rule enjoins the Commissioner that he shall, subject to general conditions of rule 47 and special conditions specified in the rule itself, grant a drawback, set-off or refund of the whole of the tax, or any part thereof in respect of the tax paid on the purchases of raw materials, processing materials, packing materials and machinery used by a certified manufacturer establishing a new industry for the manufacture of the goods for sale. The second part which comprises of the definition of "new industry" provides that new industry would mean and include an industry which has been commissioned at any time during the period of 1st April, 1970, to 31st March, 1975, but shall not include any industrial undertaking, which has been established by transfer or shifting or dismantling of any existing industrial unit and any of the industries specified in the rule, which by and large carry on the processing job or doing the works contract or crushing and extracting of oil from the oil-seeds. The third part pertains to the special conditions which are to be satisfied besides the general conditions prescribed in rule 47 by a manufacturer so as to qualify himself for the claim of drawback, set-off or refund. Broadly stated, the conditions are :

(i) The assessee must be a registered dealer having obtained an eligibility certificate from the Commissioner of Industries from the Gujarat State that he has commissioned a new industry in the areas and within the period prescribed under the Rules and also a certificate in that behalf by the Commissioner of Sales Tax.

(ii) Such an assessee must have purchased taxable goods within the meaning of section 2(33) of the Gujarat Act during the period of five years from the date of the commissioning of the industry as certified by the Industries Commissioner.

(iii) Such goods must have actually been used by the assessee within the State as raw materials, or processing materials, or as machinery in the manufacture of any goods for sale, or as packing materials in the packing of the goods so manufactured.

23. The 4th part pertains to the extent of drawback, etc. The amount of set-off,

etc., is the aggregate of the following amounts of taxes :

(a) Amount of sales tax, or general sales tax, or both, recovered separately from the claimant-dealer by a registered dealer otherwise than on a certificate u/s 12 or section 13 or section 49 of the Gujarat Act, or the amount calculated according to the formula prescribed where sales or general sales tax is not recovered separately.

(b) Amount of purchase tax paid or payable u/s 15.

(c) Amount of purchase tax paid or payable u/s 15 for a period prior to the date of the rule.

24. The crux of the problem is, whether there is any indication in the subject or context in rule 42-A which would justify our departure from the legislative dictionary meaning of the term "sale", which is defined in section 2(28) of the Gujarat Act, to mean "sale of goods made within the State". In other words, is there any justification for the view which the Tribunal has taken in the matter of set-off under rule 42-A that a claimant-dealer is entitled to set-off the amount of tax paid in respect of purchases of raw materials used by him in the manufacturing of goods which have been sold actually outside the State. As stated above, we are of the opinion that in construing the expression used the legislature "in manufacture of the goods for sale" employed in the main enactment of rule 42-A, we have to look at the context, the collocation and the object of the rule, and interpret the meaning intended to be conveyed by the use of the said expression, having overall consideration of the entire subject of set-off, and particularly set-off to a dealer establishing a new industry. For the reasons, which are obvious, we are of the opinion that in interpreting the expression "used in manufacture of goods for sale", there is complete justification and warrant for our departure from the legislative dictionary meaning of the term "sale" as defined in section 2(28) of the Gujarat Act. The justifying reasons which warrant such a departure are as under :

(1) In the first place, the apparent object and the purpose of the rule, found as a matter of fact by the Tribunal, is to give incentive to the new industries which may be commissioned in the State. The court, when called upon to construe the relevant words defined in the Act, should bear in mind the object and the purpose of the rule, because that is the context from which one has to find out whether there should be a departure from different meaning. The restrictive meaning which was canvassed on behalf of the State would defeat the very object and purpose for which this wholesome provision is made by the State Legislature. It should be emphasised that the larger object of set-off, etc., of the tax paid on the purchases of raw materials used in the manufacture of goods is to ensure that the manufacturing cost may not inflate so as to make it difficult for a manufacturer of Gujarat to stand in the competition in the market of the manufactured goods. We must not ignore this larger perspective that it set-off is permissible in cases of existing manufacturers so as to enable them to stand in

the national competition with the industries in other parts of the country, it stands more to the reason that a greater incentive should be provided to the new industries coming up in the State as compared to the existing industries. If, therefore, the State gives restricted meaning to the word "sale", as to mean sale in the State only, it would be a self-defeating exercise inasmuch as on the one hand it seeks to provide further incentives to new industries, and on the other hand, it seeks to deny the very benefit which is envisaged in the rule on its misconstruction.

(2) In the second place, the structure and the tenor of the rule and the context and collocation of the words in different sub-rules clearly indicate that the legislative intent was never to envisage situs of sale within the State of Gujarat only. There is an inherent indication in the rule itself for this view, the relevant aspects of which are as under :

(a) The set-off is permissible in respect of the tax paid on the machinery used in the manufacture of the goods. The interpretation canvassed on behalf of the State would render this concession of set-off of the tax paid on the machinery wholly illusive or render it unworkable since the use of the machinery would continue for a substantial period comprising of a number of years in the course of the first year of which a claimant-dealer would be entitled to set-off of such tax paid only if all its manufactured goods are sold in that particular year in the State and would not be entitled to set-off of such tax if a substantial part of the manufactured goods is sold outside the State. Even if partial set-off is allowed which is relatable to the quantum of goods sold in the State in the first year, what will happen to the rest of the claim; whether it is disallowed or allowed to be carried forward to the next year in the course of which the machinery is used for manufacture of the goods. It cannot be said that the rest of the claim has exhausted itself since the machinery continues for being used in manufacture in the next year and the case cannot be compared with the one where tax-paid goods are consumed in manufacturing. The rule on that interpretation will be unworkable in the absence of the provision of carry forward of unabsorbed part of the claim of set-off.

