Southern Motors vs State Of Karnataka & Ors on 18 January, 2017

Equivalent citations: AIR 2017 SUPREME COURT 476, 2017 (3) SCC 467, AIR 2017 SC (CIVIL) 913, (2017) 1 SCALE 604, 2017 (2) KCCR SN 66 (SC)

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Bench: Amitava Roy, Dipak Misra

[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.10955-10971 OF 2016
(ARISING OUT OF SPECIAL LEAVE PETITION (C) Nos.28309-28325/2013)

M/S. SOUTHERN MOTORS .…APPELLANT
Versus
STATE OF KARNATAKA AND OTHERS ...RESPONDENT
WITH
Civil Appeal Nos. 10972-10978 of 2016
(Arising out of SLP (C) Nos. 27752-27758 of 2014)

J U D G M E N T

AMITAVA ROY, J.

The instant adjudicative pursuit is to disinter the statutory intendment lodged in Rule 3(2)(c) in particular of the Karnataka Value Added Tax Rules, 2005 (for short, hereinafter to be referred to as "the Rules") so as to facilitate the determination of taxable turnover as defined in Section 2(34) of the Karnataka Value Added Tax Act, 2003 (for short, hereinafter to be referred to as "the Act") in interface with Section 30 of the Act and Rule 31 of the Rules.

2. We have heard Mr. Dhruv Mehta, learned senior counsel for the appellant in Civil Appeal Nos. 10955-10971 of 2016, Mr. Tarun Gulati, learned counsel for the appellant in Civil Appeal Nos. 10972-10978 of 2016 and Mr. K.N. Bhat, learned senior counsel for the respondent-State.

3. The foundational facts, albeit not in dispute present the required preface. The appellant is a dealer in the motor vehicles and registered under the Act. Its version is that during the years in question i.e. 2007- 2008 and 2008-2009, it raised tax invoices on the purchasers as per the policy of manufacturers of vehicles to maintain uniformity in the price thereof. After the sales were completed, credit notes were issued to the customers granting discounts, in order to meet the competition in the market and for allied reasons. Consequentially, it received/retained only the net amount, that is the amount shown in the invoice less the sum of discount disclosed in the credit

note. Accordingly, the net amount, so received was reflected in his books of account and returns were filed under Income Tax Act, 1961 et al.

4. The Assistant Commissioner of Commercial Taxes, (Audit-1.6), VAT Division No.1-1, Gandhi Nagar, Bangalore i.e. the respondent No.3, as the Assessing Authority by his reassessment orders dated 21.06.2010 allowed deductions claimed by the appellant towards discount accorded by the credit notes from the total turnover to quantify the taxable turnover. Subsequent thereto, in the face of the decision of the High Court in State of Karnataka vs. M/s Kitchen Appliances India Ltd., 2011 (71) Karnataka Law Journal 234, recognizing only discounts mentioned in the tax invoices as eligible for deduction from the total turnover in terms of Rule 3(2)(c) of the Rules, the Assessing Authority passed the rectification orders dated 21.05.2012 under Section 41(1) of the Act, disallowing the deduction of post sale discounts earlier awarded by the corresponding credit notes. The appellant having unsuccessfully challenged these rectification orders before the High Court, in both the tiers, has invoked this Court's jurisdiction under Article 136 of the Constitution of India for redress. The above facts pertain to the Civil Appeal Nos. 10955-10971 of 2016.

5. The Civil Appeal 10971-10978 of 2016, with Samsung India Electronics Ltd. as the appellant, also present the same debate. The appellant, the assessee is as well a registered dealer under the Act and engaged in the business of electronic goods and I.T. products. Though the assessment for the tax period April, 2006 to October, 2006 was concluded by the Deputy Commissioner of Commercial Taxes (Audit-4) LDU, Bangalore on 29.01.2007, the Assessing Authority disallowed the claim of deduction towards discounts on the ground that the same were not revealed at the time of issuance of tax invoices, though credit notes were issued at the end of the month concerned. The appeals filed by the appellant- assessee before the Commissioner of Commercial Taxes (Appeals), DVO–I & III, Bangalore though came to be dismissed, it succeeded before the jurisdictional Tribunal, whereafter the Revenue took the challenge to the High Court. By the decision impugned herein, the High Court relying on its earlier decision in M/s Southern Motors vs. State of Karnataka and Ors. rendered in Writ Appeal Nos. 5769-5785 of 2012 reiterated its view that once the sale invoice was issued and the sale price was collected along with the tax, the aggregate of such sales constituted the total turnover and the tax was payable on the taxable turnover. It took note of the deductions permissible under Rule 3(2) of the Rules to determine the taxable turnover and held that though the amounts allowed as discount did constitute permissible deduction to compute the eventual taxable turnover, such discount was to be necessarily reflected in the sale invoice to qualify for such deduction. It thus concluded that by issuing a credit note after receiving the amounts even before the filing of the returns, it could not be construed that the discounts were not includible in the turnover. The claim of deduction of the discount extended through credit notes after the completion of the sale but not divulged in the tax invoice was negated. As the above rendition was founded on the verdict under scrutiny in the previous batch of appeals where M/s Southern Motors figures as the appellant, and the issue seeking adjudication is common, all these appeals with the aforenoted marginal factual variations have been analogously heard.

6. As the dissension stems from contrasting interpretations of the underlying purport of Rule 3(2)(c) of the Rules in the context of the scheme of the Act as a whole and Section 30 thereof and Rule 31 of the Rules in particular, further reference to the factual details would be inessential.

