Before Hon'ble R. P. Sethi, J. L. Gupta & N. K. Kapoor, JJ.

M/S UNITED RICELAND LIMITED & ANOTHER,—*Petitioners.*

versus

THE STATE OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 6071 of 1993

17th August, 1995

Constitution of India, 1950—Arts. 226/227—Haryana General Sales Tax Act, 1973—Ss. 9 & 15-A—Validity of Haryana Act No. 4 of 1991—S. 9 repealed—Vide *amendment Section 15-A incorporated which is retrospective in nature—Power of Legislature to legislate prospectively and retrospectively—Amended provisions of S. 15-A upheld being valid and constitutional.*

Held, that if the object of an amending statute is to remove and rectify the defect in phraseology or lacuna of other nature and to validate the proceedings under an earlier Act even found by the Court to be vitiated by some infirmity, such an amending and validating Act in effect and in essence has the retrospective operation having the aim to effectuate and carry out the object for which the earlier principal Act was amended and modified. Such an amending and validating Act which is intended to make, "small repairs" is a permissible mode of legislation and is frequently resorted to in fiscal enactments.

(Para 35)

Further held, that the doubt created,—*vide* Section 9, if any, regarding the liability to pay the purchase tax was intended to be removed by substituting Section 15-A of the Act and making corresponding amendment in Sections 6 & 15 of the Act. The effect of Section 15 is that in case no specific exemption is granted there shall be levied on the taxable turn over of a dealer a tax, at such rates as specified in sub-section (1) of clauses (a) and (b). Admittedly, no specific or implied exemption is in existence in favour of the petitioners after the omission of Section 9, substitution of Section 15-A and amendment of Section 15 retrospectively. The liability to pay tax, is, therefore, regulated by Section 6 read with Section 15 and adjustments, if any, are permissible under Section 15-A of the Act. The petitioners have not claimed any adjustments within the meaning of Section 15-A of the Act and rightly so because they are claiming exemption from payment of initial tax on the purchase of paddy used for the purpose of husking rice intended to be exported.

(Para 42)

Further held, that the principle of equality cannot be stretched to mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the

same position. The principle does not take away from the State the power to classify the persons for the legitimate purposes. Differential treatment by itself does not constitute violation of Article 14. If the law equally treats similarly situated or the members of well defined class it cannot be held to be obnoxious. It is for the Legislature to determine what categories it intends to embrace within the scope of the principal statute and merely because some categories are left out would not render the Legislation violative of Article 14 of the Constitution.

(Para 48)

Further held, that the exemption contemplated by the Statute must be specific and unambiguous. Such exemption can also be inferred provided there are strong and cogent reasons for such an inference to be drawn. Where the Statute has specifically dealt with the exemption, no one can be permitted to stretch the language of a Section which may amount to doing violence to it by reading it in between the lines to infer exemption. In the Act, the intention of the Legislature wherever desired and power to exempt is specifically stated in Sections 13, 13-A and 13-B. Section 14 provides that burden of proving that any purchase, sale, import or export effected by any person as principal, agent or in any other capacity is not liable to tax under this Act should be on such persons. The petitioners have miserably failed to discharge such burden of proof in the instant case.

(Para 53)

Further held, that the State Legislature was competent to validly legislate Act No. 4 of 1991 by which Section 9 of the Act was omitted by making corresponding amendment in Sections 6 and 15 and by substituting a new Section 15-A. The State Legislature was also competent to give effect to these provisions retrospectively by imposing the tax liability on the petitioners with respect to the purchase of paddy used for the purpose of manufacturing of rice to be exported out of the country. The provisions were enacted with the declared intention of plugging the holes and removing the doubts, if any, which had erupted regarding tax liability of the petitioners on account of the judgment of the Supreme Court referred to by the Legislature itself.

(Para 54)

Further held, that to seek the benefit of exemption, the principle to be kept in mind is that exemption claimed must be shown to be specific and should not be inferred by the implication unless such implication is implicit and subject to no doubt.

(Para 58)

Further held, that the judicial mandate regarding exemption is that it should have been granted specifically by the statute and must be strictly construed. It is also settled that if the assessee wants to

bring his case within any claimed exemption he is under an obligation to make out and establish a case quite clearly within the language of exemption granted. It is equally true that the exemption from the tax if granted by the Statute should be given full scope and amplitude and should not be withheld by imposing limitations not intended by the Legislature or by the delegated authority.

(Para 63)

Further held, that (1) the law declared by the Supreme Court is binding on all the Courts in the territory of India ;

(2) the law declared by the Supreme Court means the interpretation of the legislation in order to bring such law in harmony with social changes ;

(3) the law laid down by the Supreme Court must be with respect to the matter in controversy before the court and not merely an obiter dictum ;

(4) even if an obiter of the Supreme Court is required to be given due respect and considerable weightage, the judgment of the Supreme Court upon concession, on facts, has no binding force ;

(5) the law laid down, judgment delivered and the order passed by the Supreme Court are of binding nature on all the Courts in the country including the High Court ; and

(6) the judgment of the co-ordinate benches should not be commented upon or decided as appellate court by another such benches.

(Para 86)

Further held, that in the judgments of the Supreme Court in Hotel Balaji's case and Murli Manohar's case, the Supreme Court made reference to the provisions of the Act while interpreting the law to other States. Such observations or contentions made or noted in the judgment of the Supreme Court while interpreting the provisions of the law pertaining to other States may not be deemed finally decided as admittedly the Haryana Act was not called upon to be adjudicated. The judgment proceeding on the concessions whether implicit or implied and admittedly not on analysis or examination of the relevant provisions cannot be held to be declaring the law within the meaning of Article 141 of the Constitution. The obiter dictum cannot be treated as precedent particular when such obiter dictum is not found to be specifically connected with an issue before the Supreme Court. It is, however, acknowledged that obiter dictum of the Supreme Court though not a precedence yet being observations of the Apex Court is worthy of respect and considerable weightage. In the light of what has been noted and discussed, the law laid down in the aforesaid two judgments cannot be held to be a decision with respect to the matter in controversy before the Court.

(Para 87)

Further held, that resort to the provisions of Section 40 of the Act unambigiously demonstrates that the petitioner had not earlier been held responsible for their tax liability and the revisional authority on its own decided to call for the records of the case supposedly disposed of by the Assessing Authority for the purposes of satisfying himself as to the legality or propriety of the proceedings or of the orders made therein before passing the order determining the liability of the petitioners to pay the tax. It is worthwhile to mention that the revisional authority had not even indicated to the Dealer regarding his liability to pay the interest in case of default of payment of the principal amount of the tax. In the notice of assessment on Form ST 28 under rule 34, the Assessing Authority has not referred to the period for an the rate of interest at which the liability was determined in terms of sub-section 5 of Section 25 of the Act. The assessment order so far as it directs the payment of interest is vague and ambigious which on the face of it is not in conformity with the requirements of sub-section 5 of the Section 25 of the Act. The circumstances of the case do not indicate or even suggest that the petitioner-dealer had acted *mala-fidely* in depositing the tax within the time contemplated under Section 25 and thus incurred any liability to pay interest under sub-section 5 of the aforesaid section.

(Para 93)

Further held, that the sales tax is the biggest source of revenue for a State and it is for the authorities under the Act to decide as to how and in what manner such revenue would be realised. Provision for payment of interest in case of default in payment of tax is a means of compelling the assessee to pay the tax due within the time prescribed by the State. It is, however, equally true that a citizen cannot be compelled to pay penalty in the form of interest for alleged non-payment of sales tax when the liability to pay the tax itself was *bona-fidedly* in dispute and the authorities were not clear about the liability of the assessee. Neither the defaulting tax payer can be given any benefit under the technicalities of law nor the State can be permitted to burden the *bona-fide* assessee within the liability to pay the interest in case of default in the payment of the tax, the liability of which is itself in doll drums.

(Para 94)

Further held, that the liability to pay the interest arises only after the tax is assessed and not deposited within the statutory period. The cause of action for paying interest is the default in payment of the tax determined by the authorities or affirmatively known by the assessee. Imposition of interest is not intended to be a penalty to be uniformally applied in all cases of default whether *bona-fide* or otherwise.

(Para 99)

Further held, that it cannot be said that the petitioner-assessee had *mala-fidely* or intentionally evaded to pay the tax thus incurring the liability to pay the interest within the meaning of sub-section 3 of Section 25 of the Act. The demand regarding payment of interest is also vague, ambigious and without the authority of law. The petitioners cannot be directed to make the payment of interest for any period prior to the actual demand made for the payment of purchase tax under the provisions of the Act. The impugned order in so far as it directs the payment of interest is liable to be quashed.

(Para 105)

Further held, that (i) the provisions of Haryana Act No. 4 of 1991 are legal, valid and constitutional ;

(ii) the provisions of Section 15-A of the Act as substituted by Act No. 9 of 1993 is *intra-vires* of the provisions of the Constitution rightly imposing the liability upon the petitioners to pay the purchase tax retrospectively ;

(iii) Section 9 of the Act was validly omitted and this Section had not granted any exemption to the petitioners from payment of the tax demanded ;

(iv) the petitioners are liable to pay the purchase tax on the paddy used by them for husking paddy which was ultimately exported out of the country.

(Para 106)

Raja Ram Aggarwal, Senior Advocate with Rajesh Bindal, Advocate, *for the Petitioners.*

Arun Nehra, Addl.A.G. with D. D. Vasudeva, Advocate, *for the Respondents.*

JUDGMENT

R. P. Sethi, J.

(1) The concept of imposition of tax is as old as the human civilization. Tax is one form or the other was collected by all forms of Government for providing protection, security and other amenities to the citizens. It is compulsory acquisition of property by the State ostensibly on behalf of the assessee, for the purpose of providing amenities and looking for the vital interests of the society. Even in primitive times the process of compulsory acquisition of the property of the subjects was resorted to if not in cash

positively in kind. However, with the development of the concept of the States ways and means of acquisition of the property for the benefit of the State have undergone a sea change. Human instinct has always been at work to avoid the payment of the tax compulsorily resorted to by legal and other means with antaginistic approach adopted both by the State and the assessee of levy and collection of tax which is in existence in all the countries of the world from the days of the known history. In India also, the existence and inception of system of taxation is referred to by Manu in his Manu Samriti which prescribes how a duty is to be imposed on the transaction of sales. Manu even acknowledged the existence of sales tax as did *Kautilya* also. Megasthenes a renowned traveller to India has also referred to the existence of such a tax. After the first world war, the sales tax was first visualised in the report of the Taxation Enquiry Committee (1924-25). In this background and with the development of concept of sales tax in the rest of the world, entry in Government of India Act No. 48 was made proposing the imposition of sales tax. However, relevant provisions were made for the imposition of sales tax in the Constitution of India, 1950.

(2) It is unfortunate that tax laws in our country are technically couched making its interpretation difficult. The language used in the fiscal laws in such the wriggling out of which is left to the wisdom of few. It has been acknowledged by all concerned that the most difficult law in the country to be interpreted is the law dealing with the taxation. The difficult language and phases used in such enactments may be intentional giving a vast field to the evadors of the tax of fighting and providing ample opportunities to the wilful defaulters and evadors to resort to such technicalities with oblique motive of avoiding taxation intended and declared to have been imposed for the purposes of the general masses. The time has come which necessitates not only the restructuring of the taxation law system but to also provide a plain and capable and smooth interpretation reflecting and demonstrating the object sought to be achieved by the Legislature. It is also acknowledged that our law makers are admittedly not the law framers. The law framers are the constituents of bureaucracy apparently not committed in securing the goal as enshrined in the Preamble of the Constitution adopted on January 26, 1950. The time and necessity to take appropriate action is desired to be taken note of by resorting to remedial measures by making taxation law simple and easily understandable.

(3) The facts giving rise to the filing of the present petition and the Constitution of this Bench for adjudication of the scope of Sections 9, and 15-A of the Haryana General Sales Tax Act, 1973 (for short the 'State Act') are extracted from C.W.P. No. 6071 of 1993. The liability to pay purchase tax on the paddy used for extracting rice for the purpose of export is the pivotal question required to be adjudicated by us.

(4) The petitioners are admittedly exporters of rice outside India. They purchase paddy from the States of Punjab and Haryana and also from other States for the purposes of dehusking it for export of rice outside India. The petitioners have claimed to be earning valuable foreign exchange for the Country. The paddy is declared commodity under Section 14 of the Central Sales Tax Act (for short the Central Act.) Section 15 of the Central Act prescribes restrictions and conditions in regard to tax on sale or purchase of declared goods within the State. It provides that every sales tax law of State shall, in so far as it imposes or authorises the imposition of tax on the sale or purchase of declared goods, to be subject to various conditions including the condition :—

> "Where a tax has been levied under that law in respect of the sale or purchase inside the State, of any paddy referred to in sub Clause (i) of Clause (1) of Section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy."

