

(1983) 02 MAD CK 0049

In the Madras High Court

Case No : T.C. No. 731 of 1977 (Revision No. 181 of 1977)

The State of Tamil Nadu

APPELLANT

Vs

Manakchand

RESPONDENT

Date of Decision : 03-02-1983

Acts Referred:

Central Sales Tax Act, 1956 — Section 13, 2, 3, 4, 5

Tamil Nadu General Sales Tax Act, 1959 — Section 2, 3, 3(1), 3(2), 3(3)

Citation : (1983) ILR (Mad) 1 : (1984) 56 STC 237

Hon'ble Judges : S. Padmanabhan, J; N.V. Balasubramanian, J; M.A. Sathar Sayeed, J

Bench : Full Bench

Judgement

Balasubrahmanyam, J.—This case raises a point of crucial importance under the Tamil Nadu General Sales Tax Act, 1959, on which there are already two Bench decisions of our Court. In our judgment, both these require reconsideration. The problem arises this way. A dealer engaged in the business of buying and selling goods is assessable to sales tax for a given assessment year if his total turnover exceeds Rs. 50,000 in that year. This is laid down u/s 3(1) of the Act. It has been tacitly assumed for a long time that this provision only refers to the total sales turnover during the year. This is apparently because the tax on the total turnover goes by the name of "sales tax". In Britain, they have what is known as a "purchase tax". Even in this State, tax is levied at the purchase point in regard to transactions in certain goods. This is called "single point" by barring single point purchase tax, the general charge u/s 3(1) is a cumulative sales tax, and the turnover which is taxed the total sales turnover. The dealer who sells the goods effects the sales turnover, and he is the person who is charged to tax on that turnover. In the year, 1970, the State Legislature introduced a scheme of purchase tax as complimentary or supplementary to the general cumulative sales tax u/s 3(1). This was done by introducing in the Act, section 7-A. It is now settled that section 7-A is a new and separate charging section different and distinct from section 3 of the Act. u/s 7-A, tax is charged on the purchase

turnover of a dealer where the goods purchased by him have not borne tax at the point of sales when the goods were purchased by him, as a tax levied on his selling dealer. If these two are separate charging sections, namely, section 3(1), on the one hand, and section 7-A, on the other, then it stands to reason that although they appear in one and the same enactment, the turnover of sales and the turnover of purchases, although of the same assessee's cannot be clubbed together for any purpose connected with his assessment. Section 3(1) says that the liability for the tax on sales turnover exists only for those whose total turnover is Rs. 50,000 and above in that year. If the sales turnover is less than this amount, he does not have to pay any tax. In the present case, the assessee is a dealer in jewellery. His sales turnover for the year 1975-76 was Rs. 40,931. Hence, if this alone were the turnover in his business, the dealer would not have to be charged to sales tax for the assessment year. But this is not the whole story. The dealer in this case had also made sum purchases of old jewellery which are liable to tax u/s 7-A(1) of the Act. The turnover in such purchase, according to the assessee's books, amounts to Rs. 39,721 for the same year 1975-76. What the assessee in this case did was to file an option u/s 7(1) of the Act, opting to get assessed under compounded rates. u/s 7(1), the compounded rates of tax would begin to operate only where the total turnover is either Rs. 50,000 or is in excess of Rs. 50,000. The assessing authority found that the total sales turnover of the assessee was only Rs. 46,931. But since the assessee had returned a purchase turnover also and that purchase turnover was computed in the sum of Rs. 39,721, adding both the turnovers, the aggregate turnover would exceed the sum of Rs. 50,000. The assessing authority, accordingly, did the arithmetical exercise of addition, and brought to tax the amount of Rs. 46,931 although considered individually, and by itself, that amount was not assessable to tax u/s 7(1) of the Act even at compounded rates. Even under the general provisions of section 3(1), a turnover of less than Rs. 50,000 cannot be brought to tax. But this is not all. Having assessed the sales turnover of Rs. 46,931 to tax, the assessing authority turned to the purchase turnover of Rs. 39,721 and brought it also to charge under the provisions of section 7-A(1) of the Act.

2. On appeal, the assessment of the sales turnover u/s 3(1) as well as the assessment of the purchase turnover u/s 7-A(1) were both confirmed by the Appellate Assistant Commissioner, subject to a small deletion of a part of the turnover. On further appeal, it was urged before the Appellate Tribunal by the assessee that the sales turnover assessable either u/s 3(1) in a regular assessment, or u/s 7(1) under compounded rates, on the one hand, and the purchase turnover assessable u/s 7-A(1), on the other, were distinct and separate subjects of charge and hence the turnover under both the heads cannot under any circumstances, be clubbed, just for the sake of arriving at the target of Rs. 50,000 and charging the tax either u/s 3(1) or section 7(1) of the Act. This contention was accepted by the Tribunal. The other argument addressed by the assessee before the Tribunal was that even as respects the purchase turnover of Rs. 39,721.40 since it was below the non-taxable maximum of Rs. 50,000 falling

under the proviso of section 7-A(1) of the Act, the levy of purchase tax on that sum was also not proper.

3. In this revision brought by the State Government, the main question argued by the learned Government Pleader was that for the purpose of assessment in this case, the aggregate sales turnover of Rs. 46,931 must be clubbed with the aggregate purchase turnover of Rs. 39,721 and that should be the proper thing to do even for purposes of an assessment made u/s 7(1) under compounded rates. The contention of the learned counsel for the assessee, on the contrary, is that since the aggregate sales turnover of Rs. 46,931 has not reached the ceiling limit of Rs. 50,000 either u/s 7(1) or u/s 3(1) of the Act, it cannot be brought to tax; likewise, since the aggregate purchase turnover of Rs. 39,721.40 is below the taxable limit of Rs. 50,000 that too cannot be brought to tax u/s 7(1).

4. The learned Government Pleader has referred to two Division Bench judgments of this Court as being in his favour. The first is *Mohanlal v. Commissioner of Commercial Taxes* [1979] 43 STC 433. This was an order passed by a Division Bench at the admission stage. The Bench rejected the revision filed by an assessee under the Tamil Nadu General Sales Tax Act raising a point similar to the present one before us. We are inclined to feel that this decision, if it can be so called, is not truly and authoritatively binding on the court, considering that the matter has not been the subject of consideration on an examination of the contentions of rival parties, but was disposed of during the admission stage. The reasoning in this judgment, however, was held to be correct in a later decision reported in *Chennakesavalu v. Board of Revenue* [1981] 47 STC 403. The later decision was a well-considered one on a final hearing of a revision under the Act. We cannot get away from the binding character of this later decision.

5. In both the decisions, it will be found that emphasis had been laid on the definition of the expression "total turnover" in the Act. The learned Judges apparently took the view that "total turnover" can only be "total turnover" in a dealer's assessment for a given assessment year. According to them, the Act does not contemplate a total turnover for sales and a total turnover for purchases in one and the same year.

6. It seems to us that this argument does not accord with the scheme of the Act as well as the very basis on which section 7-A was introduced by the legislature when they altered the pre-existing scheme of the Act. The learned Judges have missed the fact that section 7-A is a separate charging section, as laid down by the Supreme Court in *The State of Tamil Nadu Vs. M.K. Kandaswami and Others*, . The learned Judges have also not given proper weight to the words of section 7-A itself. Those words are to the effect that the purchase tax would be exigible under circumstances in which "no tax is payable u/s 3" These words show that purchase tax u/s 7-A is only on the goods purchased which did not suffer tax earlier as part of the sales turnover of the selling dealer u/s 3(1) or section 7(1), as the case may be. It is quite clear that the expression "total

turnover" which is found in section 3(1) of the Act is, and must be, different from the expression "turnover" occurring in section 7-A(1) of the Act. The two are different in kind, and separated by time. It follows that in the matter of the charge also, they must stand separate. When the Act deals separately with the two, it cannot be in consonance with the construction of the statute to mix up, or club, the two different turnovers for the purpose of arriving at "total turnover" for the purpose of assessment under the Act.

7. We have earlier referred to the fact that u/s 3(1), what is subjected to charge is only the total sales turnover. A study of the words of charge in section 3(1), however, would show that the language used therein is strictly neutral. It is, on its terms, capable of referring not only to the sales turnover, but also to the purchase turnover during a year. The words are :

"Every dealer whose total turnover for a year is not less than Rs. 50,000 shall pay a tax for each year at the rate of 4 per cent of his taxable turnover."