7. The emphatic insistence on behalf of the appellant is that the combined reading of Section 30 and Rule 31 demonstrates in clear terms that the assesses are entitled to claim deduction of the discount allowed to their customers by credit notes, from the total turnover to quantify their taxable turnover. The learned counsel have urged that as some discounts, especially those linked to targets to be achieved in a particular period are not comprehendable at the time of sale, these logically cannot be reflected in the tax invoices. They have maintained that such discounts actualize through credit notes at the end of the prescribed period for which the target is fixed and are thus governed by Section 30 of the Act and Rule 31 of the Rules. They have asserted that in no view of the matter, Rule 3(2)(c) can be conceded a primacy to curtail or abrogate Section 30 or Rule 31 of the Rules, lest the latter provisions are rendered otiose. Such an explication would also be extinctive of the concept of the well ingrained concept of turnover/trade discount which is indefensible.

8. Referring to the definition of "total turnover" and "taxable turnover" as defined in Sections 2(36) and 2(34) of the Act, it has been urged that as the discount allowed by the credit notes is not payable to the assessee by the customers and does not form a part of the sale consideration, it is not exigible under the Act. According to the learned counsel, it is no longer res integra that trade discount is not a constituent of the sale price and therefore not taxable. It has been insistently pleaded that a post sale discount through credit notes is revenue neutral in terms of Section 30(3) of the Act, as a consequence whereof the selling and the purchasing dealers accordingly remodel their returns and pay tax as due. In endorsement of the above contentions, the following decisions have been relied upon:

1. Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam vs. M/s. Advani Oorlikon (P) Ltd.(1980) 1 SCC 360,

2. IFB Industries Ltd. vs. State of Kerala (2012) 4 SCC 618,

3. Commissioner of Central Excise, Madras vs. M/s. Addison & Co. Ltd. (2016) 10 SCC 56,

4.Union of India and others vs. Bombay Tyres International (P) Ltd. (2005) 3 SCC 787.

9. In refutation, the the learned counsel for the respondents, has argued that a discount to qualify for deduction to compute the total and eventual taxable turnover, as contemplated in Rule 3(2)(c) of the Rules has to be essentially reflected in the tax invoice or the bill of sale issued in respect of the sales. According to them, Section 30 and Rule 31 deal with a situation where after a tax invoice is issued, it transpires that the tax charged has either exceeded or has fallen short of the tax payable for which a credit/debit note, as the case may be, would be issued. As these two provisions do not regulate the computation of a taxable turnover, there is no correlation thereof with Rule 3(2)(c) of the Rules which has been assigned an independent role to determine the tax liability. In absence of any specific provision in the parent statute granting tax exemption based on deduction founded on post sale trade discount, Section 30 and Rule 31 are of no avail to the assesses, he urged. It is maintained that in any view of the matter, a taxing statute has to be construed strictly and any

exemption is permissible only if the legislation permits the same. Reliance in buttressal of the above has been placed on the decisions of this Court in A.V. Fernandez vs. The State of Kerala 1957 SCR 837, IFB Industries Ltd. vs. State of Kerala (2012) 4 SCC 618 and Jayam & Co. vs. Assistant Commissioner and Another (2016) 8 SCALE 70.

10. As the gravamen of the discord has its roots in the interplay of Sections 29 and 30 of the Act with Rule 3(2)(c) in particular, apposite it would be to refer to the same as well as the accompanying provisions as are construed indispensable.

11. The Act is a legislation, as its preamble suggests to provide for further levy of tax on the purchase or sale of goods in the State of Karnataka. It defines amongst others "dealer" "tax invoice" "taxable turnover" "total turnover" and "turnover" as contained in Sections 2(12), 2(32), 2(34), 2(35), 2(36). For immediate reference the relevant excerpts of these expressions are set out hereunder:

> "2(12) 'Dealer' means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes-.....
>
> 2(32) 'Tax invoice' means a document specified under Section 29 listing goods sold with price, quantity and other information as prescribed;
>
> 2(34) 'Taxable turnover' means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of interstate trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of goods transferred or dispatched outside the State otherwise than by way of sale.
>
> 2(35) 'Total turnover' means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of interstate trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of goods transferred or despatched outside the State otherwise than by way of sale.
>
> 2(36) 'Turnover' means the aggregate amount for which goods are sold or distributed or delivered or otherwise disposed of in any of the ways referred to in clause (29) by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration, and includes the aggregate amount for which goods are purchased from a person not registered under the Act and the value of goods transferred or despatched outside the

> State otherwise than by way of sale, and subject to such conditions and restrictions as may be prescribed the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof.
>
> Explanation.- The value of the goods transferred or despatched outside the State otherwise than by way of sale, shall be the amount for which the goods are ordinarily sold by the dealer or the prevailing market price of such goods where the dealer does not ordinarily sell the goods."

