
(1996) 06 MAD CK 0021

In the Madras High Court

Case No : Writ Petition No. 4577 of 1995

Venkatagiri Spinning Mills P. Ltd.

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 13-06-1996

Acts Referred:

Central Sales Tax Act, 1956 — Section 13, 3, 4, 5, 6
Constitution of India, 1950 — Article 11, 138, 139, 140, 143
Income Tax Act, 1961 — Section 147
Tamil Nadu General Sales Tax Act, 1959 — Section 12, 16, 31, 32, 33

Citation : (1996) 06 MAD CK 0021

Hon'ble Judges : K.A. Swami, J; Doraiswamy Raju, J

Bench : Division Bench

Judgement

D. Raju, J.—These batch of writ petitions relate to what are known in commercial parlance as ""consignment sales"" and in all it involved

disposal of 387 cases of writ petitions filed by different assesseees to sales tax under the Central Sales Tax Act, 1956 hereinafter referred to as ""the

CST Act"". The different assessee have filed one or more of the writ petitions, seeking different nature of writs and reliefs as prayed for therein

depending upon the particular stage of the proceedings with reference to such assesseees or for one or more assesseees relating to one or more that

one assessment years. Some of the assesseees have challenged either the notices issued proposing reassessment invoking the powers of the

assessing authorities u/s 16 of the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as ""the TNGST Act"" or final orders passed

thereon. In some of the writ petitions the challenge is made to the preassessment notices themselves and in some stray instances challenging the

very original order of assessment passed. In many of these writ petitions, the

order State Governments to which the assessee claim to have paid sales tax on the very transactions under the respective local Sales Tax Act in force in those States have been impleaded as party respondents and relief in the nature of refund of tax from such State Governments also are incidentally sought for. De hors such variation in the stage at which the proceedings are pending or at which the various assessee approached this Court of the nature of relief sought for, these writ petitions involve a consideration of among other things the scope, purport and effect of section 6A of the CST Act and the legal efficacy and further consequences flowing out of an order passed under sub-section (2) of section 6A of the CST Act. The petitioners have, no doubt, challenged the various proceedings in question not only on the scope and effect of section 6A and the impact of orders passed thereunder by competent assessing authority, but grounds have been raised on merits relating to the nature and character of the transactions themselves contending that the stock transfer in question sought to be brought within the net of taxation in this State under the provisions of the CST Act on the ground that such movement of goods from this State was occasioned as a result of sale under one or more of the impugned proceedings do not really constitute an inter-State sale exigible to tax within the State of Tamil Nadu. Voluminous records have been also filed in this regard. But, at the same time, during the course of hearing, Mr. K. Parasaran, learned Senior Counsel appearing for the petitioners in W.P. Nos. 14245 to 14249 of 1992, made it clear that the petitioners would fell content to seek and obtain an adjudication on the scope and purport of section 6A of the CST ACT and the efficacy and binding force of the orders passed u/s 6A(2) of the CST Act and if need be, the question relating to the nature and character of the transaction as such - whether they are really inter-State sales so far as the State of Tamil Nadu is concerned exigible to tax in this State under the CST Act may be reserved for or relegated to the assessing authority or the concerned authorities which have issued the various proceedings under challenge or in cases where the orders are finalised, the petitioners are willing and prepared to go before the appellate authorities constituted under the Act to have an adjudication on such issues of facts on the merits of the claim. As a matter of fact, the learned counsel for the petitioners

appearing in the rest of the cases also have only adopted the submissions of the learned Senior Counsel and there was no separate argument or

any submission made at variance from the one made by Mr. K. Parasaran.

2. To have a proper understanding of the problem, it would be enough of the facts of a particular case alone are referred to and the stand taken for

the State of Tamil Nadu and State Governments who are party respondents are notices before referring to the provisions, the case laws and the

various points urged at the time of hearing. The petitioners in W.P. Nos. 14245 to 14249 of 1992 are M/s. Ashok Leyland Ltd., who are engaged

in the manufacture of automobiles, chassis, engines and spares thereof at their factories situated at Ennore and Hosur in Tamil Nadu, Bhandara in

Maharashtra and Alwar in Rajasthan. They claim to have an established network of stockyards and branches which they call as regional sales

offices in several parts of the country and it is stated that such offices are an integral part of the sale and distribution system. It is also stated that

customers across the country wish to inspect the vehicles, place order and take customers across the country wish to inspect the vehicles, place

order and take deliver from the nearest sales office of the company and it would be also unrealistic to expect a customer in one State to buy

vehicles from the petitioners in Tamil Nadu without having an opportunity to inspect the vehicles. The terms of sale are said to be ex-factory or ex-

regional sales offices and normally the customer will not wait to place order and wait for days to take deliver and to facilitate immediate sale as and

when customers approach, stock points were considered by them to be necessary to avoid losing a customer who may likely to switch to another

competitor ready to offer immediate delivery. Having regard to the above it is claimed that it becomes absolutely necessary for every vehicle

manufacturer to have stocky/sales office in every conceivable location to cater to the needs of the nearby market and, therefore, not only

petitioners but also other manufacturers such as Telco, Premier Automobiles, Hindustan Motors, etc., have their regional sales offices and

stockyards almost spread over the breadth and length of the country. The petitioners in question also claim to have several such regional sales

offices in various parts of the country and it is claimed that each of such regional sales offices have been registered under the sales tax laws of the

respective States, besides being registered under the CST Act in the various States of their operation. The further claim is that each of the regional sales offices are fully established with the stockyard with a storage capacity of minimum 100 vehicles, sufficient insurance coverage for the same, duly registered with the local sales tax authorities and also licensed under the the relevant Shops and Establishments Act in force in the respective States. A service engineer who could attend to defects if any, in the vehicles in the stockyard was also said to have been engaged and whenever the defects which could not be locally attended to arise. It is stated that such vehicles are taken to the factory of repair with a due certificate for its movement for such purpose. The regional sales offices also are said to have stocks for battery charging, tyre changing and supply of tool kits and hold spare parts also for rectification and repair. Apart from the regional sales officer, the said officer also seems to employ casual labourers for the repairs, rectification, painting tyres changing, etc., and meticulous records are said to be maintained for such activities and expenditure incurred therefor.

3. The further claims on behalf of the petitioners are that the regional sales officers maintain the relevant information relating to the stock position, maintain records for the receipt of the stock from various factories, offer vehicles for inspection to customers and effect necessary optional fitment to the vehicles as per the needs of the customers. The regional sales officers are said to collect money from the customers and deliver the vehicles, deposit cheques in the banks or send them to the regional sales offices or headquarters after issuing money receipts. A periodical review of stock position and movement of unsold vehicles to other locations are also said to be undertaken, and sales are said to be effected on cash terms on its own and for offering credit after taking clearance from the higher officers and periodical reports used to be sent on the daily stock position and sale position to the regional sales offices and headquarters. While claiming that at current levels, the annual quantum of vehicles manufactured comes to nearly 20,000 and though several types of vehicles are said to be available, the different models are only to offer a large range of choice to the customers and each of the model is said to be standardised and produced in bulk, coming under the well-known brand names like Comet,

Cheetah, Viking, Taurus, etc. The system of transfer of vehicles for sales to several regional sales offices is said to be a continuous process and the production of vehicles for each year is said to be well planned in advance so as to make necessary arrangements for finance, raw materials, imports, etc. Similarly, according to the petitioners, despatches of vehicles and the distribution at various regions are also programmed, but never for any specific order or customer and the programme is said to be only to provide the respective regional sales offices, such quantum of vehicles which will cater to the demand in the area, or as should be offered to raise the market share in the region. The company also claims to continuously effect sales at various regional sales offices to authorised segments of buyers, like private operators, Government institutions, dealers, State transport undertakings, etc., and it is claimed that each of the regional sales offices negotiates with the customer, enters into contract and effect sales and that in some of the cases, the competent authorities who are also respondents have accepted the genuineness of the bulk of the transfers of the petitioners to the regional sales offices to be mere branch transfers. On the above factual details, it is further claimed that the orders passed by some of the assessing authorities will go to show that the company operates full-fledged regional sales offices which are independent entities, contacting and contracting with customers whose sales are purely local transactions at the respective States. The present controversy is said to relate to the sales of the petitioners to the State transport undertaking which only constitute a part of the total production and sales.

4. As for the taxability of the transactions, it is stated that the company has been assessed periodically under the CST Act by the Assistant

Commissioner of Commercial Taxes, Central Assessment Circle III, Madras-6, that they have produced, during the course of assessment, the

entire documents relating to the transfer of vehicles to the regional sales offices for stock and sale including the stock transfer invoice-cum-delivery

challan, excise gate pass, road permit under the Motor Vehicles Act and insurance cover note and the company effects transfers of the vehicles by

consigning the vehicles to the regional sales offices. The company is also said to have approved transport contractors for moving the vehicles in

convoy of 10 to 15 vehicles and the various contractors used to take the vehicles which are entrusted to the regional sales officers who, on arrival,

were said to accept the vehicle and intimate their remarks as to its condition while accepting delivery. The freight bills for the same are said to be

periodically presented at the head office at Madras and settled and the transshipment of the vehicles up to the regional sales offices are said to be

made by the petitioner-company, the consignee being always the regional sales offices, which according to the petitioners are the petitioner-

company's only an additional place of business. The vehicles are said to be covered by policy of insurance for transit up to the regional sales

offices and the insurance coverage is said to cover the vehicles remaining at regional sales offices till their sales. The transit losses and storage

losses till sale at the regional sales offices area said to be to the account of the petitioner-company only.

