Ashok Leyland Limited vs Union Of India & Ors on 20 February, 1997

Equivalent citations: AIRONLINE 1997 SC 250, 1997 (9) SCC 10, (1997) 2 SCALE 242, (1997) 138 TAXATION 153, (1997) 105 STC 152, (1997) 3 SUPREME 495, (1997) 2 JT 666, 1997 STI 181, (1997) 2 JT 666 (SC), (1997) 2 SCR 224 (SC), 1997 UPTC 2 1187

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Bench: B.P. Jeevan Reddy, S.B. Majmudar

PETITIONER:
ASHOK LEYLAND LIMITED

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 20/02/1997

BENCH:
B.P. JEEVAN REDDY, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P. JEEVAN REDDY, J.

Leave granted.

Ashok Leyland Limited, the appellant herein, * is * Though several other dealers are the petitioners/appellants herein, We shall refer to Ashok Leyland as a representative dealer. The discussion and directions made in this judgment shall, however, govern all the petitioners/appellants herein. one of the major manufacturers of trucks and other motor vehicles in

India. Its registered office is at Madras [Chennai]. The plants manufacturing trucks and motor vehicles are situated in the state of Tamil Nadu as well as in other States. The trucks and vehicles manufactured by it are sold all over the country. For its business purposes, it maintains Regional Sales officers [R.S.Os.] in different parts of the country like, Bangalore, Trivandrum, Vijayawada, Pune, Nagpur, Indore, Calcutta, Bhuvaneshwar, Gauhati, Pondicherry, and so no. The appellant says that each of these R.S.Os. maintains an office, a stock yard and other necessary paraphernalia for receiving, stocking, repairing and delivering motor vehicles to their customers. The appellant says that almost seventy percent of its sales are to parties other than state Transport Undertakings [S.T.Us.]. The sales to S.T.Us. are in the region of thirty percent of its production. The R.S.Os., the appellant says, contact the local purchasers and the S.T.Us., book the orders and also deliver the vehicles to the pursuant to sales effected by them. The appellant always keeps the R.S.Os. well stocked having regard to their requirements. By way of illustrations, it is stated, the R.S.O. at Hyderabad receives vehicles from Tamil Nadu from time to time. In respect of vehicles sold in Andhra Pradesh - whether to Andhra Pradesh State Road Transport Corporation or to other parties - sales tax is levied and collected by the State of Andhra Pradesh inasmuch as they are intra - State sales for the purpose of the Andhra Pradesh General Sales Tax Act. Over the years, the appellant says, it has been sending the trucks, chassis and other vehicles to R.S.Os. all over the country under `F' Forms produced by it questioned by any one. However, the State of Tamil Nadu has been seeding, in the recent times, to reopen the concluded assessments contending that the transfer of vehicles from Tamil Nadu to other States was not mere consignments [without effecting sales] but constitute inter-state sales within the meaning of clause (a) of Section 3 of the Central Sales Tax Act, which are taxable in the State of Tamil Nadu by virtue of the provisions of the Central Sales Tax Act. The attempt of the State of Tamil Nadu is to treat the said movement of vehicles as inter-State sales and tax them which would ultimately go back to that State by virtue of the provisions contained in Articles 269 and 286 of the Constitution and the Central Sales Tax Act. The appellant says that it did not effect any inter-State sales and that there was only one sale in the other State which has already been taxed under the sales tax law of that other State. The appellant complains that the same transaction cannot be taxed twice, once as an intra-State sale by one State and again by the State of Tamil Nadu as an inter-State sale. The appellant complains that the reopening of assessments - in some cases, even the re-assessment has been made and Central sales tax levied - and taxing the same transaction once again [by the State of Tamil Nadu] is causing serious harassment to the appellant, making it impossible for it to carry on its business operations in a smooth and orderly manner. It approached the Madras High Court with the said grievance. Thought a number of factual issues were also raised in the writ petitions filed by the appellant, it was stated by their counsel at the time of hearing that they do not propose to invite the decision of the High Court on these factual issues and that they would be confining their submissions only to the questions of law, viz., the interpretation of Section 6-A of the Central Sales Tax Act and the power to reopen the orders accepting `F' Forms. In certain other writ petitions filed by the appellant, several State governments were impleaded as respondents. The prayer in these writ petitions was that inasmuch as sales to S.T.Us of those States are being treated and taxed as inter-State sales by the State of Tamil Nadu, the levy of tax under the other State sales tax enactments treating the very sales as inter-State sales within those respective States is unsustainable, and therefore, those State governments should be directed to refund the tax collected by them to the appellant. The High Court had dismissed to writ petitions holding that (i) the Madras High Court cannot direct the other State governments to