8. Mark the expression "whose total turnover for an year". A very literal interpretation of the expression "total turnover" in line with the definition of that expression u/s 2(q) read with section 2(r) of the Act might lead to the impression that the turnover liable for charge to tax u/s 3(1) must combine the aggregate of the sales turnover and the aggregate of the purchase turnover. But such a liberal construction can not be correct, if one is to be alive to the past traditions of the statute. With the neutral language it employs, the charging provision in section 3(1) has nevertheless been regarded for long both by the taxing authorities and the assesseees, as levying only a tax on the total sales turnover during a year. The purchase aspect had never entered and could never enter into the reckoning, except in the single point levy, which is laid under the different provisions of section 3(2). Indeed, the rationale of introducing a scheme of purchase tax u/s 7-A, as part of the mopping-up operations under the Act, is only on the footing that the charge u/s 3(1) does not attach, or has not attached, to the goods in question. If section 3(1) levys a tax on purchase turnover also, and both sales turnover and purchase turnover are to be clubbed with each other so as to arrive at the "total turnover" then the necessity for a new charging provision specifically to bring to tax the purchase turnover alone vanishes. We are satisfied that despite the generality of the definition of the words "turnover" and "total turnover" in the interpretation clauses of the Act, the reference in section 3(1) must be regarded as a reference only to total sales turnover. There is no other way to render the introduction of section 7-A meaningful. When so much implication has to be read into section 3(1) of the Act for the purpose of laying the general charge of tax on the sales turnover, consistent with the emergence of the purchase tax u/s 7-A, it stands to reason that the expression "total turnover" cannot lend itself to a different interpretation u/s 7(1). In both sections 3(1) and section 7(1), the expression "total turnover" cannot enable the assessing authority to club the aggregate sales turnover of a dealer in a year with

aggregate purchase turnover of the same dealer in the same year for the purpose of deciding whether he is to be brought within the ambit of the charge or left out.

9. The difficulty in fitting the language of section 3(1) with the new found levy u/s 7-A in the Act would be inseparable if the expression "total turnover" were given the meaning of a combined purchase-cum-sale total turnover. It would have been observed that section 3(1) retains its original format unchanged even after section 7-A had been introduced. This is another reason to hold that it had the same meaning before that it has now, and the meaning has not changed. The learned Government Pleader offered the construction that the definition of "turnover" up to 26th November, 1969, that is to say, up to the time when section 7-A was introduced, would relate only to sales turnover and not the purchase turnover, but subsequently the same definition would include a combined sales and purchase turnover. We cannot accept this approach to interpretation. We know of the compulsions and exigencies that may demand the court having to construe the same word occurring in different sections in an enactment according to differences in context, producing different results. But it is quite a novel mode of attributing different meanings to the same expression in the same enactment, the differences to be spelled out according to the age and history of the enactment at successive stages. We cannot agree with the view that the same expression "total turnover" includes (sic) purchase turnover up to a particular point of time, but, thereafter, without a single word being added or taken away from the expression, it would get its meaning altered and include the purchase turnover, after the particular point of time. For this novelty in statutory interpretation, there is no sanction either in principle or in authority.

10. In the two bench decisions earlier referred to, the matter has not been examined whether, in the historical perspective of section 3(1), the words "total turnover" can be given a wide meaning, and whether at all events, such a meaning could be given particularly after the introduction of section 7-A. Nor have the learned judges considered the question with reference to the restrictive words of charge found in section 7-A. We are, therefore, satisfied that the decisions require reconsideration.

11. The matter may be placed before the Chief justice for being dealt with by a larger Bench.

12. In pursuance of the above said order of reference the case came on for hearing before the Full Bench.

13. The Advocate-General for the Additional Government Pleader, for the petitioner.

14. Moolchand Jain for Suganchand Jain, for the respondent.

Padmanabhan, J.

15. An important question of law under the provisions of the Tamil Nadu General

Sales Tax Act, 1959 (referred to as the Act), arises for consideration of the Full Bench in this case. The matter has been referred to the Full Bench by a bench consisting of Ratnavel Pandian, J., and one of us (Balasubrahmanyam, J.) in view of the fact that they doubted the correctness of two earlier Bench decisions of this Court in *Mohanlal v. Commissioner of Commercial Taxes* [1979] 43 STC 433 and *Chennakesavalu v. Board of Revenue* [1981] 47 STC 403.

16. The assessee herein is a dealer in jewellery. For the assessment year 1975-76 his sales turnover was Rs. 46,931. The assessee had also purchased during the assessment year old jewellery which is liable to purchase tax u/s 7-A(1) of the Act to the tune of Rs. 39,721. The assessee filed a return declaring his sales turnover at Rs. 46,931 and the purchase turnover at Rs. 25,653. Before the assessing authority, the assessee contended that he was not liable to pay purchase tax u/s 7-A(1) of the Act in view of the fact that his purchase turnover of old jewellery was below Rs. 50,000. The assessing officer added 5 per cent to the sales turnover returned by the assessee and determined the same at Rs. 49,278. He accepted the figure of Rs. 25,653 returned by the assessee as the purchase turnover u/s 7-A(1) of the Act. The assessing authority added the sales turnover and the purchase turnover and levied a tax of Rs. 1,800 u/s 7 and an additional tax of Rs. 1,026 on the purchase turnover of Rs. 25,653 at 4 per cent u/s 7-A of the Act. The assessee preferred an appeal before the Appellate Assistant Commissioner. The appellate authority deleted the addition of 5 per cent added by the assessing authority to the sales turnover and accepted the figure of Rs. 46,931 returned by the assessee. The appellate authority, however, on the enhancement petition filed by the revenue added a further sum of Rs. 14,068 to the purchase turnover and determined the same at Rs. 39,721. He accordingly fixed the total turnover at Rs. 86,652 and directed levy of sales tax on the same amount u/s 7 of the Act. The assessee carried the matter further in appeal before the Sales Tax Appellate Tribunal, Madras. Before the Appellate Tribunal it was contended on behalf of the assessee that the sales turnover u/s 3(1) and the purchase turnover u/s 7-A(1) cannot be clubbed together and that consequently the assessee would not be liable to tax either u/s 3(1) or u/s 7-A(1) of the Act. It was further argued that even as respects the purchase turnover of Rs. 39,721 since it was below the non-taxable maximum of Rs. 50,000 falling under the proviso to section 7-A(1) the levy of tax on that sum was also not proper. The Appellate Tribunal upheld the enhancement of the purchase turnover by Rs. 14,068 made by the Appellate Assistant Commissioner. However, the Appellate Tribunal accepted the contention of the assessee that the purchase turnover should not be added to the sales turnover for the purpose of determining the turnover u/s 7 of the Act. The Tribunal came to the conclusion that in view of the fact that the sales turnover of the assessee after excluding the purchase turnover of Rs. 39,721 came only to Rs. 46,931 and was below Rs. 50,000, there was no necessity for the assessee to claim the benefit u/s 7 of the Act. In the view, the Tribunal further held, that the levy of purchase tax against the assessee u/s 7-A(1) of the Act was wrong. Accordingly, the Tribunal set aside

the orders of the assessing authority as well as the appellate authority and allowed the appeal. It is, in these circumstances, the revenue has filed this tax revision case.

17. The question that arises for consideration is whether for the purpose of determination of the total turnover u/s 3(1) or 7 of the Act, the turnover of the assessee u/s 3(1) and the turnover u/s 7-A(1) can be aggregated. I may straightaway state that both in *Mohanlal v. Commissioner of Commercial Taxes* [1979] 43 STC 433 and *Chennakesavalu v. Board of Revenue* [1981] 47 STC 403 this Court has taken the view that for the purpose of finding out the total turnover under the Act, the turnover u/s 3(1) and that u/s 7-A have to be aggregated. We are concerned, as already stated, with the correctness of the said view taken in these decisions.

18. The Sales Tax Act is essentially a law imposing tax on the sale of goods. The Act was first introduced in 1939. It underwent many amendments. In the year 1959 the Tamil Nadu General Sales Tax Act, 1959, was passed to consolidate and amend the laws relating to the levy of a general tax on the sale or purchase of goods in the State of Tamil Nadu.

19. In order to consider the question of law arising for our consideration, it is necessary to set out the relevant sections of the Act. Section 3(1) of the Act which is the main charging section reads thus :

"3. (1) Every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year is not less than fifty thousand rupees and every casual trader or agent of a non-resident dealer, whatever be his turnover for the year, shall pay a tax for each year at the rate of four per cent of his taxable turnover :

Provided that

(i) in the case of rice products (for example, rice flour and rice bran), milk, fresh vegetables (other than those mentioned in the First Schedule), fresh fruits, betel and plaintain leaves, flowers, eggs, meat and fish (other than canned meat and fish), the rate shall be one per cent."

20. It is not necessary for our present purpose to reproduce the other sub-section of section 3.

21. Section 4 states thus :

"Tax in respect of declared goods. - Notwithstanding anything contained in section 3, the tax under this Act shall be payable by a dealer on the sale or purchase inside the State of declared goods at the rate and only at the point specified against each in the Second Schedule on the turnover in such goods in each year, whatever be the quantum of turnover in that year."

22. Section 5 reads thus :

"Notwithstanding anything contained in sub-section (1) of section 3, every dealer registered under sub-section (3) of section 7 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), shall whatever be the quantum of his turnover, pay tax for each year in respect of the sale of goods with reference to the purchase of which he has furnished a declaration under sub-section (4) of section 8 of the aforesaid Central Act, at the rates specified hereunder -

(a) one per cent of his taxable turnover, in the case of goods mentioned in clause (i) of the proviso to sub-section (1) of section 3;

(b) four per cent of his taxable turnover in the case of other goods liable to tax under sub-section (1) of section 3."

23. u/s 3(1) of the Act a dealer is liable to pay tax on his taxable turnover at the specified rate only if his total turnover, is not less than Rs. 50,000. Section 4 prescribes the rate of tax and the point of taxation in respect of declared goods which are listed in the Second Schedule to the Act. Section 5 makes liable to tax a dealer under the Central Sales Act, 1956, on his sales go goods with reference to the purchase of which he has furnished a declaration under sub-section (4) of section 8 of the Central Sales Tax Act, 1956. The liability to tax u/s 4 and 5 will be attracted even if the total turnover of a dealer is less than the exemption limit mentioned in section 3(1) of the Act.