Concerning the process of selling, it is claimed that the regional sales offices are independent entities and the officers especially trained for the

running of such offices used to contact customers and sell the products and as and when the vehicles are sold, such regional offices issue invoice,

delivery challan and gate pass which indicate, according to the petitioner, the particular vehicle sold with engine number, chassis number and

detailed description of the product. The regional sales offices while invoicing were said to collect also local taxes over and above the listed prices

and monies are said to be realised by the regional sales offices and credited to the account of the petitioner at the local banking centres. Funds are

periodically said to be transferred by the regional sales offices to the company headquarters. Such regional sales offices are also stated to be

assesseees under the local sales tax laws of the concerned States and sales effected therein are said to be declared from time to time as inside sales

and taxes are regularly paid pursuant to assessments completed by these respective officers of the concerned State. Wherever necessary, the

liability to octroi duty is said to be incurred and discharged by the petitioner-company.

5. Reference has also been made and details have been furnished as to how the authorities charged with the task of assessment have been

periodically accepting the claims made about the stock transfers on the filing of the duly filled up declaration in form F, about the passing of orders

and a search and seizure of records and the threatened action to reassess the turnover relating to the sales effected on vehicles in the other States

which were transferred from the factories under stock transfer invoice from time to time on the ground that they are liable to tax under the CST Act in this State.

6. On the above statement of facts, the petitioners claim that the movement of vehicles from several factories of the petitioners to the regional sales

offices cannot be treated as in the course of inter-State trade and commerce. The vehicles having been sent only in the names of regional sales

officers under stock transfer invoice and excise gate passes through their own transport contractors and that there are no documents to ever

indicate that any specific vehicle was earmarked for specific customer and the actual appropriation of particular vehicle with specific customer was

only at the time of sale by the regional sales offices which raise invoice and challan and till that point of time, no customer can identify any incoming

vehicle into the regional sales offices or for the purpose of its contract, particularly when the petitioner-company does not despatch the vehicles

directly to customer or consign them in favour of the State transport undertakings concerned. The further plea on behalf of the petitioner is that

section 6A of the CST Act introduced by the Central Act 61 of 1972 was for the purpose of throwing the onus on the assessee, providing for

discharge of the onus by filing a declaration in form F statutorily prescribed and the details contemplated to be furnished therein was to establish

that the movement was to branch or agent and once the position was accepted to be so, thereupon the movement has to be treated as not

occasioned by any sale and that section 6A of the CST Act is virtually a declaration of a principle by Parliament under article 269(3) of the

Constitution of India and in substance section 6A is nothing but a legislative acceptance of a well-established principle that movement to a buyer

under a contract is an inter-State sale and movement to oneself without reference to a contract is merely a transfer of stock. It is the further

contention of the petitioners that the very object of section 6A is to suppress the mischief of lack of co-ordination in adjudication of the matter

relating to the inter-State transfers of stocks and once the form F declaration issued in the respective States by the authorities having jurisdiction

over the regional sales offices concerned, are filed and accepted by the competent authorities in this State, the issue relating to the character of the

transaction becomes final and is no longer open for consideration and that, therefore, the threatened action is not only contrary to law but,

unconstitutional and therefore it is liable to be struck down. We omit reference to various other claims contained in the affidavit in view of the

submissions made at the time of arguments confining the issue for consideration only in respect of section 6A of the Act.

7. The State of Tamil Nadu and its officers have filed two common counter-affidavits, the one at the W.M.P. stage and the other in the main writ

petitions themselves. In substance, the stand taken for the respondent-State of Tamil Nadu is that the petitioner-company had deliberately

camouflaged their CST. sales from Tamil Nadu as local sales in other States and chosen to pay tax on such sales in those States on their own

accord and it is for them to approach the appropriate authorities in those States to get refund of the tax if any, paid by them and so far as the State

of Tamil Nadu is concerned, the recovery of certain records which are said to be incriminating documents indicating that the petitioners had been

making systematic and well-organised attempts to destroy and secret away the evidence which point to the real nature of the transactions to be

inter-State sales from Tamil Nadu and not merely branch transfers, justified the impugned course of action.

It is further contended that the goods, namely, the chassis are said to be normally purchased by the individuals and whereas the passenger chassis

are procured in bulk by State transport undertakings of various States and other small bus operators and the reassessment proposed are said to

relate only to sales made to the State transport undertakings. It is contended that there are many instances where the chassis for Delhi Transport

Corporation were being sold from Pondicherry which is farther than Madras from Delhi, that chassis for Andhra Pradesh State Road Transport

Corporation were being sold from Pondicherry and Daman, that chassis for Haryana Road Transport Corporation were being sold from

Pondicherry, Vijayawada, etc., and that there were numerous instances and occasions where goods-chassis intended for customers from Assam,

Calcutta and all Northern States were being sold from Pondicherry, Daman and Bangalore and the only logical explanation for such sales being the

lower rate of tax prevailing in those States. It is also stated that since the chassis were costly, the petitioners business practice was to manufacture

them only pursuant to prior purchase orders, especially where bulk purchases were concerned in order to minimise the locking up of money. It is

further stated that M/s. Ashok Leyland Limited and Telco are the two major producers of chassis in the country and the State transport

undertakings used to operate through High Power Committees of higher officials in the State and that the manufacturer was to meet such specific

orders placed by the various State transport undertakings and the object of reassessment is not to bring to tax all the vehicles manufactured by the

companies in the Tamil Nadu, but only those vehicles which are either sold locally in Tamil Nadu or sold in the course of inter-State trade or

commerce from Tamil Nadu. The role of the regional sales offices said to be in existence in other States, according to the respondent-State of

Tamil Nadu, is more in the nature of a conduit and when there is a conceivable link between the contract of sale and the movement of goods from

one State to another, in order to discharge the obligation under the contract of sale, the inter-position of the agent or branch of the seller, who may

temporarily intercept the movement will not alter the inter-State character of the sale, inasmuch as the goods were despatched from Tamil Nadu to

other States pursuant to contract of sale which had come into existence directly between the petitioner-company and the buyer in the other State.

Such and similar other contentions are raised challenging the claim of the petitioners on merits pertaining to the nature and character of the

transaction. As for the legal issues raised, the stand taken for the respondent-State of Tamil Nadu is that the legal and constitutional questions

raised were already well-settled issues and do not require any reconsideration and the reassessment proposed are well within the jurisdiction of the

third competent authority which has issued the notices under the powers conferred on them under 9(2A) of the CST Act read with section 16(1)

of the TNGST Act. As for the contentions based on section 6A of the Act, the respondent-State of Tamil Nadu contends that section 6A merely

clarified that in cases of transfer of goods from one State to another to any other places of the petitioners' business or to their agent or principal as

the case may be, the burden of proof that such transfers were not by reason of sale shall be on the petitioners claiming the exemption and it does

not in any way have the effect of modifying section 3(a) of the CST Act. It is also contended that through originally the assessing officer had made

the assessment based on the form "F" produced, in view of the subsequent unearthing of allegedly incriminating records said to have been recovered relating to the same transaction, the assessing officer has reconsidered the matter and has chosen to invoke his powers of reassessment and the conclusive fiction said to be enacted u/s 6A of the Act does not in any manner affect the said jurisdiction of the assessing authority or the authority concerned to invoke his powers of reassessment. While disputing the correctness of the interpretation sought to be placed on the scope of section 6A, it is contended that the entire machinery relating to assessment, reassessment and collection and enforcement of payment under the general sales tax law of a State is rendered applicable by virtue of section 9(2A) of the CST Act and that no exception could be taken to the powers of the assessing authority in question which has chosen to issue notices of reassessment or which has passed final orders of reassessment or assessment or bringing the transaction of the nature in question to tax under CST Act in this State.

8. M/s. Ashok Leyland had filed a reply affidavit to the counter-affidavits filed on behalf of the second and third respondents reiterating the stand taken in the affidavit and referring to certain additional materials and details which we think are unnecessary to be referred to in the context of the limited submissions made before us. Some of the other State Governments who are respondents in some of the writ petitions have also filed their counter-affidavits particularly in the writ petition filed by M/s. Ashok Leyland Limited.