(b) Special condition No. (6) prescribed in the rule itself provides that new materials, processing materials or machinery, on which tax has been paid must have been used in the manufacture of any goods, which means that the manufactured goods may be non-taxable goods also. This condition, therefore, clearly indicates that the legislative intent in providing for set-off is not restricted when the manufactured goods are sold in the State only, because there is no justification for providing such a restriction which is only for securing the revenue as the State would not be able to levy and collect tax on the manufactured goods which are non-taxable.

(c) The entitlement of aggregating the amount of purchase tax paid or payable u/s 16 of the Gujarat Act as provided in the rule while prescribing the extent of drawback, etc., clearly indicates that the situs of the sale is not at all material. It

should be recalled that section 16 provides for the liability to purchase tax for contravention of the terms of the certificate given by a dealer or a commission agent purchasing non-taxable goods under a certificate given by him u/s 12 or section 13. Section 13 prohibits deduction from the turnover of those sales of goods to a recognised dealer unless the latter certifies in the prescribed form that he has purchased the goods other than prohibited goods for use by him as raw material or processing material, or consumable stores in the manufacture of taxable goods for sale by him. If, therefore, a dealer establishing a new industry uses raw materials, etc., in the manufacture of the goods which he sells outside the State, he shall be liable to pay purchase tax. This is what section 16 provides. If purchase tax is also to be aggregated for purposes of determining the extent of set-off u/s 16, it is clear that the situs of the sale need not be in the State only.

(d) Absence in form Z, on which a certified manufacturer establishing new industry purchasing raw materials, etc., of the obligation of sale of the manufactured goods within the State, as prescribed in form 19 on which an existing recognised manufacturing dealer purchases the goods etc., clearly indicates that the sale by the new industry of its manufactured goods was not necessarily envisaged within the State for purposes of earning set-off. It should be recalled that by Notification No. GST/1070 dated 11th November, 1970, issued by the State Government in exercise of its powers u/s 49 of the Gujarat Act exempts the turnover of sales from the payment of whole of the tax, or purchase tax, on the sales of the raw materials, processing materials, machinery or packing materials by a registered dealer or unregistered dealer, respectively, to a certified new manufacturer, who either does not hold recognition or surrenders it within the stipulated time provided he furnishes certificate in form Z.

(e) Special condition No. (6) indicates that what the legislature has thought important in the present scheme of set-off provided in rule 42-A is the intra-State use of the raw materials and not intra-State use of the finished goods as urged by the State Government.

(3) In the third place, since each provision of set-off is a scheme by itself some of which do provide for situs of sale by necessary implication, it must be inferred that the legislative intent where it is not specified, which is the case so far as rule 42-A is concerned, that the legislature did not intend to provide a situs of sale within the State as a condition precedent for qualifying for set-off.

(4) In the fourth place, having regard to rule 42-A, as well as to entry 53 to the aforesaid Government notification providing for exemption of tax on sale or purchase of raw materials to or by a certified manufacturer establishing new industry, the object appears to be not to earn revenue but to encourage setting up of new industries in the State so as to generate employment, and therefore, the necessity of prescribing the situs becomes irrelevant.

(5) In the fifth place, if the object of rule 42-A which has been inserted in the

Rules with effect from 11th November, 1970, is to give incentive and fillip to the new industries in the State, it would really be incongruous on the interpretation canvassed on behalf of the State to put it in a worse condition in the matter of set-off than that of an existing industry which is entitled to claim set-off after deduction of specified percentage in case of breach of the condition of use of raw material, etc., purchased on declaration in form 19 by sale of goods manufactured out of such raw materials outside the State [vide rule 42, condition No. (4)].

25. We are, therefore, of the opinion that there is sufficient justification and warrant for departing from the dictionary meaning of the term "sale", and that having regard to the object, purpose, structure and tenor of the rule, it is not necessary that in order to earn set-off, the sale of the manufactured goods by a certified manufacturer should be within the State only. The Tribunal was, therefore, justified in reaching the conclusion that the assessee was entitled to set-off of the whole amount of tax paid on the purchases of raw materials under rule 42-A of the Gujarat Sales Tax Rules, 1970, and that the Assistant Commissioner of Sales Tax committed an error of law in levying purchase tax u/s 15 of the Gujarat Act. The Tribunal was also justified in removing the order of penalty imposed u/s 45(6) of the Gujarat Act.

26. The result is that questions Nos. (1), (2) and (3) referred to us should be answered in the affirmative, that is, in favour of the assessee and against the State Government. The State Government shall pay costs of this reference to the assessee.

27. Reference answered in the affirmative.