

(2007) 08 KAR CK 0028
In the Karnataka High Court
Case No : S.T.R.P. No. 85 of 2005

The State of Karnataka

APPELLANT

Vs

A. and G Projects and Technologies Ltd.

RESPONDENT

Date of Decision : 14-08-2007

Acts Referred:

Central Sales Tax Act, 1956 — Section 3 (a), 3 (b), 9 (1)

Citation : (2007) ILR (Kar) 4675 : (2008) 13 VST 177

Hon'ble Judges : V. Gopala Gowda, J;Arali Nagaraj, J

Bench : Division Bench

Advocate : S. Sujatha, A.G.A, for the Appellant; G. Sarangan, for S. Parthasarathi, for C/r and Mallaharao K., for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : A and G Projects and Technologies Ltd. Vs. State of Karnataka, (2008) 16 SCALE 178 : (2009) 2 SCC 326 : (2009) 18 STT 525 : (2009) 11 Vat Reporter 3 : (2009) 19 VST 239

V. Gopala Gowda, J.—This sales tax revision petition is filed by the State Government questioning the correctness of the impugned judgment dated 23-5-2005 passed in S.T.A. Nos. 171 to 173/2005, by the Karnataka Appellate Tribunal (hereinafter called as "the KAT" for short) wherein it has allowed the appeals of the respondents after setting aside the order of assessment which was upheld by the First Appellate Authority in levying tax upon the Assessee turnover of Rs. 13,22,80,926/- being the value of the supply of goods from the respondent company to Karnataka Power Transmission Corporation Ltd., (hereinafter called as "KPTCL" for short) as a result of revised demand notice in levying tax is deleted and also set aside the penalty levied u/s 12-B(4) of the Karnataka Sales Act framing the questions of law which are extracted in this judgment and urging various grounds in support of the same and prayed to set aside the impugned judgment and to restore the orders of the First Appellate Authority by answering the questions of law in favour of the Revenue.

2. This Court on 21 -11 -2005 admitted this petition and framed the following questions of law, which read thus:

1. Whether there could be any subsequent sale effected by the respondent as per explanation 1 appended to Section 3(b) of the CST Act in furtherance to the ultimate buyer -KPTCL before the commencement of the movement of the goods from other State to the State of Karnataka?

2. Whether the three independent simultaneous transactions of sale effected before the commencement of movement of goods could be regarded as covered u/s 3(a) of CST Act and not u/s 3(b) of CST Act?

3. Whether the State of Karnataka which has issued "C" forms to the registered dealer is the "Appropriate State" to levy C.S.T. as per the proviso appended to Section 9(1) of the CST Act?

4. Whether the Tribunal is right in holding the levy of tax can be attracted in the State of Karnataka only when there is a local sale or an inter-State sale resulting in the movement of goods from the respondent to the KPTCL in the course of inter-State trade?.

3. The brief facts of the case are that, the respondent is a private limited company who is a registered dealer both under the Karnataka Sales Tax Act (hereinafter called "KST Act") and the Central Sales Tax Act (hereinafter called "CST Act") engaged in supply of goods and also undertakes works contract. It has filed its revised annual returns on 31-3-2001 before the Assessing Officer declaring its total and taxable turnover respectively at Rs. 15,78,33,563/- and Rs. 2,45,68,947/- under the K.S.T. Act and taxable turnover is shown as nil under the C.S.T. Act. The Assessing Authority concluded the assessment and levied the tax at 4% in respect of the goods covered by "C" forms and tax at 10% in respect of the goods not covered by "C" forms and determined the total turnover of Rs. 15,78,33,563/- and a taxable turnover of Rs. 13,22,80,926/- under CST Act and it has also levied penalty upon the respondent u/s 12-B(4) of the KST Act. The respondent claimed the supply of goods to KPTCL was a transit sale covered under Sections 3(b) and 6(2) of the CST Act in respect of the goods worth Rs. 13,22,80,926/-. The said claim has been rejected by the Assessing Authority holding that the same is inter-State sale availed by the respondent u/s 3(a) of the CST Act. Aggrieved by the said order the respondent company preferred the appeals before the first appellate authority. He has dismissed the appeals vide order dated 31 -8-2004 confirming the order of the Assessing Authority. Aggrieved by the said order passed by the first appellate authority, the respondent company preferred appeals in S.T.A. 171 to 173/20,05 before the KAT and the said appeals were allowed by the impugned judgment and further directed the assessing authority to consider the TDS certificate filed by the respondent-company and issued the revised demand notice after due credit of the same and thereby the order passed in CST Act was set-aside in levying the tax on the turnover of Rs. 13,22,80,926/- for supplying the goods by the

respondent to the KPTCL. The correctness of the said judgment is questioned in this revision petition by the Revenue urging various grounds in support of the questions of law that are framed in this case.