9. The 4th respondent is the State of Gujarat and they have filed a counter in the writ petitions filed by M/s. Ashok Leyland Limited. In the counter, it is contended for the said respondent that the chassis have been imported from various places of the manufacturing units of the petitioners M/s. Ashok Leyland Limited as branch transfers, that branch offices or regional offices in various parts of the State of Gujarat are duly registered as dealers under the local sales tax law, that they have been issued duly with form F declarations which have been utilised by them and that the sales effected inside the Gujarat State were also local sales. Having regard to the fact that the records available disclosed that the chassis have been brought under stock transfer challans by the petitioner, held them in their stock yards at Gujarat and sold and delivered to the customers in

the State of Gujarat and further the final acts of appropriation of the vehicles having been made only inside the State of Gujarat, there is no question

of any refund or crediting of the tax paid by the petitioners to the State of Tamil Nadu and such a relief cannot be granted against the State of

Gujarat.

10. So far as the 9th respondent which is the State of Maharashtra is concerned, they have also contended that the sales in respect of which the

assessments have been made under the local sales tax law were really and in substance, having regard to the nature of the transaction, first sales in

the State of Maharashtra attracting levy under the local sales tax law in respect of an assessee who was not only a registered dealer, but had

depots and branches in the State of Maharashtra. It is also contended that the chassis have been moved to various business places inside

Maharashtra by M/s. Ashok Leyland Limited not in pursuance of any contract, but as a routine branch transfer and it is not as though that the

transfers have been made only from the State of Tamil Nadu, but that goods manufactured inside the Maharashtra had also been moved to other

States and they have been taxed only as local sales in the other States and have not been subjected to Central sales tax in their own State and the

transaction relating to the movement of goods from the State of Maharashtra since such movement also was not pursuant to any contract of sale

but only as branch transfers. While contending that such depot transfers inside the State of Maharashtra and outside the State of appear to have

been effected for maintaining regular stocks at the depots to be subsequently sold to the customers after inspection and approval, the claim for

challenging the levy made or refund of the tax paid cannot be countenanced. It is also contended that the chassis when moved from the State of

Tamil Nadu, it did not move as the vehicle of Maharashtra State Road Transport Corporation, but had moved outside the State only as the vehicle

of the manufacturer and the various purchase orders would also go to show that the levy of tax by the State of Maharashtra in respect of the sales

effected inside the State on the chassis moved from outside the State under the local sales tax law is quite in accordance with law and cannot be

challenged in these proceedings before this Court.

11. The 10th respondent is the State of Kerala and they have filed a counter-

affidavit contending that the petitioners had their office at Thiruvananthapuram up to the assessment year 1988-89 and thereafter are having their office at Cochin and not only they are registered dealers under the local sales tax law in force in Kerala State, but they have regularly submitted their returns and on verification of their accounts, assessments were duly made and the sales tax collected on their transactions inside the Kerala State. The further plea taken was that the petitioners have maintained stock registers and other books of account to record the vehicles received, the vehicles delivered and sold in addition to the delivery challans, sale invoices, etc., made at the regional sales office inside the Kerala State and that such records disclosed that the vehicles have been received as general goods under excise gate passes and stock transfer invoices and vehicles were appropriated with engine numbers and chassis numbers only within the State of Kerala wherein delivery was effected to the purchaser and the said fact is decisive as to where the sale took place and, therefore, no exception could be taken to the power of the authorities of the Kerala State to levy tax in respect of such transactions. The further plea of this respondent was that the sales of the petitioners to the Kerala State Road Transport Corporation are only sales within the State of Kerala for which taxes have been correctly assessed under local sales tax law and collected. It is also contended by this respondent that the mere fact that the petitioners receive advance orders from the Kerala State Road Transport Corporation is not a sufficient factor to justify the claim of the State of Tamil Nadu since the movement cannot be said to be solely for the purpose of sales to the Kerala State Road Transport Corporation and the vehicles sold to Kerala State Road Transport Corporation can, as well, be sold to any other person and, therefore, the claim for refund of taxes paid in Kerala cannot be countenanced and so such relief could be sought for in the writ petition filed before this Court.

12. The 11th respondent is the State of Andhra Pradesh and it is stated that is concerned only with the transfer of vehicle to the regional sales office at Vijayawada and the sales effected from the said regional sales office. It is also stated that the petitioners M/s. Ashok Leyland Limited are dealers registered under the local sales tax law within the territories of the State

of Andhra Pradesh. As in the case of other States, Andhra Pradesh authorities also contend that Andhra Pradesh State Road Transport Corporation placed orders for buying chassis regularly from the regional sales office at Vijayawada of the petitioners and M/s. Telco and normally they used to place orders for the requirements only and invariably supplies have been effected against such orders from the chassis available at the regional sales office at Vijayawada, and after inspection of the chassis only, confirmed orders are placed and goods are purchased and appropriated and sale consideration paid and all these activities took place inside the State of Andhra Pradesh. It is further contended that Andhra Pradesh State Road Transport Corporation usually buys a chassis and hands it over to the contractor to build the body and the body-builders of the APSRTC are spread across the country and are situated at Hyderabad, Jamshedpur, Pollachi, Daman, etc., and it has been the policy of the APSRTC to effect purchases of most of the chassis required by them from the regional sales offices situated at Pondicherry, Goa, etc., and this was done keeping in view of the nearest sale points to the body builders. This respondent further contends that misconstruing some communications from the APSRTC, the authorities in the State of Tamil Nadu are trying to treat the sales which were effected as local sales inside the State of Andhra Pradesh as inter-State sales and no such presumption could be made generally violating the guidelines laid down by the Supreme court in a catena of judgments to decide as to when a sale constitutes an inter-State sale. It is contended that all the correspondence available with the authorities of the State as also with the APSRTC have been shown to the officers and the contention of the State of Tamil Nadu to make a claim generalising all the sales effected to the APSRTC as inter-State sales is not supported by either facts or law.

13. The 12th respondent is the State of Karnataka. They also contended that the petitioners M/s. Ashok Leyland Limited have their office at Bangalore 45 up to the assessment years 1986, 1987, 1988 and 1989 and thereafter are having their office at Deorvaninagar, Bangalore, that they are registered dealers under the Karnataka Sales Tax Act and having stockyard at Karnataka and periodically strong the stocks for sales to be effected locally and in respect of such sales, the goods have been delivered and

appropriated by the purchasers only inside the Karnataka State. It is contended that the documents like delivery challans, sale invoices are made for the sale at the regional sales office at Bangalore and the local office is maintaining the originals of inward documents such as stock transfer, delivery memo, Central excise gate pass, etc., under cover of which vehicles are received into the State of Karnataka to be stored in their regional sales offices. While contending that the claim for reopening of the assessments made by the Karnataka authorities or the refund of the tax paid as unwarranted and unsustainable, this respondent also contends that the character of the movement in respect of sales to other parties has been accepted in the case of passenger chassis and similarly movement of the goods vehicles to other States for sale from such States has also been accepted. It is further contended that the goods have been received inside the State of Karnataka only as general goods under excise gate passes and stock transfer invoices and vehicles actually have been appropriated with engine number and chassis under number only within the State of Karnataka when delivery challans and invoices have been made and, therefore, the sales in favour of the Karnataka State Road Transport Corporation are only local sales inside the State of Karnataka. The further plea by this respondent is that the Karnataka State Road Transport Corporation does not contemplate the movement of chassis only from Ennore and Hosur while placing their orders and the relief of the nature in the form of mandamus against this respondent-State cannot lie before the courts in this State.

14. The 13th respondent is the State of Pondicherry. It is contended by this respondent that M/s. Ashok Leyland Limited, who have their manufacturing units at places in Tamil Nadu, Maharashtra and Rajasthan, have their head office at Madras and regional offices in several States including Union Territory of Pondicherry, that after the chassis are manufactured, they are sent to the various regional sales offices for sale on stock transfer basis and stocks transferred likewise into the Union Territory Pondicherry had been sold and goods delivered and appropriated only within the territorial limits of Pondicherry and it is only in respect of such transactions, levies both under the Pondicherry General Sales Tax Act and the Central Sales Tax Act have been made and tax collected and that there is no

infirmity or illegality involved in the said levy or collection of taxes and the contentions to the contrary cannot be sustained. It is also contended that the petitioner's regional office has also infrastructural facilities to handle the vehicle and they have been registered as dealers both under the local sales tax law and the Central Sales Tax Act within the territory of Pondicherry under the respective assessing officers and, therefore, there is no scope for reopening the assessment made earlier by the authorities of the State of Pondicherry.