(5) Schedule D of the State Act prescribes the point of levy of tax on paddy as the first sale within the State by a dealer liable to pay tax when imported from outside, and the stage of levy is last purchase within the State by a dealer liable to pay the tax when such purchase of paddy is made within the State. The Assessing Authority held the petitioners not liable to pay any purchase tax under the State Act. The Assessing Authority created a demand of 'nil' and the petitioners after making various adjustments of refund due to it depsoited the balance to square up the demand. The Deputy Excise and Taxation Commissioner (Inspection)-cum-Revisional Authority, Karnal issued a notice under Section 40 of the Act proposing to take *suo motu* action in respect of the adjustments allowed under Section 15-A of the Act for the purchase value of paddy worth the amount mentioned in the notice, the rice procured out of which had been sold in the course of export outside India. It is contended that the petitioners enjoyed the exemption under Section 9 of the

Act and could not have been directed to pay tax for the period when Section 9 was admittedly on the statute book. It is further contended that the petitioners have been granted the certificate in form ST-3 under which they were entitled to purchase paddy to be used for export of rice without payment of tax. It is submitted that the denial of refund or adjustment in the case of paddy while permitting the same in respect of other items is violative of the provisions of Articles 14, 19(1) (g), 286, 301, 302, 304 and 300-A of the Constitution of India besides being violative of Sections 5 and 15(c) of the Central Act and Sections 9 and 12 of the State Act. Section 15-A of the State Act substituted by Haryana Ordinance No. 1 of 1992 and Act No. 9 of 1993 is alleged to be unconstitutional and liable to be declared void.

(6) *Vide* Annexure P/1, Respondent No. 2 Deputy Excise and Taxation Commissioner-cum-Revisional Authority issued a notice under Section 40 of the Act intimating the petitioners that he had *suo motu* examined their sales tax assessment record for satisfying himself as to the legality and propriety of the order passed by the Assessing Authority and after examining the said record he had found discrepancies in the assessment order passed by the Assessing Authority which necessitated the revision of the assessment order. Before passing the order under revision, the petitioners were provided an opportunity of being heard in his office and to produce account books/stock inventory/sufficient evidence in support of their claim, if any. The writ petitions have been filed against the aforesaid show-cause notice mainly on the ground that the said notice was without jurisdiction and issued on the basis of the provisions of law not applicable in the case of the petitioners. The provisions relied upon by the Assessing Authority are alleged to be unconstitutional and void.

(7) In the reply filed on behalf of the respondents, it is admitted that the petitioners are registered dealers and are running rice-shellers. They are admitted to be purchasing paddy from Mandis (Markets) of Haryana as well as from outside the State of Haryana and after dehusking exported rice to various countries outside India. Paddy and Rice are stated to be different and distinct declared goods under Section 14 of the Central Act. Paddy and Rice are two distinct commodities and the leviable to tax under Section 6 read with Section 17 and Schedule 'D' of the State Act. Paddy is subject to tax at the last purchase in the State by the Dealer liable to pay tax

and Rice is taxable at the stage of first sale under Section 6 read with Section 17 and Schedule D of the State Act. Section 5 of the Central Act is stated to be applicable only to those goods mentioned in the Schedule which are sold outside the territory of India. Section 5 (3) of the Central Act lays down that notwithstanding anything contained in sub-section (1) of Section 5, last sale or purchase of goods preceding the sale or purchase occasioning export of goods out of the territory of India shall also be deemed to be in the course of such export if such sale or purchase takes place after, and was for the purpose of complying with the agreement or order for or in relation to such export. Relying upon various judgments, it is submitted that if the purchase is of some goods which were lateron exported out of the territory of India then such purchase is exempt but if the goods are purchased at a different place than outside the territory of India they are liable to be taxed under the Local Act and in that case the provisions of Section 5(3) of the Central Act would not be applicable. It is submitted that the petitioners export rice out of the territory of India and the Assessing Authority has not levied any tax on the rice so exported. The petitioners are liable to pay tax on paddy during such purchase of paddy in the State of Haryana under Sections 6, 15-A and 17 of the State Act read with Schedule 'D'. The petitioners are stated to be under a legal obligation to pay purchase tax on paddy being the last purchase within the State of Haryana not being entitled to the benefit of Section 5(3) of the Central Act. The petitioner is stated to be having no case because paddy and rice even according to the provisions of Section 14 of the Central Act are two different commodities and distinct from one and another. The petitioners could have saved their liability only if they had exported paddy but since they have exported rice, they are liable to pay purchase tax on it.

(8) Before referring to the rival contention of the learned counsel for the parties, it would be useful to refer to the Origin, Scheme and Object of the Haryana Act with special reference to the provisions of law applicable in the case.

(9) The State Act being Act No. 20 of 1973 was enacted to provide for a validate the levy of tax on the sale or purchase of certain goods in the State of Haryana. The Act was necessitated as experience of the working of the Punjab General Sales Tax Act, 1948 has brought to light certain locunae and inadequacies. It was specifically mentioned in the Object and Reasons that as numerous amendments have been incorporated in the original Act from time

to time and a great difficulty was being felt by the assessees in understanding, interpreting and applying the provisions of the existing Act, new Act No. 20 of 1973 was enacted in the State of Haryana. It may not be out of place to mention that a provision for imposing a tax on the sales of goods was incorporated for the first time in the Government of India Act, 1935 with the object of augumenting the revenue of provinces. The State of Madras was the first to enact General Sales Tax law in the year 1939 which was lateron followed by Act No. 4 of 1941. The said Act was repealed by Act No. 46 of 1948, after partition of the country in the year 1947. After reorganisation of the States of Punjab and Haryana on 1st November, 1966 the Punjab Act continued to be in force in the State of Haryana as well till the new Act was incorporated on 3rd May, 1973. This Act was also amended on various occasions according to the needs, requirements and necessities felt.

(10) Section 2 of the State Act deals with various definitions including the definition of Dealer, Trade, Declared Goods, Export, Goods, Import, Purchase, Sale, Turnover and like. Chapter II prescribes the taxing authority and the Tribunal. Section 3 authorities the State to appoint a person to be Commissioner and such other persons to assist him as are thought fit. The Commissioner has the jurisdiction over the whole of the State and exercises all powers conferred and perform all duties imposed on him by or under the Act. Section 4 deals with the Constitution of Tribunal which consists of one Member to be appointed by the State Government for the purpose of performing such functions and exercising such powers as may be assigned to or conferred on, the Tribunal by or under the Act. Sections 6 to 18 deal with incidence and levy of tax. Chapter IV provides for compulsory registeration of dealers liable to pay tax and Chapter V deals with return, assessment, reassessment and collection. Chapter VI deals with the maintenance of accounts, inspection of business premises and Accounts, establishment of check posts and furnishing of information by clearing and forwarding agents etc. Chapter VII deals with appeals, revisions, review and refund. Section 40 authorises the Commissioner to call for the record of any case pending before or disposed of by any Assessing Authority or the appellate authority other than the Tribunal, for the purposes of satisfying himself as to the legality or to propriety of any proceedings or of any order made therein. Chapter VIII deals with offences and penalties whereas Chapter IX is miscellaneous.

(11) Shri Raja Ram Aggarwal, Sr. Advocate, who initiated the arguments on behalf of the petitioners submitted that the respondent-revisional authority was not justified in issuing show-cause notice as according to him the petitioners were not liable to pay the purchase tax on the Paddy used for husking of paddy which was admittedly exported out of the country. He has contended that under Section 9 of the Act the petitioners have already been held entitled to the exemption from payment of purchase tax and that the repeal of this Section did not make the petitioner liable to pay tax either under Section 15 or under Section 17 of the State Act. It is submitted that the incorporation of Section 15-A,—*vide* Act No. 9 of 1993 did not in any way effect the rights of the petitioner which had accrued to them under the repealed Section 9 of the Act. It is argued alternatively that Section 15-A of the Act is violative of Article 14 of the Constitution as it intends to make discrimination between similarly situated persons. It is contended that the discrimination made with respect to the dealers dealing with the export of rice and with respect to the dealers left out of the purview of payment of purchase tax had no nexus or rationale with the object sought to be achieved. It is further contended that the petitioners are not liable to pay interest in any way particularly when their acts have been held to be *bona fide* and not actuated by any extraneous consideration. Relying upon various judgments of the Apex Court, the learned counsel has submitted that if the law enacted by the State is interpreted in accordance with the settled principles, the petitioners cannot be held to be liable to pay any tax. It is submitted that in case if two constructions of certain words or terms are possible the Court should lean in favour of the construction which give relief to the citizen. It was further contended that Section 9 of the Act was a special provision and Section 17 was not the charging section.

(12) Mr. M. L. Verma, Advcoate, appearing for another group of assessees adopted most of the arguments of Shri Raja Ram Aggarwal and elaborated the submissions regarding Section 17 of the Act being not the charging Section. His emphasis was that Section 6 of the State Act was the only charging Section and that the impugned Sections were violative of various provisions of the Constitution.

(13) In reply, Mr. Arun Nehra, submitted that Section 9 was not applicable in the case of the petitioners and even if the same is held to be applicable that did not absolve the petitioners from liability to pay the tax. According to him, Sections 6, 9, 15-A and 17

are the charging Sections. He has submitted that exemption from payment of tax cannot be presumed as the same is required to be specific and unambiguous. According to him various Sections under the Act specifically deal with the exemption and such sections do not deal with the exemptions as claimed by the petitioners. According to the learned counsel, the judgments relied upon by the petitioners were either not applicable in the case or did not in any way support their contentions.

(14) Before appreciating the rival contentions, it is necessary to understand as to what is meant by tax particularly the sale and purchase tax. In a civilised society a tax is recognised to be compulsory extraction of money by a public authority for public purposes enforceable by law. It is the charge imposed by the Legislature upon the persons or the property to raise money for public purposes and is enforced by the authority of the State for the support of the Government and for all public needs. It cannot be forgotten that payment of the tax cannot be held to be voluntary because it has authorised compulsory imposition upon the person held liable by the Legislature, expressing the Will of the people. Tax is never imposed with the consent of the tax payer. It envisages, therefore, that in all cases of tax imposition there has to be antagonistic attitude of the State and the assessee. As the tax is imposed for a proclaimed public purpose, a duty is cast on the Courts to interpret the fiscal law in such a manner which does not in any way defeat such public purpose. Imposition of tax is admittedly an acknowledged attribute of the sovereignity of the State reflected and demonstrated through the will of the people. Will of the people, in a democratic set up, is represented by the Legislature and the democratically elected and formed government. In a democratic set up, particularly in a developing country like India, it becomes the primary duty of the State to muster financial resources to raise additional revenues in order to meet its commitments to the people for implementing the plans and projects promised or contemplated to be fulfilled. It is acknowledged position that as the purpose of levy of tax is to raise funds for public good, it is the duty of the Legislature to decide regarding the liability of the person, transaction or goods to be taxed keeping in view the social economic and administrative considerations. The Courts cannot substitute their opinion for the declared economic and social policy of the State expressed through the duly elected Legislature. It has been rightly held by various Courts that in a democratic system the power of

taxation vests in the Legislature and not in the executive or the judiciary. Tax cannot be equated with fee or other contributions. Sales tax is a tax which includes within its scope and business as well as all tangible personal property at either the retailing, wholesailing or manufacturing stage with the exceptions noted in the taxing law.

(15) Purchase tax is a tax imposed on the purchase of goods which is imposed at the time of acquisition of such goods for cash or deferred payments or other available considerations otherwise than under the circumstances enumerated in the statute providing for the imposition of such purchase tax. Generally speaking a sales tax is a tax levied on the occasion of sale while purchase tax is a tax levied on the occasion of purchase. The transactions which involves sale by somebody necessarily involves purchase by some other person. Sale and purchase are merely different ways of looking at the same transaction from different angle of the persons concerned.

(16) Sales tax statutes are broadly divided into two classes i.e. one levying multiple point tax and the other single point tax in the series of transaction. In some States, particularly in Bombay, double point system was also evolved. Multi Point System provides for taxation at each incidence of sale and Single Point System is an incident and controlled system where tax is charged, in the passage of the article from the first dealer to the last in what may be a whole chain of dealers, is not left to be decided by the intermediate number of links, ignoring the number of dealers involved connected with the final sale. In all cases the liability to pay sales tax under the Act is only on Seller and the Buyer.