4. Questioning the correctness of the findings of the KAT referred in the impugned judgment on the contentious points framed and answered against the Revenue Smt. Sujatha, the learned A.G.A. contended that the KAT has completely ignored the contract executed by the respondent in favour of the KPTCL for supply of capacitor banks at various site locations in the Karnataka State designated by the KPTCL namely supply contract, civil contract and erection contract. The Assessing Authority has examined the terms and conditions of the supply contract and found that the transaction of the respondent with the KPTCL was an inter-State sale which falls u/s 3(a) of the CST Act. Further, it is urged that KAT has erred in not considering the relevant finding of fact recorded by the Assessing Authority that the sale of goods was completed when they were appropriated before commencement of movement of goods from the manufacturer's place to KPTCL, therefore Section 23 of the Sale of Goods Act is attracted to the case on hand. Hence the Assessing Authority held that the sale of goods cannot be u/s 3(b) as contended by the respondent for the purpose of Section 6(2) of the CST Act. As there was appropriation of goods on account of simultaneous sales synchronized in a point of time u/s 3(a) of the CST Act pursuant to the contract between the parties therefore it has been held that the proviso appended to Section 9(1) of the CST Act which states that "appropriate State" is the State of Karnataka to levy central sales tax upon the respondent on total turnover. Therefore, it has issued "C" forms to the registered dealers to levy the central sales tax, which order has been affirmed by the first Appellate Authority. Further it is contended that the impugned judgment of the KAT is not only is vitiated on account of erroneous finding of fact and also suffers from error in law as the same is in contravention of the provisions of Section 3(a) read with Section 9(1) proviso of CST Act and law laid down by the Apex Court in various judgments, which will be referred to in the subsequent paragraphs of this judgment.

5. The learned A.G.A. in support of her legal submissions placed strong reliance upon the lorry receipts issued by the Maruthi Road Carriers, Hyderabad, and further in justification of the concurrent finding of fact recorded by the first appellate authority in its order placed reliance upon the Constitution Bench decision of the Supreme Court in the Case of Tata Iron and Steel Co., Limited, Bombay v. S.R. Sarkar and Ors. (1960) 11 STC 654 wherein the Apex Court in the said case examined the provisions of Section 3(a) and (b) and Section 4(2) of the C.S.T. Act and made an observation that where the property in the goods has passed before the movement has commenced, the sale will evidently not fall within clause (b) nor will the sale in which the property in the goods passes after the movement from one State to another has ceased to be covered by clause 3(b) and such sale covers under clause (a) of Section 3 of the CST Act. Therefore, the provisions of Section 9 of the CST Act is attracted to the case on

hand. The appellant State is the "Appropriate State" is entitled to collect sales tax from the respondent. In support of her above contention she has placed reliance upon another decision of the Apex Court in the case of State of Tamil Nadu Vs. Dharangadhara Trading Co. Ltd., , and another decision of the Andhra Pradesh High Court in the case of Jadhavjee Laljee Vs. State of Andhra Pradesh, wherein the Andhra Pradesh High Court, after considering Sections 6(2) and 9(1) of the CST Act has held that the object of the proviso to Sub-section (1) of the above provisions of CST Act has to determine or to specify the appropriate State competent to tax second or subsequent sales not falling u/s 6(2) of the CST Act. She has contended that the said decision with all fours is applicable to the case of the Revenue for the reason that Sub-section (1) to Section 9 of the CST Act was inserted by way of an amendment to the statute after the decision of the Madras High Court in the case of State of Madras v. Nandagopal Chetty (1968) 22 STC 290 and also placed reliance upon another Division Bench decision of the Madras High Court reported in Vinay Cotton Waste Company v. The State of Tamil Nadu (1986) 63 STC 391 wherein the Division Bench has interpreted clause (a) of Section 3 of CST Act and laid down the principles of law stating that the inter-State sales falls under clause (a) of Section 3 of the CST Act and also placed reliance upon English Electric Company of India Ltd. v. The Deputy Commercial Tax Officer and Ors. (1976) 38 STC 475 wherein the Apex Court interpreted Section 3(a) of the CST Act with reference to the contract of sale made by the buyers outside the State through branches and despatch of goods to buyers by Madras office, where such sales fall under clause (a) of Section 3 of the CST Act is examined and held that it is inter-State sale falling u/s 3(a) of the CST Act. She has also placed reliance upon another decision of the Supreme Court reported in the case of Bayyana Bhimayya and Sukhdevi Rathi v. The Government of Andhra Pradesh (1961) 12 STC 147 wherein the Apex Court held that such sale of goods fall within Section 3(a) of the CST Act and there is no second sale.