12. Section 3 is the charging provision and the modes of fixation of rate and measure of tax exigible under the statute are enumerated in Section 4. Having regard to the exigency of the adjudication, appropriate it would be to extract Sections 29 and 30 of the Act as hereunder:

> "29. Tax invoices and bills of sale (1) A registered dealer effecting a sale of taxable goods or exempt goods along with any taxable goods, in excess of the prescribed value, shall issue at the time of the sale, a tax invoice marked as original for the sale, containing the particulars prescribed, and shall retain a copy thereof.
>
> (2) A tax invoice marked as original shall not be issued to any registered dealer in circumstances other than those specified in sub-section (1), and in a case of loss of the original, a duplicate may be issued where such registered dealer so requests.
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> (3) A registered dealer,-
>
> (a) selling non-taxable goods; or
>
> (b) opting to pay tax by way of composition under section 15 and selling any goods; or
>
> (c) permitted to pay tax under section 16 and selling any goods, in excess of the prescribed value, shall issue a bill of sale containing such particulars as may be prescribed.
>
> (4) Notwithstanding anything contained in sub-section (1) or (3) or sub-

section (1) of Section 7, a registered dealer executing civil works contracts shall issue a tax invoice or bill of sale at such time and containing such particulars as may be prescribed

30. Credit and Debit Notes (1) Where a tax invoice has been issued for any sale of goods and within six months from the date of such sale the amount shown as tax charged in that tax invoice is found to exceed the tax payable in respect of the sale effected, or is not payable on account of goods sold being returned within the prescribed period, the registered dealer effecting the sale shall issue forthwith to the purchaser a credit note containing particulars as prescribed.

(2) Where a tax invoice has been issued for sale of any goods and the tax payable in respect of the sale exceeds the amount shown as tax charged in such tax invoice, the registered dealer making the sale, shall issue to the purchaser a debit note containing particulars as prescribed.

(3) Any registered dealer who receives or issues, credit notes or debit notes shall declare them in his return to be furnished for the tax period in which the credit note is received or debit note is issued and claim reduction in tax or pay tax due thereon.

(4) Any document issued by the registered dealer as required under any other law containing particulars of credit note or debit note as prescribed shall be deemed to be a credit or debit note for the purpose of this Section"

13. Under Section 29, it is incumbent on a registered dealer effecting a sale of taxable goods or goods exempted from tax along with any taxable goods in excess of the prescribed value, to issue at the time of sale, a tax invoice marked as original for the sale and containing the particulars prescribed. Thereunder a registered dealer in the eventualities mentioned therein has to issue a bill of sale containing such particulars as may be prescribed. Section 30 mandates that where such a tax invoice has been issued for any sale of goods and withing six months from the date of such sale, the amount shown as tax charged in that tax invoice is found to exceed the tax payable in respect of the sale effected, or is not payable on account of goods sold being returned within the prescribed period, the registered dealer effecting the sale, would issue forthwith to the purchaser, a credit note containing the particulars as prescribed. The Section further stipulates that when a tax invoice has been issued for sale of any goods and the tax payable in respect of the sale exceeds the amount shown as tax charged in such tax invoice, the registered dealer making the sale would issue to the purchaser, a debit note containing the particulars as prescribed. It is further ordained that any registered dealer who receives or issues credit notes or debit notes would declare them in his return to be furnished for the tax period in which the credit note is received or debit note is issued and claim reduction in tax or pay tax due thereon. Noticeably, the period of six months for the issuance of the credit note on the eventuality of excess tax being paid is not a factor for the contingency requiring issuance of a debit note.

14. Be that as it may, Rule 3 of the Rules framed under Section 88 of the Act, is lodged under Part II dwelling on "Turnover, Registration and Payment Of Security". This provision in particular deals with the determination of total and taxable turnover and predicates that the taxable turnover would be determined by allowing the deductions from the total turnover as listed in sub-rule (2) thereof. Rule 3(2)(c) of the Rules, indispensable for the present adjudication is quoted hereunder for ready reference:

> "3(2)(c): All amounts allowed as discount:
>
> PROVIDED that such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of any contract or agreement entered into in a particular case and the tax invoice or bill of sale issued in respect of the sales relating to such discount shows the amount allowed as discount.

> PROVIDED FURTHER that the accounts show that the purchaser has paid only the sum originally charged less discount."

15. A plain reading of this quote would reveal that all amounts allowed as discount would qualify for deduction from the total turnover to ascertain the taxable turnover and thus the extent of exigibility under this statute. The first proviso which occupies the center stage of the debate prescribes that a discount to be eligible for deduction has to be one which is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of any contract or agreement entered into in a particular case and the tax invoice or bill of sale issued in respect of the sales relating to such discount shows the amount allowed as discount. The second proviso enjoins further, that the accounts should show that the purchaser had paid only the sum originally charged less the discount. Whereas the Revenue insists in view of the first proviso in particular, that a discount to be entitled for deduction to quantify the taxable turnover should essentially be mentioned in the tax invoice or bill of sale issued in respect of the sales and further the purchaser has to reflect in his accounts that he had paid only the sum originally charged less the discount, the appellants contend that having regard to the uniform canons regulating the trade practice, a trade discount though in comprehension at the time of original sale is not always precisely quantifiable at that point of time and is contingent on variable factors to be computed only on the happening of a future event(s). In any case, however as the discount eventually sanctioned is tangible and actual, the literal interpretation sought to be given to the contents of first proviso to Rule 3(2)(c) is expressly illogical and if accepted would lead to absurd results rendering this provision redundant and unworkable.

16. Before embarking on analysis of the competing assertions, expedient it would be to advert to the citations addressed at the Bar.

17. In A.V. Fernandis (supra), a Constitution Bench of this Court while dwelling on the interpretation of the relevant provisions of the United State of Travancore and Cochin General Sales Tax Act, 1125 and the Travancore Cochin General Sales Tax Rules, 1950 framed thereunder ruled that in elucidating a fiscal statute, it is not the spirit thereof but the letter of law that has to be looked into and that if a particular tax cannot be brought within the letter of the law, the subject could not be made liable for the same. That the emphasis has to be to the strict letter of law and not merely on the spirit of the statute or the substance of law was highlighted. In this context, the observations of Lord Russel of Killowen in Inland Revenue Commissioner vs. Duke of Westminister (1936) AC 1 24 was extracted :

> "I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a Court's view of what it considers the substance of the transaction, the Court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case"

> 18. The following passage as well from Partington vs. Attorney General (1869)4 HL 100, 122 was quoted with approval.