refund the tax levied and collected under their respective State sales tax enactments. The appellant has to approach the authorities under those Acts or the courts in those States for such relief, if they are so advised. (ii) the provisions contained in Section 6-A have no special status or content and cannot be elevated to the status of a constitutional provision; it is like any other provision under the Central Sales Tax Act. The order accepting Form `F' is nothing more than a step-in-aid of, or a part and parcel of, the assessment proceedings. (iii) an order passed by the assessing authority accepting Form `F' cannot be reopened except in accordance with Section 16, 32 and 55 of the Tamil Nadu General Sales Tax Act read with sub-sections (2) and (2A) of Section 9 of the Central Sales Tax Act. A mere change of opinion is not sufficient to reopen the order accepting Form `F'. Having declared the law thus, the High Court directed the appellant to prefer appeals before the appropriate appellant authority where an order of assessment has been made and to go and show cause to the assessing authority where the appellant has approached the High Court at the sate of show-cause notice.

Sri K. Parasaran, learned counsel for the appellant, urged the following contentions :

> (1) Section 6-A creates a conclusive presumption which come into play on proof of the truth of facts stated in Form `F'.

This conclusive presumption cannot be defeated by resorting to the power of reopening conferred upon the authorities by Section 16 of the Tamil Nadu General Sales Tax Act read with Section 9(2) of the Central Sales Tax Act. The order accepting Form `F' as true cannot also be reopened for the reason that such order of acceptance gives rise to certain consequences which cannot be rectified even if the order accepting Form `F' is reopened and revised. The vehicles have been transferred/consigned to the appellant's R.S.Os. in various States which R.S.Os. have issued Forms `F' in that behalf and which, on being produced by the appellant before its assessing authority, have been accepted as true. This means that the sale of the said vehicles in the other State is an intra-State sale in that State and has in fact been taxed as such. Now if the Tamil Nadu Sales Tax authorities propose to reopen the said orders accepting the said Forms `F' and levy Central sales tax treating the said movement of vehicles to other States as inter-State sales, the consequence would be that though there is only one sale, it is being taxed by two different States under two different State sales, the consequence would be that though there is only one sale, it is being taxed by two different States under two different enactments. This cannot be. The cannot be. The show-cause notices issued by the Tamil Nadu authorities do not say that there was a sale by the appellant to its R.S.O. and another sale by the R.S.O. to the State Transport Undertakings. Indeed, there cannot be a sale between the appellant and its own R.S.O. A person cannot sell to himself.

(2)(a) Section 6-A is an independent provision. An order passed thereunder is not a part of the assessment order. An order under Section 6-A has an independent existence of its own. It is neither subject to appeal nor is it amenable to power of revision. The order under Section 6-A is the result of a conscious adjudication. For all these reasons too, it must be held that an order accepting Form `F', once made, is conclusive and is not liable to be reopened.

(b) even if it is held by a process of reasoning that an order accepting Form `F' as true is amenable to power of reopening under Section 16 of the Tamil Nadu General Sales Tax Act read with Section 9(2) of the Central Sales Tax Act, even then it must be held that until and unless reasonable grounds exist for doubting the truth of the statements contained in Form `F', it cannot be reopened. Merely because an assessment is reopened, the orders accepting Forms `F' cannot automatically be held amenable to the power of reopening.