(17) In this context the learned counsel for the petitioners have referred to various judgments governing, prescribing and limiting the powers of the Court so far as the interpretation of the taxation laws are concerned. Relying upon *'Commissioner of Income Tax* v. *Straw Board Manufacturing* Co. *Ltd.* (1), it has been argued, "it is necessary to remember that when a provision is made in the context of a law providing for concessional rates of tax for the purpose of encouraging an industrial activity a liberal construction should be put upon the language of the statute."

(1) A.I.R. 1989 S.C. 1490.

(18) The Supreme Court in '*Bajaj Tempos Ltd., Bombay* v. *Commissioner of T.T.*' (2), held, "that the Legislature was the best Judge of need of people, manifest its intention from time to time through amendment, substitution and omission considering the social and economic conditions in view." The Courts resort to such interpretation and construction which is reasonable and purposive to make the provision meaningful in consonance with the object sought to be achieved by the Act enacted by the Legislature.

(19) The statutory provisions creating a citizen's right or taking away citizen's right are ordinarily held to be prospective. They will be held retrospective only if by the expressed words or by necessary implication the Legislature has made them applicable as such. Retrospective operation shall be limited only to the extent to which it was made so. The intention of the Legislature is always to be gathered from the words used by it, giving to the words their plain, normal, grammatical meaning.

(20) In *Mahadeolal* v. *Administrator General of W.B.* (3), the Supreme Court dealt with various rules applicable in the interpretation of statutes and held that, "in their anxiety to advance the beneficent purpose of legislation courts must not, however, yield to the temptation of seeking ambiguity, when there is none." The four rules of interpreting the statute as prescribed by the Supreme Court in this case are :—

> "The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication the Legislature has made them retrospective; and the retrospective operation will be limited only to the extent to which it has been so made by express words or necessary implication. The second rule, is that the intention of the words used by it, giving to the words their plain, normal, grammatical meaning. The third rule is that if in any legislation, the

(2) A.I.R. 1992 S.C. 1622.

(3) A.I.R. 1960 S.C. 936.

general object or which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted. The fourth rule is that if the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose the Legislature may reasonably be considered to have had will be put on the words, if necessary even by modification of the language used."

(21) The Courts are not expected to examine the merits and demerits of a policy laid down by a Regulation making the policy. Any draw backs in the policy incorporated in a rule or regulation will not render the statute *ultra vires* and the Court cannot, in its opinion, hold that the policy was not wise or foolish one. In *Maharashtra S.B.O. & H.S. Education* v. *Paritosh Bhupesh* (4), it was held :—

"The constitutionality of a regulation has to be adjudged only by a three fold test, namely (1) Whether the provisions of such regulations fall within the scope and ambit of the power conferred by the statute on the delegate; (2) whether the rules/regulations framed by the delegate are to any extent inconsistent with the provisions of the parent enactment and lastly (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution."

(22) Again in '*M/s Aphali Pharmaceuticals Ltd.* v. *State of Maharashtra and others*' (5), the Court held :—

".....The best interpretation is made from the context. *Injustumest nish tota lege inspecta, de una aliqua ejus particula proposita judicare vel respondere.* It is unjust

(4) A.I.R. 1984 S.C. 1543.

(5) A.I.R. 1989 S.C. 2227.

to decide or respond as to any particular part of law without examining the whole of the law. Interpretaret concordare leges legibus, est optimus intepretendi modus. To interpret and in such a way as to harmonize laws with laws is the best mode of interpretation....."

(23) Where there is doubt about the national legal system in the context of inter-national obligations, the law must be interpreted by keeping in mind the need for harmonisation whenever possible bearing in mind the spirit of the convenants.

(24) The learned counsel for the petitioners have also referred to *'M. C. Monagle* v. *Westminister City Council'* (6), and *'Pickstone and others* v. *Freemass plc'* (7), in support of their contention that for statutory interpretations, reference can be made to the proceedings in Parliament in order to ascertain the intention of the Legislature and that if necessary, certain words may be added to the Statute for the purpose of interpreting it in consonance with the intention of Legislature.

(25) In the context of scope, aim and object of the taxing statute and the Rules of Interpretation, as noted herein above, let us now examine the submissions of the petitioners testing them on the touch-stone of the aforesaid legal propositions. It has vehementally been argued that as Section 9 of the Act gave the petitioners exemption from payment of the purchase tax, the respondents could not initiate action for its recovery.

(26) The petitioners have claimed exemption from payment of purchase tax on the plea of implied exemption granted by Section 9 of the Act, on the paddy purchased for the purpose of husking paddy exported out of the country. They have relied upon the judgments of the Supreme Court in *Hotel Balaji's case* (supra) *Murli Manohar's case* (supra) and *Jagajit Sugar Mill's case* (supra) in support of their contention. In reply it has been submitted that the aforesaid Section was omitted firstly by Ordinance No. 2 of 1990 dated 15th October, 1990 and subsequently by Act No. 4 of 1991 dated 16th April, 1991 by making corresponding and effective amendments in Sections 6 and

(6) (1990) 1 All E.R. 993.

(7) (1988) 2 All E.R. 803.

15-A of the Act. It is contended that a combined reading of the Ordinance and the Amending Act unequivocally suggested that after the omission of Section 9 and amendment of the Charging Sections 6 and 15-A, the liability of the assessee to pay tax was held operative retrospectively.

(27) There is substance in this arguments of the learned counsel for the respondents in as much as after the omission of Section 9 by Act No. 4 of 1991, the provisions of Sections 6 and 15-A of the Act have been made applicable retrospectively with effect from 27th May, 1971. In the absence of Section 9 and after the amendment of Sections 6 and 15-A of the Act a tax liability has been imposed upon the persons like the petitioners retrospectively with effect from 27th May, 1971. It has, therefore, to be seen as to whether, firstly the Ordinance No. 2 of 1990 and subsequently Act No. 4 of 1991 could impose the tax liability retrospectively after removing the doubts, if any, which had arisen on account of Section 9 of the Act. According to the petitioners it was not within the competence of the Legislature whereas the respondents have pleaded that there was no bar for repealing the proviso and imposing tax liability retrospectively if the Legislature otherwise had the legislative competence to enact the law on the subject.

(28) It is acknowledged position of law that the Legislature has plenary powers of legislation within the field of legislature entrusted to them but subject to certain constitutional restrictions as specified in Part 11 of the Constitution. The legislature has, admittedly the power to legislate prospectively as well as retrospectively.

(29) The Supreme Court in *J. K. Jute Mills Co. Ltd.* v. *State of Uttar Pradesh* (8), examined the power of the Legislature in this context and held :

> "The power of a Legislature to enact a law with reference to a topic entrusted to it, is. as already stated, unqualified subject only to any limitation imposed by the Constitution. In the exercise of such a power, it will be competent for the legislature to enact a law, which is either prospective or retrospective. In *Union of India* v. *Madan Gopal*, 1954

(8) A.I.R. 1961 S.C. 1534.

SCR 541, it was held by this Court that the power to impose tax on income under entry 82 of List I in Schedule VII to the Constitution, comprehended the power to impose income-tax with retrospective operation even for a period prior to the Constitution. The position will be the same as regards laws imposing tax on sale of goods. In *M. P. V. Sundararamier & Co.* v. *State of Andhra Pradesh*, 1958 SCR 144, this Court had occasion to consider the validity of a law enacted by Parliament giving retrospective operation to laws passed by the State Legislatures imposing a tax on certain sales in the course of inter-State trade. One of the contentions raised against the validity of this legislation was that having regard to the terms of Art. 286(2) the retrospective legislation was not within the competence of Parliament. In rejecting this contention, the Court observed :—

"Article 286(2) merely provides that no law of a State shall impose tax on Inter-State Sales' except in so far as Parliament may be law otherwise provide. It places no restrictions on the nature of the law to be passed by Parliament. On the other hand, the words in so far as clearly leave it to Parliament to decide on the form and nature of the law to be enacted by it. What is material to observe is that the power conferred on Parliament under Article 286(2) is a Legislative Power, and such a power conferred on a Sovereign Legislature carry with it authority to enact a law either prospectively or retrospectively, unless there can be found in the Constitution itself a limitation on that power".

And it was held that the law was with the competence of the legislature. We must therefore hold that the Validation Act is not *ultra vires* the powers of the Legislature under entry 54, for the reason that it operates retrospectively."

(30) The Federal Court in *United Provinces* v. *Mt. Astiga Begum and others* (8A), had held :—

(8A) A.I.R. 1941 F.C. 16.

"Within their own sphere the powers of the Indian Legislatures are as large and ample as those of Parliament itself, and the burden of providing that they are subject to a strange and unusual prohibition against retrospective legislation must certainly lie upon those who assert it. There is nothing in the language of S. 292 which suggests any intention on the part of Parliament to make them (Indian Legislatures) subject to that prohibition, nor, so far as that may be relevant, any explanation why Parliament should have desired to do so".

(31) Similar view was taken in *Piare Dusadh and others* v. *Emperor* (9), *Subally and another* v. *Attorney General* (10), and *Western Transport Pvt. Ltd.* v. *Kropp* (11).

(32) Similarly in *Rai Ramkrishna* v. *State of Bihar* (12), the power of the Legislature to enact laws retrospectively was considered and it was held :

"...the Legislative powers conferred on the appropriate legislatures to enact law in respect of topics covered by the several entries in the three lists can be exercised both prospectively and retrospectively. Where the Legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law but it can also provide for the retrospective operation of the said provisions. Similarly, there is no doubt that the legislative power in question includes the subsidary or the auxillary power to validate laws which have been found to be invalid. If a law passed by a Legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent to the appropriate Legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed."

(9) A.I.R. 1944 F.C. 1.

(10) (1964) 8 All E.R. 377.

(11) (1964) 3 All E.R. 722.

(12) A.I.R. 1963 S.C. 1667.

(33) It, however, cannot be denied that every statute is *prima-facie* presumed to be prospective unless it is expressely or by necessary implication made to have retrospective operation. If the words in the statute are sufficient to show the intention of the Legislature, no other meaning can be assigned by the Courts to hold otherwise.

(34) In *Jawaharmal* v. *State of Rajasthan* (13), the Supreme Court reiterated the position and held as under :—

> "It is well recognised that the power to legislate includes the power to legislate prospectively, as well as retrospectively, and in that behalf, tax legislation is no different from any other legislation. If the Legislature decided to levy a tax, it may levy such tax either prospectively or even retrospectively. When retrospective legislation is passed imposing a tax, it may, in conceivable cases, become necessary to consider whether such retrospective taxation is reasonable or not. But apart from this theoretical aspect of the matter, the power to tax can be completely exercised by the legislature either prospectively or retrospectively....."

(35) If the object of an amending statute is to remove and rectify the defect in phraseology or lacuna of other nature and to validate the proceedings under an earlier Act even found by the Court to be vitiated by some infirmity, such an amending and validating Act in effect and in essence has the retrospective operation having the aim to effectuate and carry out the object for which the earlier principal Act was amended and modified. Such an amending and validating Act which is intended to make, "small repairs" is a permissible mode of legislation and is frequently resorted to in fiscal enactments. The Supreme Court in *'Krishnamurthi & Co.* v. *State of Madras* (14), reiterated and approved its earlier decision in *'Assistant Commissioner of Urban Land Tax* v. *Buckingham and Carnatic Co. Ltd.* (15), in which reliance had been placed upon the following passage in 73 Harvard Law Review 692 at page 705 :—

(13) A.I.R. 1968 S.C. 764.

(14) A.I.R. 1972 S.C. 2455.

(15) A.I.R. 1970 S.C. 169.

"It is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retrospective curing of such a defect in the administration of government outweighs the Individual's interest in benefitting from the defect... The Court has been extremely reluctant to override the legislative judgment as to the necessity for retrospective taxation, not only because of the paramount governmental interest in obtaining adequate revenues, but also because taxes are not in the nature of a penalty or a contractual obligation but rather a means of apportioning the costs of government among those who benefit from it."

(36) In *Shiv Dutt Raj Fateh Chand* v. *Union of India* (16), the Supreme Court considered the scope of Section 9 of the Central Sales Tax Act by which a provision was made for imposition of penalty retrospectively and held that the same was not violative of either Article 19 or 20 of the Constitution of India. It was declared :

"We have already indicated above the circumstances under which it become necessary to levy penalties with retrospective effect and to validate all the proceedings relating to levy of penalties and recovery thereof. The scope of the power of a legislature to make a law validating the levy of a tax or a duty retrospectively was considered by this Court in *Chhotabhai Jethabhai Patel and Co.* v. *Union of India*, A.I.R. 1962 S.C. 1006. The Court held that Parliament acting within its legislative field had the power and could by law both prospectively and retrospectively levy excise duty under the Central Excises and Salt Act, 1944 even where it was established that by reason of the retrospective effect being, given to the law, the assessee were incapable of passing on the excise duty to the buyers. After considering certain American decisions, Ayyangar, J. observed at page 37 (of SCR); (at pp. 1022-23 of AIR) thus :

(16) A.I.R. 1984 S.C. 1194.