24. Since sections 3, 4 and 5 refer to "turnover", "taxable turnover" and "total turnover", it is necessary to refer to the definition of the words as given in the Act. Section 2(r) defines "turnover" thus :

""turnover" means the aggregate amount for which goods are bought or sold, or supplied, or distributed, by a dealer, either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea grown within the state by himself or an any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover."

25. Section 2(q) defines "total turnover" thus :

""total turnover" means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax."

26. Section 2(p) defines "taxable turnover" thus :

""taxable turnover" means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may prescribed."

27. From the above it is clear that "total turnover" is the aggregate turnover in all goods of a dealer, whether such turnover is liable to tax or not. "Taxable

turnover" is the turnover on which the dealer is liable to pay tax and is to be determined after making such deductions from the "total turnover" as may be prescribed. "Turnover" is the aggregate amount for which goods are bought or sold. Since the "turnover" includes the amount for which the goods are bought or sold, it looks as if the amount for which the particular goods are purchased and the amount for which the same goods are sold will have to be added together to arrive at the "turnover" in such goods. However rule 5, which is extracted below, provides that for certain goods mentioned in rule 5(2) the amount for which the goods are purchased by the dealer and for all other goods the amount for which the goods are sold by the dealer, only will have to be taken into account for arriving at the "turnover" in such goods. Further it is seen that the proceeds of the sale by a person of agricultural or horticultural produce other than tea are to be excluded from the turnover provided they are grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise.

28. Section 53 of the act empowers the Government to make rules to carry out the purposes of the Act. Section 53 reads thus :

"53. (1) The Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for -

(a) all matters expressly required or allowed by this Act to be prescribed;

(b) determining the total turnover or turnover of a dealer for the purposes of this Act."

(c) to (p) omitted.

29. The State Government have in exercise of the powers conferred on them by section 53 of the Act framed the Tamil Nadu General Sales Tax Rules, 1959. Rule 5 deals with the procedure for assessment. Rule 5(1) reads thus :

"Save as provided in sub-rule (2), the total turnover of dealer for the purposes of these rules shall be the amount for which goods are sold by the dealer."

30. Rule 5(2) reads as follows :

"In the case of the undermentioned goods the total turnover of a dealer for the purpose of these rules shall be the amount for which the goods are bought by the dealer -

(a) cotton,

(b) raw hides and skins,

(c) wattle bark, avaram bark, konnam bark, wattle extract, quobracho and chestnut extract,

- (d) omitted,
- (e) palmyra fibres and stalks,
- (f) potatoes,
- (g) cardamom,
- (h) sugarcane,
- (i) groundnut,
- (j) omitted,
- (k1) coconut [other than those falling under sub-section (viii) of item 6 of the Second Schedule],
- (k2) coconut [i.e., copra excluding tender coconuts (*cocos nusifera*)],
- (l) raw rubber, namely, latex,
- (m) cashewnut and kernel, and
- (n) prawns, lobsters, crabs, frogs and frog legs."

31. Rule 5-A deals with the amounts which shall not be included in the total turnover of a dealer in pursuance of explanation (2) to section 2(r) of the Act subject to the conditions specified therein. Rule 5-B deals with the claim for adjustment or refund of the tax made under sub-section (5) of section 13. Rule 6 specifies the amounts to be deducted from the total turnover of a dealer in determining his taxable turnover. Rule 7 deals with the filing of return by the dealer having more than one place of business and the head office within the State of Tamil Nadu. Rule 9 deals with submission of returns by every dealer who is liable to pay tax u/s 3(2) or section 4 or section 5 and every agent of a non-resident dealer. It also deals with the submission of return by every dealer except a casual dealer whose estimated total turnover for that year of his business is not less than Rs. 50,000. The rest of the rules (2)(sic) to 22-A deals with the procedure and manner of assessment.

32. Section 7(1) provides that notwithstanding anything contained in sub-section (1) of section 3, every dealer (other than a casual trader or an agent of a non-resident dealer) whose total turnover is not less than fifty thousand rupees but not more than one lakh of rupees, may at his option, instead of paying the tax in accordance with the provisions of that sub-section, pay tax at the rates specified in section 7(1). Section 7(2) provides that any dealer (other than a casual trader or agent of a non-resident dealer) who estimates his total turnover for a year to be not more than one lakh of rupees may apply to the assessing authority to be permitted to pay the tax under this section and on being so permitted he shall pay the tax due in advance during the year in monthly or prescribed instalments and for that purpose shall submit such returns in such manner as may be prescribed. The permission granted to the assessee by the assessing authority

would continue to be in force so long as the assessee is eligible to be assessed under that provision, viz., so long as the turnover did not exceed the amount specified in the provision and so long as the assessee has not withdrawn the option. Sub-section (3) of section 7 provides that the tax paid under sub-section (2) shall be subject to such adjustment as may be prescribed on the completion of final assessment in the manner prescribed. Section 7 is an optional provision and if an assessee considers that it will not be beneficial to him to be assessed u/s 7 he could as well opt to be assessed u/s 3(1) of the Act.

33. By the Tamil Nadu Amendment Act 2 of 1970 section 7-A was inserted in the Act. The section came into effect from 27th November, 1969. The section reads thus :

"7-A. (1) Every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable u/s 3, 4 or 5, as the case may be, either, -

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

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

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in section 3, 4 or 5, as the case may be, whatever be the quantum of such turnover in a year;

Provided that a dealer (other than a casual trader or agent of a non-resident dealer) purchasing goods the sale of which is liable to tax under sub-section (1) of section 3 shall not be liable to pay tax under this sub-section, if his total turnover for a year is less than fifty thousand rupees.

....."

34. In The State of Tamil Nadu Vs. M.K. Kandaswami and Others, the the Supreme Court has specified the ingredients of sub-section (1) of section 7-A thus :

"(1) The person who purchases the goods is a dealer;

(2) The purchase is made by him in the course of his business;

(3) Such purchase is either from "a registered dealer or from any other person";

(4) The goods purchased are "goods, the sale or purchase of which is liable to tax under this Act";

(5) Such purchase is "in circumstances in which no tax is payable u/s 3, 4 or 5, as the case may be"; and

(6) The dealer either -

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

(b) despatches all such goods in any manner other than by way of sale in the State; or

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce."

35. If all the above conditions are cumulatively satisfied then the revenue can invoke section 7-A(1). The proviso to section 7-A exempts a dealer, other than a casual trader or agent of a non-resident dealer, from payment of tax u/s 7-A(1), if his total turnover for a year is less than fifty thousand rupees.

36. It may be mentioned that at the time the section was originally introduced the figure was only Rs. 25,000 and the same was raised to Rs. 50,000 by a subsequent amendment. Section 7-A thus brings to a tax goods, the sale of which would normally have been taxed at some point in the State subsequent to their purchase by the dealer if those goods are not available for taxation owing to the act of the dealer in consuming them in the manufacture of other goods for sale or otherwise, or by disposing them in any manner other than by way of sale in the State, or by despatching them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce. For instance, sales of arecanuts, gingelly seeds, turmeric, grams are not liable to tax in the hands of agriculturist sellers by reason of the fact that the goods are the produce of the crops raised by them. They will become exigible to tax after they are sold by dealers registered under the Act. If these goods however are consumed in the manufacture of other goods for sale or disposed of otherwise, then they would escape taxable liability under the Act resulting in leakage and evasion of tax. It is precisely to prevent such leakage and evasion of tax that section 7-A has been introduced in the Act. It is thus clear that section 7-A is an independent charging section.

37. The true interpretation to be placed on section 7-A has been made clear by the Supreme Court in *The State of Tamil Nadu Vs. M.K. Kandaswami and Others*, . I have already referred to the ingredients of section 7-A as laid down by the Supreme Court in the said decision. In interpreting section 7-A, Sarkaria, J., has observed as follows :

"It is to be noted that section 7-A is not subject to section 3; it is by itself a charging provision. Section 7-A brings to tax goods the sale of which would normally have been taxed at some pint in the State, subsequent to their purchase by the dealer if those goods are not available for taxation, owing to the act of the dealer in (a) consuming them in the manufacture of other goods for

sale or otherwise, or (b) despatching them in any manner other than by way of sale in the State, or (c) despatching them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce.

Ingredients (4) and (5) are not mutually exclusive and the existence of one does not necessarily negate the other. Both can co-exist and in harmony. Ingredient (4) would be satisfied if it is shown that the particular goods were "taxable goods"; i.e., the goods, the sale or purchase of which is generally taxable under the Act. Notwithstanding the goods being "taxable goods", there may be circumstances in a given case, by reason of which the particular sale or purchase does not attract tax u/s 3, 4 or 5, Section 7-A provides for such a situation and makes the purchase of such goods taxable in the hands of the purchasing dealer on his purchase turnover if any of the conditions (a), (b) and (c) of sub-section (1) of section 7-A is satisfied

It may be remembered that section 7-A is at once a charging as well as a remedial provision. Its main object is to plug leakage and prevent evasion of tax. In interpreting such a provision, a construction which would defeat its purpose and in effect, obliterate it from the statute book, should be eschewed. If more than one construction is possible, that which preserves its workability and efficacy is to be preferred to the one which would render it otiose or sterile."