(3) All the sales effected by R.S.Os. in various other States are all of the same pattern, whether the sale is to S.T.U. or to any other person. Curiously enough, the impugned reopening notices are confined only to sales effected in favour of various State Transport Undertakings in several States. No such attempt to reopen is made in respect of sales effected to persons other than S.T.Us. As a matter of fact, the S.T.Us. are nothing but manifestations of their respective State governments. Since the S.T.Us./State governments purchase vehicles in bulk, they insist that the sale of vehicles should take place within their respective State so that they may be able to derive income in the shape of sales tax on those sales. Unless the sales are effected within their State and tax is paid thereon under the sales tax enactment of that State, that State government or S.T.U. is not prepared to purchase vehicles from the appellant. Indeed, it is for this reason also that the appellant maintains R.S.Os. almost in all the States in the country. Simply because the orders are booked by the R.S.Os. and sent to Head Offices, it does not follow that the movement of vehicles is in pursuance of or is an incident of a contract of sale.

(4) Section 4 of the Central Sales Tax Act provides clearly that (a) in the case of specific or ascertained goods, the sale of goods shall be deemed to take place inside a State if the goods are within that State at the time of the contract of sale and (b) in the case of unascertained or future goods, the sale of goods should be deemed to take place inside a State when the goods are appropriated to the contract of sale by the seller or by the buyer, whether the assent of the other party is prior or subsequent to such appropriation. This principle is at variance with the general principle contained in the Sale of Goods Act. It must, therefore, be held that sale of vehicles takes place only when they are appropriated towards their order and the appropriation is only when the vehicles are earmarked for delivery to the S.T.Us. The vehicles so appropriated are always in the State to the S.T.U. of which the vehicles are earmarked and delivered.

(5) in the absence of any Central machinery which can decide disputes between the State, viz., where one State claims that a particular transaction is an inter-State sale and the other State claims that it is an intra-State sale [within that State, i.e., itself], an order once made accepting Form `F' as true must not be allowed to be reopened. If it is allowed to be reopened, this Court may provide that the appellant-assessee is entitled to implead the other State [which has levied tax upon the same transaction treating it as an intra-State sale within that State] as a party-respondent before the assessing authorities in Tamil Nadu [acting under Central Sales Tax Act] so that an effective adjudication can be made as to the true nature of the transactions/sale. This Court may also consider whether a direction should be given to the Union of India to create such a machinery in the interest of inter- State trade and commerce and to ensure that the assessees are not harassed and prejudiced by taxing the same transaction twice over.

Sri A.K. Ganguly, learned counsel for the State of Tamil Nadu, disputed the correctness of the various submissions put forward by Sri Parasaran. He supported the reasoning and conclusion of the Madras High Court and submitted that an order under Section 6-A accepting Form `F' as true will ordinary be passed in the course af assessment proceeding and as part of the assessment order. There is no reason to treat an order under Section 6-A as something different from any other order under the Act. It is as much amenable to power of reopening as nay other order under the Act. Whether a particular movement of goods across the boundaries of one State to another is a mere movement [i.e., in this case, a consignment of goods by the Head Offices to its R.S.O.] or whether the movement is occasioned by a contract of sale, is a question of fact and is not a question of law. The said question has to be decided by the appropriate authority in each case having regard to the relevant facts and circumstances. The appellant was ill- advised to approach the Madras High Court by way of writ petitions at the initial stage of proceedings. Nothing prevented the appellant to satisfy the Tamil Nadu authorities that it has effected no inter-State sales and that the transfer of vehicles was only a transfer without effecting a sale. If it succeeds in establishing the said fact, it is obvious that no Central sales tax will be levied by the Tamil Nadu authorities.