"It would thus be seen that even under the Constitution of the United States of America the unconstitutionality of a retrospective tax is rested on what has been termed, "the vague contours of the 5th Amendment" Whereas under the Indian Constitution that grounds on which infraction of the rights to property is to be tested not by the flexible rule of "due process" but on the more precise criteria set out in Article 19(5). Mere retrospectivity in the imposition of the tax cannot *per se* render the Law unconstitutional on the ground of its infringing the right to hold property under Article 19(1) (f) or depriving the person of property under Art. 31(1). If on the one hand, the tax enactment in question were beyond legislative competence of the Union or a State necessarily different considerations arise. Such unauthorised imposition would undoubtedly not be a reasonable restriction on the right to hold property besides being an unreasonable restraint on the carrying on of business. If the tax in question is one which is laid on a person in respect of his business activity."

The Court was more emphatic in *Raj Ramkrishna* v. *State of Bihar*, A.I.R. 1963 S.C. 1667, about the power of the legislature in India to enact retrospective taxation laws. It held that if in its essential features a taxing statute is within the competence of the legislature, it would not cease to be so if retrospective effect is given to it. A power to make a law, therefore, includes within its scope to make all relevant provisions which are ancilliary or incidental to it. The provision for levying of interest and to levy penalties retrospectively and to validate earlier proceedings under laws which have been declared unconstitutional after removing the element of unconstitutionality is included within the scope of legislative power. In the above mentioned case of Rai Ramkrishna (supra) a Bihar Act levying a tax on passengers and goods passed in 1950 was declared to be unconstitutional by this Court in December, 1960. An Act validating the said levy after removing constitutional deficiencies in it was passed with the assent of the President on September 23, 1961 and that Act was given retrospective effect from

April 1, 1950 on which date the earlier Act which had been declared as unconstitutional had come into force. The limited challenge mounted against the validating Act was that the provisions contained in Section 23(b) thereof which provided that any proceeding commenced or purported to have been commenced for the assessment, collection and recovery of any amount as tax or penalty under the provisions of the earlier Act which had been declared as unconstitutional or the rules made there under during the period from April 1, 1950 to July 31, 1961 i.e. till the date on which an ordinance which was replaced by the validating Act in question came into force, should be deemed to have been commenced and conducted in accordance with the provisions of the validating Act and if not already completed should be continued and completed in accordance with the validating Act was opposed to Article 304(b) and Article 19(1) (f) and (g). It was urged in that case on the basis of the observation made in Sutherland on 'Statutes and Statutory Constructions' to the effect that :—

"The Statutes may be retrospective if the legislature clearly so intends. If the retrospective feature of a law is arbitrary and burdensome the statute will not be sustained."

That the length of retrospectivity, that is, eleven years was an unreasonable restriction on the rights guaranteed under Art. 19(1) (f) and (g). This contention was rejected by this Court at pages 915 and 916 (of SCR); (at page 1674 of AIR) of the report as follows :

"We do not think that such a mechanical test can be applied in determining the validity of the retrospective operation of the Act. It is conceivable that cases may arise in which the retrospective operation of a taxing or other statute may introduce such an element of unreasonableness that the restrictions imposed by it may be open to serious challenge as unconstitutional: but the test of the length of time covered by the retrospective operation cannot by itself, necessarily by a decisive test. We may have a statute whose retrospective operation covers a comparatively short

period and yet it is possible that the nature of the restriction imposed by it may be of such a character as to introduce a serious infirmity in the retrospective operation. On the other hand, we may get cases where the period covered by the retrospective operation of the statute, though long, will not introduce any such infirmity. Take the case of a validating Act. If a statute passed by the legislature is challenged in proceedings before a Court, and the challenge is ultimately sustained and the statute is struck down, it is not unlikely that the judicial proceedings may occupy a fairly long period and the legislature may well decide to await the final decision in the said proceedings before it uses its legislative power to cure the alleged infirmity in the earlier Act. In such a case, if after the final judicial verdict is pronounced in the matter the legislature passes a validating Act, it may well cover a long period taken by the judicial proceedings in Court and yet it would be inappropriate to hold that because the retrospectvie operation covers a long period, therefore, the restriction imposed by it is unreasonable. That is why we think the test of the length of time covered by the retrospective operation cannot by itself be treated as a decisive test."

In this case, the Supreme Court also considered the scope of Section 48 of the Haryana Act by which a provision was made for imposition of penalty and held that such a provision though made retrospectively did not violate Article 14 of the Constitution.

(37) It is also cardinal principle of interpretation of Statutes that the Court is to interpret the law in the manner as well to supress the mischief and advance the remedy and to supress the evasions and the continuance of the mischief. Too carry out effectually the objects of an statute, such an interpretation is to be given which actually defeats all attempts to do or avoid doing in an indirect or circuitous manner that which is prohibited or enjoined. Maxwell on the Interpretation of Statutes while dealing with the construction to prevent evasion or abuse, states :—

"This manner of construction has two aspects. One is that the courts, mindful of the mischief rule, will not be astute to narrow the language of a statute so as to allow persons

within its purview to escape its net. The other is that the statute may be applied to the substance rather than that mere form of transactions, thus defeating any shifts and contrivances which parties may have devised in the hope of thereby falling outside the Act. When the Courts find an attempt at concealment, they will, in the words of Wilmot C.J., "brush away the cobweb varnish, and shew the transactions in their true light."

(38) In *Rai Ram Krishan* v. *State of Bihar* (17), a Constitution Bench of the Supreme Court had observed :—

"Where the Legislature can make a valid law, it can provide not only for the prospective operation of the material provisions of the said law, but it can also provide for the retrospective operation of the said provisions."

(39) In a recent judgment the Supreme Court in *'Entertainment Tax Officer-I* v. *Ambae Picture Palace* (18), has held :—

"If the Parliament or the State Legislatures have competence to legislate, they can do so prospectively as well as retrospectively and taxation laws are no exception to this power (Reference in this connection may be made to the decision of this Court in *U.O.I.* v. *Madan Gopal Kabra* (1954) 25 ITR 58 (SC). Again in *Krishnamurthi and Co.* v. *State of Madras* (1973) 31 STC 190, this Court has held that the legislative power conferred on the appropriate Legislatures to enact laws in respect of topics covered by the several entries in the three Lists can be exercised both prospectively and retrospectively."

(40) *Vide* Ordinance No. 2 of 1990, Section 9 of the Principal Act was omitted and Section 15-A was substituted with effect from 27th May, 1971. The Ordinance was replaced by Haryana Act No. 4 of 1991. The effect was that after omission of Section 9 of the Principal Act the amended Section 15 was applied retrospectively with effect from 27th May, 1971. Proviso (iii) to Clause (b) of sub-section (1) of Section 15 of the Act was inserted by Act No. 44 of 1976 with

(17) (1968) 50 I.T.R. 171.

(18) 1995 (96) S.T.C. 338.

effect from 7th September, 1976. Section 17 of the Act provided that the tax on declared goods shall be leviable at the stage of sale or purchase, as the case may be, and under the circumstances specified against such goods in Schedule 'D' provided the goods have not been subjected to tax at any stage of the sale or purchase specified in the said Schedule. The tax shall be levided on the paddy by the dealer liable to pay tax under the Act at the stage of last purchase of such goods and further that the tax under the said Section shall be levied, charged and paid after providing deductions admissible under Section 27 of the Act. Amended Section 15-A which is made applicable with effect from 27th May, 1971 is as under :—

"15-A. Adjustment or refund of tax in certain cases.—Subject to the provisions of clause (iii) of proviso to sub-section (1) of Section 15 and subject to the conditions and restrictions, as may be prescribed,—

(i) the tax leviable under this Act or the Central Sales Tax Act, 1956 on the sale of goods by a dealer manufactured by him, shall be reduced by the amount of tax paid in the State on the sale or purchase of goods, other than the tax paid on the last purchase of paddy, cotton and oil seeds, used in their manufacture; and

(ii) When no tax is leviable on the sale of manufactured goods except those specified in schedule B, subject to the conditions and exceptions specified therein, or when the tax leviable on the sale of manufactured goods is less than the tax paid in the State on the sale or purchase of goods, other than the tax paid on the last purchase of paddy, cotton and oil seeds, used in their manufacture, the full amount of tax paid or the excess amount of tax paid over the tax leviable on sale, as the case may be, shall be refundable if the manufactured goods are sold in the State or in the course of inter-State trade or commerce, or in the course of export out of the territory of India :

Provided that in case the manufactured goods have been sold before the 1st day of January, 1988, the tax paid on goods, leviable to tax at the first stage of sale under Section 18, used in their manufacture, shall not be refunded."

(41) The provisions of Section 15-A of the Act specifically mentions that taxable goods, persons and the events which makes the section charging section. It was held in *Adarsh Industrial Corp.* v. *State of Haryana* (19), that the requirements of the charging Section are :—

1. That the commodity to be taxed must be mentioned ;
2. The circumstances under which the tax is to be levied should have been spelt out; and
3. The stage of levy of tax and the persons liable to pay the tax be defined.

(42) The doubt created,—*vide* Section 9, if any, regarding the liability to pay the purchase tax was intended to be removed by substituting Section 15-A of the Act and making corresponding amendment in Sections 6 and 15 of the Act. The effect of Section 15 is that in case no specific exemption is granted there shall be levied on the taxable turnover of a dealer a tax, at such rates as specified in sub-section (1) of clauses (a) and (b). Admittedly, no specific or implied exemption is in existence in favour of the petitioners after the omission of Section 9, substitution of Section 15-A and amendment of Section 15 retrospectively. The liability to pay tax, is, therefore, regulated by Section 6 read with Section 15 and adjustments, if any, are permissible under Section 15-A of the Act. The petitioners have not claimed any adjustments within the meaning of Section 15-A of the Act and rightly so because they are claiming exemption from payment of initial tax on the purchase of paddy used for the purpose of husking rice intended to be exported.

(43) Keeping in view the principles of interprertation of statutes, as noted herein above, the intention of the Legislature to impose tax on the purchase of paddy used for export of rice is so well demonstrated that there is no escape than to accept the contention raised on behalf of the respondent-State and hold the petitioners liable to the tax liability. While introducing Bill No. 11-HLA/91, to amend the Haryana General Sales Tax Act. 1973 proposing to drop Section 9 and amending Section 15 besides substituting Section 15-A, it was stated in the statement of objects and reasons as under :—

---

(19) 79 S.T.C. 94.

"A tax on the purchase value of goods, purchased from within the State, when transferred as such to branches outside the State or sent for sale on consignment basis or when used in the manufacture of goods, and the manufactured goods were either transferred to branches or sent for sale on consignement basis, outside the State, was leviable under Section 9 and Section 24 of the Haryana General Sales Tax Act. Although the Full Bench of Punjab and Haryana High Court in *Des Raj Pushap Kumar Gulati* v. *State* held that the taxable event was the purchase of goods and Section 9 was valid yet the Supreme Court of India in the case M/s Good Year India Limited, Faridabad has held, *inter alia* that the taxable event is the despatch of goods and not the purchase of goods and the State is not legislatively competent to enact such provisions. In other words the Hon'ble Supreme Court struck down the provisions of Section 9(1) (b) and Section 24(3) of the Act *ibid.* In order to remove the lacuna pointed out by the Supreme Court and to remove any doubt and ambiguity, the Haryana General Sales Tax Act, 1973 was amended,—*vide* Act No. 1 of 1990, and subsequently by an ordinance dated 12th October, 1990 and the taxable event was shifted to the purchase of goods itself. However, in another decision. in case of *M/s Murli Manohar and Co.* v. *State of Haryana,* the Supreme Court has, ineffect, held that the amendment carried out,—*vide* Act. No. 1 of 1990 does not still empower the State Government to levy purchase tax on certain specified transactions. The Supreme Court held that the definition of turnover and the provisions for right to purchase goods without payment of tax given in the Act do not permit the charging of purchase tax as the value of the purchases could not be included within the definition of 'turnover' in Section 2(p), especially in view of Explanation 2. Since, the State Legislature is competent to legislate enactment for levy of purchase tax in terms of entry No. 54 of the State List of the 7th Schedule of the Constitution of India, in order to remove the deficiencies pointed out by the Hon'ble Supreme Court of India in the case of *M/s Murli Manohar and Co.* v. *State of Haryana,* it is necessary to amend the provisions of the Act so as to carry out the legislative intention to levy purchase tax, as proposed in the Bill."