"As I understand the principle of all fiscal legislation it is this: if the person sought to be taxed, comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.".

19. In the textual facts, in essence, the claim of the appellant-assessee to avoid deduction of an amount arising out of sales effected beyond the State concerned was negated as the same were not taxable in terms of Section 26 of the Travancore-Cochin General Sales Tax Amendment Act, 1951 in clear terms. Drawing a distinction between the provisions contained in a statute with regard to the exemptions, refund or rebate on one hand and non liability of tax or non imposition of tax on the other, it was enunciated that in the former, the sales or purchases would have to be included in the gross turnover of the dealer because those were prima facie liable to tax and the dealer was only entitled to deductions from the gross turnover so as to arrive at the net turnover on which the tax could be imposed. In the latter case, the sales or the purchases were exempted from taxation altogether. It was thus ruled that as the sales beyond the State, were not liable to tax, those were liable to be excluded from the calculation of the gross turnover as well as the net turnover on which the sales tax could be levied or imposed. The attempt on the part of the appellant-assessee to include the turnover of the sales beyond the State in the gross turnover and thereafter to seek a deduction thereof was thus disapproved.

20. The distinction between "trade discount" and "cash discount" was elaborated upon by this Court in M/s. Advani Oorlikon (P) Ltd. (supra), in re, the question whether for the purpose of computing the turnover assessed to sales tax therein, under the Central Sales Tax Act 1956, the sale price of goods was to be determined by including the amount paid by way of trade discount. The facts as unfolded evinced that the assessee was a private limited company, carrying on business as sole selling agent for certain brand of welding electrodes and for the goods supplied to the retailers, it charged them the catalogue price less the trade discount. The concerned Revenue Authority, for the assessment year in question, refused to allow the deduction and sans thereof, computed the taxable turnover, being of the view that the trade discount was not excludable from the catalogue price. It was contended on behalf of the Revenue that in view of the definition of "sale price" in Section 2(h) of the Central Sales Tax Act which permitted the deduction of sums alleged as cash discount only, the deduction by way of trade discount was not contemplated or permissible.

21. This Court referred to the definition of "sale price" in Section 2(h) of the Act and noted that it was defined to be the amount payable to a dealer as a consideration for the sale of any goods, less any sum allowed as cash discount, according to the practice normally prevailing in the trade. While observing that cash discount conceptually was distinctly different from a trade discount which was a deduction from the catalogue price of goods allowable by whole-sellers to retailers engaged in the trade, it was exposited that under the Central Sales Tax Act, the sale price which enters into the computation of the turnover is the consideration for which the goods are sold by the assessee. It was held that in a case where trade discount was allowed on the catalogue price, the sale price would be the amount determined after deducting the trade discount. It was ruled that it was immaterial that the definition of "sale price" under Section 2(h) of the Act did not expressly provide for the

deduction of trade discount from the sale price. It also held a view that having regard to the nature of a trade discount, there is only one sale price between the dealer and the retailer and that is the price payable by the retailer calculated as the difference between the catalogue price and the trade discount. Significantly it was propounded that, in such a situation, there was only one contract between the parties that is the contract that the goods would be sold by the dealer to the retailer at the aforesaid sale price and that there was no question of two successive agreements between the parties, one providing for the sale of the goods at the catalogue price and the other providing for an allowance by way of trade discount. While recognizing that the sale price remained the stipulated price in the contract between the parties, this Court concluded that the sale price which enters into the computation of the assessee's turnover for the purpose of assessment under the Sales Tax Act would be determined after deducting the trade discount from the catalogue price.

22. The decision in Jayam and Company (supra) cited by the Revenue was to underline the postulation that whenever concession is given by a statute, notification etc., the conditions thereof are to be strictly complied with in order to avail the same. Section 19(20) of the Tamil Nadu Value Added Tax Act, 2006, which in clear terms, denied the benefit of Input Tax Credit, where any registered dealer sold goods at a price lesser than the price at which the same had been purchased, was adverted to consolidate this proposition. Noticeably, this provision of the statute involved, which fell for scrutiny, did by unequivocal mandate deny the availment of the income tax credit, in case the registered dealer/assessee had sold goods at a price lesser than the price at which the same had been purchased by him.

23. In IFB Industries Ltd. (supra), this Court was seized with the query as to how far deductions were allowable under Rule 9 (a) of the Kerala General Sales Tax Rules, 1963 for trade discounts. The jurisdictional High Court returned the finding that unless the discount was shown in the invoice evidencing the sale, it would not qualify for such deduction and further any discount that was given by means of credit note issued subsequent to the sale, in reality was an incentive and not a trade discount eligible for exemption under Rule 9 (a) of the Rules. The appellant was a manufacturer of home appliances having a scheme of trade discount for its dealers under which the latter on achieving a pre set sale target would earn certain discount on the price for which they had purchased the articles from it. As the discount was subject to achieving the sale target, the dealer would naturally be qualified for it in the later part of the Financial years/assessment period i.e. long after the sales had taken place. It was noted that for the sales taking place between the appellant and its dealer after the sale target was achieved, the dealer would get the articles on the discounted price but for the sales that had taken place before the sale target was achieved, the manufacturer would issue credit notes in favour of the dealer. Under the statute involved, in the computation of the turnover as defined, amongst others, any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by the customers, was deductible. Rule 9 (a) provided that in determining the taxable turnover, all amounts allowed as discount, provided such discount was accorded in accordance with the regular practice would stand deducted, if the accounts show that the purchaser had paid only the sum originally charged less the discount. Rule 9(a) therefore did stipulate, as the conditions precedent for deduction of any amount allowed as discount, two prescriptions i.e. the discount had been given in accordance with the regular practice in trade and that the accounts maintained by the purchaser would disclose that it had paid