6. With reference to the aforesaid decisions of the Supreme Court, Division Bench decision of the Andhra Pradesh High Court and Madras High Court it is contended by the learned A.G.A. Smt. Sujatha that the finding of fact recorded by the Assessing Authority, which is concurred with by First Appellate Authority in its order has been erroneously set aside by the KAT assigning reasons, which are perverse and therefore the same are vitiated on account of erroneous reasoning. Therefore, she has contended that the questions of law referred to supra would arise in this revision petition and requested to answer the same in favour of the Revenue.

7. Sri Sarangan, learned Senior Counsel, appearing on behalf of the respondent placed strong reliance upon the following decisions in support of his contention:

(1) State of Tamilnadu v. Dharangadhara Trading Co. Ltd., (Supra) (2) State of Gujarat v. Haridas Mulji Thakkers (1992) 84 STC 317 (Paragraphs 6, 8, 10) (3) State of West Bengal and Ors. v. Joshi Jute Corporation and Anr. (1996) 100 STC

17(Cal) (10) Tractors and Farm Equipments Ltd. v. State of Tamil Nadu and Anr. (1999) 112 STC 301 (Mad). In support of his legal submission that the finding recorded by the KAT in its judgment is legal and valid and the same is passed on proper appreciation of the documentary evidence produced by the respondent before the Assessing Authority which has not been properly appreciated by it and passed an erroneous order. Therefore, he has contended that sale of goods fall within clause (b) of Section 3 of CST Act, therefore, Section 6(2) of the KST Act is attracted to the fact situation and therefore he has urged that the questions of law framed in this petition do not arise for consideration. Further he has contended that Section 23 of Sale of Goods Act relied on by the learned A.G.A. is not applicable to the fact situation and therefore he has urged that reliance placed upon the said provisions of the Act and decisions referred to supra are misplaced as they do not apply to the fact situation.

8. The learned Senior Counsel Mr. Sarangan in support of his submission has relied on the decision of the Supreme Court case of Bharat and Company Vs. Trade Tax Officer and Another, . Placing reliance upon the said judgment he has vehemently contended that the concurrent finding of fact recorded by the appellate authority on the basis of the lorry receipt merely goes to show that consignee's name is shown as KPTCL for delivery of goods to the KPTCL, it is submitted by the learned Sr. Counsel that the concurrent finding recorded by the Appellate Authority that the sale of goods falls u/s 3(a) of the CST Act and it is not a sale during transit, as the title of the goods were transferred in favour of the KPTCL at the commencement of goods at Chennai, Tamilnadu State is factually and legally not correct. Today he has placed strong reliance upon the following decisions. 14 STC 175 (SC) at page 183, 17 STC 473 (SC) at page 488, 102 STC 373 (SC) at page 374, and 27 STC 127 (SC) in support of his submission to justify the impugned judgment. Further he has submitted that no law is laid down by the Apex Court in the case of Tata Iron and Steel Ltd.'s case (Supra) with regard to the sale of goods falling u/s 3(a) of the CST Act. Therefore he submits that the reliance placed upon the said decision by the learned AGA does not substantiate the concurrent finding of fact recorded by the First Appellate Authority, hence he has contended that the Tribunal has rightly set aside the same by allowing the appeals of the respondent.