In the Statement of Financial Memorandum it was stated :—

> "In order to remove the deficiencies in Haryana General Sales Tax Act, 1973, pointed out by the Hon'ble Supreme Court of India in the case of *M/s Murli Manohar and* Co. v. *State of Haryana*, it is necessary to amend the provisions of the Act so as to carry out the legislative intention to levy purchase tax."

(44) In the Memorandum explaining the reasons for modification of the provisions of Ordinance No. 2 of 1990, it was stated :—

> "The Supreme Court had quashed the provisions of Section 9 and Section 24(3) of the Haryana General Sales Tax Act imposing purchase tax on certain transactions. An application for review was filed in the Supreme Court and simultaneously certain amendments were made in the Act,—*vide*—Act 1 of 1990 to empower the Government to continue to collect the tax. After the review application was rejected by the Supreme Court and in view of certain fresh writs in the High Court challenging the vires of some of the amendments made by Act 1 of 1990, it became necessary to make some more amendments with immediate effect, which was done through the Haryana General Sales Tax (Second Amendment) Ordinance, 1990. The matter has come under further scrutiny by the Supreme Court in the case of *M/s Murli Manohar* v. *State of Haryana* and some further amendments have become necessary to achieve the objects of the Government to levy and collect purchase tax on certain transactions. The proposed bill covers comprehensively all the above matters and the bill is proposed to be given retrospective effect. Hence it is proposed to repeal the Haryana General Sales Tax (Second Amendment) Ordinance, 1990. The modification in the provisions of Ordinance and the Bill has to be made in view of the changed circumstances. Moreover, it was the need of the hour to achieve the objects.

(45) A perusal of the Statement of objects and Reasons, Statement of Financial Memorandum and Memorandum explaining the reasons for modification of the provisions of Ordinance No. 2 of 1990, unambigiously shows that the Legislature intended to plug the holes to prevent escaping tax liability and imposition of purchase tax despite the judgment of the Supreme Court in *Murli Manohar's case* (supra).

(46) The Legislative competence of the State Legislature to enact and amend the State Act has infact been conceded. Otherwise also in view of the provisions of Article 246 read with Article 286, Entry 54, List II of 7th Schedule of the Constitution of India, the authority of the State Legislature to enact laws with respect to imposition of sale and purchase tax on paddy can neither be disputed nor denied.

(47) The learned counsel appearing for the petitioner have vainly tried to urge that the amended provisions of Section 15-A of the Act were unconstitutional being discriminatory. It is submitted that the persons similarly situated have been treated differently and that dealers dealing with the export of rice could not have been burdened with the liability to pay tax on the purchase of paddy. It was also argued that the State has been conferred with unguided and uncanalised powers to impose tax and the rate of tax on their whims.

(48) It is now well settled that the principle of equality cannot be stretched to mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position. The principle does not take away from the State the power to classify the persons for the legitimate purposes. Differential treatment by itself does not constitute violation of Article 14. If the law equally treats similarly situated or the members of well defined class it cannot be held to be obnoxious. It is for the Legislature to determine what categories it intends to embrace within the scope of the principal statute and merely because some categories are left out would not render the Legislation violative of Article 14 of the Constitution.

(49) It was held in *East India Tobacco Company* v. *State of Andhra Pradesh and others* (20), that under the law the burden lies on the persons challenging the legislation as discriminatory who is required to establish that the provision was not based upon a valid classification. In taxation law, "It is necessary to bear in mind that the State has the wide discretion in selecting the persons or the objects it will tax, and that a Statute is not open to attack on the ground that it taxes some persons or objects and not others. It is

(20) A.I.R. 1962 S.C. 1733.

only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of Article 14." The State is not required to have a tax on every thing in order to tax something. Under the taxing statute the Legislature has wide powers to classify and the power of working details regarding subjects to be taxed and fixation of rate of tax, which in turn depend upon social, economic and administrative considerations to be identified by the Legislature, and may be opted to be left to the Government. Similarly the maximum limit of rate of tax fixed by the taxing statute may itself provide social guidelines to save it from the attack of unconstitutionality.

(50) In *Municipal Corporation of Delhi* v. *Birla Cotton, Spinning and Weaving Mills* (21), the Supreme Court held that the powers conferred by Section 150 of the Delhi Municipal Corporation Act on the corporation to levy any of the optional taxes by prescribing the maximum rates of tax to be levied ; to fix class or classes of persons or the description or descriptions of articles and properties to be taxed and to lay down the system of assessment and exemptions if any, to be granted is not unguided and cannot be said to amount to excessive delegation.

(51) To the same effect is the judgment of the Full Bench of the Jammu and Kashmir High Court in *Glacier Cold Storage and Ice Mills and others* v. *Assessing Authority* (22).

(52) Learned counsel for the petitioners appeared to have half heartedly challenged the vires of alleged offending Sections to be unconstitutional and did not refer to any vice which could persuade us to declare the Section as *ultra vires.*

(53) The learned counsel for the respondents have submitted and we agree that the exemption contemplated by the Statute must be specific and unambiguous. Such exemption can also be inferred provided there are strong and cogent reasons for such an inference to be drawn. Where the statute has specifically dealt with the exemption, no one can be permitted to stretch the language of a Section

---

(21) A.I.R. 1968 S.C. 1232.

(22) 24 S.T.C. 426.

which may amount to doing violence to it by reading it in between the lines to infer exemption. In the Act, the intention of the Legislature wherever desired and power to exempt is specifically stated in Sections 13, 13-A and 13-B. Section 14 provides that burden of proving that any purchase, sale, import or export effected by any persons as principal, agent or in any other capacity is not liable to tax under this Act should be on such persons. The petitioners have miserably failed to discharge such burden of proof in the instant case.

(54) It is, therefore, held that the State Legislature was competent to validly legislate Act No. 4 of 1991 by which Section 9 of the Act was omitted by making corresponding amendment in Sections 6 and 15 and by substituting a new Section 15-A. The State Legislature was also competent to give effect to these provisions retrospectively by imposing the tax liability on the petitioners with respect to the purchase of paddy used for the purpose of manufacturing of rice to be exported out of the country. The provisions were enacted with the declared intention of plugging the holes and removing the doubts, if any, which had erupted regarding tax liability of the petitioners on account of the judgment of the Supreme Court referred to by the Legislature itself. The respondent-Deputy Excise and Taxation Commissioner was, therefore, justified in issuing notice under Section 40 of the State Act proposing to take *suo-motu* action in the case for revision of the assessment order.

(55) It is not disputed before us that paddy and Rice are declared goods under Section 14 of the Central Act and are two different commodities subject to tax under Section 6 read with Sections 15-A and 17 of the Haryana Act.

(56) Assuming but not acknowledging that the amendment made,—*vide* Act No. 4 of 1991 and Act No. 9 of 1993 was not retrospective in operation and that Section 9 of the Principal Act has not validly been omitted, the claim of the petitioner as projected in the Court cannot be accepted even in that eventuality. The star point projected by the petitioners in their favour is that they are entitled to exemptions under Section 9 of the Act which according to them is both a charging as well as exempting provision. In projecting their view point, the petitioners have tried to build their castle on the foundation of the judgments of the Supreme Court reported in

'*Hotel Balaji and others* v. *State of Andhra Pradesh and others* (23) and *Jagajit Sugar Mill's Case* (supra) (24).

(57) In order to appreciate the submissions made on behalf of the petitioners. it is necessary to examine the main attributes of charging Section and the principles regulating the exemptions.

(58) The main attributes of the charging Section are :—

(a) that the commodity to be taxed must be specified ;

(b) the circumstances under which the Tax is required to be imposed should be spelt out ; and

(c) the stage of levy of tax and the person liable to pay tax must have been defined.

To seek the benefit of exemption, the principle to be kept in mind is that exemption claimed must be shown to be specific and should not be inferred by the implication unless such implication is implicit and subject to no doubt.

(59) The hearing of Section 9 of the State Act is, "Liability to pay Purchase Tax". This section was amended firstly by Amendment Act No. 44 of 1976 and then by Act Nos. 11 of 1979, 3 of 1983, 11 of 1984, 8 of 1986, 16 of 1986 and 1 of 1988. The Section was eventually omitted by Ordinance No. 2 of 1990 followed by Act No. 4 of 1991. For all these periods, the said Section remained on the statute book and its title continued to be the same as was incorporated in the initial Act.

(60) The relevant period for the decision of this writ petition and other similar writ petitions is from 1982 to 1990. For the purposes of adjudication and interpretation. the pleas of facts raised by the learned counsel for the petitioner are undisputed. The relevant provisions of Section 9 of the State Act are reproduced :—

"Liability to pay tax on purchase value of goods.

(1) Where a dealer liable to pay tax under this Act—

(a) Purchases goods, other than those specified in Schedule B, from any source in the State and uses them in the

(23) A.I.R. 1993 S.C. 1048.

(24) 96 S.T.C. 344.

State in the manufacture of goods specified in Schedule B ; or

(b) Purchases goods, other than those specified in Schedule B, from source in the State and uses them in the State in the manufacture of any other goods and either disposes of the manufactured goods in any manner otherwise than by way of sale in the State or despatches the manufactured goods to a place outside the State in any manner otherwise than by way of sale on the inter-state trade or in the inter-state trade or commerce or in the course of export outside the territory of India within the meaning of Section 5 of the Central Sales Tax Act, 1956 ;

(c) purchases goods, other than those specified in Schedule B, from any source in the State and exports them,

In the circumstances in which no tax is payable under any other provision of this Act, there shall be levied, subject to the provisions of Section 17, a tax on the purchase of such goods at such rates as may be notified under Section 15."

(61) In order to appreciate the argument regarding the Section providing exemption from payment of purchase tax on the paddy used for the purpose of export of Rice, a reference is required to be made also to Sections, 6, 9, 15, 15-A and 17. Section 6 of the State Act deals with the Incidence of taxation and provides that every dealer whose gross turnover during the year immediately preceding the coming into force of the provisions of the Section exceeded the taxable quantum shall be liable to pay tax on all sales and purchases affected after the coming into force of the provisions of the Section. A dealer is not liable to pay such tax if he deals exclusively in goods specified in Schedule 'B'. This Section also provides the quantum, stage and method of paying the tax. Section 15 of the Act provides the Rate of tax as under :—

(a) twenty paise in a rupee in the case of liquor (foreign liquor and Indian made foreign liquor) specified at serial number 25 of Schedule A and (twelve paise) in a rupee in the case of other goods specified therein; and

(b) Eight paise in a rupee in the case of other goods; as the State Government may, by notification, direct.

(62) Section 15-A of the Act deals with Adjustment and refund of taxes. Section 17 of the Act provides :

"Tax on declared goods.—Tax on declared goods shall be leviable and payable at the stage of sale or purchase, as the case may be, and under the circumstances specified such goods in Schedule D ;

Provided that where the goods have been subjected to tax at any of the stages of sale or purchase specified in Schedule D, the tax shall be levied or paid by a dealer liable to pay tax under this Act at the last purchase of such goods by him :

Provided further that the tax under this Section shall be levied, charged and paid after providing deductions admissible under Section 27 of this Act."

(63) A perusal of Section 9 of the State Act unambiguously indicate the existence of the ingredients of a charging Section specifying the taxable events, taxable goods, the persons from whom the tax is to be recovered. The learned counsel for the petitioners have tried to take advantage of the words, "otherwise than by way of sale in the State or despatch the manufactured goods to a place outside the State in any manner otherwise than by way of sale in the Inter-State trade or Commerce or in the course of export outside the territory of India..." to urge that the Legislature intended to provide exemption as well. The Dictionary meanings of the word 'other' are alternate, different, different from or not the same as the one in question remaining additional and the word 'otherwise' means, "in another way or manner, by other causes, in other respects, in other conditions," and the word 'exemption' means, "the act of exemption, state of being exempt; freedom from any service, duty, burden etc, immunity." The judicial mandate regarding exemption is that it should have been granted specifically by the Statute and must be strictly construed. It is also settled that if the assessee wants to bring his case within any claimed exemption he is under an obligation to make out and establish a case quite clearly within the language of exemption granted. It is equally true that the exemption from the tax if granted by the Statute should be given

full scope and amplitude and should not be withheld by imposing limitations not intended by the legislature or by the delegated authority. See *C.S.T.* v. *Triloki Nath and sons* (25), *Jaya and Co.* v. *State of Tamil Nadu* (*Mad*) (26), and *Union of India* v. *Wood Paper Ltd.* (27).