15. Mr. K. Parasaran, learned Senior Counsel appearing for the petitioners, contended that section 6A of the CST act enacts a statutory fiction relating to the movement of goods outside the State to have been occasioned otherwise than as a result of sale for the purposes of the CST Act and once an order contemplated under sub-section (2) of section 6A has been passed, the fiction becomes unalterable and the presumption arising thereunder becomes irrebuttable. While contending that the creation of fiction as above is not a mere matter of procedure, but one pertaining to substantive law, the learned counsel submitted that when an express provision is made under article 269(3) of the Constitution of India enabling and empowering Parliament to formulate, by law, principles for determining when a sale or purchase of goods have taken place in the course of inter-State trade or commerce or outside a State or in the course of import or export from India, sections 3, 4 and 6A have to be related only to that constituent power and not to be considered or read as the exercise of power through Parliament as a body enacting ordinary law. Argued the learned Senior Counsel further that once an order is made by the competent authority accepting the declaration in form F the concluding portion of section 6A(2) of the CST Act eo instante operate proprio vigore to the effect that the movement of goods to which the declaration related shall be deemed for purposes of the Act to have been occasioned otherwise than as a result of sale and thereby all such transactions go outside the pale of the CST Act and there would be no scope for any longer having recourse to the exercise of power u/s 9(2) and (2A) of the CST Act so as to attract the procedure for assessment, reassessment, collection and recovery of the tax and penalty under the Acts in question. While elaborating this aspect, the learned Senior Counsel also contended that in a case where

Parliament has laid down the principles under article 269(3) of the Constitution of India and the requirements thereof were satisfied resulting in an order made u/s 6A(2) of the CST Act relating to the laying down of the principles under article 269(3), the order passed has the inevitable consequences of denuding the power of assessment and the authorities under CST Act and vice versa, whether the order passed was for accepting or rejecting the declaration in affirmation or negation of the claim based on the character of the movement. The further submission of the learned Senior Counsel was that in the absence of an express provision in the CST Act itself, empowering the assessing authority to review or cancel or revoke or go behind that order passed u/s 6A(2) of the CST Act, accepting the declaration with regard to the goods covered by form F, the character of the transaction that the movement outside the State of Tamil Nadu was otherwise than as a result of sale becomes final and the assessing authority becomes functus officio vis-a-vis the determination of the character of the transaction. Pursuing the said line of submission, it was also contended that if a transaction goes outside the scope of the CST Act by a positive order of acceptance made u/s 6A(2) of the CST Act, even the provisions relating to revision u/s 32 of the TNGST Act will not be attracted at the instance of the Revenue though for an assessee, by virtue of section 9(2) of the TNGST Act the remedies available u/s 33 of the TNGST Act would be available. The decision rendered u/s 6A(2) of the CST Act was said to operate in rem so that the State in which the goods were received and where the taxable event, viz, the sale or purchase takes place would be entitled to levy tax under the State or local sales tax law as the first sale in that State. To permit the reopening of such an order made under 6A(2) of the CST Act would, according to the learned Senior Counsel, amount to making irreversible, what was rendered irreversible by the statute. Such an interpretation alone, according to the learned Senior Counsel, would constitute a purposeful construction perpetuating public interest and facilitating smooth flow of inter-State trade and the contra construction countenancing the claim of the Revenue would not only defeat the purpose of law, but render section 6A of the CST Act itself meaningless and a mere exercise in futility.

16. Per contra, Mrs. Chitra Venkataraman, learned Additional Government

Pleader (Taxes), contended that the provisions of section 6A of the CST Act merely pertain to the question of burden of proof on the part of the assessee and such rule of proof cannot culminate into a statutory declaration inasmuch as the proof of the character of the transaction can also as has been held by courts to be by other methods than the filing of declaration in form F. While contending that the words ""for purposes of this Act"" have reference and relevance for the fixation of the taxable turnover and levy and collection of tax and the order passed u/s 6A(2) of the CST Act loses its significance and identity at the stage of passing final orders of assessment and it cannot be given any independent existence de hors the process of assessment. It is the contention of the learned Additional Government Pleader that such an order u/s 6A(2) passed separately or during or in the course of or as the part of the assessment proceedings, it becomes a process pertaining to and, therefore, necessarily becomes part of the assessment proceedings and de hors the assessment order, it has no independent existence. Any claim that a transaction of a particular turnover is not liable to tax, according to the Additional Government Pleader (Taxes), is a claim necessarily forming part of the assessment process or proceedings it being really a step in aid of assessment. Section 9(2) and (2A) of the CST Act takes within it all powers for assessment, reassessment and other avenues of related remedies and consequently section 16 of the TNGST Act can be invoked to bring to assessment a transaction erroneously considered to be exempt from taxation under the CST Act. The assessment by the other States treating the sales effected as local sales attracting liability under their respective State tax laws, according to the learned Additional Government Pleader, is not the concern of the State of Tamil Nadu. The further stand taken was the section 6A of the CST Act does not create any fiction but only amounts to re-emphasising the factual position and the inference to be drawn from the materials placed and the inference or presumption being always a rebuttable one and there is no such thing as irrebuttable presumption in a tax law. It was also contended for the State of Tamil Nadu that at any rate, the proceedings recorded u/s 6A(2) of the CST Act can if at all be given finality only subject to the provisions of the Act and the power of the assessing authority or the revisional authority such as

sections 16, 32 and 34 of the TNGST Act to reassess or revise any order, of course, subject to the period of limitation stipulated therefor.

17. Mr. T. Karunakaran Nambiar, learned Additional Advocate-General (Taxation) for the State of Kerala, contended that the sales in question

which were the subject-matter of levy under the sales tax law of the State was in respect of sales of chassis effected from the stockyard at Kerala

and, therefore, there is no question of any inter-State sale arising for being made amenable to tax under the CST Act read with section 16 of the

TNGST Act. The learned Additional Advocate-General for the Kerala State, while reiterating the said stand that there was no inter-State sale

involved in the transaction in question, contended that there was no provision of law or power in the authorities of the State of Tamil Nadu to

reopen the assessment.

18. Mr. R. Raghavan, learned counsel appearing for the State of Karnataka, contended that the goods which have moved into the Karnataka

State were not in pursuance of any contract of sale and such movement of goods was from other States also.

19. Mr. S. V. Subramaniam, learned Senior Counsel for the State of Maharashtra, Mrs. Nalini Chidambaram, learned Senior Counsel appearing

for the State of Andhra Pradesh and Mr. P. Krishnamoorthy, learned Government Pleader for Pondicherry State, reiterated their respective stand

taken by their States in the counter-affidavits filed to which a reference has already been made and further contended that in the absence of any

specific challenge made to the order of assessment passed, by the respective assessing authorities of their States, there is no scope for a

collateral challenge of such orders which have become final between the parties. All the learned counsel appearing for the various State

Governments also contended that the writ petitions of the nature cannot be filed within the State of Tamil Nadu before this Court in respect of

proceedings passed as relatable to and in connection with taxable events which occurred within their respective State territorial limits, and under

their own relevant sales tax laws in force.

20. In [1955] 6 STC 446 : AIR 1955 SC 666 (Bengal Immunity Company Limited v. State of Bihar), the majority of a Constitution Bench of the

Supreme Court held that article 286, as it stood prior to the Sixth Amendment in

1956 imposed four separate and independent restrictions upon the legislative competency of the State of make a law with respect to matters enumerated in entry 54 of List II of the Seventh Schedule to the Constitution and the framers of the Constitution forged a fetter on the basis of situs to cure the mischief of multiple taxation by the States founded on the theory of territorial nexus with one or other ingredients or elements of sale and consequently except in so far as Parliament may by law provide otherwise no State law can impose or authorise the imposition of any tax on sales or purchases when such sales or purchases take place in the course of inter-State trade or commerce. The court also held that article 286(1)(a) has the effect of shifting the situs of a sale or purchase from its actual situs under the general law to a fictional situs and thereby power of all States other than the State where the situs is fictionally fixed, to tax is taken away. Then came the CST Act, with the object of formulating the principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export outside India and to provide for levy, collection and distributing taxes and also specify the restrictions upon the taxing laws of the States in imposing taxes on sale or purchase of goods declared to be of special importance in inter-State trade and commerce. Section 3, 4 and 6 have been enacted to give effect to the constitutional mandate and section 6A came to be inserted by the Central Act 61 of 1972 with effect from April 1, 1973, laying down the burden of proof, etc., in cases of transfer of goods claimed to be otherwise than by way of sale.

21. Section 6A of the CST Act read as follows :

6-A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale. - (1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled

and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars

in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods.

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration

furnished by a dealer under sub-section (1) are true, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer

under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed of the

purposes of this Act to have been occasioned otherwise than as a result of sale.

Explanation. - In this section, "assessing authority", in relation to a dealer, means the authority for the time being competent to assess the tax

payable by the dealer under this Act.