9. After hearing the learned A.G.A. and the learned Senior Counsel at length, we have carefully examined the rival legal contentions urged with reference to the order passed by the Assessing Authority, which order was concurred with by the first appellate authority and the impugned judgment wherein it has set aside the order of the Appellate Authority impugned in the appeals before the KAT to find out whether the questions of law as framed in this revision petition would arise for our consideration and required to be answered in favour of the revision petitioner or not.

10. After careful consideration of the rival legal submissions and material on record we have answered to the questions of law framed together, as they are

inter related with each other, in favour of the Revenue for the following reasons.

11. It is necessary for us to extract the relevant provisions of the Sale of Goods Act and CST Act in this judgment to appreciate the legal submissions made by the learned AGA in justification of the legal contentions that the inter-State sale of goods in question fall within the provisions of Section 3(a) of CST Act and Section 23 of the Sale of Goods Act, the provision of Section 23 of the Sale of Goods Act reads thus:

23. Sale of unascertained goods and appropriation.- (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

(Emphasis laid by us)

Sections 3(a), 6(2) and 9(1) and provisions of the CST Act read thus:

3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.- A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase.

(a) occasions the movement of goods from one State to another; or

(b) ...xxx...xxx...

6. Liability to tax on inter-State sales.

(1) ...xxx...xxx

(2) Notwithstanding anything contained in Sub-section (1) or Sub-section (1-A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods,-

(A) to the Government, or

(B) to a registered dealer other than the Government, if the goods are of the description referred to in Sub-section (3) of Section 8,

shall be exempt from tax under this Act.

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit.-

(a) a certificate duly filed and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority, and

(b) if the subsequent sale is made.-

(i) to a registered dealer, a declaration referred to in clause (a) of subsection (4) of Section 8, or

(ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of Sub-section (4) of Section 8.

9. Levy and collection of tax and penalties.-

(1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of Section 3, shall be levied by the Government of India and the tax so levied shall be collected by the Government in accordance with the provisions of Sub-section (2), in the State from which the movement of the goods commenced:

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods and being also a sale which does not fall within Sub-section (2) of Section 6, the tax shall be levied and collected.-

(a) where such subsequent sale has been effected by a registered dealer, in the State from which the registered dealer obtained or, as the case may be, could have obtained", the form prescribed for the purposes of clause (a) of Sub-section (4) of Section 8 in connection with the purchase of such goods, and

(b) where such subsequent sale has been effected by an unregistered dealer in the State from which such subsequent sale has been effect.

12. It is an undisputed fact that the respondent is a registered dealer who has entered into contract with the KPTCL for supply of the capacitor banks to be erected at various locations in the State of Karnataka by entering into, civil contract and erection contract by it with the KPTCL. The revised returns submitted by the respondent before the assessing authority has been examined by him with reference to the contract which was entered into between the respondent and the KPTCL for supply of aforesaid goods. The lorry receipt issued by Maruthi Road Carriers, Hyderabad, clearly mentions the name of the consignor for supply of the goods in favour of the KPTCL. The same were delivered to the KPTCL. The goods were manufactured at Chennai as per the specifications mentioned in the contract with the respondent and the goods were delivered in favour of the KPTCL by executing its contract. Therefore the sale of goods in favour of KPTCL was completed when the goods were appropriated by the KPTCL before commencement of movement of goods from the manufacturer's place namely Chennai to the KPTCL in the Karnataka State.

Therefore the inter-State sale of goods of capacitor banks fall under Clause 3(a) of the CST Act is the finding recorded by the Assessing Authority in its order, which finding of fact was concurred by the First Appellate Authority by giving valid reasons on appreciation of undisputed facts and material evidence produced before the Assessing Authority. The correctness of the same is examined by us in the light of the observations made by the Supreme Court in the case of Tata Iron and Steel's case (Supra) decided by the Constitution Bench, wherein the Apex Court, after interpretation of Sections 2(2), 3(a), (b) and Section 4(2) of the CST Act, has observed thus at page 666:

The sale contemplated by clause (b) is one which is effected by transfer of documents of title to the goods during their movement from one State to another. Where the property in the goods has passed before the movement has commenced, the sale will evidently not fall within clause (b); nor will be sale in which the property in the goods passes after the movement from one State to another has ceased to be covered by the clause. Accordingly a sale effected by transfer of documents of title after the commencement of movement and before its conclusion as defined by the two termini set out in Explanation (I) and no other sale will be regarded as an inter-State sale u/s 3(b). The definition of the expression "sale" undoubtedly includes transfer of goods on hire-purchase or other systems of payment by installments, but thereby, a mere contract of sale which does not result in transfer of property occasioning movement of goods from one State to another does not fall within the terms of Section 3(a). That transaction alone in which there is "transfer of goods" on the hire-purchase or other systems of payment by installments is included in the definition of "sale ". The question whether a mere contract in which goods are delivered under a hire-purchase agreement is a sale within the meaning of Section 2, clause (g), and therefore covered by clause (a) of Section 3 does not fall to be determined in this case; nor are we called upon to express our opinion on the question whether the clause authorising imposition of sales tax on what may be merely a contract of sale is unconstitutional.

At page 667, with reference to clause (a) and (b) of Section 3 of the CST Act has further made observations unnumbered paragraph 2, relevant paragraph is extracted herein, which reads thus:

In our view, therefore, within clause (b) of Section 3 are included sales in which property in the goods passes during the - movement of the goods from one State to another by transfer of documents of title thereto; clause (a) of Section 3 covers sales, other than those included in clause (b), in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State.

(emphasis laid by us)

Further in the above case it has observed at 667 unnumbered para 3 which reads thus:

The question to which attention must then be directed is, which of the two or more States concerned with the goods sold under an inter-State sale is entitled to collect the tax under Act 74 of 1956. By Section 9, the tax payable by any dealer under the Act is to be levied and collected in the "appropriate State". The expression "appropriate State" was at the material time defined by Section 2(a) as follows:

"Appropriate State" means-

(i) in relation to a dealer who has one or more places of business situate in the same State, that State;

(ii) in relation to a dealer who has one or more places of business situate in different States, every such State with respect to the place or places of business situate within its territory.

13. Further, the learned AGA rightly placed reliance upon the observations made at page 673 in the case of Tata Iron & Steel's case with reference to the sale of Goods Act. But under the Sale of Goods Act, if a document of title to goods is used in the ordinary course of business as proof of possession or control of goods, endorsement or delivery thereof according to mercantile practice will amount to delivery of goods thereby represented. The transfer of document either by endorsement or delivery does complete transfer of title, but in the absence of an indication to that effect in the statute, the place where the documents are transferred is not the place of sale.

14. Further it was observed by the Supreme Court in the case of Bayyana Bhimayya" case (Supra) upon which strong reliance was placed by the learned AGA with reference to the terms of the Contract and Section 2(4) of Sale of Goods Act. It has held at page 150, relevant portion of the unnumbered para reads thus:

A delivery order is a document of title to goods and the possessor of such a document has the right not only to receive the goods but also to transfer it to another by endorsement or delivery.

At the moment of delivery by the mills to the third parties, there were, in effect, two deliveries, one by the mills to the appellants, represented, in so far as the mills were concerned, by the appellants' agents, the third parties and the other, by the appellants to the third parties as buyers from the appellants. These two deliveries might synchronise in point of time, but were separate in point of fact and in the eye of law.

Further, in the same page and paragraph it is held that:

... If a dispute arose as to the goods delivered under the kutchha delivery order to the third parties against the mills, action could lie at the instance of the appellants. The third parties could proceed on breach of contract only against the appellants and not against the mills. In our opinion, there being two separate

transactions of sale, tax was payable at both the points, as has been correctly pointed out by the tax authorities and the High Court.

Further, another decision of the Supreme Court in the case of the State of Tamil Nadu v. Dharangadhara Trading Co. Ltd.'s Case (Supra) the Apex Court, with reference to the terms of the contract, observed thus at page No. 96:

...It was clear that the movement of the goods from the State of Tamil Nadu to the outside States was occasioned by the terms of the contract themselves and the sale were in inter-State sales falling within Section 3, Sub-section (a) of the Central Sales Tax Act, 1956. Alternatively, if a view were taken that the sale did not fall under Sub-section (a) of Section 3, the deliveries of goods sold were effected by the transfer of documents after the movement of the goods from Tamil Nadu to the other States had commenced and the sales could be regarded as covered under Sub-section (b) of Section 3 of the Central Sales Tax Act.