(64) In *Goodyear India Limited* v. *State of Haryana* (28), the Supreme Court held that Section 9(1) (b) of the Haryana General Sales Tax Act was unconstitutional.

(65) In *Murli Manohar and Co.* v. *State of Haryana* (29), it was held :—

> "What was declared by the Supreme Court to be unconstitutional in Goodyear case (1990) 76 STC 71, in relation to Section 9(1) (b) of the Haryana General Sales Tax Act, 1973 was only the levy of a tax where raw materials are purchased and used inside the State for the manufacture of finished goods which are then simply, and without any sale despatched, rather consigned outside the State. There is, however, nothing unconstitutional about the two other consequences that flow on the language of Section 9(1) (b); one express and the other implied; one in favour of the Revenue and the other in favour of the assessee, viz., (1) that there will be a tax on the purchase of the raw materials if the manufactured goods are disposed of in the State itself otherwise than by way of sale; and (2) that there will be no tax on the Purchase of the raw materials if the manufactured goods are despatched from the state consequent on (i) a local sale, (ii) an inter-State sale, or (iii) a sale in the course of export. These two aspects of Section 9(1) (b) survive even after the judgment of the Supreme Court in Good year's case".

(25) (1984) 57 S.T.C. 322.

(26) 1991 S.T.C. 512.

(27) (1991) 83 S.T.C. 251 (S.C.)

(28) (1990) 71 S.T.C. 71 (S.C.)

(29) 80 S.T.C. 79 (S.C.)

(66) When minutely examined, the judgment reveals that the Hon'ble Supreme Court had dealt only with the charging part of the Section and referred the circumstances under which the tax was to be imposed. The circumstances were spelt out as "consequences that flow on the language of Section....." noted above. Regarding exemption, no arguments were addressed by or on behalf of the State. The counsel appearing for the State submitted as under :—

> "that even if the claim were to be accepted, the assesses would be in no better position. He fully supported the reasoning of the High Court and urged that full effect should be given to the words "within the meaning of sub-section (1) of Section" which found a place in Section 9(i) (b) till they were dropped by Act 1 of 1988. If due regard be given to these words, he pointed out the assessees would be entitled to an exemption from the impugned purchase tax only if their sales were export sales within the meaning of section 5(1) of the Central Sales Tax Act which they, admittedly were not. He submitted that the argument that to levy the tax imposed by Section 9(1) in cases covered by Section 5(3) but not Section 5(1) of the Central Sales Tax Act would violate Article 286 of the Constitution, was misplaced and overlooks the vital circumstances that what Section 9(1) (b) taxes are the purchases of raw materials and not the manufactured goods that were eventually exported. Alternatively, he submits Section 9(1) (b) has been declared unconstitutional by this Court in *Goodyear case* and, therefore, the assessees can seek no implied exemption from its language. If Section 9 is left out, he says, the language of section 6 (as amended) which brings to charge all purchases and sales in the State would be attracted and so the impugned taxation of the purchases would be in order."

(67) After referring to *Mohd. Serajuddin* v. *State of Orissa* (30), and the provisions of section 9(1) (a) (ii) and Section 9(1) (b) alongwith section 5 of the Central Sales Tax Act and keeping in view the amendments in Section 9, the Court in that case held :—

> "In view of the circumstances outlined above, we are of the opinion that the High Court was right in concluding that

(30) (1975) 36 S.T.C. 136 (S.C.)

> the assessee was not entitled to the exemption under Section 9 because the sales made by him were not sales in the course of export outside the territory of India within the meaning of Section 5(1) of the Central Sales Tax Act."

(68) The Supreme Court, in the circumstances of the case held that there is however, nothing unconstitutional about the two other consequences flowing on the language of the clause, one expressed and the other implied, one in favour of the Revenue and the other in favour of the assessee. Referring to the provisions of Section 9 of the Act, it was observed :

> "As pointed out above, Section 9(1) is both charging and exempting section."

(69) In *Murli Manohar's case* (Supra) the Supreme Court considered, explained and referred to the law laid down in *Goodyear's case* (Supra). However. in *Hotel Balaji's case* (Supra), the earlier decision of the Supreme Court in *Good Year's case* (Supra) was over ruled.

(70) In *Hotel Balaji's case* (supra), the Supreme Court examined the constitutionality of Gujarat Sales Tax Act, U.P. Sales Tax Act and Andhra Pradesh General Sales Tax Act. The assessee had relied upon the decision of the Court in *Good Year's case* (Supra) whereas the counsel appearing for Revenue had challenged the correctness of the said decision and pleaded for its reconsideration. Upon reference, the matter pertaining to other States arising *inter alia* the question relating to the ratio of *Good Year's* case (Supra) were also considered. The Court, however, indicated that they shall confine their attention only to three states enactments namely Gujarat, Uttar Pradesh and Andhra Pradesh. In this context the law laid down in *Good Year's case* (Supra) was held to be not a good law. The Supreme Court dealt with the provisions of Section 15-B of the Gujarat Sales Tax Act as substituted by Gujarat Sales Tax Act (Act 6 of 1990) which was amended by Act No. 7 of 1990 and came into force on 6th May, 1990 replacing the Bombay Sales Tax Act which was inforce in that State till then. Section 15 of the Act levied purchase tax on purchases made by a dealer from a person who is not a registered dealer. Section 15-A was introduced by Amendment Act No. 7 of 1983 which provided for levy of concessional rate of tax in respect of purchase of raw material made

by a recognised dealer which were found to be necessarily manufacturing, provided the goods and raw material purchased by them fell in Schedule II or III. Section 15-B was introduced by Amendment Act of 1986 which provided for levy of an additional purchase tax on raw material purchased by the manufacturing dealers in case he used the said raw material for the manufacture of other goods which he despatched to his own place of business or to his agent's place of business situated outside the State but within India. By Amending Act of 1987, the Section was substituted without any substantial change. Following the decision of the Supreme Court in *Good Year's case* (Supra). a batch of writ petitions were filed in the Gujarat High Court challenging the validity of Section 15-B on the ground that in truth and effect it levied a consignment tax which was outside the competence of the State Legislature. While the writ petitions were pending section 15-B of the Act was substituted by an ordinance No. 3 of 1990 issued on 20th April, 1990. Subsequently, the Gujarat Sales Tax Amendment Act 6 of 1990 was enacted in terms of and replacing the Ordinance. Substituted section 15-B was given retrospective effect with effect from the date when section 15-B first came into force. The arguments advanced included that levy imposed by the new provision was in the nature of an excise duty which was beyond the competence of the State Legislature.

(71) The Supreme Court, however, incidentally referred to the provisions of Section 9 of the Haryana Act and Section 13-AA of the Bombay Sales Tax Act and put itself the question as to what was the position of taxation in either of the aforesaid two statutes. The point in issue was summarised, "the question is whether the levy of tax is on the purchase of goods or on the consignment of manufactured goods." The Supreme Court held that levy created by the said provision is a levy on the purchase of raw material purchased within the State which is consumed in the manufacture of other goods within the State. If the manufactured goods are sold within the State, no sales tax is collected on the raw material, evidently because the State gets larger revenue by taxing the sale of such goods. Where the manufactured goods are sold within the State but are yet disposed of or where the manufactured goods are sent outside the State the tax is to be paid on the purchase value of the raw material the reason that the manufactured goods are disposed of otherwise than by sale out of the State, the State does not get any revenue because no sale of manufactured good takes place within the State. In such a situation, the State was presumed to have retained the levy and collection and there was not reason for waiving

the purchase tax in these two situations. It was noticed that in the case of Inter-State sale, the State of Haryana does get the tax revenue under Article 269 of the Constitution. It was, however, observed :

> "Where, of course, the sale is an export sale within the meaning of Section 5(1) of the Central Sales Tax Act (export Sales), the State may not get any revenue but larger national interest is served thereby. It is for these reasons that tax on the purchase of raw material is waived in these two situations."

(72) The Supreme Court compared the provisions of Section 9-A of the Haryana Act with Section 13-AA of the Bombay Sales Tax Act and approved the view of the Kerala High Court in *Yusuf Shabeer* v. *State of Kerala* (31). The Supreme Court, however, held that the view of the Kerala High Court accorded with their understanding of the Scheme of Section 9 of the Haryana Act to leve no ambiguity. The Court observed :—

> ".....To repeat, the Scheme of Section 9 of the Haryana Act is to levy the tax on purchase of raw material and not to forego it where the goods manufactured out of them are disposed of (or despatched, as the case may be) in a manner not yielding any revenue to the State nor serving the interests of nation and its economy, as explained hereinbefore. The purchased goods are put an end to by their consumption in manufacture of other goods and yet the manufactured goods are dealt with in a manner as to deprive the State of any revenue, in such cases, there is no reason why the State should forego its tax revenue on purchase of raw material."

(73) It may be noticed that neither the State of Haryana was a party nor appears to have been properly represented in *Balaji's case* (Supra). The point in issue was also not as to whether Section 9 of the Act provides exemption and on the basis of the earlier decision exemption was considered in favour of the export sale. So far as the case of *Murli Manohar's* (Supra) is concerned it was stated :

---

(31) (1973) 32 S.T.C. 359.

".....It arose under the Haryana Sales Tax Act and explains the meaning of export sale referred to in section 9(1)(b) of the Act. There is no discussion in this decision about the point at issue before us."

However, before parting with the judgment, the Supreme Court clarified another aspect of the matter and observed :—

"It was brought to our notice that both the Haryana and Bombay provisions have since been substituted with retrospective effect. We have not referred to those provisions in this part, for the reason that we are concerned only with the reasoning in good year."

(74) It would thus be clear that exemptions under section 9 were presumed without determining the contentions as raised on behalf of the State before us and the view point of the State was not properly projected as the Hon'ble Supreme Court in that case was mainly concerned with the sales tax of three States namely Gujarat, Uttar Pradesh and Andhra Pradesh.

(75) In *Jagatjit Sugar Mills* v. *State of Punjab and another* (32), the Supreme Court considered the object and purpose of section 4-B of the Punjab General Sales Tax Act, 1948 and found it to be analogous to the provisions of Section 9 of the Haryana General Sales Tax Act. On that case, the plea of the petitioner was that for the purpose of manufacturing Sugar the purchase of sugar cane from cane growers and co-operative societies and as Sugar cane being an agricultural produce was exempt from the payment of sales tax within the meaning of section 6 read with Schedule 'B' and because the said Sugar Cane was sold to the petitioner-mill by the growers of sugar cane itself, no sales tax or purchase tax could be levied on the sale or purchase of the sugar-cane. After considering the host of authorities including *Hotel Balaji's case* (Supra), the Supreme Court ultimately dismised the writ petition with Costs. However, while dealing with the Scope of Section 4-B, the Supreme Court held :—

".....If the manufactured goods are taken out of the State in such a manner that State does not derive any tax (nor

(32) 1995 (96) STC 344 (S.C.).

the national interest aforesaid is served), the purchase of raw material is taxed. Conversely, if the manufactured goods are sold within the State or sold in the course of inter-State trade or commerce or sold in the course of export, the raw material is exempted from purchase tax. In case, however, the manufactured goods are those mentioned in Schedule B-not taxable on sale point-clause (i) does not concern itself with their manner of disposal. From the point of revenue, it makes no difference whether such goods are sold within the State or sold in the course of inter-State trade or commerce or Sold in the course of export ; in any of the situations, the State does not derive any revenue."

(76) The Court also found that Section 4-B was designed to affirm or exempt, as the case may be, the purchase of certain goods from purchase tax in certain specified situations. The object of Section was held to be that the purchase of raw material was not taxed where the sale of manufactured goods brings in tax to the State or serves the national interest. The Court held that since section 4-B did not apply to Schedule 'B' goods, the said provision was not relevant to the petitioners because purchase tax on sugar cane was levied by Section 4(1).

(77) It is submitted that in view of the judgments of the Supreme Court in *Hotel Balaji's case* (Supra) and *Murli Manohar's case* (Supra) the petitions are required to be accepted and the petitioners held entitled to exemption under section 9 of the Haryana Act and Section 4 of the Punjab Act.