This provision became the subject-matter of interpretation by a Division Bench of this Court to which one of us (My Lord the honourable the Chief

Justice) was a party, in the decision reported in [1995] 96 STC 98 (A. Dhandapani v. State of Tamil Nadu). Though the thrust of attack was on

the validity of certain rules framed as part of the Central Sales Tax (Tamil Nadu) Rules, 1957, the Division Bench analysed the scheme underlying

section 6A and its object and observed as follows :

As already pointed out, as per section 6A of the Act, burden is upon the dealer to establish that the transfer of goods was otherwise than by way

of sale. For this purpose, form F is prescribed. The dealer, apart from producing form F, if he chooses to adopt the course prescribed u/s 6A of

the CST, Act along with form F he required to produce evidence of despatch of such goods. No doubt sub-section (2) of section 6A of the CST

Act empowers the assessing authority to hold such inquiry as he may deem necessary, but such inquiry shall have to be confined to determine as to

whether the particulars contained in the declaration furnished in form F by the dealer are true. Such an inquiry can be held at any time by the

assessing authority either before or at the time of the assessment of the tax payable by the dealer under the CST Act. On the basis of such inquiry

the assessing authority has to pass an order of assessment under the Act if the particulars furnished in the declaration filed in form F are found to be

true. On the passing of such an order of assessment the movement of goods to which the declaration relates shall be deemed for the purposes of the CST Act, to have been occasioned otherwise than as a result of sale. Therefore, it is necessary to point out that the enquiry and the declaration in form F and the acceptance of such declaration are only intended for the purposes of the Act and not for any other purpose. The contention is that as the provisions contained in section 6A and form F prescribed under the Central Rules do not require any other records to be maintained, whereas, sub-rule (3A) of rule 4 of the CST (TN) Rules prescribes many other records to be maintained other than those contained in form F, therefore, to that extent, the said rule contravenes the provisions contained in section 6A read with section 13(4)(e) of the CST Act, as such, it is beyond the rule-making power of the State Government. We have in the earlier portion of this judgment referred to the contention of the learned counsel for the State that the records required to be maintained as per rule 4(3A) of the Rules are not in any way different from those required to be maintained by any dealer u/s 40 of the Act and rule 26(5A) of the Rules, except to the extent what is contained in rule 4(3A)(d) of the CST (TN) Rules.

22. In *Izhar Ahmad Khan Vs. Union of India (UOI)*, arising under the Citizenship Act, the distinguishing features and functions of procedural law

and that of substantial law was considered by the apex Court, and it was observed as follows :

29. In deciding the question as to whether a rule about irrebuttable presumption is a rule of evidence or not, it seems to us that the proper

approach to adopt would be to consider whether fact A from the proof of which a presumption is required to be drawn about the existence of fact

B, is inherently relevant in the matter of proving fact B and has inherently any probative or persuasive value in that behalf or not. If fact A is

inherently relevant in proving the existence of fact B and to any rational mind it would bear a probative or persuasive value in the matter of proving

the existence of fact B, then a rule prescribing either a rebuttable presumption or an irrebuttable presumption in that behalf would be a rule of

evidence. On the other hand, if fact A is inherently not relevant in proving the existence of fact B, or has no probative value in that behalf and yet a

rule is made prescribing for a rebuttable or an irrebuttable presumption in that connection, that rule would be a rule of substantive law and not a

rule of evidence. Therefore, in dealing with the question as to whether a given rule prescribing a conclusive presumption is a rule of evidence or not,

we cannot adopt the view that all rules prescribing irrebuttable presumptions are rules of substantive law. We can answer the question only after

examining the rule and its impact on the proof of facts A and B. If this is the proper test, it would become necessary to enquire whether obtaining a

passport from a foreign Government is or is not inherently relevant in proving the voluntary acquisition of the citizenship of that foreign State.

23. While construing the deeming provision enacted in section 5(3) of the CST Act, the apex Court in the decision reported in [1980] 46 STC

164 (Consolidated Coffee Ltd. v. Coffee Board, Bangalore) observed as hereunder :

It is not possible to accept the aforesaid contention for the reasons we shall presently indicate. It is true that the word "deemed" has been used in

section 5(3) but the same word has been used not merely in section 5(1) but also in the other two sections 3 and 4 of Chapter II of the Central

Sales Tax Act which has the heading "Formulation of principles for determining when a sale or purchase of goods takes place in the course of

inter-State trade or commerce or outside a State in the course of import or export"; the heading of Chapter II on the face of it suggests that what is

done under sections 3, 4, and 5 including sub-section (3) is formulation of principles. Secondly, the word "deemed" is used a great deal in modern

legislation in different senses and it is not that a deeming provision is every time made for the purpose of creating a fiction. A deeming provision

might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or

phrase that would not otherwise prevail, but in the each case it would be a question as to with what object the Legislature has made such a

deeming provision. In *St. Aubyn v. Attorney-General* [1952] AC 15 Lord Radcliffe observed thus :

"the word ""deemed"" is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction

of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be

uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."

After making these observations, the learned Law lord went on to hold that it was in the last of the three ways (indicated in the observations) that

the deeming provision was made in section 58(2) of the Finance Act, 1940, which came for interpretation before the House of Lords. Similarly in

Words and Phrases, Permanent Edition, Volume 11A, at page 181, it is explained that the word "deemed" is also used to mean "regarded as

being"; it is equivalent to "shall be taken to be" (at page 185). In our view, when sub-section (3) of section 5 uses the word "deemed" and says

that the penultimate sale "shall also be deemed to be in the course of export" what is intended to be conveyed is that the penultimate sale shall also

be regarded as being in the course of such export. In other words, no legal fiction is created. Moreover, it was conceded by the counsel that the

word "deemed" in sections 3, 4, and 5(1) laid down general principles and did not create any fiction; if that be so, it is difficult to accept the

contention that in sub-section (3) the same word should be construed as creating a fiction. Thirdly, a principle has been explained in Butterworths"

Words and Phrases, Second Edition, Volume 4, at page 177, thus :

"A "principle" means a general guiding rule, and does not include specific directions, which vary according to the subject-matter" (per Shearman, J.

in M"Creagh v. Frearson 1922 WN 39).

Similarly in Words and Phrases, Permanent Edition, Volume 33A, at page 327, it is explained that "principle means a general law or rule adopted

or professed as a guide to action". In other words, as opposed to any specific direction governing any particular or specific instance, transaction or

situation a principle would be a guiding rule applicable generally to cases or class of cases. Looked at from this angle it will be clear that sub-

section (3) of section 5 formulates a principle inasmuch as it lays down a general guiding rule applicable to all penultimate sales that satisfy the two

conditions specified therein and not any specific direction governing any particular or specific transaction of a penultimate sale. In other words the

content of the provision shows that it lays down a principle. In fact, while addressing arguments on proper construction of section 5(3), the counsel

for the three States strenuously contended that the said provision should not be construed as being applicable only to the export auctions

conducted by the Coffee Board and the terms and conditions governing them because it applies to variety of parties including the small

manufacturers who seek a foreign market for their goods through private export houses or canalised agencies like the State Trading Corporation. It

is thus clear to us that section 5(3) formulates a principle of general applicability in regard to all penultimate sales provided they satisfy the specified

conditions mentioned therein and there is no question of the said provision creating a legal fiction as has been contended for by the counsel. The

contention, therefore, that section 5(3) is beyond the power or authority of article 286(2) and, therefore, ultra vires, must be rejected.

24. In In the matter of : CAUVERY WATER DISPUTES TRIBUNAL, , a special reference under article 143 of the Constitution of India, the

apex Court expressed the opinion that the inter-State Water Disputes Act, 1956, was enacted by Parliament pursuant to the provisions of article

262 of the Constitution of India, since the subject of adjudication of the said disputes is taken over specifically and exclusively by article 262 and,

therefore, by necessary implication, the subject stood excluded from the field covered by entry 56 of List I and entry 17 of List II and cannot also

be considered to be covered under the residuary entry 97 of List I.

25. As to the role and purpose of a statutory presumption, the Supreme Court, in the decision reported in [1986] 62 STC 381 (Sodhi Transport

Co. v. State of U.P.), the Supreme Court held as follows :

A presumption is not in itself evidence but only makes a prima facie case for party in whose favour it exists. It is a rule concerning evidence. It

indicates the person on whom the burden of proof lies. When presumption is conclusive, it obviates the production of any other evidence to

dislodge the conclusion to be drawn on proof of certain facts. But when it is rebuttable it only points out the party on whom lies the duty of going

forward with evidence on the fact presumed, and when that party has produced evidence fairly and reasonably tending to show that the real fact is

not as presumed the purpose of presumption is over. Then the evidence will determine the true nature of the fact to be established. The rules of

presumption are deduced from enlightened human knowledge and experience

and are drawn from the connection, relation and coincidence of facts and circumstances.

In our opinion, a statutory provision which creates a rebuttable presumption as regards the proof of a set of circumstances which would make a transaction liable to tax with the object preventing evasion of the tax cannot be considered as conferring on the authority concerned the power to levy a tax which the Legislature cannot otherwise levy. A rebuttable presumption which is clearly a rule of evidence has the effect of shifting the burden of proof and it is hard to see how it is unconstitutional when the person concerned has the opportunity to displace the presumption by leading evidence.