This decision is referred to by the Division Bench of the Madras High Court in the case of Tractors and Farm Equipments Ltd. v. State of Tamil Nadu and Anr. 112 STC 301 (Mad) at paragraph 9, which reads thus:

As we have found that the sale effected by the vendor of the assessee to the assessee was a sale occasioned the movement of goods from State to outside the State that sale was an inter-State sale u/s 3(a). Consequently, the order of the Tribunal levying tax on the second inter-State sale effected by, the assessee cannot be sustained and is, therefore, set aside.

15. It is also pertinent to refer to the observations made by the Division Bench of the Andhra Pradesh High Court in the case of Jadhavjee" Laljee v. State of Andhra Pradesh (Supra) with reference to the proviso to Section 9(1) of the CST Act, the relevant portion at page 206 unnumbered para 3 reads thus:

The court recognised that the construction it was placing upon the proviso would give rise to a lacuna in the proviso, and that in case of sale of goods which are exempt from tax in the State from which they emanate and consequently in respect of which sale no declaration in C form is obtained, the second sale, even though not exempted u/s 6(2), would still be exempted; but, the court was of the opinion that in view of the actual language employed in the proviso to Section 9(1), it had to conclude that the State of Madras cannot levy the tax. It was evidently to rectify this situation that the aforesaid words were inserted in clause (a) of the proviso to Section 9(1) by Amendment Act 28 of 1969. In the "Notes on Clauses" appended to the Bill, the following note was appended with respect to clause 6 (Section 6 of the amending Act) which indeed substituted the entire Section 9. (We may state in this connection that the proviso to Section 9(1) was again substituted by the amending Act 103 of 1976, which added clause (b) in the proviso; but so far as clause (a) is concerned, it practically remained untouched.) In the same decision at page 207, unnumbered para 1 of the note on clause 6 reads as follows:

This clause seeks to substitute with retrospective effect Section 9 of the principal Act by a new section. In respect of the first inter-State sale tax will be payable in the State wherefrom the movement of the goods commenced. In the case of a second or subsequent sale not covered by Sub-section (2) of Section 6, the tax will be levied and collected in the State where the registered dealer effecting the subsequent sale has his place of business....

Further at page 207 last unnumbered para it was further observed thus:

The object of the proviso to Section 9(1), it must be understood, is only to determine or specify the appropriate State competent to tax such second or subsequent sale. For this purpose, even where the sale in favour of a dealer effecting such second or subsequent sale is exempt, one has to see from which State he could have obtained the declaration in C form, had it been necessary for him to furnish such a declaration. Thus, the said words would take in not only a situation where a dealer, who could have obtained such form, fails to obtain, but also covers a situation where it is not necessary for him to obtain such a declaration.

Further, at page 208, observation is made with reference to Section 8(1) and 8(4) of the CST Act. The learned A.G.A. has placed strong reliance on the observation having regard to the undisputed fact that "C" form has not been obtained by the respondent from the department of the State in respect of the sale of goods sold on the basis of contract entered by respondent in favour of KPTCL and it is stated by it that for obtaining the same it has applied to the Department, but it has not furnished to the respondent in respect of turnover of the transaction of inter-State sale of goods in favour of KPTCL, which amount is covered for sales tax and penalty amount under Section. 12-B(4) of KST Act r/w. Section 9(2) of CST Act. This factual aspect is considered by the Assessing Authority with reference to undisputed fact of delivery of goods of capacitor Banks to the KPTCL in the State of Karnataka on the basis of the terms and conditions of the contract entered into with the respondent, a registered dealer, by the above corporation and delivered goods to the corporation, which was manufactured as per the specification of the KPTCL at Karnataka State. Therefore, the provisions of Section 9(1) proviso of the CST Act is attracted but not Section 6(2) of the CST Act to the case on hand. Therefore, Assessing Authority and First Appellate Authority have rightly held that the Karnataka State is the appropriate State entitled under the provisions of CST Act for recovery of the sales tax in respect of the goods sold to the KPTCL by the registered dealer.

16. In view of the finding of fact recorded by the Assessing Authority which was concurred by the Appellate Authority and for the reasons stated supra by us and the reliance placed by the learned A.G.A. on the decisions of the Supreme Court, Andhra Pradesh High Court, Gujarat High Court, Calcutta High Court and Madras High Court in the above cases, we answer the questions of law in favour of the Revenue and against the respondent. Accordingly, revision petition is allowed.