Article 269 of the Constitution says that "taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce", among other taxes, shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause (2) of the said Article [vide Article 269(1)(g)]. "Taxes on the consignment of goods (whether the consignment is to the person making it or to any other person) where such consignment takes place in the course of inter-State trade of commerce" is one of the taxes mentioned in clause (1) of Article 269. The power to levy consignment tax, however, is conferred upon the Parliament by virtue of Entry 92-B of the Union List. So far no such tax has been levied by the Parliament. Clause (2) of Article 269 provides that the net proceeds in any financial year of any duty or tax mentioned in clause (1) shall not form part of the Consolidated Fund of India but shall be assigned to the States within which that duty or tax is leviable in that year and that the same shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law. Clause (3) further provides that "Parliament may by law formulate principle for determining when a sale or purchase of, or consignment of, goods takes place in the course of inter-State trade of commerce".

By virtue of clause (1) of Article 286 of the Constitution, the State legislature has no power to levy tax on a sale which takes place outside that State or which takes place in the course of import of goods into or export of goods out of the territory of India. Clause (2) empowers the Parliament to formulate, by making a law, principles for determining when a sale or purchase of goods takes place outside the State or in the course of import or export, as the case may be. Clause (3) of Article 286 need not be noticed for the purposes of this case.

It is well-known that Article 286 has been thoroughly recast by the Constitution [Sixth Amendment] Act, 1956 which also amended Article 269 substantially. It is in pursuance of the said Articles, as recast/amended by Constitution [Sixth Amendment] Act, that the Parliament enacted the Central Sales Tax Act, 1956. Section 3 defines an "inter- state sale". Section 4 sets out when a sale or purchase of goods can be said to have taken place outside a State and Section 5 provides when a sale

or purchase of goods can be said to have taken place in the course of import or export. It is evident that these provision have been made pursuant to Article 286 as well as clause (3) of Article 269. Section 6 of the Central Sales Tax Act is the charging section. Section 6-A has been inserted by the Amendment Act 61 of 1972 with effect from April 1, 1973. This provision appears to have been enacted in the light of the judgment of this Court in Tata Engineering and Locomotive Company Limited v. Assistant Commissioner of Commercial Tax, Jamshedpur & Anr. [(1970) 20 S.T.C. 354]. Section 6-A provides that where any dealer claims that he is not liable to pay tax under the Central Sales Tax Act in respect of any goods on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, not by reason of sale, the burden of proving the said fact shall be upon him. For that purpose, he may furnish to the assessing authority, within the prescribed time, a declaration duly filled and signed by the principal officer of the other place of business or by his agent or principal, as the case may, be containing the prescribed particulars, along with the evidence of despatch of such goods Form `F' have to be obtained from the prescribed authority. The section further provides that if the assessing authority is satisfied after such enquiry as he may deem necessary, that the particulars contained in the declaration furnished by the dealer ar true, he may, at the time of or at any time before the assessment af the tax payable by the dealer under the Central Sales Tax Act, make an order to that effect. Thereupon, the movement of goods to which the declaration relates shall be deemed, for the purpose of this Act, to have been occasioned other wise than as a result of sale. It would be appropriate to set out the section in its entirety:

> "6A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale-- (1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not be reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority, within such further time as that authority may, for sufficient cause, permit, a declaration, dully filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods. (2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under the Act, make an order to that effect and thereupon the movement of goods to which the declaration related shall be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale.

Explanation -- In this section, `assessing authority', in relation to a dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act."