only the sum originally charged less the discount. This Court thus expounded that in absence of any prescript of reference of such discount availed in the sale invoices, the negation of the benefit of deduction of the trade discount in the quantification of the taxable turnover was erroneous. It was held, that there was nothing in Rule 9 (a) to read it in a restrictive manner to mean that the discount in order to eligible for exemption thereunder must be reflected in the invoice itself. While dilating on the notion of "trade discount" to be a deduction from the catalogue price of goods allowed by wholesalers to the retailers engaged in the trade to enable the latter to sell the goods at the catalogue price and yet make a reasonable margin of profit after taking into account his business expense, the following observations of this Court in Union of India and others vs. Bombay Tyres International (P) Ltd. (2005) 3 SCC 787, describing "trade discount" and countenancing its deductibility from the sale price were alluded to:

> "(1) Trade discounts – Discounts allowed in the trade (by whatever name such discount is described) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice, the allowance and the nature of the discount being known at or prior to the removal of the goods. Such trade discounts shall not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price." (emphasis supplied)

24. This rendering presumably had been cited on behalf of the respondents in order to underscore that the appellant's claim therein for the deduction of the trade discount had been approved as both the prerequisites stipulated by Rule 9(a) had been complied with. This is to reinforce the plea that the appellant in the case in hand thus by analogy of reasonings can avail the benefit of deduction of trade discount only if the same is reflected in the tax invoice as statutorily prescribed by Rule 3(2)(c) of the Rules.

25. This Court in M/s Addison and Co. Ltd. (supra) was chiefly seized with the issue of refund of excise duty under Section 11B of the Central Excise Act, 1944. The respondent, a manufacturer of cutting tools, filed a refund claim which, on being eventually allowed after persuading through the different tiers, culminated in a reference before the High Court of Madras which was also answered in favour of the respondent/assessee. It was held by the High Court that the refund towards deduction of turnover discount could not be denied on the ground that there was no evidence to show who was the ultimate consumer of the product and as to whether the ultimate consumer had borne the burden of duty. The word "buyer" used in Section 12B of the Act, as construed by the High Court did not refer to the ultimate consumer and was confined only to the person who bought the goods from the manufacturer. This Court accepted the postulation in Union of India and others vs. Bombay Tyre International Ltd. and others (1984) 1 SCC 467 and Bombay Tyres International (P) Ltd. (supra) to the extent that discounts allowed in the trade should be permitted to be deducted from the sale price having regard to the nature of the goods, if it established under agreements or in terms of sale or by established practice and that such trade discounts ought not to be disallowed only because those were not payable at the time of each invoice or deducted from the invoice price, but declined the relief of refund to the respondent on the consideration that the burden of duty had meanwhile been passed on to the ultimate buyer. It was explicated that the word "buyer" appearing

in Clause (e) to the proviso of Section 11B(2) of the Central Excise Act could not be restricted to the first buyer from the manufacturer. The prevalence of trade discounts was recognized so much so that deductions on the basis thereof were also approved so as to determine the eventual tax liability.

26. The parties noticeably are not in issue over the prevalence of trade discount contemplated in regular practice and that wherever warranted, the dealing parties in accord therewith do enter into a contract or agreement to apply the same for reduction of the sale/purchase price. Understandably, the taxable turnover is the summation of the actual sale/purchase price exigible to tax under the Act and the Rules. Depending on the eventualities as comprehended in Section 30, credit and debit notes are issued, as a consequence whereof, the tax liability is reduced or enhanced correspondingly and the same is determined on the basis of the declarations made by the assessees in their returns. That there is an inseverable co- relation between the taxable turn over and the tax payable need not be over emphasized. Noticeably, Section 30 dilates on the contingencies witnessing reduction or enhancement of tax liability subsequent to the sale/purchase of goods. The tax liability, to reiterate would be contingent on the sale/purchase price in the eventual sale/purchase price, to be essentially reflected in the return of the assessee. Section 30 axiomatically thus deals only with the incidence of tax and not the spectrum of situations or eventualities bearing on the tax liability. Rule 3(2), in particular lists the array of deductions conditioned on variety of situations as scheduled therein to ascertain the taxable turnover. Allowance of discount is one of the several other permissible deductions contingent on the melange of determinants referred to therein. These deductions, however contribute to the reduction of the total turnover to quantify the taxable turnover and thus the tax liability. It is too trite to state that neither an assessee is liable to pay tax in excess of what is due in law nor is the revenue authorized to exact the same. Any interpretation of Rule 3(2)(c) though an integrant of a fiscal statute has to be in accord, in our estimate unite this fundamental mandatory postulation.