38. Sarkaria, J., quoted with approval the following passage from *Malabar Fruit Products Company, Bharananganum, Kottayam v. Sales Tax Officer, Palai* [1972] 30 STC 537 :

"Another instance I can conceive of is a case of a dealer selling agricultural or horticultural produce grown by him or grown on any land in which he has interest, whether as owner, usufructuary mortgagee, tenant or otherwise. From the definition of "turnover" in section 2(xxvii) of the Kerala General Sales Tax Act it is evident that the proceeds of such sale would be excluded from the turnover of a person who sells goods produced by him by manufacture, agriculture, horticulture or otherwise, though merely by such sales he satisfies the definition of a "dealer" in the Act. Thus, such a person selling such produce is treated as a dealer within the meaning of the Act and the sales are of goods which are taxable under the Act but when he sells these goods, it is not part of his turnover. Therefore, it is a case of a dealer selling goods liable to tax under the Act in circumstances in which no tax is payable under the Act. In such a case, the purchaser is sought to be taxed u/s 5A provided the conditions are satisfied. The case of growers selling goods to persons to whom section 5A thus applies is covered by this example."

39. Sarkaria, J., again observed as follows :

"We have pointed out and it needs to be emphasised again that section 7-A itself is a charging section. It creates a liability against a dealer on his purchase turnover with regard to goods, the sale or purchase of which though generally liable to tax under the Act have not, due to the circumstances of particular sales,

suffered tax u/s 3, 4 or 5, and which after the purchase, have been dealt by him in any of the modes indicated in clauses (a), (b) and (c) of section 7-A(1)."

40. It is therefore clear that section 7-A is an independent charging section. It imposes a liability on a dealer to pay tax on his purchase turnover with regard to goods the sale or purchase of which though generally liable to tax under the Act have not, due to circumstances of particular sales, suffered tax u/s 3, 4 or 5 and which after the purchase have been dealt by him in any of the modes indicated in clauses (a), (b) and (c) of section 7-A(1).

41. The argument of the learned Advocate-General is that for the purpose of determining the total turnover of a dealer, the turnovers of all the goods must be aggregated. This is so because the total turnover is defined in the Act as meaning of aggregate turnover in all goods of a dealer. According to the learned Advocate-General the turnover of goods covered by sections 3, 4 or 5 and 7-A will have to be added for the purpose of finding out the total turnover and if such total turnover is not less than Rs. 50,000 then the dealer is liable to pay tax as per section 3(1) or 7(1). In addition to this, the dealer is also liable to pay tax u/s 4 or 5 or 7-A, as the case may be. The total turnover mentioned in section 3(1) or 7(1) or in the proviso to section 7-A(1) has the same meaning as given in the Act. On the other hand, the learned counsel for the assessee contended that the total turnover occurring in section 3(1) or 7(1) would refer only to total sales turnover and the total turnover occurring in the proviso to section 7-A(1) would refer to the total purchase turnover and both these cannot be clubbed together for making the assessee liable to pay tax under the Act. The submission of the learned counsel for the assessee is that the fact that a word has been defined in the Act does not mean that wherever the word is used in the Act the same meaning should be given to the word. On the other hand, the question whether the expression bears the meaning given to it in the definition clause has to be determined in the context of the situation in which the word occurs.

42. It is one of the settled canons of interpretation of statutes that if an interpretation clause gives a particular meaning to a word it does not follow as a matter of course that if that word is used more than once in the Act it is on each occasion used in the same meaning. Whether the same meaning, as has been given in the interpretation clause, should be given to the word wherever it occurs, will depend upon the context. To quote Craies on Statute Law, seventh edition, page 216 :

"Another important rule with regard to the effect of an interpretation clause is, that an interpretation clause is not to be taken as substituting one set of words for another, or as strictly defining what the meaning of a terms must be, under all circumstances, but rather as declaring what may be comprehended with the term where the circumstances require that it should be so comprehended. If, therefore, an interpretation clause gives an extended meaning to a word, it does not follow as a matter of course that, if that word is used more than once in the Act, it is on each occasion used in the extended meaning, and it may be always a

matter for argument whether or not the interpretation clause is to apply to the word as used in the particular clause of the Act, which is under consideration. "It appears to me", said Lord Selborne in *Meux v. Jacobs* (1875) LR 7 HL 481 "that the interpretation clause does no more than say that, where you find these words in the Act, they shall, unless there be something repugnant in the context or in the sense, include fixtures."

So the words "any person" in the Solicitors Act, 1932, were held not to include a body corporate, but only such person as could become a solicitor, in spite of section 2 of the Interpretation Act, which enacts that "person" shall include a body corporate unless a contrary intention appears."

43. In *Dhandhaniala Kedia and Co. Vs. The Commissioner of Income Tax*, the question for consideration was the meaning to be attached to the word "previous year". It was contended before the Supreme Court that the expression "previous year" used in section 2(6A)(c) of the Income Tax Act, 1922, as amended in 1939, should be given the same meaning as given in the definition clause of section 2(11). Venkatarama Aiyar, J., observed as follows :

"The argument of Mr. Sharma for the appellant is that section 2(11) having defined the meaning which the expression "previous year" has to bear in the Act, that meaning should, according to the well-settled rules of construction, be given to those words wherever they might occur in the statute, and that that is the meaning which must be given to the words "six previous years" in section 2(6A)(c). It is to be noticed that the definitions given in section 2 of the Act are, as provided therein, to govern "unless there is anything repugnant in the subject or context". Now, the appellant contends that the words "unless there is anything repugnant" are much more emphatic than words such as "unless the subject or context otherwise requires", and that before the definition in the interpretation clause is rejected as repugnant to the subject or context it must be clearly shown that if that is adopted, it will lead to absurd or anomalous results. And our attention was invited to authorities in which the above rules of construction have been laid down. It is unnecessary to refer to these decisions as the rules themselves are established beyond all controversy, and the point to be decided ultimately is whether the application of the definition in section 2(11) is repelled in the context of section 2(6A)(c)."

44. In the context of the situation, the learned Judges held that it would be repugnant to the definition of "dividend" in section 2(6A)(c) to import into the words, "six previous years" the definition of "previous year" in section 2(11) of the Act."

45. In *Commissioner of Expenditure Tax, Gujarat, Ahmedabad Vs. Darshan Surendra Parekh*, it has been observed as follows :

"It is a settled rule of interpretation that in arriving at the true meaning of any particular phrase in a statute, the phrase is not to be viewed isolated from its context; it must be viewed in its whole context, the title, the preamble and all

the other enacting parts of the statute. It follows therefrom that all statutory definitions must be read subject to the qualifications expressed in the definition clauses which create them, such as "unless the context otherwise requires", or "unless a contrary intention appears", or "if not inconsistent with the context or subject-matter".

46. In *State of Madhya Pradesh Vs. Saith and Skelton (P) Ltd.*, the question arose whether the word "court" occurring in section 14(2) of the Arbitration Act should be given the same meaning as contained in definition of "court" in section 2(d) of the Act. With reference to this aspect Vaidialingam, J., spoke thus :

"It should be noted that the opening words of section 2 are "In this Act, unless there is anything repugnant in the subject or context". Therefore, the expression "court" will have to be understood as defined in section 2(c) of the Act, only if there is nothing repugnant in the subject or context. It is in that light that the expression "court" occurring in section 14(2) of the Act will have to be understood and interpreted."

47. In *The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another, Wanchoo, J.*, speaking for the court stated the ratio thus :

"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 similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore, in finding out the meaning of the word "insurer" in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, 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 collection 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. Therefore, though ordinarily the word "insurer" as used in the Act (Insurance Act, 1938) would mean a person or body corporate actually carrying on the business of insurance it may be that in certain sections the word may have a somewhat different meaning."

48. The above being the canon of interpretation of definition clauses, we have to examine whether the expression "total turnover" occurring in the proviso to section 7-A of the Act can be given the same meaning as the meaning to be

given to the expression "total turnover" in section 2 of the Act. Section 2 begins with the words, "In this Act unless the context otherwise required". Therefore, it will certainly be open to the court to give a different meaning to the words "total turnover" occurring in the proviso to section 7-A of the Act if the context so requires. On the contrary, if the context does not call for a different meaning being given to the words "total turnover" other than the one given in section 2 read with section 2(r) then the expression must be deemed to have been used in the same sense in which it has been given the meaning in the definition clause.