We are of the view that the words contained in section 28-B of the Act only require the authorities concerned to raise a rebuttable presumption, that the goods must have been sold in the State if the transit pass is not handed over to the officer at the check-post or the barrier near the place of exit from the State. The transporter concerned is not shut out from showing by producing reliable evidence that the goods have not been actually sold inside the State. It is still open to him to establish that the goods had been disposed of in a different way. He may establish that the goods have been delivered to some other person under a transaction which is not a sale, they have been consumed inside the State or have been redespached outside the State without effecting a sale within the State, etc. It is only where the presumption is not successfully rebutted the authorities concerned are required to rely upon the rule of presumption in section 28-B of the Act. It is, therefore, not correct to say that a transaction which is proved to be not a sale is being subjected to sales tax. The authority concerned before levying sales tax arrives at the conclusion by a judicial process that the goods have been sold inside the State and in doing so relies upon the statutory rule of presumption contained in section 28-B of the Act which may be rebutted by the person against whom action is taken u/s 28-B of the Act. When once a finding is recorded that a person has sold the goods which he had brought inside the State, then he would be a dealer even according to the definition of the word "dealer" as it stood from the very commencement of the Act subject to the other condition prescribed in this behalf being fulfilled. A person who sells goods inside the State of Uttar

Pradesh and fulfils the other conditions prescribed in that behalf is a dealer even as per amendments made in 1959, 1961, 1964, 1973 and 1978

to the said definition. There is, therefore, no substance in the contention that a transporter was being made liable for the first time after 1979 with

retrospective effect to pay sales tax on a transaction which is not a sale. Tax becomes payable by him only after a finding is recorded that he has

sold the goods inside the State though with the help of the presumption which is a rebuttable one.

26. In *Smt. Somavanti and Others Vs. The State of Punjab and Others*, dealing with a case under the Land Acquisition Act, it was observed, thus

:

Since evidence means and includes all statements which the court permits or requires to be made, when the law says that a particular kind of

evidence would be conclusive as to the existence of a particular fact it implies that that fact can be proved either by that evidence or by some other

evidence which the court permits or requires to be advanced. Where such other evidence is adduced it would be open to the consider whether,

upon that evidence, the fact exists or not. Where, on the other hand, evidence which is made conclusive is adduced, the court has no option but to

hold that the fact exists. If that were not so, it would be meaningless to call a particular piece of evidence as conclusive evidence. Once the law

says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence. In substance,

therefore, there is no difference between conclusive evidence and conclusive proof. Statutes may use the expression conclusive proof where the

object is to make a fact non-justiciable. But the Legislature may use some other expression such as "conclusive evidence" for achieving the same

result. There is thus no difference between the effect of the expression "conclusive evidence" from that of "conclusive proof", the aim of both being

to give finality to the establishment of the existence of a fact from the proof of another.

27. Reference has also been made to a statement on conclusive evidential fact from the treatise of ""Salmond on Jurisprudence"" - 12th Edition -

page : 128 which reads as follows :

2. A conclusive evidential fact is equivalent to, and tends to take place of, the

fact proved by it. All conclusive presumptions pertain in form of procedure, but in effect to the substantive law. That a child under the age of eight years is incapable of criminal intention is a rule of evidence, but differs only in form, from the substantive rule that no child under that age is punishable for a crime. That the acts of a servant done about his master's business are done with his master's authority is a conclusive presumption of law, and pertains to procedure; but it is the forerunner and equivalent of our modern substantive law of employer's liability. A bond (that is to say, an admission of indebtedness under seal) was originally operative as being conclusive proof of the existence of the debt so acknowledge; but it is now itself creative of a debt; for it has passed from the domain of procedure into that of substantive law.

28. In the text book Cross and Tapper on Evidence - 8th Edition, it is stated that presumptions of law are nothing else than natural inferences or presumptions of facts which the law invests with an artificial or preternatural weight - and such may often be the case but by no means always the case. In the Book on Evidence in Trials at Common Law by John Henry Wigmore - Volume 9, 1981 Edition, it is stated, while dealing on conclusive presumptions, that strictly speaking there cannot be such a thing as a conclusive presumption and wherever from one fact another is said to be conclusively presumed, in the sense that the opponent is absolutely precluded from showing by any evidence that the second fact does not exist, the rule is really providing that where the first fact is shown to exist, the second fact's existence is wholly immaterial for the purpose of proponent's case and to provide this is to make a rule of substantive law and not a rule apportioning the burden of persuading as to certain propositions or varying the duty of coming forward with evidence.

29. In Commissioner of Income Tax, Bombay Vs. Amritlal Bhogilal and Co., the apex Court held dealing with a matter arising under the Income Tax Act, 1922 that an order granting registration to an assessee-firm is an independent and separate order and it merely affects or governs the procedure to be adopted in collecting or recovering the tax found due but does not really affect the computation of taxable income as such.

Adverting to the scheme of appeals under the said Act and the conspicuous absence of any specific right of appeal to the department, against an

order granting registration unlike the right of the assessee to prefer an appeal against an order refusing or canceling registration of the firm, the court

also held that the appellate powers of the Appellate Assistant Commissioner however wide it may be, have to be exercised only in respect of the

matters which are specifically appealable and if any order has been left out of the appellate authority's purview, it would not be open to the

appellate authority to entertain a plea against such an order, but such orders may be amenable to the suo motu powers of revision, provided under

the Act. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , the apex Court held that the principle of

finality of litigation"" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants and a

person whose case is based on falsehood and obtained any judgment or decree by practising fraud on the court is nullity and non est in the eye of

law and such proceedings can be challenged even in collateral proceedings.

30. In *Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd.*, , the apex Court while dealing with the powers u/s 147 of the

Income Tax Act, 1961 held that since the powers u/s 147 are for the benefit of the Revenue and not an assessee and are aimed at gathering the

escaped income of an assessee, the same cannot be allowed to be converted as revisional or review proceedings at the instance of the assessee

thereby making the machinery unworkable. The observations, if any, made in such context in the said judgment, cannot be pressed into service by

the petitioners in their attempt to forestall an action for reassessment or in bringing escaped turnover to tax, when the facts and circumstances in a

given case warrants such course of action. In [1991] 83 STC 457 (*Joint Commercial Tax Officer-II, Tuticorin v. Ekambareswarar Coffee and Tea*

Works), a Division Bench of this Court to which one of us (Raju, J.) was a party had an occasion to deal with a peculiar situation created by an

assessee taking advantage of a proceeding u/s 16 of the TNGST Act, 1959. That was a case wherein the assessee had sought exemption for the

packing charges and succeeded. After completion of assessment proceedings, the assessing authority found that the exemption from tax of packing

charges had been wrongly claimed and granted and consequently treating it as a case of escaped turnover, initiated action u/s 16 of the TNGST

Act and after complying with the principles of natural justice the escaped turnover was subjected to tax. The plea of the assessee was that the reassessment order truly reflected the only assessable turnover in its entirety and perspective and by such an order the original assessment order was virtually set aside and the tax paid on turnover is liable to be refunded to the assessee, then the escaped turnover brought to assessment. The Division Bench observed as follows in repelling the claim :

..... While making an assessment in respect of escaped turnover, the assessing authority does not at all "reassess" the entire taxable turnover but confines itself only to assessing the escaped turnover. An order u/s 16(1)(a) of the Act has to be confined, after proper enquiry within the stipulated period, and giving an opportunity to the dealer to show cause, to an assessment of the escaped turnover only. An assessment which had been completed in proceedings u/s 12 of the Act is not reopened or revised in the proceedings relating to assessment of escaped turnover u/s 16(1)(a) of the Act, unlike in the proceedings u/s 16(1)(b) of the Act, made in the circumstances detailed in that section, viz., where the dealer had been originally assessed at a rate lower than the rate at which he should have been assessed.

31. The decision in *Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another*, deal with a case where an assessment was made and tax was levied in respect of vehicles which moved from the manufacturing plant in Jamshedpur to the stockyards in different State in the country and sales tax was paid in accordance with the respective State laws on the sales effected from the stockyards there. The court noticed therein the position that the transfer of the vehicles from works to the various stockyards was a continuous process and was not related to the requirement of any particular customer, whether a dealer or a corporation or a private individual and actually the appropriation of vehicles through specification of the engine and chassis numbers only at the stockyard and till such appropriations, it was always open to the company to allot any vehicle to any purchaser or to transfer the vehicles from the stockyard in one State to stockyard in another State. The apex Court held that, in such circumstances the completion of sales did not take place at the works at Jamshedpur and the

movement of goods from the works could not be said to have been occasioned by any covenant or incident of the contract of sale notwithstanding

the existence of even firm orders which could be nothing more than mere offers. But in cases where the movement of the goods from the

Registered Office at Hyderabad was occasioned by an order placed by the customer though on the branch office and was an incident of the

contract and, therefore, from the very beginning from Hyderabad all the way until delivery to customer, it was an inter-State agreement and such

sales are inter-State sales u/s 3(a) of the CST Act (vide : English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax Officer

and Others, and Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others, .