(78) In order to appreciate this argument of the learned counsel for the petitioners it is necessary to have reference to various provisions of the Constitution and pronouncements of the Supreme Court on the subject. Article 141 of the Constitution provides that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. This Article empowers the Supreme Court to declare the law in the course of its functions of interpreting a legislation. Such a power is contemplated to bring law in harmony with the special changes (A.I.R. 1968 S.C. 683). It was held in *Amritsar Municipality* v. *Hazara Singh* (33), that every statement contained

(33) A.I.R. 1975 S.C. 1087.

in a judgment of the Supreme Court would not attract the provisions of Article 141 of the Constitution. Statements on matters other than law have no binding force. Similarly in *Gurcharan Singh* v. *State of Punjab* (34) and *Parkash Chander Pathak* v. *State of Uttar Pradesh* (35), it was held that as, on facts, no two cases could be similar, the decisions which are essentially on questions of facts could not be relied upon as precedents for decision of the other cases. The Supreme Court in *Lakshmi Shanker Shrivastava* v. *State* (Delhi Administration) A.I.R. 1979 S.C. 451, held that the judgment proceeding on concession and not on any analysis or examination of the relevant provisions cannot be held to be declaring the law within the meaning of Article 141 of the Constitution. In order to see as to whether the Supreme Court has laid the law within the meaning of Article 141 of the Constitution, the context of questions which arose for consideration in which the judgment was delivered is required to be taken note of and the reasoning of one decision cannot be applied to the other cases unless there exists parity of situation and circumstances. The other dictum cannot be treated as a precedent particularly when such obiter is found to be not specifically connected and in issue before the Supreme Court. Though the obiter dictum is not a precedent, yet. being the observation of the Apex Court in the country, is worthy of respect and considerable weightage.

(79) The Supreme Court in *Assistant Collector of Central Excise* v. *Dunlop India Ltd. and others* (36), referred to the system of dispensing justice in the country and hoped that in the hierarchical system of courts in the country, it was necessary for each lower tier including the High Court to accept loyally the decision of the higher tiers. Referring to *Cassell and Company* v. *Broome* (37), their Lordships observed :—

> "We desire to add and as was said in *Cassell and Company Ltd.* v. *Broome*. we hope it will never be necessary for us to say so again that "in the hierarchical system of courts which exists in our country, it is necessary for each lower tier", including the High Court, "to accept loyally the decisions

(34) 1972 F.A.C. 549.

(35) A.I.R. 1960 S.C. 195.

(36) 1935 1 S.C.C. 380.

(37)1972 A.C. 1027 (1972 (1) All Engg. Reports 801).

of the higher tiers". It is inevitable in hierarchical system of courts that there are decisions of the Supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary..... But the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted." The better wisdom of the court below must yield to the higher wisdom of the court above. That is the strength of the hierarchical judicial system. In *Cassell and Company Ltd* v. *Broome,* commenting on the Court of Appeal's comment that *Rookees* v. *Bernard* was rendered *per incuriam,* Lord Diplock observed :

"The Court of Appeal found themselves able to disregard the decision of this House in *Rookees* v. *Barnard by* applying to it the label per incuriam. That label is relevant only to the right of an appellate court to decline to follow one of its own previous decisions, not to its right to disregard a decision of a higher appellate court or to the right of a Judge of the High Court to disregard a decision of the court of Appeal."

"It is needless to add that in India under Article 141 of the Constitution the law declared by the Supreme Court shall be binding on all courts within the territory of India and under Article 144 all authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court."

(80) In *Shama Rao* v. *Union Territory* (38), it was held that, "It is trite to say that the decision is binding in case of its conclusion but in regard to its ratio and the principle laid down therein". In *Shenoy and Company* v. *Commercial Tax Officer* (39). the Supreme Court held that no one can be permitted to urge that the judgment of the Apex Court would not be applicable in case of a person who was not a party before that Court. Their Lordships held that in a case where numerous petitions are disposed of by a common judgement, aggrieved party can file one appeal and the other parties can-

(38) A.I.R. 1967 S.C. 1180.

(39) 1985 (ii) S.C.C. 512.

not be heard to say that the decision was taken by the court behind their back or profess ignorance of the fact that the appeal had been filed by the State against the common judgment. The Supreme Court found it as an economic procedure and declared "To contend that this conclusion applied only to the party before this Court is to destroy efficacy and integrity of the judgment and to make the mandate of Artcle 141 illusory." Their Lordships further held that declaration of law is binding on every one and it was futile to contend that *mandamus* would survive in favour of those parties against whom appeals were filed.

Referring to such a situation, the Court held :—

> "The fallacy of the argument can be better illustrated by looking at the submissions made from a slightly different angle. Assume for argument's sake that the *mandamus* in favour of the appellants survived notwithstanding the judgment of this Court. How do they enforce the *mandamus* ? The normal procedure is to move the court in contempt when the parties against whom *mandamus* is issued disrespect it. Supposing contempt petitions are filed and notices are issued to the State. The State's answer to the court will be "Can I be punished for disrespecting the *mandamus* issued, which law is equally binding on me and on you ?" which Court can punish a party for contempt under these circumstances ? The answer can be only in the negative because the *mandamus* issued by the High Court becomes ineffective and unenforceable when the basis on which it was issued falls, by the declaration by the Supreme Court, of the validity of 1979 Act."

(81) Under Article 142 of the Constitution, the decree and orders passed by the Supreme Court are enforceable through out the territory of India in such a manner as may be prescribed by or under law made by the Parliament. The scope of Article 142 was considered by the Supreme Court in *Union Carbide Corpn.* v. *Union of India* (40), wherein it was held :—

> "It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court

---

(40) A.I.R. 1992 S.C. 248.

under Art. 142(1) of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded. operates to limit the powers of the apex Court under Article 142(1) is unsound and erroneous. In both Garg's was well as Antulay's case, the point was one of violation of constitutional provisions and constitutional rights. The observations as to the effect of inconsistency with statutory provisions were really necessary in those cases as the decisions in the ultimate analysis turned on the breach of constitutional rights. We agree with Shri Nariman that the power of the court under Art. 142 in so far as quashing of criminal proceedings are concerned is not exhausted by Ss. 320 or 482 Cr.P.C. or all of them put together. The power under Art. 142 is an entirely different level of a different quality. Prohibition or limitations or provisions contained in ordinary laws cannot *ipso facto*, act as prohibitions or limitations on the constitutional powers under Art. 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law. taking into account the nature and status of the authority or the court on which conferment of powers-limited in some appropriate way is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Shri Sorabjee, learned Attorney General, referring to Garg's case said that limitation on the powers under Art. 142 arising from "inconsistency with express statutory provisions of substantive law" must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the express 'prohibition' is read in place of 'provision' that would perhaps convey the appropriate idea. But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Art. 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising

powers under Art. 142 and in assessing the needs of "complete justice" of a cause or matter, the apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the power of the Court under Art. 142, but only to what is or is not 'complete justice' of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise.

Learned Attorney General said that Section 320 Criminal Procedure Code is "exhaustive of the circumstances and conditions under which composition can be affected"..... and that 'the court can not go beyond test laid down by the Legislature for determining the class or offences that are compoundable and substitute one of their own." Learned Attorney General also referred to the following passage in *Biswabahan* v. *Gopen Chandra* (1967 1 SCR 447 P. 451, AIR 1967 SC 895 at page 897), If a person is charged with an offence, then unless there is some provision for composition of it, the law must take its course and the charge enquired into resulting either in conviction or acquittal."

(82) He said that 'if a criminal case is declared to be non-compoundable, then it is against public policy to compound, it. and any agreement to that end is wholly void in law".....and submitted that the Court "can not make that legal which the law condemns". Learned Attorney general stressed that the criminal case was an independent matter and of great public concern and could not be the subject matter of any compromise, or settlement. There is some justification to say that statutory prohibition against compounding of certain class of serious offences, in which large social interests and social security are involved, is based on broader and fundamental consideration of public policy. But all statutory prohibitions need not necessarily partake of this quality. The attack on the power of the apex Court to quash the crucial proceedings under Art. 142 (1) is ill conceived. But the justification for its exercise is another matter."

In view of this judgment referred to the judgment of the Supreme Court in S.L.Ps. (c) No. 4208-09 of 1993 shall be made at the appropriate time to determine as to whether any direction was given or

order passed by their Lordships in terms of Art. 142 of the Constitution.

(83) In *Kaushalya Dev Bogra* v. *Land Acquisition Officer* (41), the Supreme Court again referred to the case of Cassell & Co. (supra) and held that, "the direction of the appellate court is certainly binding on the courts subordinate thereto. That apart, in view of the provisions of Art. 141 of the Constitution, all courts in India are bound to follow the decisions of this Court. Judicial discipline requires and decorum known to law warrants that appellate directions should be taken as binding and followed. "In *Bikramjit Singh* v. *State of Madhya Pradesh* (AIR 1992 SC 474), it was held. "It appears from the learned Judge while passing the impugned order failed to appreciate that no bench can comment on the functioning of a co-ordinate bench of the same court, muchless sit in judgment as an appellate court over its decision". In *A. R. Antulay* v. *R. S. Nail* (42), it was held :—

> "The question of validity, however is important in that the want of jurisdiction can be established solely by a superior court and that, in practice, no decision can be impeached collaterally by any inferior court. But the Superior Court can always correct its own error brought to its notice either by way of petition or *ex debito* justicae....."

(84) Article 144 of the Constitution provides that all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court and Article 145 authorises the Supreme Court to make rules for regulating generally the practice and procedure for the purposes enumerated therein.

(85) Learned Counsel for the parties have referred to some judgments with respect to expression 'per incuriam' which means the decision given in ignorance in terms of a statute or a rule having the force of a statute. The argument with respect to the judgment of the Supreme Court being termed as 'per incuriam' may not be necessary to be adjudicated in view of the peculiar circumstances of this case.

---

(41) 1984 II S.C.C. 324.

(42) A.I.R. 1988 S.C. 1531.

(86) After referring to various judgments as noticed hereinabove, it is held that :

(1) the law declared by the Supreme Court is binding on all the Courts in the territory of India ;

(2) the law declared by the Supreme Court means the interpretation of the legislation in order to bring such law in harmony with social changes ;

(3) the law laid down by the Supreme Court must be with respect to the matter in controversy before the court and not merely an obiter dictum ;

(4) even if an obiter of the Supreme Court is required to be given due respect and considerable weightage, the judgment of the Supreme Court upon concession, on facts, has no binding force ;

(5) the law laid down, judgment delivered and the order passed by the Supreme Court are of binding nature on all the courts in the country including the High Court : and

(6) The judgment of the co-ordinate benches should not be commented upon or decided as appellate court by another such bench.

(87) As earlier noted in the aforesaid judgments of the Supreme Court in *Hotel Balaji's case* (supra) and *Murli Manohar's case* (supra), the Supreme Court made reference to the provisions of the Act while interpreting the law of other States. Such observations or contentions made or noted in the judgment of the Supreme Court while interpreting the provisions of the law pertaining to other States may not be deemed finally decided as admittedly the Haryana Act was not called upon to be adjudicated. The judgment proceeding on concessions whether implicit or implied and admittedly not on analysis or examination of the relevant provisions cannot be held to be declaring the law within the meaning of Article 141 of the Constitution. The Obiter-dictum cannot be treated as precedent particularly when such Obiter-dictum is not found to be specifically connected with an issue before the Supreme Court. It is, however, acknowledged that Obiter-dictum of the Supreme Court though not a precedence yet being observations of the Apex Court is worthy of respect

and considerable weightage. In the light of what has been noted and discussed hereinabove, the law laid down in the aforesaid two judgments cannot be held to be a decision with respect to the matter in controversy before this Court.

(88) Similarly, in *Jagatjit Sugar Mills's case* (supra) the Hon'ble Supreme Court was merely concerned with the liability of the purchaser of sugar-cane from the cane growers who were stated to be not liable to pay tax under the relevant statute. The scope of Section 4-B of the Act in the context as projected before us was neither argued nor considered or adjudicated by the Supreme Court showing greatest respect and regard to the judgment and observations of the Supreme Court in *Hotel Balaji's case* (supra) and *Murli Manohar's case* (supra), we have come to the conclusion that as the Court had not declared the law on the subject in the context of the arguments addressed before us the same having all regard and value cannot be pressed into service by the petitioner for accepting their arguments as noted herein above.

(89) The learned counsel appearing for the assessee vehemently argued that if their clients are held liable to pay the purchase tax on the paddy, the assessing authority was not justified in demanding the interest,—*vide* demand notice impugned in the petition. It is argued that no demand regarding liability of interest was made or even referred in the notice served under Section 40 of the Act when the liability to pay the tax was itself in fluid situation and was limping over the edges of uncertainity, no demand of interest could be made from the petitioners who have sought protection under the umbrella of *bona-fide* action or omission.

(90) A perusal of the demand notice shows that the assessees have been directed to pay interest in terms of sub-section (5) of Section 25 of the Act. It was worth mentioning that the non-liability to pay interest has been claimed without challenging the vires of interest imposing provisions.