The Central Sales Tax Act has not created a machinery of its own to assess and collect the tax levied thereunder. Probably because the tax will ultimately go to the state in which the said tax is leviable, sub-sections (2) and (2A) of Section 9 provide that the machinery provisions under the respective State sales tax enactment shall be treated as the machinery provisions under this Act for all purposes. Sub- section (1) of Section 9 provides that the Central sales tax shall be levied by the State from which the movement of the goods commences. This provision is evidently relatable to clause (2) of Articles 269, Section 13 confers the rule- making power upon the Central Government for certain purposes and upon State governments for certain other purposes. [It is not necessary to refer to the other provisions of the Act for the purposes of this Case.] Rule 12 of the Central Sales Tax [Registration and Turn-Over] Rules, 1957 is the rule made pursuant to Section 6-A among other sections of the Act. Sub-rule (5) of Rule 12 says that the declaration referred to in sub-section (1) of Section 6-A shall be in Form `F". Sub-rule (6) says that Form `F' referred to in sub-rule (5) of Rule 12, shall be the one obtained by the transferee in the State in which the goods covered by such Form are delivered. Sub-rule (7) says that the declaration in Form `F' shall be furnished by the dealer to the prescribed authority upto the time of assessment by the first assessing authority. Clause (a) of sub-rule (8) says that only the person referred to in Rule 3(1)(a) shall be competent to sign the declaration/Form `F'. The Rules also prescribe the form in which Form `F' shall be issued . It is in triplicate. It is issued by the prescribed authority and contains his seal. It has to be signed by the transferee and is addressed to the transferor affirming that "the goods transferred to me/us as per details below have been receive and duly accounted for". The person signing it is obligated to mention his status in relation to the transferor. In other words, Form `F' in the case before us has to be issued by the person in charge of the R.S.O. receiving the vehicles from Tamil Nadu - and sent to the appellant. The appellant, in turn, has to produce the same before his assessing authority who shall pass an order accepting it is he is satisfied, after making the necessary inquiry that the facts stated in the said Form are true. Such an order means that the movement of goods mentioned in the said Form from Tamil Nadu to the other State is not by reason of sale but a mere transfer - to wit, not an inter- State sale attracting Central sales tax.

By virtue of sub-section (2) of Section 9, the machinery provisions under the Tamil Nadu General Sales Tax Act are imported into the Central Sales Tax Act, as already noticed. Section 16 of the Tamil Nadu Act provides for reopening of assessments. It would be sufficient to notice sub-section (1) of Section 16 which comprises two clauses

(a) and (b). The sub-section reads:

> "16. Assessment of escaped turnover.-- (1)(a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub- section (2) at any time within a period of five years from the expiry of the year to which the tax relates, determine to the best of its judgments the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.

> (b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of five years from the expiry of the year to which the tax relates, re-assess the tax due after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such re-

assessment."

[Emphasis added] Sub-section (2) provides that where the escapement of income is due to wilful non-disclosure of the dealer, penalty can also be levied. Sub-section (3) says that the power under section (1) can be exercised even if the order assessment is the subject-matter of revision or appeal. Sub- section (4), (5) and (6) deal with the manner in which the period of limitation prescribed by the section should be computed. Section 32 confers upon the Deputy Commissioner the power to revise the orders or proceedings of any subordinate authority made under the provisions specified therein. This power can be exercised suo moto and only where the order is prejudicial to the interests of Revenue. This power has also to be exercised within five years from the date of the order proposed to be revised. The contentions urged by Sri Parasaran have to be examined in the light of the above provisions of law and certain decisions, to which he has invited our attention.

We find it difficult to agree with Sri Parasaran that Section 6-A creates a conclusive presumption. It is true that if the particulars stated in the declaration/Form `F' are found to be true, the assessing authority shall pass an order, either at the time of making of the assessment or at any time before, that the contents of Form `F' are accepted as true. On such order being made, it shall be deemed that the movement of goods to which the form relates has been occasioned otherwise than as a result of sale. But there are no words in Section 6-A which can be said to create a conclusive presumption or clothe the "deemed" fact with a conclusive character. All that it says is that if the particulars stated in Form `F' are true, certain fact shall be presumed - or shall be or deemed to have taken place, as the case may be. It is not possible to agree that the word "deemed" in sub-section (2) of Section 6-A can be understood as creating a conclusive presumption nor is it possible to agree that the fact "deemed" is final and conclusive. Section 6-A merely states a rule of evidence. It says that where a dealer claims that certain goods have been moved from one State to another and that such movement has occasioned otherwise than as a result of sale, the burden of proving the same lies upon him. Besides creating the said rules of evidence, the section also sets out how the said burden can be discharged. It can be discharged by producing Form `F' and on the particulars stated in the said form being found true on being enquired into by the assessing officer. From this it does not follow that once order is made accepting Form `F' as true, it is not subject to the power of reopening or revision contained in Section 16 and 32 of the Tamil Nadu General Sales Tax Act read with Section 92 of the Central Sales Tax Act. After all, Section 6-A is also one of the provisions in this Act. There is no reason to elevate it to a higher status than the rest of the provisions. If it were the intention of the Parliament to invest the "deemed" fact with the status of a conclusive presumption, the Parliament would have said so . The Court cannot supply that requirement. Ordinarily speaking, an order accepting - or rejecting - Form `F' as true will be passed only during the assessment proceedings. There may be case where such an order is passed earlier to the making