49. Section 7-A no doubt, as found by the Supreme Court, is an independent charging section. It levies a tax on every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods the sale or purchase of which is liable to tax under the Act in circumstances in which no tax is payable u/s 3, 4 or 5 and provided any of the conditions referred to in clauses (a), (b) and (c) are satisfied. In other words, section 7-A(1) enjoins a dealer to pay tax in certain circumstances on the turnover relating to such purchases. The rate of tax is the rate mentioned in section 3, 4 or 5, as the case may be. Section 7-A further provides that the tax payable in such circumstances shall be on the turnover relating to the purchases whatever may be the quantum of such turnover in a year. The proviso to section 7-A states that a dealer who purchases goods in the circumstances mentioned in the enacting section shall not be liable to pay tax u/s 7-A(1) if his total turnover for a year is less than Rs. 50,000. A reading of section 7-A(1) of the Act with the proviso as a whole, the inference that one gets is that the word "total turnover" used in the proviso has been used in the same sense in which it has been defined in section 2(q) of the Act. Such an interpretation, if placed on the expression "total turnover" found in the proviso, would be in harmony with the scheme of the Act and would not in any way be repugnant to the enacting part of section 7-A(1). We have already seen that section 2(q) defines the "total turnover" as the aggregate turnover in all the goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax. The definition of "total turnover" does not give any room for splitting up the "total turnover" into different total turnovers depending upon the fact whether it is a turnover relating to sales or relating to purchase. Ordinarily, the "total turnover" referred to in section 2(q), unless limited by express or necessary implication, must take in the aggregate turnover in all goods of a dealer which must necessarily include not only the sales turnover as well as purchase turnover u/s 7-A or 4. The word "turnover" has been defined as the aggregate amount for which goods are bought or sold, or supplied or distributed, by a dealer, either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration. The definition, as already noticed, would include the amounts for which goods are bought or sold. It must be noted that the language used is "sold or bought" and not "sold and bought". Therefore, the question whether in the case of identical goods when a dealer purchases them and sells them, his total turnover should be taken to include the

purchase turnover of goods and the sales turnover of the very same goods, does not arise. It is only either the aggregate amount for which goods are bought or the aggregate amount for which goods are sold will be taken into consideration for arriving at the turnover of a particular goods. Rule 5 of the Rule provides for the manner of arriving at the turnover of goods. According to rule 5(2) in cases of goods mentioned in that rule, it is only the aggregate amount for which goods are bought should be taken into consideration for arriving at the turnover and in all other cases [according to rule 5(1)] it is the aggregate amount for which goods are sold should be taken into consideration for arriving at the turnover. A combined reading of sections 2(r), 2(q) and rule 5 would make it clear that for arriving at the turnover of goods as defined in section 2(r) either the sales turnover of goods or the purchase turnover of goods will have to be taken into consideration and that both the sales turnover as well as the purchase turnover will have to be clubbed together for arriving at the total turnover of a dealer as defined in section 2(q) when the dealer deals in goods falling in rule 5(1) as well as in rule 5(2).

50. Just like section 7-A, section 4 also is an independent charging section and it levies tax on certain declared goods at the rate and only at the point specified against each in the Second Schedule on the turnover in such goods in each year, whatever be the quantum of turnover in that year. A perusal of the Second Schedule would show that taxes are levied on certain items at the point of the last purchase in the State. In such cases, the total turnover of the dealer must definitely include the purchase turnover of declared goods. In this connection, it will be useful to refer to two decisions of this Court. In *State of Madras v. Eastern Supplies* [1954] 5 STC 344; (1954) 2 MLJ 548 which was a case under the Madras General Sales Tax Act, 1939, one of the questions that arose for decision was whether groundnuts could be taxed only at the point of sale and not at the point of purchase. A Bench of this Court held that for the purpose of determining the turnover one had to fall back upon the charging section, section 3, which directed that every dealer should pay for each year tax on his total turnover, and that the turnover as provided by sub-rule (4) of section 3 for the purpose of taxation, should be determined in accordance with the rules enacted under the provisions of the Act. The Bench then referred to rule 4 which provided that in the case of groundnuts, the turnover should be calculated on the amount at which the goods are purchased by the dealer. The Bench further held that the tax, therefore, is not with reference to the sale or purchase as such, but upon the dealer on the basis of his turnover which is subjected to the tax by the charging section, section 3.

51. In *Radhakrishna Groundnut Oil Mill v. State of Madras* [1954] 5 STC 357; (1954) 2 MLJ 550 which was also a case under the 1939 Act and the Rules made thereunder, it was held that under rule 4(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, dealings in groundnut are taxable at the purchase point, and that when exactly the dealer sold the groundnut, he had purchased or when exactly he converted that groundnut into oil did not matter,

so long as the condition required by rule 4(2) was satisfied, that groundnut was purchased by the dealer in the course of his business.

52. Thus it is clear that in the case of goods where sales tax is leviable at the purchase point the amount for which the goods are purchased has to be included in arriving at the total turnover of a dealer for the purpose of sections 3 and 7. I am conscious of the fact that rule 5(2) prescribes that in the case of certain specified goods in respect of which tax is leviable at the purchase point the amount for which the goods are purchased will be the turnover.

53. Similarly, section 5 levies tax on sale of goods purchased by dealers under the Central Sales Tax Act. As in the case of section 4, section 5 also is an independent charging section, distinct and different from section 3(1). In the case of section 5 also it is not disputed and it cannot be disputed that the turnover u/s 5 has to be aggregated along with the turnover u/s 3(1) for arriving at the total turnover of the dealer for the purpose of determination of his taxable liability. In *Coimbatore District Central Co-operative Supply and Marketing Society Ltd. v. Deputy Commercial Tax Officer* [1975] 35 STC 226 the assessee's turnover was fixed at Rs. 5,30,92,979.52. Out of this turnover Rs. 3,68,34,733.11 was given exemption and the taxable turnover was fixed at Rs. 1,62,58,246.41. This turnover was subjected to tax u/s 3(1). Thereafter, the Commercial Tax Officer on a further verification of the assessment files found that a turnover of Rs. 9,44,156.90 would be liable to tax u/s 5 of the Act. It was contended before this Court that the entire turnover of Rs. 5,30,92,979.52 was the subject of the assessment u/s 3(1) and therefore there was no room for application of section 5. In other words, it was contended that inasmuch as the turnover u/s 5 had already been included in the total turnover, the turnover u/s 5 should not be singled out for being charged separately. The argument was not accepted by a Bench of this Court. It was held that "it is not unusual that where a turnover of sales, when split up, is found to contain a variety of transactions which are differently dealt with for the purpose of charging under the Sales Tax Act, it is no argument because there is a compendious assessment that the sales, which attract the special charge, could not be separated from assessment". This decision shows that for the purpose of arriving at the total turnover for the purpose of section 3(1), the turnover u/s 3(1) as well as the turnover u/s 5 have to be clubbed together.

54. When once I find that the turnover of a dealer under sections 4 and 5 have to be aggregated along with the turnover u/s 3 for arriving at the total turnover for determination of the taxable liability, the question naturally arises whether a different interpretation can be applied to section 7-A read with the proviso. Can it be said that the total turnover referred to in the proviso to section 7-A is not the same total turnover that is referred to in section 2(q). In other words, can there be one total turnover composed of turnover under sections 3, 4 and 5 and another total turnover relating to the purchase u/s 7-A for the purpose of determining the taxable liability of a dealer. This question will become particularly

important in case where a dealer deals in goods covered by section 7-A as well as good which fall outside the purview of section 7-A but within the mischief of one or the other of sections 3, 4 or 5. On a consideration of the scheme of the provisions of the Act, I am of the view that the expression "total turnover" occurring in the proviso to section 7-A cannot be limited to only the purchase turnover referred to in section 7-A. On the other hand, it can have reference only to the "total turnover" as defined in section 2(q) read with section 2(r) of the Act. Dictates of harmonious constructions would demand that the expression "total turnover" used in the proviso should be given the same meaning as that given in the definition in section 2(q) read with section 2(r). Normally, the rule of construction is that a proviso must be construed with reference to the principal matter to which it stands as a proviso. In other words, when one finds a proviso to section the natural presumption is that but for the proviso the enacting part of the section would have included the subject-matter of the proviso. However, it may be necessary on the facts and circumstances of a particular statute that a proviso may have to be given an enlarged scope. To quote Craies on Statute Law, seventh edition, page 219 : "But sections, though framed as provisoes upon preceding sections, may exceptionally contain matter which is in substance a fresh enactment, adding to and not merely qualifying what goes before". Crawford in his "Statutory Construction" at page 604 has observed as follows : "Even though the primary purpose of the proviso is to limit or retain the general language of a statute, the legislature, unfortunately, does not always use it with technical correctness. Consequently, where its use creates an ambiguity it is the duty of the court to ascertain the legislative intention, through resort to the usual rules of construction applicable to statutes generally, and give it effect even though the statute is thereby enlarged or the proviso made to assume the force of an independent enactment, and although a proviso as such has no existence apart from the provision which it is designed to limit or to qualify. It should also be construed in harmony with the rest of the statute, or as the court stated in *Foster v. United States* 47 Fed (2) 892 :

"It may be said in general that every part of the Act must be given effect where it is possible so to do, and that a proviso should, in general be construed as a limitation or qualification upon the otherwise general application of the statute. Whether in a given case the proviso does in fact limit or qualify, and if so, to what extent, depends primarily on the proviso itself"

55. As a general rule, however, the operation of a proviso should be confined to that clause or portion of the statute which directly precedes it in the statute Nevertheless, this general rule is not always applicable. Although the position of the proviso has considerable influence upon its real character, it is not necessarily controlling. Accordingly, if the meaning and purpose of the proviso is plain, any reference from its position may and should be disregarded. In other words, position cannot supersede the obvious intention of the legislature as ascertained from the context and all the provisions relating to the subject-matter involved. It is therefore possible that the proviso may

apply to sections or portions thereof which follow the proviso, or to the entire act, or, for that matter, even to the original statute of which the statute containing the proviso is an amendment. After all, it is the legislative intent that controls."