32. We have carefully considered the submissions made on either side. Apart from the question relating to the scope of section 6A of the CST

Act, the various contentions raised by the several State Governments also give rise to certain other incidental issues other than those on the merits

relating to character of transactions, which also in our view are required to be dealt with before even taking up for consideration the issue raised on

section 6A of the CST Act. Almost many and some of the respondent-States, at any rate, vehemently contended that writs with relief of the nature

claimed against them cannot be maintained before this Court against such State Governments or officers and authorities of the State Governments

in relation to the action taken by them on an event said to have occurred in their respective States under their State laws. Article 226 of the

Constitution, as it stood prior to 1963, was considered as a not entitling the writs issued by a High Court to run beyond the territories in relation to

which each High Court exercised its jurisdiction. But by the Constitution (Fifteenth Amendment) Act, 1963, clause (1-A) came to be inserted

which came to be renumbered as clause (2) by the Constitution (Forty-second Amendment) Act, 1976 providing that if the cause of action arises

wholly or in part, within the territorial jurisdiction of the High Court, it may issue a writ against a person or authority resident within the jurisdiction

of another High Court. If the object of the petitioners is only to have their claim against the State of Tamil Nadu or its officers and authorities, in the

presence of their counter parts of the other State and to that extent they are formal parties, there could be no serious or valid objection in law for

impleading them as party respondents to these proceedings directed against only the State of Tamil Nadu and its officers and in respect of action taken or orders passed by such authorities in this State. But in some of the writ petitions relief in the nature of refund to either the petitioners or the authorities of the State of Tamil Nadu the tax said to have been paid by them on sales held to have been effected in those other States and subjected to levy under their local sales tax law in force in those States pursuant to the proceedings made by the authorities of such other States are also sought for. De hors the questions of legality or the propriety of the same, such orders passed by the authorities of the other States in respect of events which occurred in their territorial limits and in exercise of powers under the laws in force in those States, or the tax remitted to those other States pursuant thereto, cannot be either directly or even indirectly or collateral be made the subject-matter of challenge in any proceedings under article 226 of the Constitution of India before this Court. May be that after getting an adjudication of the rights of the petitioners against the authorities of the State of Tamil Nadu, in the presence of the other States or the authorities of such other States, the only course open to them would be to approach the competent or appropriate authorities or the courts situated in those other States for relief and merely on account of inconvenience or difficulties that may be encountered or delay that may be caused, this Court cannot assume jurisdiction or authority against the authorities of the other States in respect of something done by them relating to a cause of action which occurred in the territorial limits of the other States. Consequently, we sustain the objection of the other respondent-States and hold that the petitioners are not entitled to canvass the correctness or legality and propriety of the levy of tax and collections of the same made under the local sales tax law of those States or seek for any direction against them to refund the tax paid by them to those States either to the petitioner or to the authorities of the State of Tamil Nadu. To that extent, the relief claimed shall stand rejected and the writ petitions shall stand dismissed as against those other State Governments and the authorities of such other State Governments.

33. The plea on behalf of the petitioners based upon article 269(3) of the Constitution, and the submission that the provisions contained in sections

3, 4 and 6A are related not to the ordinary power of legislation but only the constituent power of the delegator and that an order made accepting the declaration in form F u/s 6A(2) eo instante operate, by virtue of the deeming contained to render such transactions go outside the pale of the CST Act and the same cannot be considered to be available for the exercise of power u/s 9(2) and (2A) of the CST Act, are far-fetched and seem to be illogical and unreasonable. The Indian Constitution is indisputably a quasi-federal one and it purports to embody a division of power between the Central and State authorities and the three Lists under which legislative powers have been distributed between the Union and the States are designed to define and delimit the respective areas of legislative competence of the Union and State Legislatures, the entries being mere legislative heads and do not confer any power on the respective Legislatures nor do they cast any duty or obligation to exercise the legislative power in any prescribed manner. The legislation enacted by Parliament pursuant to a specific power or authority conferred under any one or other of the provisions in the main body of the Constitution, apart from articles 245 and 246 read with relevant entries in the three Lists in the Seventh Schedule, cannot be placed on any higher pedestal that the law made under articles 245 and 246 read with the entries in the Seventh Schedule, nor could it be said to be anything except a law made by the Parliament in exercise of its ordinary legislative powers. The observations of the apex Court in the decision reported in In the matter of : CAUVERY WATER DISPUTES TRIBUNAL, , In the matter of) in the context of identifying the source of the Parliament's power to enact the Inter-State Water Disputes Act, 1956, cannot in any manner help the petitioners to project the extreme stand taken on their behalf. There are several provisions in the body of the Constitution such as to say a few, articles 3, 11, 33 to 35, 138 to 140, 169, 239, 245 to 250, 252, 253, 262, 286(2), 287, 302, 307, 312A, 323A, 327, 369, and 371E which stipulate that the Parliament may be law deal with or enact a legislation providing for any one of the matters specified as against article 368 which contains the procedure for amendment of the Constitution and which constitutes exercise of constituent power in stipulating that the Parliament may, in exercise of its constituent power, amend any provision in the Constitution and consequently the well marked and well merited distinction between exercise of

constituent power or ordinary legislative powers of Parliament cannot be ignored or lost sight of merely because the Parliament has also chosen to avail of the mandate in one or more of the provisions of the Constitution to make a law than the powers under any one of the general powers read with any one or more of the entries in the Seventh Schedule. Therefore, the law made by the Parliament, as contemplated under article 286(2) or 269(3) does not, on that account alone, acquire any special significance or sanctity than any other law enacted by the Parliament and no one finding recorded by any officer or authority of the State or of the Commercial Taxes Department in exercise of the powers under such enactment can be elevated to the position of a judgment of the court or can be accorded any special position of immunity and immutability to escape itself from the scrutiny of the higher authorities in the hierarchy or its subjectivity to sections 16, 32 and 55 of the TNGST Act. A decision rendered u/s 6A(2) of the CST Act, is in our view no way better than any other decision taken in the course of or for purposes of assessment and quantification of the tax liability of an assessee.

34. The issue that requires next to be considered is the scope and purport of section 6A and the nature and character of an order passed u/s

6A(2) of the CST Act and the consequences flowing therefrom. The intricacies and subtleties of the distinction between substantive law and law of

procedure are not much of relevance in the context of the issues arising and the cases to be decided by us. A careful analysis of section 6A(1)

would go to show that the exercise to be undertaken by a dealer is necessitated where he claims that he is not liable to pay tax under the Act in

respect of any goods on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such

goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of any sale. This leaves no room

for doubt or controversy that the purpose of furnishing to the assessing authority a declaration in form F duly filled and signed by the principal

officer of the other place of business or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form

obtained from the prescribed authority, along with the evidence of despatch of such goods is only in order to claim exemption in respect of goods

so moved outside the State from being assessed to tax. On the filing of such declaration, the provisions of sub-section (2) of section 6A oblige the

assessing authority to make such enquiry as he may deem necessary to get satisfied about the truth of the particulars furnished in the declaration

form and make an order therefore either at the time of or at any time before the assessment of the tax payable by the dealer under the Act.

35. While casting the burden of proving that the movement of goods, in a particular case, was otherwise than a result of sale, sub-section (2) goes

further to stipulate that, on the passing of an order that the particulars contained in the declaration furnished by a dealer in form F are true, the

movement of the goods to which the declaration related, has been deemed for the purposes of the CST Act, to have been occasioned otherwise

than as a result of sale. The purpose of the CST Act is not merely to formulate principles for determining when a sale or purchase takes place in

the course of inter-State trade or commerce or outside a State or in the course of import into or export from India but also to provide for the

levy, collection and distribution of taxes on sale of goods in the course of inter-State trade or commerce and also specify the restrictions and

conditions subject to which State laws imposing such taxes on sales or purchases of goods of special importance should be subjected to. The mere

fact of deeming a particular eventuality does not ipso facto render the same to be final and conclusive too since they are two different aspects

altogether and the gravamen of the grievance of the petitioners in our view is based more upon the assumed finality and not merely upon the

statutorily deemed factuality. Further, the order passed u/s 6A(2) of the CST Act, has not been ordained to have any overriding effect

notwithstanding the other provisions of the Act or the law in force and applicable to the case. We are unable to persuade ourselves to agree to the

extreme stand of according immunisation to the order passed u/s 6A(2) of the CST Act and make it beyond the reach of any one under the Act,

particularly when a proceeding or an order passed under the said provision is nothing but a step in aid or a process which leads only to the ultimate

computation of assessment of tax liability.