of the assessment. Even so, such an order is incidental to and integrally connected with the assessment of the dealer. The High Court has characterised the said provision as a step- in-aid of assessment. Be that as it may, if the very assessment is subject to the power of reopening or revision, it is un-understandable as to how an order under Section 6- A(2) is not similarly amenable. The power to reopen can exercise under Section 16 of the Tamil Nadu General Sales Tax Act "where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax". The power is very wide, though it may be that it should not be mechanically or lightly exercised.

Sri Parasaran has relied upon certain decisions in support of his contention. The first decision relied upon is in Izhar Ahmad Khan v. Union of India [1962 Suppl.(3) S.C.R. 235], which dealt inter alia with Section 9 of the Citizenship Act, 1955. Sub-section (1) of Section 9 provides that if any citizen of India voluntarily acquires citizenship of another country, he shall cease to be a citizen of India with effect from the date of such acquisition. Sub-section (2) says that if any question arises as to whether, when or how any person has acquired citizenship of another country, it shall be determined by such authority in such manner and having regard to such rules of evidence as may be prescribed in that behalf. Rule 30 of the Rules framed under the Act prescribes Central Government as the authority to decided the said question while Rule 3 incorporate a conclusive presumption. According to it, "fact that a citizen of India has obtained on any date a passport from the government of any other country shall be conclusive proof of his having voluntarily acquired the citizenship of the country before that date". The petitioner challenged the validity of Rule 3 saying that Rule 3 was not a mere rule of evidence but a rule of substantive law and, therefore, outside the purview of the delegated authority conferred by Section 9(2) as well as general rule-making power conferred upon the Central Government by Section 18. Indeed, Section 9(2) itself was impugned on the ground that it purported to deprive the petitioner of their fundamental right under Article 19(1)(e) of the Constitution. All these contentions were rejected. We are unable to see how the ratio of or discussion in this decision in this decision is of any help to the appellant herein. Rule 3 of the Citizenship Act expressly enacts a conclusive presumption and that called for a discussion as to the nature of presumptions, the types of presumptions and their evidentiary value.

Mahant Dharam Das v. State of Punjab [1975 (3) S.C.R. 160] dealt with certain provision of the Sikh Gurudwara Act, 1925. Section 3(4) of the Act made the declaration in the notification issued under Section 3(2) that a particular institution is a Sikh Gurudwara conclusive and beyond challenge. The constitutionality of the said provision along with certain other provisions was challenged by the appellants before this Court. This Court examined the historical background to the said Act, the scheme of the Act and its object and repelled the challenge to he validity of its provisions. The court held that the determination under Section 3(4) is not a judicial determination and that it was designed to obviate the prospect of a protracted litigation in a matter involving the religious sentiments of a large section of sensitive people proud of their heritage. Creation of the said conclusive presumption by the statute, the Court held, was neither incompetent nor discriminatory. We may again point out that this decision also dealt with a statutory provision which expressly created a conclusive presumption unlike the case before us.