56. Maxwell in his "Interpretation of Statutes", 12th edition, at page 189, stated the rule thus :

"Difficulties sometimes arise in construing provisos. It will, however, generally be found that inconsistencies can be avoided by applying the general rule that the words of a proviso are not to be taken absolutely in their strict literal sense, but that a proviso is "of necessity limited in its operation to the ambit of the section which it qualifies". And, so far as that section itself is concerned, the proviso again receives a restricted construction : where the section confers powers, "it would be contrary to the ordinary operation of a proviso to give it an effect which would cut down those powers beyond what compliance with the proviso renders necessary".

.....

If, however, the language of the proviso makes it plain that it was intended to have an operation more extensive than that of the provision which it immediately follows, it must be given such wider effect.

If a proviso cannot reasonably be construed otherwise than as contradicting the main enactment, then the proviso will prevail on the principle that it speaks the last intention of the makers."

57. Considering the proviso in the light of the principles set out above, it is not possible to limit the expression "total turnover" found in the proviso to the "turnover relating to the purchase" found in the enacting part of section 7-A(1). Further it has to be noticed that section 7-A(1) imposes tax on the turnover relating to the purchase in the circumstances mentioned in the section "whatever be the quantum of such turnover". If the total turnover referred to in the proviso has to mean only the purchase turnover referred to in section 7-A(1), the legislature would not have used the words "whatever be the quantum of such turnover". On the other hand, the legislature could have avoided the proviso and would have stated that every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable u/s 3, 4 or 5, as the case may be, and either, (a) consumes such goods in the manufacture of other goods for sale or otherwise; or (b) disposes of such goods in any manner other than by way of sale in the State; or (c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in section 3, 4 or 5 as the case may be, if the turnover exceeded Rs. 50,000. Further the necessity for the insertion of the proviso can be explained by another

circumstance. Section 3(1) of the Act refers to total turnover. The total turnover has been defined as already stated in section 2(q) of the Act as the aggregate turnover in all the goods dealt in by a dealer.

58. Therefore, there can only be one total turnover for the purpose of the Act, and if that took in the purchase turnover u/s 7-A(1) also on the basis of the language of section 7-A(1), without the proviso the dealer would have been liable to pay tax on the purchase turnover u/s 7-A(1) of the Act even though his total turnover is below the Rs. 50,000 limit mentioned u/s 3(1) of the Act and was not therefore liable to pay tax and the revenue would have been in a position to contend that for the purpose of levy of tax u/s 7-A(1) the exemption limit mentioned in section 3(1) would not be available to the dealer. That is exactly the reason why the proviso has been introduced in section 7-A(1). The proviso exempts a dealer whose total turnover is below Rs. 50,000 from paying tax on the turnover u/s 7-A(1) of the Act. We therefore hold that the total turnover referred to in the proviso to section 7-A(1) has the same meaning as the total turnover as defined u/s 2(q) of the Act.

59. Another argument of the learned counsel for the assessee is that there is no provision in the Rules specifically providing for the inclusion of the purchase turnover u/s 7-A(1) in the total turnover under rule 5 of the Rules. We are unable to appreciate this argument of the learned counsel for the assessee. In the normal circumstances, i.e., if the assessee had sold the goods which he had purchased as it is, then such goods would have been made liable to tax by the application of rule 5(1) of the Rules. But, it is the subsequent act of the assessee, viz., conversion in this case, which made rule 5(1) inapplicable for the purpose of computing the turnover in such goods. Rule 5(2) also is not applicable because the goods are not those of the type mentioned in the very rule itself. It is in order to bring to tax the goods which escaped assessment by the subsequent act of the assessee, that section 7-A(1) of the Act has been enacted. The section itself in categorical terms states that a dealer shall pay tax on the turnover relating to the purchase if he in the course of business purchased any goods and dealt with it in the manner specified in the section itself. Therefore, there is no necessity at all for making any rule providing for the inclusion of the goods covered by section 7A(1) in the total turnover of a dealer in the Rules. Therefore, the argument of the learned counsel for the assessee that the Rules do not provide for the inclusion of the goods covered by section 7-A(1) in the total turnover of a dealer carries no conviction and the same is rejected.

60. I shall now refer to the two decisions of this Court, viz., *Mohanlal v. Commissioner of Commercial Taxes* [1979] 43 STC 433 and *Chennakesavalu v. Board of Revenue* [1981] 47 STC 403. In *Mohanlal v. Commissioner of Commercial Taxes* [1979] 43 STC 433 a Bench of this Court speaking through Govindan Nair, C.J., held as follows :

"The appellant has admittedly a turnover relating to sales amounting to Rs. 43,359.58. It is also admitted that the turnover of Rs. 14,717.50 is also taxable

by virtue of the provisions of section 7-A. The two together exceed the Rs. 50,000 limit mentioned in section 3(1) and so the appellant is liable to pay tax under the Act. But it was contended before us by the counsel for the appellant that the only turnover that is taxable under the Act is that of Rs. 14,717.50 coming u/s 7-A. The attempt is to leave out the sum of Rs. 43,000 and odd turnover from reckoning altogether. This is sought to be achieved by stating that rule 5, which provides for computation of the turnover, only referred to in (sic) sections 3, 4 and 5 of the Act. The rules were framed before section 7-A was introduced in the Act. Those rules cannot obliterate the section or produce a result different from that contemplated under the Act. We have, therefore, to look at the relevant sections, section 3(1), section 7-A as well as the definition of the term "total turnover" under the Act. If we look at these provisions, it is clear that the Rs. 50,000 limit has been exceeded. The "total turnover" takes within its ambit taxable as well as non-taxable turnover. Admittedly, Rs. 14,717.50 is taxable turnover. Assuming that the sum of Rs. 43,000 and odd is a non-taxable turnover, that has also to be taken into account for the purpose of computing the "total turnover". Section 3(1) talks of the "total turnover" exceeding Rs. 50,000. So, the two have to be added together for determining the liability. When they are added, clearly the assessee is liable to be taxed on the sum total of the two turnovers."

61. The reasoning of this judgment has been followed by another Bench of this Court in *Chennakesavalu v. Board of Revenue* [1981] 47 STC 403, where Ismail, C.J., took the same view. Ismail, C.J., observed as follows :

"The argument of the learned counsel for the appellant is, with regard to the turnover of Rs. 67,900.70 covered by section 3(1), the appellant was liable to pay tax at the rate mentioned in section 7(1) by virtue of the opening expression contained in section 7(1) and with regard to the turnover of Rs. 15,431.09 coming within the scope of section 7-A, the appellant is liable to pay tax under the same section 7(1) at the rate mentioned therein by virtue of sub-section (2) of section 7-A. We are not able to accept this argument. It has to be seen that both section 7(1) and section 7-A(2) use the expression "total turnover". Section 2(q) defines the expression "total turnover" as meaning : "the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax". Consequently, the Act contemplates only one "total turnover" and not different total turnovers and hence the "turnover" u/s 7-A as well as the "turnover" u/s 3(1) had to be aggregated for the purpose of finding out the "total turnover" under the Act and for determining the taxable turnover."

62. Then dealing with the argument based on rule 5 of the Rules and after extracting rule 5(1) and (2) the learned Chief Justice has observed as follows :

"Relying upon this rule 5, the learned counsel for the appellant contends that the rule contemplates two turnovers, one being a sales turnover and the other, purchase turnover and therefore there is nothing wrong in the appellant claiming

two reliefs, one u/s 7(1) and the other u/s 7(1) read with section 7-A(2) of the Act. It is worth-while pointing out that the rules themselves referred to the total turnover propounded by them as only for the purpose of the Rules and not for the purpose of the Act. As we pointed out already, section 2(q) of the Act defines the expression "total turnover", and that takes in every turnover whether liable to tax or not. In any event, rule 5 cannot override section 2(q). We are fortified in our conclusion by a judgment of this Court in Mohanlal v. Commissioner of Commercial Taxes [1979] 43 STC 433."

63. After extracting certain passages from the judgment the learned Chief Justice, again observed as follows :

"Though the point that was raised in that case was slightly different from the one with which we are dealing in the instant case, still, the decision in the above case supports our conclusion in the present case."

64. I am of the view that the above decisions have been correctly decided.

65. In fine, I hold that the "total turnover" occurring in the proviso to section 7-A(1) of the Act has the same meaning as the "total turnover" as defined in section 2(q) of the Act. All the turnovers of a dealer whether it is u/s 3(1) or 4 or 5 or 7-A, will have to be clubbed together for finding out the "total turnover" of a dealer under the Act. If such "total turnover" exceeds Rs. 50,000 he is liable to pay tax either u/s 3(1) or at his option u/s 7(1). In addition, he will have to pay tax at the rate specified u/s 4 or 5 or 7-A, if the goods fall either u/s 4 or 5 or 7-A.

66. In the result, I would allow the revision, set aside the order of the Tribunal and restore the order of the Appellate Assistant Commissioner. There will be no order as to costs.

Balasubrahmanyam, J.