36. Any and every order passed by a competent assessing authority which has a direct impact on the quantification of liability of a dealer or an

assessee and concerned the assessment to tax of such liability incurred under the Act de hors the specific provision under which it has been passed

had been always considered and treated to form part of the process or proceeding relating to assessment and amenable to the appellate/revisional

jurisdiction of the higher authorities provided under the Act. To illustrate, it may be pointed out that an order u/s 55 of the TNGST Act which

enables certain specified authorities to rectify an error apparent on the face of the record has not been one of the orders specifically made

appealable or revisable prior to the introduction of sub-section (4) of section 55 in the year 1972. Notwithstanding the absence of such specific

provision prior to 1972, courts have construed even such order to be an order appealable as it pertains to part of the procedure relating to

assessment or quantification of liability of a dealer. In [1965] 16 STC 808 (Haji Abdul Shukoor and Company v. State of Madras), a Division

Bench of this Court had an occasion to deal with the question as to whether an order passed by an assessing authority u/s 55 of 1959 Act is an

order of assessment within the meaning of section 12 and can be revised by the Commissioner u/s 32. The Division Bench held on an analysis of

the scheme of the provisions of the Act and also the relevant case law that in substance the order passed u/s 55 would partake the character of the

original order which it purports to rectify and that, therefore, is amenable to the revisional jurisdiction of the Deputy Commissioner u/s 32 of the

Act.

37. In [1972] 30 STC 516 (India Cements Limited v. Deputy Commissioner of Commercial Taxes) yet another Division Bench of this Court had

an occasion to consider the nature and character of an order passed u/s 55(3) of the TNGST act. It was held therein that the rectified order

resulting in enhancement of tax would amount to an order of assessment falling u/s 12 of the Act entitling to a right to canvass the correctness of the

same in an appeal u/s 31 at the instance of the assessee.

38. In [1970] 25 STC 252 (Sales Tax officer v. Sudarsanam Iyengar & Sons), the apex Court had an occasion to deal with the ambit and scope a

also the purport of the word "assessment". That was a case arising under the Travancore-Cochin General Sales Tax Rules, 1950, particularly

rule 33 which is similar to the provision contained in section 16 of the TNGST

Act, 1959 providing for assessment of turnover which has escaped assessment. The Supreme Court observed therein as follows :

..... Assessment is a comprehensive word and can denote the entirety of proceedings which are taken with regard to it. It cannot and does not mean a final order of assessment alone unless there is something in the context of a particular provision which compels such a meaning being attributed to it. In our judgment despite the phraseology employed in rule 33 the principle which has been laid in other cases relating to analogous provisions in sales tax statute must be followed as otherwise the purpose of a provision like rule 33 can be completely defeated by taking certain collateral proceedings and obtaining a stay order as was done in the present case or by unduly delaying assessment proceedings beyond a period of three years.

Though in the context of sub-section (2) of section 6A of the Act wherein a reference is made to the point of time, vis-a-vis the assessment of the tax may require the word ""assessment"" to be construed as final order of assessment, the order of assessment passed on a declaration in form F filed even prior to the final order of assessment would be part of the proceedings relating to the assessment, since such order has the inevitable consequence of either exonerating the dealer concerned of his liability or bringing him also in respect of the transaction covered by the declaration filed in form F within the net of taxation. Consequently, the order passed u/s 6A(2) by the assessing authority, though cannot be mechanically ignored, as of no consequence by the very assessing authority during the course of finalisation of the assessment for the year or even thereafter, but at the same time, such order would, in our view, be as much amenable to the jurisdiction conferred upon the very assessing authority under sections 16(1) and 55 of the Act provided the condition precedent stipulated therein for attracting action under those provisions are found to be meticulously satisfied and complied with to warrant or justify recourse under those provisions on the basis of relevant and vital materials which were not within the knowledge or means of the assessing officer to know at the point of time when an order had been passed on a declaration filed in form F of the CST Act. If such construction is not placed on the relevant provisions of the Act, it would amount that an erratic order recklessly

passed by an unscrupulous assessing officer enables an otherwise taxable transaction to escape for all times from the net of legitimate taxation dehors the fact that all relevant materials have been withheld also by the machinations or suppressive tactics of the very assessee in spite of the fact that such grave suppressions were unearthed by any statutory search or seizure of materials. A construction always to prevent evasion of tax is to be preferred than one which facilitates easy evasion thereby rendering the very taxing provisions to nothing. Similarly, the order as one passed under or relating to the claim made in a declaration filed in form F which has been considered by us as one to be part of the assessment proceedings itself becomes amenable to the revisional jurisdiction of the suo motu powers of the revisional authority concerned, as the circumstances of a case may warrant. The order passed u/s 6A(2) on a declaration either before the passing of the final order of assessment or as part of the proceedings for final assessment on such declaration in form F cannot have any better status, immunity or protection that the very order of assessment itself and consequently the absolute immunity asserted to be claimed in respect of such and order to completely deprive and deny the assessing authority or the higher authorities in the hierarchy provided in the TNGST Act and section 9(2) and (2A) of the CST Act to deal with or to get at such an order cannot have our approval and the said claim is liable to be and is hereby rejected.

39. Having regard to the conclusion of ours as above, there is no scope or room for quashing the impugned proceedings be it show cause notices preceding an original assessment or an escaped assessment or final orders themselves passed thereafter in these proceedings under article 226 of the Constitution of India, particularly in view of the fact that the learned counsel for the petitioners, as noticed supra in the earlier part of this order, have clearly stated that they are not going into the merits of the claim as to whether any one transfer effected or transaction covered by any individual declaration in form F is really a taxable one or not. The petitioners shall be at liberty to go before the authorities and make their representations on merits. In cases where the petitioners have approached this Court against the show cause notices at whatever stage of the proceedings, they shall have 30 days" time from today to make their representations or further representations if any, against the proposals

contained in such show cause notices and in cases where the writ petitions have been filed against final orders, such petitioners shall have 30 days"

time from today to pursue their appellate/revisional remedies as are permissible in law against such proceedings and as and when such

representations or appeals or revisions are filed, the concerned statutory authorities shall, without placing any obstacle of limitation or delay,

consider the representations or the appeals/revisions concerned on merits and in accordance with law.

40. To summarise, we hold :

(a) The writ petitions in so far as they claim the relief of refund from the other respondent-State Governments to the petitioners or to the assessing

authority in the State of Tamil Nadu, cannot be maintained before this Court and they shall stand dismissed accordingly. Their right to move the

competent authorities or the courts in those other States where taxes were paid pursuant to orders of assessment made under the relevant sales tax

laws in force in their respective States are preserved for being vindicated in accordance with law governing therefor.

(b) The provisions contained in section 6A of the CST Act are like any other provision enacted by the Parliament in exercise of its ordinary

legislative jurisdiction and do not deserve to be accorded any further or higher status and cannot also be raised or elevated to the status of a

constitutional provision itself.

(c) A decision rendered u/s 6A(2) of the CST Act on a declaration filed in form F whether at the time of or at any time before the assessment of

the tax payable under the Act in one relating to a step in aid of or part and parcel of the procedure prescribed under the Acts and the Rules for

assessment and quantification of liability of a dealer/assessee to tax under the CST Act, and cannot be assigned any special or distinct status or

role to confer any immunity whatsoever from the other authorities or action contemplated under other provisions of the Acts and the Rules made

thereunder by the very authorities.

(d) The assessing authority cannot mechanically ignore the order passed by it on the declaration filed in form F and take a position contra to the

order is dealt with in accordance with law under sections 16, 32 and 55 of the TNGST Act by the competent authority on being specifically

satisfied of the positive existence of the necessary prerequisites warranting and justifying recourse to action under sections 16, 55 and 32 of the

TNGST Act read with section 9(2) and (2A) of the CST Act and proceedings are accordingly initiated and final orders passed, after giving due

opportunity to the assessee/dealer concerned, accordance with law.

(e) The order passed u/s 6A(2) of the CST Act, on a declaration filed in form F, at any stage, is as much amenable to the provisions of the CST

Act read with TNGST Act, viz., sections 16, 55 and 32 of the TNGST Act - as an order of assessment itself will be otherwise amenable and the

mere passing of an order does not for all times make the same immune to action under all provisions or any contemplated action by any authority

discharging duties and exercising powers under those Acts.

(f) Since, the counsel for the petitioners have specifically made it clear and we have also permitted them to do so, no submissions were made on

the merits of the claim and we have not endeavoured to decide the question as to whether the movement of the goods to which the declaration in

form F related to was occasioned otherwise than as a result of sale or as a result of sale. This issue is left open and both the parties are at liberty to

agitate the same in the appropriate proceedings before the appropriate forum.

(g) In all cases where the petitioners have come at the stage of show cause notice - preassessment or post-assessment u/s 16, they shall have thirty

days time from this day to make representations or further representations and as and when such representations are made, the competent

authorities shall consider them on merits and pass appropriate orders in accordance with law, with further avenues of remedies open to them,

thereafter.

(h) In cases where the petitioners have filed writ petitions against final orders - assessment or reassessment or escaped assessment u/s 16 of the

TNGST Act, such petitioners shall have thirty days time from today to file their appeals/revisions, as are permissible in law and on their so

presenting the appeal/revision, the concerned authorities shall consider the matter on merits, without placing the obstacle of limitation or delay

against them and in accordance with law.

(i) All the above writ petitions shall stand finally disposed of in the above terms.

No costs.

41. In view of the final orders passed in the writ petitions, no further or separate orders are necessary in the W.M.Ps. and hence, they are closed.

42. Writ petitions disposed of accordingly.