27. It is a matter of common experience that in the present contemporary competitive market, trade discounts not only are dependent on variable factors but also might be strategically not disclosable at the time of the original sale/purchase so as to be coevally reflected in the tax invoice or the bill of sale as the case may be. The actual quantification of the trade discount, depending on the nature of the trade and the related stipulations in any contract with regard thereto, may be deferred till the happening of a contemplated event, so much so that the benefit thereof is extended at a point of time subsequent to that of the original sale/purchase. That by itself, subject to proof of such regular trade practice and the contract/agreement entered into between the parties, would not render the trade discount otherwise legal and acceptable, either non est or fictitious for evading tax liability. In the above factual premise, the interpretation as sought to be provided by the Revenue would evidently reduce Section 3(2)(c) to a dead letter, ineffective and unworkable and would defeat the objective of permitting deductions from the total turnover on account of trade discount.

28. A trade discount conceptually is a pre sale concurrence, the quantification whereof depends on many many factors in commerce regulating the scale of sale/purchase depending, amongst others on goodwill, quality, marketable skills, discounts, etc. contributing to the ultimate performance to qualify for such discounts. Such trade discounts, to reiterate, have already been recognized by this Court with the emphatic rider that the same ought not to be disallowed only as they are not payable

at the time of each invoice or deducted from the invoice price. In our comprehension, Sections 29, 30 and Rule 3 are the constituents of a same scheme to determine the taxable turnover and thus the extent of exigibility. Whereas Sections 29 and 30, to repeat, deal with the issuance of tax invoice and bill of sale to start with and thereafter credit and debit notes to be in accord with the tax actually payable, Rule 3 in a way espouses the exercise of ascertaining the taxable turnover by enumerating the permissible deductions from the total turnover. We are thus of the considered view that there is no repugnance or conflict amongst these three provisions so much so that Rule 3(2)(c) stands out in isolation and is incompatible with either the scheme of the Act or Sections 29 and 30 to be precise. The interplay of these three provisions is directed to ensure correct computation of the taxable turnover for an accurate computation of the tax liability. These provisions therefore for all practical purposes complement each other and are by no means militative in orientation or impact. Perceptionally, if taxable turnover is to be comprised of sale/purchase price, it is beyond one's comprehension as to why the trade discount should be disallowed, subject to the proof thereof, only because it was effectuated subsequent to the original sale but evidenced by contemporaneous documents and reflected in the relevant accounts.

29. This Court in K.P. Varghese vs. Income Tax Officer, Ernakulam and Anr. AIR 1981 SC 1922, while interpreting Section 52 of the Income Tax Act 1961 favoured an interpretation in departure from a strict literal reading thereof. For ready reference, Section 52, as interpreted, is extracted hereinbelow.

"Section 52 (1) Where the person who acquires a capital asset from an assessee is directly or indirectly connected with the assessee and the Income-tax Officer has reason to believe that the transfer was effected with the object of avoidance or reduction of the liability of the assessee under Section 45, the full value of the consideration for the transfer shall, with the previous approval of the Inspecting Assistant Commissioner, be taken to be the fair market value of the capital asset on the date of the transfer.

(2) without prejudice to the provisions of Sub-section (1), if in the opinion of the Income-tax Officer the fair market value of a capital asset transferred by an assessee as on the date of the transfer exceeds the full value of the consideration declared by the assessee in respect of the transfer of such capital assets by an amount of not less than fifteen per cent of the value declared, the full value of the consideration for such capital asset shall, with the previous approval of the Inspecting Assistant Commissioner, be taken to be its fair market value on the date of its transfer." It was proclaimed thus:

> "5. Now on these provisions the question arises what is the true interpretation of Section 52, Sub-section (2). The argument of the Revenue was and this argument found favour with the majority Judges of the Full Bench that on a plain natural construction of the language of Section 52, Sub-section (2), the only condition for attracting the applicability of that provision is that the fair market value of the capital asset transferred by the assessee as on the date of the transfer exceeds the full value of the consideration declared by the assessee in respect of the transfer by an amount of not less than 15% of the value so declared. Once the Income-tax Officer is satisfied

that this condition exists, he can proceed to invoke the provision in Section 52 Sub-section (2) and take the fair market value of the capital asset transferred by the assessee as on the date of the transfer as representing the full value of the consideration for the transfer of the capital asset and compute the capital gains on that basis. No more is necessary to be proved, contended the Revenue. To introduce any further condition such as understatement of consideration in respect of the transfer would be to read into the statutory provision something which is not there: indeed it would amount to rewriting the section. This argument was based on a strictly literal reading of Section 52 Sub-section (2) but we do not think such a construction can be accepted. It ignores several vital considerations which must always be borne in mind when we are interpreting a statutory provision. The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity." We can do no better than repeat the famous words of Judge Learned Hand when he said:

"....it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning" We must not adopt a strictly literal interpretation of Section 52 Sub- section (2) but we must construe its language having regard to the object and purpose which the legislature had in view in enacting that provision and in the context of the setting in which it occurs. We cannot ignore the context and the collocation of the provisions in which Section 52 Sub- section (2) appears, because, as pointed out by Judge Learned Hand in most felicitous language:-

"....the meaning of a sentence may be more than that of the separate words as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create" Keeping these observations in mind we may now approach the construction of Section 52 Sub-section (2).