67. I have read the judgment of my learned brother Padmanabhan, J. I do not agree with it. Here are my reasons for saying so. As might be evident from the judgment of my learned brother, this Full Bench is constituted to review two earlier Bench decisions, namely, Mohanlal v. Commissioner of Commercial Taxes [1979] 43 STC 433 and Chennakesavalu v. Board of Revenue [1981] 47 STC 403. Both cases dealt with section 7(1) of the Tamil Nadu General Sales Tax Act, 1959. The point for consideration in those cases was whether for the purpose of compounded assessment u/s 7(1) of the Act, the assessee's sales turnover [normally taxable u/s 3(1)] can be combined with his purchase turnover [normally taxable u/s 7-A(1)], so as to arrive at the total turnover. In both the decisions reliance was placed on the expression "total turnover" occurring not only in the text of section 7(1), but also in the table of rates of compounded tax set out in that provision.

68. The learned Advocate-General, who appeared for the State Government before us, submitted that the crux of section 7(1) lies in the use of the

expression "total turnover" and the proper meaning to be attributed to that expression. In the two cases under consideration, the learned Judges considered the expression "total turnover" occurring in section 7(1) as bearing the meaning assigned to it in the interpretation clause in section 2(q) of the Act. Pursuing the line of reasoning adopted by the learned Judges in those decisions, the learned Advocate-General referred us to the definition of "total turnover" occurring in section 2(q) of the Act. As preliminary to an understanding of the definition of "total turnover" the learned Advocate-General invited our attention to the definition of the expression "turnover" occurring in section 2(r) of the Act. Excluding words of the definition which are unnecessary for the present discussion, the expression "turnover" is defined in section 2(r) as the aggregate amount for which goods are bought or sold by a dealer. The expression "total turnover" in section 2(q) is defined, as the aggregate turnover in all goods of a dealer, whether or not the whole or any portion of such turnover is liable to tax. In the light of these definitions, according to the learned Advocate-General, total turnover must be understood as the aggregate turnover in all goods whether taxable or not, meaning thereby the aggregate amount for which goods are bought and sold.

69. I do not accept the arguments of the learned Advocate-General for two reasons. In the first place, while a turnover is defined as an aggregate amount, there is nothing, either in express terms or by necessary intendment in section 2(r), to combine in that aggregate the two distinct and separate amounts, namely, the amount for which goods are bought and the amounts for which goods are sold. Mark the use of the disjunctive "or" in the phrase "amount for which goods are bought or sold".

70. This Act is a consolidating and amending Act. It repealed and re-enacted the Madras General Sales tax Act, 1939. In that Act, the expression "turnover" was defined as the aggregate amount for which goods are either bought by or sold by a dealer. In my judgment, the definition of the expression "turnover" in the repealed Act as well as in the present Act is materially the same. Although the present definition does not use the expression "either", "or", the meaning is not different. The aggregate referred to by the definition is a separate aggregate for purchase and a separate aggregate for sales. It would go against the conception of turnover in ordinary speech as well as in commercial language if the expression "or" occurring in section 2(r) were to be read as "and". If, for instance, a trader were asked to tell us what his "turnover" for a year is, he would like to know which turnover we have in mind, sales turnover or purchase turnover ? No one would total up all his purchases during the year and all his sales during the same year and present the aggregate amount as his turnover in the year. The statutory definition of "turnover" in this fiscal Act does not, in my opinion, offend against common sense or the ordinary principles of commercial accounting. It accepts that purchase turnover is purchase turnover and sales turnover is sales turnover and never the twain shall meet.

71. Section 2(q) does not make for any change to this distinction between total purchase turnover and total sales turnover. The epithet "total" in the expression "total turnover" has no special significance. This will be seen by the fact that while section 2(r) speaks of the aggregate amount for which goods are bought or sold, section 2(q) only reiterates the same idea by referring to the aggregate turnover. I have earlier shown how and why u/s 2(r) purchase turnover and sales turnover must be kept distinct and separate. It follows that u/s 2(q) also purchase turnover and sales turnover must be kept distinct and separate. There is nothing in section 2(q) which forces anyone to combine both the purchase turnover and the sales turnover and arrive at a ground total, as it were. We were referred to a further distinction in the statute between total turnover and taxable turnover. But the definition of table turnover does not support the learned Advocate-General's thesis that total turnover must be regarded as a combination of both the purchase and sales turnover.

72. The learned Advocate-General submitted that the pertinent issue in this case is not whether total turnover means the sum-total of the purchases of goods, on one side of the trading account and the sales of the same goods, on the other side of the trading account. The learned Advocate-General said that to consider this as the issue in this case would be to misunderstand the Department's position and to reduce its argument to an absurdity. According to the learned Advocate-General the problem raised in the present case and in cases which figured in the two Bench decisions was something different, namely, whether sales turnover in certain commodities can be combined with the purchase turnover in certain other transactions and both aggregated so as to form a single total turnover. It was in this connection that the learned Advocate-General laid emphasis on the words, "whether or not the whole or any portion of any turnover is liable to tax", occurring in section 2(q) of the Act defining the expression "total turnover". The learned Advocate-General explained that in the present case, as well as in the cases which figured in the two reported decisions under review, what was sought to be included in the total turnover was sales turnover in certain commodities taxable u/s 3(1) and purchase turnover in other commodities taxable u/s 7-A(1). Since the assessee had both these turnovers in the same year, it was paid, there was no prohibition against combining the two turnovers for the purpose of section 7(1) of the Act. The learned Advocate-General referred to the following passage in *Chennakesavalu v. Board of Revenue* [1981] 47 STC 403 :

"..... the Act contemplates only one "total turnover" and not different total turnovers and hence the "turnover" u/s 7-A as well as the "turnover" u/s 3(1) had to be aggregated for the purpose of finding out the "total turnover" under the Act and for determining the taxable turnover."

73. I do not agree with this understanding of the statutory scheme. The Tamil Nadu General Sales Tax Act, 1959, is a mixed bag. In it are to be found several taxes, big and small. There is first a general sales tax on sales. This is the tax

with which the statute originated in the State, perhaps in this country. This tax on sale is a multi-point or cumulative tax. The levy is made on annual sales turnover. See section 3(1) of the Act. Similarly, there is a multi-point tax on annual purchase turnover in a few selected items of goods. See the proviso to section 3(1) of the Act read with rule 5 of the Rules. Besides, there is a single point levy either on the sale point or on the purchase point of taxable transactions in declared goods inside the State. See section 4 read with the Second Schedule to the Act. Apart from single point levy on transactions in declared goods, even as respects non-declared goods, there is a single point levy in as many as 149 items. See section 3(3) and the First Schedule to the Act. Moreover, there is also a regular purchase tax on registered dealers who purchase goods in inter-State transactions covered by C form declarations. See section 5 of the Act. As if these taxes were not enough, there is a recent purchase tax by way of "mopping up operations" to bring to charge the turnover in purchases of goods where, subsequent to the purchases, the goods take to some different course or undergo some change in their character which puts them out of the reach of the other taxing provisions in the Act. See section 7-A(1) of the Act. Courts have held that each of these levies is an independent tax in itself. Vide *Sivamurugan v. Assistant Commercial Tax Officer* [1970] 26 STC 68 and *The State of Tamil Nadu Vs. M.K. Kandaswami and Others*, .

74. In the face of the statutory scheme, it is a through-going misconception of the idea of total turnover to assert that there can be only one total turnover under the Act. In Income Tax there can only be one total income, although under the scheme of the Income Tax Act, the computation is done under several separate heads of income. Under the Tamil Nadu General Sales Tax Act, however, there can be no such thing as a single total turnover capable of doing service for all the different taxes which find a place in one or the other of the charging sections of the Act. I am satisfied that turnover and total turnover, wherever they occur in the Act have always embodies two separate but closely related fiscal conceptions. One is the segregation of purchase turnover from the sales turnover and the other is the aggregation under such turnover. I do not, therefore, accept the argument of the learned Advocate-General that there can possibly be no objection to the purchase turnover in certain goods being clubbed with the sales turnover in certain other goods.

75. What then is meant by total turnover in section 7 or, for that matter, in section 3(1) of the Act. It means what section 2(p) read with section 2(q) says in a disjunctive sense. In other words, total turnover has two facets. Total purchase turnover or total sales turnover, as the case may be. u/s 3(1) of the Act, for instance, a petty dealer is completely exempt from tax, if his total turnover, that is to say, his total sales turnover, in goods other than those mentioned in rule 5 of the Rules does not reach Rs. 50,000 in a year. If, however, a dealer's total sales turnover in those commodities is Rs. 50,000 and above, then, his liability to be taxed is charged on his taxable turnover, that is to say, on his total sales turnover minus certain deductions allowed by rule 6 of the Rules. This has always

been the understanding of the Commercial Taxes Department ever since sales tax became part of the revenues of this State. This departmental practice, in my judgment, is based on a correct understanding of the statutory conception of "turnover" and "total turnover".

76. It is, however, suggested that although the expression "total turnover" was understood distributively as total purchase turnover and total sales turnover, according to the particular context of the different charging provisions, yet the introduction of section 7-A in the statute made for a difference. I cannot understand how the meaning of the expressions "turnover" and "total turnover" can get altered either in section 3(1) or in section 7(1) merely because subsequently the legislature had introduced section 7-A in the Act, so long as neither the definition of the two expression nor the structure of section 3(1) and section 7(1) had been altered to the least extent. Section 7-A has only engrafted into the existing enactment yet another tax, namely, purchase tax, to add to the existing bunch of taxes under the Act. The arrival of this section has no repercussions on the meaning of other provisions in the Act, because of the absence of an express amendment of those provisions and because of the newly introduced provision not being invested with an overriding force or effect. I am accordingly of the view that what the expressions "turnover" and "total turnover" meant before the introduction of section 7-A remained unsullied even after section 7-A came into the statute book.