(91) Sub-section (5) of Section 25 of the Act provides :—

> "(5) If (any dealer as mentioned in sub-section (2) fails to pay the tax as required by sub-section (3), he shall be liable to pay in addition to the tax due simple interest on the amount due at one percentum per month from the date

commencing with the date following the last date for the submission of the return under sub-section (2) for a period of one month and at one and a half percentum per month thereafter during the period it continues to make default in the payment :—

Provided that where the amount of tax not paid as required under sub-section (3) does not exceed five hundred rupees. the interest payable thereon shall not exceed the amount of the tax not so paid :

Provided further that for the purposes of calculation of interest, a period of fifteen days or more shall be deemed to be one month and the amount of fifty rupees or more shall be deemed to be one hundred rupees and a period of less than fifteen days and an amount of less than fifty rupees shall be ignored."

(92) Elaborating the arguments it is contended that as admittedly the petitioners were never asked to pay the tax in terms of sub-section 2 and sub-section 3 of Section 25 of the Act, they cannot be held liable to pay the interest on the amount allegedly due from them. It is further submitted that as there was a conflict of judicial pronouncements and the respondent-State was itself not clear about the liability of the petitioners to pay the purchase tax, the petitioners *bona-fidely* did not make payment of the purchase tax. It is further argued that when the tax is not paid under the *bona-fide* belief of exemption, the assessee dealer cannot be burdened with the liability to pay the interest in terms of sub-section 5 of Section 25 of the Act.

(93) As noted in the earlier part of the judgment, the liability of the petitioners to pay the purchase-tax was apparently in dispute and not clear even to the respondent-authorities. The issuance of notice under Section 40 of the Act proposing to take *suo-motu* action with respect to the assessment years much prior to the date of issuance of the aforesaid notice is indicative, suggestive of the fact and strengthens the case of the petitioners so far as the demand of interest is concerned. Resort to the provisions of section 40 of the Act unambigously demonstrates that the petitioner had not earlier been held responsible for their tax liability and the revisional authority on its own decided to call for the records of the case supposedly disposed of by the Assessing Authority for the purposes of satisfying himself as to the legality or propriety of the proceedings or of the

orders made therein before passing the order determining the liability of the petitioners to pay the tax. It is worthwhile to mention that the revisional authority had not even indicated to the Dealer regarding his liability to pay the interest in case of default of payment of the principal amount of the tax. In the notice of assessment on Form ST 28 under Rule 34. the Assessing Authority has not referred to the period for and the rate of interest at which the liability was determined in terms of sub-section 5 of Section 25 of the Act. The assessment order so far as it directs the payment of interest is vague and ambigious which on the face of it is not in conformity with the requirements of sub-section 5 of the Section 25 of the Act. The circumstances of the case do not indicate or even suggest that the petitioner-dealer had acted *mala-fidely* in depositing the tax within the time contemplated under Section 25 and thus incurred any liability to pay interest under sub-section 5 of the aforesaid Section.

(94) It is true that the sales tax is the biggest source of revenue for a State and it is for the authorities under the Act to decide as to how and in what manner such revenue would be realised. Provision for payment of interest in case of default in payment of tax is a means of compelling the assessee to pay the tax due within the time prescribed by the State. It is, however, equally true that a citizen cannot be compelled to pay penalty in the form of interest for alleged non-payment of sales tax when the liability to pay the tax itself was *bona-fidely* in dispute and the authorities were not clear about the liability of the assessee. Neither the defaulting tax payer can be given any benefit under the technicalities of law nor the State can be permitted to burden the *bona-fide* assessee with the liability to pay the interest in case of default in the payment of the tax ; the liability of which is itself in doll drums.

(95) Lord Dunedin in *Witney* v. *Commissioner of Inland Revenue* (43). noted the following three stages for the imposition of tax :

> "There is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next there is the assessment. Liability does not depend on assessment. That, exhypothesi, has already been fixed. But assessment particularises the

(43) (1926) A.C. 37.

exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."

(96) The passage was cited with approval by the Federal Court in *'Chatturam* v. *Commissioner of Income Tax-Bihar* (44) and *Chatturam Horilram Ltd.* v. *Commissioner of Income-tax Bihar and Orissa* (45) and in *Khazan Chand* v. *State of J. & K.* (46).

(97) In *Sabharwal Brothers* v. *Commissioner, Sales Tax, U.P.* (47), where the dealer was found to be *bona-fidely* disputing the tax liability was held not liable to pay interest allegedly on the ground of non-payment of tax within the time specified.

(98) In *Qureshi Crucible Centre* v. *Commissioner of Sales Tax* (48), it was held that where the assessee was found to have deposited the admitted tax under the U.P. Sales Tax Act. as per the determination of rate of tax by the assessing authority for the earlier years but the assessing authority rejected the accounts and passed a best judgment assessment order determining the rate of tax at a higher rate and also demanded payment of interest from the assessee. The Court rejected the demand and held, "that the circumstances of the case did not warrant the levy of interest on the assessee as there was no finding that the assessee acted *mala-fidely* in not depositing the tax at the rate of 7 per cent."

(99) For the purposes of determining the liability to pay the interest or penalty the conduct of the assessee for the entire period beginning from the date of return of turn-over till final payment of the tax assessed is made is to be taken note of. The liability to pay the interest arises only after the tax is assessed and not deposited within the statutory period. The cause of action for paying interest is the default in payment of the tax determined by the authorities or affirmatively known by the assessee. Imposition of interest is not intended to be a penalty to be uniformally applied in all cases of

(44) (1947) 15 I.T.R. 202.

(45) (1955) 27 I.T.R. 709.

(46) 1984 (56) S.T.C. 214.

(47) S.T.C. (76) 41.

(48) (1986) 61 S.T.C. 327.

default whether *bona-fide* or otherwise. In *'Annopurna Biscuit Manufacturing Co. and others* v. *State of U.P. and other* (49), where a dealer was found to have calculated the tax payable by him at the relevant turn-over in consonance with the decision of the authorities, it was observed that he could not be held to have calculated the tax wrongly. The Court further held :—

> "It, therefore follows that where a dealer calculated the tax payable by him in accordance with the prevailing interpretation on the subject, it would not be possible to say that the same is not the tax payable under the Act. So long as the calculation is in accordance with the Act the dealer cannot be fastened with liability for interest on any amount found in excess due to change in law or its interpretation. The liability to pay as a result of the order passed by the authorities is not the same thing as the calculation of tax payable by the dealer. Any amount found due apart from it either due to amendment in law or change of view is amount in excess and cannot be considered to be tax admittedly payable for purposes of Section 8(1) of the Act. So long as the calculation is honest and fair the dealer shall not incur any liability to pay interest."

(100) Division Bench of the Kerala High Court in *Kallaraehal Agencies* v. *State of Kerala and another* (50). considered the circumstances under which penal interest could be imposed. Dealing with the facts of the case and relying upon the provisions of the law it was held—

> "The levy of penal interest under sub-section (3) of Section 23 of the Kerala General Sales Tax Act on the ground that the petitioner has not paid the tax in accordance with the return submitted by him under sub-rule (1) of rule 18 is challenged by the petitioner in this original petition. It is not disputed that no notice of demand as required by sub-rule (3) of rule 18 in form No. 14 has been issued in his case. We have ruled in O.P. No. 7804 of 1984—*M(Joy Varghese* v. *State of Kerala* (1986) 62 S.T.C. 227 (Ker) that

(49) 1982 (50) S.T.C. 56.
(50) 1987 (65) S.T.C. 281.

liability to pay penal interest in such circumstances accrues only where there is a failure to pay the amount of tax demanded as per the notice of demand issued in accordance with sub-rule (3) of rule 18 of the Kerala General Sales Tax Rules and form No. 14. As no notice of demand has been issued as required, the levy of penal interest by the assessing authority on the petitioner and the notice of demand for penal interest under exhibit P3 and the order in revision filed by him exhibit P-4 are hereby quashed. We say penal interest has been levied without any notice of demand as that is the case of the petitioner, which is further supported by the fact that there is no reference to the notice of demand in the impugned order Exhibit P-3..."

(101) In *Bir Sein Anand and others* v. *State of J. & K.* (51), it was held that the assessee's liability to pay the sales tax due on it arises when he filed a return and not on the happening of any subsequent event including the acceptance or rejection or return by the Assessing Authority or on the assessment made by the Assessing Authority where he has not filed the return. The assessment made by the Assessing Authority would be *ex-post facto* declaration of his liability to pay the tax. Interest being compensation for the delay in payment of tax accrues only from the date the sales tax becomes payable and not from any earlier date.

(102) In *M/s Hindustan Steel Ltd.* v. *State of Orissa* (52). the Supreme Court dealt with the considerations relevant for imposition of penalty under the provisions of Orissa Sales Tax Act and held that the liability to pay the penalty did not arise merely upon the proof of default in registering a dealer. It was further held. "that penalty will not ordinarily be imposed unless the party obliged either acted deliberately or in defiance of law or was guilty of conduct contumacious or dishonest. or acted in conscious disregard of its obligation. Penalty will also be not imposed merely because it is lawful to do so."

(103) Under sub-section 5 of Section 25 of the Act, the Legislature is clearly shown to have envisaged the circumstances under

(51) 54 S.T.C. 354.

(52) 1970 S.C. 253.

which the assessee could be directed to pay interest on the amount of tax. Such a liability can be fastened only where the assessee is shown to have attempted to contravene the provisions of the Act with the object to evade payment of rightful tax levied thereunder.

(104) It is well recognised now that the provisions regarding imposition of penalty or interest are to be construed within the term and language of the Statute and interpreted as it stands. In case of doubt, the interpretation is required to be made in a manner which is favourable to the tax payer. If the Court comes to the conclusion that language of taxing provision is ambiguous or capable of more than one meaning, the Court is required to adopt the interpretation which favours the assessee particularly when the provision relates to the imposition of penalty or interest.

(105) Keeping in view the legal position and the admitted facts of the case, it cannot be said that the petitioner-assessee had *mala fidely* or intentionally evaded to pay the tax thus incurring the liability to pay the interest within the meaning of sub-section 5 of Section 25 of the Act. The demand regarding payment of interest is also vague, ambiguous and without the authority of law. The petitioners cannot be directed to make the payment of interest for any period prior to the actual demand made for the payment of purchase tax under the provisions of the Act. The impugned order insofar as it directs the payment of interest is liable to be quashed. This does not in any way obsolve the assessee from paying the interest on the tax from the date of demand notice served upon them as admittedly on that day they had known their liability of paying the tax but intentionally evaded to pay the same on false pretext and pleas under the clock of technicalities by resorting to uncalled for litigation.

(106) No other point was argued in the case. Under the circumstances. it is held :—

(i) That the provisions of Haryana Act No. 4 of 1991 are legal, valid and constitutional ;

(ii) the provisions of Section 15-A of the Act as substituted by Act No. 9 of 1993 is *intra vires* of the provisions of the Constitution rightly imposing the liability upon the petitioners to pay the purchase tax retrospectively.

(iii) Section 9 of the Act was validly omitted and this Section had not granted any exemption to the petitioners from payment of the tax demanded ;

(iv) the petitioners are liable to pay the purchase tax on the paddy used by them for husking paddy which was ultimately exported out of the country.

(v) Annexure P/1, the notice under Section 40 of the Act, is legal, valid and according to law.

(vi) the impugned notice of assessment and demand under Section 28, 29, 31 and 33 of the Act insofar as it directs the payments of the purchase tax is legal, valid and according to law. However, the petitioners are held not liable to pay the amount of interest as specified in the said notice of assessment and demand. The Assessing Authority shall afresh determine the liability of the petitioners to pay the interest in terms of sub-section 5 of Section 25 of the Act but the interest shall be imposed only from the date of notice of assessment and demand notwithstanding any interim stay granted by any Court in the State of Haryana.

(107) Civil Writ Petition Nos. 6071, 6073, 6072, 7572. 6074, 7575, 7576, 7578, 13981, 7574 of 1993, 11422. 14755, of 1994 and 1996 of 1995 stand disposed of in the above terms. Under the peculiar circumstances of the case there shall be no order as to costs.

J.S.T.

Before Hon'ble Jawahar Lal Gupta & P. K. Jain, JJ.

BHUP SINGH,—*Petitioner.*

versus

THE STATE OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 8912 of 1994.

6th September. 1995.

Constitution of India. 1950—Arts. 226/227—Reservation—Is a Scheduled Caste member entitled to claim that reserved point in roster be filled by promotion by member of that class inspite of fact