6. The primary objection against the literal construction of Section 52 Sub-

section (2) is that it leads to manifestly unreasonable and absurd consequences. It is true that the consequences of a suggested construction cannot alter the meaning of a statutory provision but they can certainly help to fix its meaning. It is a well recognised rule of construction that a statutory

provision must be so construed, if possible that absurdity and mischief may be avoided. There are many situations where the construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. Take, for example, a case where A agrees to sell his property to B for a certain price and before the sale is completed pursuant to the agreement and it is quite well-known that sometimes the competition of the sale may take place even a couple of years after the date of the agreement-the market price shoots up with the result that the market price prevailing on the date of the sale exceeds the agreed price at which the property is sold by more than 15% of such agreed price. This is not at all an uncommon case in an economy of rising prices and in fact we would find in a large number of cases where the sale is completed more than a year or two after the date of the agreement that the market price prevailing on the date of the sale is very much more than the price at which the property is sold under the agreement. Can it be contended with any degree of fairness and justice that in such cases, where there is clearly no understatement of consideration in respect of the transfer and the transaction is perfectly honest and bonafide and, in fact, in fulfillment of a contractual obligation, the assessee who has sold the property should be liable to pay tax on capital gains which have not accrued or arisen to him. It would indeed be most harsh and inequitable to tax the assessee on income which has neither arisen to him nor is received by him, merely because he has carried out the contractual obligation under-taken by him. It is difficult to conceive of any rational reason why the legislature should have thought it fit to impose liability to tax on an assessee who is bound by law to carry out his contractual obligation to sell the property at the agreed price and honestly carries out such contractual obligation. It would indeed be strange if obedience to the law should attract the levy of tax on income which has neither arisen to the assessee nor has been received by him. If we may take another illustration, let us consider a case where A sells his property to B with a stipulation that after some-time which may be a couple of years or more, he shall resell the property to A for the same price could it be contended in such a case that when B transfers the property to A for the same price at which he originally purchased it, he should be liable to pay tax on the basis as if he has received the market value of the property as on the date of resale, if, in the meanwhile, the market price has shot up and exceeds the agreed price by more than 15%. Many other similar situations can be contemplated where it would be absurd and unreasonable to apply Section 52 Sub-section (2) according to its strict literal construction. We must therefore eschew literalness in the interpretation of Section 52 Sub-section (2) and try to arrive at an interpretation which avoids this absurdity and mischief and makes the provision rational and sensible, unless of course, our hands are tied and we cannot find any escape from the tyranny of the literal interpretation. It is now a well settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even 'do some violence' to it, so as to achieve the obvious intention of the legislature and produce a rational construction, Vide: Luke v. Inland Revenue Commissioner [1963] AC 557. The Court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision. We think that, having regard to this well recognised rule of interpretation, a fair and reasonable construction of Section 52 Sub-section (2) would be to read into it a condition that it would apply only where the consideration for the transfer is under-stated or in other words, the assessee has actually received a larger consideration for the transfer than what is declared in the instrument of transfer and it would have no application in case

of a bonafide transaction where the full value of the consideration for the transfer is correctly declared by the assessee. There are several important considerations which incline us to accept this construction of Section 52 Sub-section (2)."

30. In Commissioner of Income Tax, Bangalore Vs. J.H. Gotla Yadagiri AIR 1985 SC 1698 this Court propounded that though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than injustice, then such construction should be preferred to the literal construction.

31. In a recent rendition in State of Jharkhand and others vs. Tata Steel Ltd. and Ors. (2016) 11 SCC 147, this Court while exploring the underlying intent of a notification pertaining to the period of repayment by the respondents-assessee, which had earlier availed the benefit of deferment of payment of tax under the Jharkhand Value Added Tax Act, 2005 did exhaustively dwell on the golden rule of interpretation based on literal and plain meaning of the words/expressions used in a statute and with approval placed reliance on an earlier decision of this Court in Hansraj Gordhandas vs. H.H. Dave, Assistant Collector of Central Excise & Customs, Surat and others (1969) 2 SCR 252, in which it was propounded thus:

> "It was contended on behalf of the respondent that the object of granting exemption was to encourage the formation of cooperative societies which not only produced cotton fabrics but which also consisted of members, not only owning but having actually operated not more than four power-looms during the three years immediately preceding their having joined the society. The policy was that instead of each such member operating his looms on his own, he should combine with others by forming a society which, through the cooperative effort should produce cloth. The intention was that the goods produced for which exemption could be claimed must be goods produced on its own behalf by the society. We are unable to accept the contention put forward on behalf of the respondents as correct. On a true construction of the language of the notifications, dated July 31, 1959 and April 30, 1960 it is clear that all that is required for claiming exemption is that the cotton fabrics must be produced on power-looms owned by the cooperative society. There is no further requirement under the two notifications that the cotton fabrics must be produced by the Co-operative Society on the power-looms "for itself". It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here." [Underlining is ours]

32. In the same vein, the following passage from M/s Doypack Systems Pvt. Ltd. vs. Union of India and Ors. (1988) 2 SCC 299 was adverted to:

> "58. The words in the statute must, prima facie, be given their ordinary meanings. Where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail unless there are some strong and obvious reasons to the contrary. Nothing has been shown to warrant that literal construction should not be given effect to. See Chandavarkar S.R. Rao v. Ashalata (1986) 4 SCC 447 approving 44 Halsbury's Laws of England, 4th Edn., para 856 at page 552, Nokes v. Doncaster Amalgamated Collieries Limited 1940 AC 1014. It must be emphasised that interpretation must be in consonance with the Directive Principles of State Policy in Article 39 (b) and (c) of the Constitution.
>
> 59. It has to be reiterated that the object of interpretation of a statute is to discover the intention of the Parliament as expressed in the Act. The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. That intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand. ..."

33. The following excerpts from Tata Steel Ltd. (supra), being of formidable significance are also extracted as hereunder.