77. I have so far dealt with the contentions put forward by the learned Advocate-General on a consideration of the textual aspects of the provisions of the Act and found that those contentions are not based on a reasonable view of the statutory provisions. It is also possible to demonstrate that the assessee's stand on the question of construction actually leads to absurd results when applied to concrete cases. The compounded assessment u/s 7(1) not only purports to compound the tax to afford relief to the marginal assessees, but also actually results in such relief both in terms of rates and in terms of absolute quantum of tax. Giving the clear legislative intent that a compounded assessment u/s 7(1) must leave the assessee, who opts for it, with a lesser tax burden than he would be liable under the ordinary assessment, we may look at the facts and figures of the instant case as well as of the two cases dealt with by the Division Benches. The dealers in all the three cases are jewellers. They purchase old items of jewellery for the purpose of manufacture. They also sell newly manufactured jewellery. On the sale of new jewels, they are liable to pay sales tax u/s 3(1) of the Act. On purchases of old jewellery which they melt and convert for the purpose of manufacture, they are liable to purchase tax u/s 7-A(1). If the assessee concerned in each case had not opted for compounded assessment u/s 7, his tax burden would be either nil or far less than that was levied on him by the assessing authority on its interpretation of section 7. This topsy-turvy result came about because the assessing authority combined the sales turnover u/s 3(1) with the purchase turnover u/s 7-A(1) in order to arrive at the total turnover for the purpose of section 7(1) of the Act.

78. The figures in the three cases may be displayed case-war as under :

T.C. No. 731 of 1977 Sales turnover in new jewels Rs. 46,931.00 Purchase turnover in old jewels Rs. 39,721.00 ----- Total Rs. 86,652.00 -----

79. If the assessee had not opted for section 7(1), then he would not be liable for sales tax u/s 3(1) because the sales turnover was less than Rs. 50,000.

80. And he would not also be liable for purchase tax u/s 7-A(1) because his purchase turnover in old jewels subsequently converted for the purpose of manufacture, was again less than Rs. 50,000, and no tax was payable under the proviso to section 7-A(1). Actually, however, by combining both these turnover, the assessing authority had levied a tax on the assessee in the sum of Rs. 1,800.

81. In *Mohanlal v. Commissioner of Commercial Taxes* [1979] 43 STC 433, the turnover position was as follows :-

Sales of new jewels Rs. 43,359.58 Purchase turnover in old jewels Rs. 14,717.50

82. In this case also if the assessee had not opted for compounded assessment u/s 7(1) of the Act, he would not be liable for sales tax u/s 3(1) on the turnover of Rs. 43,359.58 because it less than Rs. 50,000 nor could he be rendered liable for purchase tax u/s 7-A(1) because purchase turnover is also less than Rs. 50,000. The assessing authority, however, combined both the turnovers for the purpose of maintaining a compounded assessment.

83. In *Chennakesavalu v. Board of Revenue* [1981] 47 STC 403, the position was slightly different. The assessee's sales turnover in finished silver articles was Rs. 67,900.70. Purchase turnover in old jewels was Rs. 15,431.09. The assessee opted for compounded assessment u/s 7(1). The assessing authority combined the two turnovers on which compounded rate must be applied. The judgment does not show the particular assessment year which was in question in that case. Applying current rates of compounded assessment u/s 7(1), on Rs. 83,331.79 the tax would be Rs. 1,560 whereas the compounded rate of Rs. 67,900.70 which represents the total turnover in sales alone would be Rs. 1,080 leaving a different of Rs. 480.

84. As earlier mentioned, the assessment made by the departmental authorities in each of these three cases is to levy compounded tax on the ground that each assessee had opted for compounded assessment u/s 7(1) of the Act. It is not quite clear whether each of these assessees had also opted for compounded assessment u/s 7-A(2) of the Act. This provision provides for yet another scheme of compounded assessment for purchase turnover assessable ordinarily u/s 7-A(1), in the same way as section 7(1) provides for compounded assessment in the case of sales turnover assessable ordinarily u/s 3(1). Under the scheme of the Act, there is no difference whatever in the pattern of compounded assessment u/s 7(1), on the one hand, and section 7-A(2), on the other. Indeed, section 7-A(2) incorporates section 7(1) for the purpose of compounded assessment u/s 7-A(2). If each of these assessees had also opted for

compounded assessment u/s 7-A(2), the department quite logically could duplicate the same figure of compounded assessment u/s 7(1) also for the compounded assessment u/s 7-A(2) as well. This is because, according to the departmental theory, total turnover must combine both sales turnover in new jewels and purchase turnover in old jewels, and this must be so not only for the compounded assessment u/s 7(1), but also for the compounded assessment u/s 7-A(2). Thus, in the assessee's case there can be two compounded assessments, one u/s 7(1), levying Rs. 1,800 at the appropriate slab rate for Rs. 86,652 and the other u/s 7-A(2) on the sale figure of Rs. 86,652 and at the same slab rate. The result would have been two compounded taxes of Rs. 1,800 each, aggregating to Rs. 3,600. Mercifully enough, this pattern of assessment had not occurred to the department in this case. But, on the department's construction of the provisions of section 7(1), the same result must flow even for a compounded assessment u/s 7-A(2) with the result I have set out above.

85. It is needless to say that this aspect of the result of the department's construction of the relevant statutory provisions makes the position more obnoxious still, which is one of the best reasons for rejecting the construction from which these results flow. The proof of the pudding is in the eating. The validity of a statutory construction stands proved by the reasonable results that follow its application, as a general rule. The invalidity of a statutory construction is proved by the monstrous results of its application, again, as a general rule. The illustrations furnished by the case on hand as well as the earlier Bench rulings are not exceptional; they are quite typical.

86. On my reading of the provisions of the Act, therefore, wherever the expression "total turnover" occurs it has got to be given one of the two meanings either total purchase turnover or total sales turnover, and that meaning has to be given which is appropriate to the particular context of the particular charging provision relating to the particular tax. In section 7(1), the expression "total turnover" means only "total sales turnover", because that is its meaning u/s 3(1). By the same token, the expression "total turnover" as applied to section 7-A(2) of the Act must be "total purchase turnover", because that is the meaning of the expression in the proviso to section 7-A(1). I accordingly hold that the two decisions in *Mohanlal v. Commissioner of Commercial Taxes* [1979] 43 STC 433 and *Chennakesavalu v. Board of Revenue* [1981] 47 STC 403 are wrongly decided. The former is no precedent at all, because it was disposed of at the admission stage. The latter decision, as I have demonstrated, has completely misconceived the scheme of the Act as well as the meaning of the term "total turnover".

87. In the present case, on the figures of sales turnover in new jewels in the sum of Rs. 46,931 and purchase turnover in old jewels in the sum of Rs. 39,721, the Tribunal held that no tax at all was payable by the assessee. On my interpretation of the relevant provisions, I entirely approve of the decision of the Tribunal.

88. The State Government's revision against the Tribunal's order is wholly untenable. The revision is dismissed. The State Government will pay the assessee his costs. Counsel's fee Rs. 250.

Sathar Sayeed, J.

89. I have read the judgments of my learned brothers and I disagree with the views expressed by Balasubrahmanyam, J. The question that has to be decided in this case is whether the expressions "total turnover" which is found in section 3(1) of the Act is separated by time and different in kind from the expression "turnover" occurring in section 7-A(1) of the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as the Act.

90. In *Mohanlal v. Commissioner of Commercial Taxes* [1979] 43 STC 433 a Bench of this Court has considered the term "total turnover" which takes within its ambit taxable as well as non-taxable turnover.

91. Relying on the decision cited supra, a subsequent Bench of this Court to which I was also a party, in *Chennakesavalu v. Board of Revenue* [1981] 47 STC 403 considered rule 5(1) and sections 2(q), 3(1), 7(1), 7-A(1)(a) and (2) and 53 of the Act and held thus :

"Consequently, the Act contemplates only one "total turnover" and not different total turnovers and hence the "turnover" u/s 7-A as well as the "turnover" u/s 3(1) had to be aggregated for the purpose of finding out the "total turnover" under the Act and for determining the taxable turnover."

92. It has been clearly pointed out in this decision while interpreting and considering sections 7 and 7-A of the Act that section 2(q) of the Act defines the term "total turnover", and this expression "total turnover" takes in every "turnover", whether liable to tax or tax or not, and that rule 5 cannot have any overriding effect on the provisions of section 2(q) of the Act. Therefore, agreeing with Padmanabhan, J., I am of the view, that there is no need to review the abovesaid two earlier Bench decisions, namely, *Mohanlal v. Commissioner of Commercial Taxes* [1979] 43 STC 433 and *Chennakesavalu v. Board of Revenue* [1981] 47 STC 403.

Order

93. The order of the Court was made by

Padmanabhan, J.

94. In view of the majority opinion, the tax revision case is allowed. The order of the Tribunal is set aside and the order of the Appellate Assistant Commissioner is restored. There will be no order as to costs.

95. Learned counsel for the respondent seeks leave to appeal to the Supreme Court under article 133(1)(c) of the Constitution of India. We are satisfied that there is a substantial question of law of general importance, which needs to be

decided by the Supreme Court in this case. Accordingly, we grant leave.