24. In this regard, reference to Mahadeo Prasad Bais (Dead) vs. Income- Tax Officer 'A' Ward, Gorakhpur and another (1991) 4 SCC 560 would be absolutely seemly. In the said case, it has been held that an interpretation which will result in an anomaly or absurdity should be avoided and where literal construction creates an anomaly, absurdity and discrimination, statute should be liberally construed even slightly straining the language so as to avoid the meaningless anomaly. Emphasis has been laid on the principle that if an interpretation leads to absurdity, it is the duty of the court to avoid the same.

25. In Oxford University Press v. Commissioner of Income Tax (2001) 3 SCC 359, Mohapatra, J. has opined that interpretation should serve the intent and purpose of the statutory provision. In that context, the learned Judge has referred to the authority in State of T.N. v. Kodaikanal Motor Union (P) Ltd. (1986) 3 SCC 91 wherein this Court after referring to K.P. Varghese v. ITO[(1981) 4 SCC 173 and Luke v. IRC (1964) 54 ITR 692 has observed:-

> "The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye 'some'

violence to language is permissible."

26. Sabharwal, J. (as His Lordship then was) has observed thus:-

"... It is well-recognised rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. It was held that construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. It was said that the literalness in the interpretation of Section 52(2) must be eschewed and the court should try to arrive at an interpretation which avoids the absurdity and the mischief and makes the provision rational, sensible, unless of course, the hands of the court are tied and it cannot find any escape from the tyranny of literal interpretation. It is said that it is now well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction. In such a case the court may read into the statutory provision a condition which, though not expressed, is implicit in construing the basic assumption underlying the statutory provision. ..."

34. As would be overwhelmingly pellucid from hereinabove, though words in a statute must, to start with, be extended their ordinary meanings, but if the literal construction thereof results in anomaly or absurdity, the courts must seek to find out the underlying intention of the legislature and in the said pursuit, can within permissible limits strain the language so as to avoid such unintended mischief.

35. In Seaford Court Estates Ltd. vs. Asker [1949] 2 All ER 155 hallowed by time, outlining the duty of the Court to iron out the creases, it was enunciated, that whenever a statute comes up for consideration, it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise and even if it were, it is not possible to provide for them in terms free from all ambiguity, the caveat being that the English language is not an instrument of mathematical precision. It was held that in an eventuality where a Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that or have been guilty of some or other ambiguity, he ought to set to work on the constructive task of finding the intention of the Parliament and that he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy and then he must supplement the written word so as to give "force and life" to the intention of the legislature.

36. It would, in any case be incomprehensible that the legislature, while occasioning the amendment to the first proviso to Rule 3(2)(c) of the Rules, was either ignorant

> or unaware of the prevalent practice of offering trade discount in the contemporary commercial dispensations. This is more so, as trade discount continued to be an accepted item of deduction. In such a premise, the intention of the legislature could not have been to deny the benefit of deduction of trade discount by obdurately insisting on the reflection of such trade discount in the text invoice or the bill of sale at the point of the sale as the only device to guard against possible avoidance of tax under the cloak thereof. Axiomatically, therefor the interpretation to be extended to the proviso involved has to be essentially in accord with the legislative intention to sustain realistically the benefit of trade discount as envisaged. Any exposition to probabilise exaction of the levy in excess of the due, being impermissible cannot be thus a conceivable entailment of any law on imperative impost. To insist on the quantification of trade discount for deduction at the time of sale itself, by incorporating the same in the tax invoice/bill of sale, would be to demand the impossible for all practical purposes and thus would be ill-

logical, irrational and absurd. To reiterate, trade discount though an admitted phenomenon in commerce, the computation thereof may depend on various factors singular to the parties as well as by way of uniform norms in business not necessarily enforceable or implementable at the time of the original sale. To deny the benefit of deduction only on the ground of omission to reflect the trade discount though actually granted in future, in the tax invoice/bill of sale at the time of the original transaction would be to ignore the contemporaneous actuality and be unrealistic, unfair, unjust and deprivatory. This may herald as well the possible unauthorised taxation even in the face of cotaneous accounts kept in ordinary course of business, attesting the grant of such trade discount and adjustment thereof against the price. While, devious manipulations in trade discount to avoid tax in a given fact situation is not an impossibility, such avoidance can be effectively prevented by insisting on the proof of such discount, if granted. The interpretation to the contrary, as sought to be assigned by the Revenue to the first proviso to Rule 3 (2)(c) of the Rules, when tested on the measure of the judicial postulations adumbrated hereinabove, thus does not commend for acceptance.

37. On an overall review of the scheme of the Act and the Rules and the underlying objectives in particular of Sections 29 and 30 of the Act and Rule 3 of the Rules, we are of the considered opinion that the requirement of reference of the discount in the tax invoice or bill of sale to qualify it for deduction has to be construed in relation to the transaction resulting in the final sale/purchase price and not limited to the original sale sans the trade discount. However, the transactions allowing discount have to be proved on the basis of contemporaneous records and the final sale price after deducting the trade discount must mandatorily be reflected in the accounts as stipulated under Rule 3(2)(c) of the Rules. The sale/purchase price has to be adjudged on a combined consideration of the tax invoice or bill of sale as the case may be along with the accounts reflecting the trade discount and the actual price paid. The first proviso has thus to be so read down, as above, to be in consonance with the true intendment of the legislature and to achieve as well the avowed objective of correct determination of the taxable turnover. The contrary interpretation accorded by the High Court being in defiance of logic and the established axioms of interpretation of statutes is thus unacceptable and is negated. The appeals are thus allowed in the above terms. No costs.

.....J. (DIPAK MISRA) .....J. (AMITAVA ROY)
NEW DELHI;

JANUARY 18, 2017