Section 29-B of the Uttar Pradesh Sales Tax Act, considered by this Court in Sodhi Transport v. State of Uttar Pradesh [1986 (1) S.C.R. 939], provided that "when a vehicle coming from any place outside the State and bound for any other place outside the State passes through the State, the driver or other person in charge of such vehicle shall obtain in the prescribed manner a transit pass from the officer in charge of the first check post or barrier after his entry into the State and deliver it to the officer in charge of the check post or barrier before his exit from the State, failing which it shall be presumed that the goods carried thereby have been sold within the State by the owner or person in charge of the vehicle". It is relevant to notice that the said provision did not create a conclusive presumption but only a rebuttable presumption of law. Since the said provision did not create a conclusive presumption but permitted the person concerned to rebut the said presumption by such evidence, as he may place before the authority, the validity of the said provision was held to be beyond challenge. This decision, in our opinion, is equally of no help to the appellant herein.

Sri Parasaran then relied upon the decision in Balabhagas Hulaschand & Anr. v. State of Orissa [(1976) 37 S.T.C. 207]. At page 214, Fazl Ali, J. set out certain situations to illustrate when does an inter-State sale take place or for that matter it does not. Case No.II reads thus:

> "Case No.II.--A, who is a dealer in State x, agrees to sell goods to B, but he books the goods from State x to State Y in his own name and his agent in State Y receives the goods on behalf of A. Thereafter the goods are delivered to B in State Y and if B accepts them a sale takes place. It will be seen that in this case the movement of goods is sell nor is the movement occasioned by the sale. The seller himself takes the goods to State Y and sells the goods there. This is, therefore, purely any internal sale which takes place in State Y and falls beyond the purview of section 3(a) of the Central Sales Tax Act not being an inter-State sale."

Sri Parasaran says that the facts of his case fall squarely within the said Case No.II. It is, however, relevant to notice that "Case No.II" in this decision has been explained in a later decision of this Court in Sahney Steel and Press Works Ltd. & Anr. v. Commercial Tax Officer & Ors. [(1985) 60 S.T.C. 301]. This is how the said illustrative Case No.II in Balabhagas Hulaschand has been dealt with in Sahney Steel and Press:

> "Considerable reliance has been placed by the petitioners on one of the illustrations given by this Court in Balabhagas Hulaschand v. State of Orissa [1976] 37 STC 207 (SC) where case No.II was set out as follows:
>
> `Case No.II.--A, who is a dealer in State z, agrees to sell goods to B, but he books the goods from State x to State Y in his own name and his agent in State Y receives the goods on behalf of A. Thereafter the goods are delivered to B in State Y and if B accepts them a sale takes place. It will be seen that in this case the movement of goods is neither in pursuance of the agreement to the sell nor is the movement occasioned by the sale. The seller himself takes the goods to State Y and sells the goods there. This is, therefore, purely any internal sale which takes place in State Y and falls beyond the purview of section 3(a) of the Central Sales Tax Act not being an

> inter-State sale.' It is not clear from this illustration whether the goods were particular and specific goods earmarked for delivery to the buyer when they commenced their movement from State X. Apparently not, because it is pointed out that the movement of the goods was neither in pursuance of the agreement to sell nor was the movement occasioned by the sale. The case is distinguishable from the present one where particular goods were manufactured in Hyderabad in satisfaction of an order placed by the buyer who desired delivery outside the State. The goods moved from the registered office at Hyderabad as a result of a covenant in the contract that the goods manufactured at Hyderabad according to the specifications stipulated by the buyer should be the very goods delivered to him outside the State."

Indeed, the decision in Sahney Steel and Press is precisely, what the Tamil Nadu State says is, the factual position in cases where notices to reopen the assessments have been given. The facts of Sahney Steel and Press are the following: the petitioner-company was engaged in the manufacture and sale of certain steel products which were utilised as raw-material for making electronic motors, transformer etc. The petitioner's registered office and factory was at Hyderabad in Andhra Pradesh. It had branches in Bombay, Calcutta and Coimbatore which were engaged in effecting sales and looking after sales promotion and liaison work. The branches received orders from customers within and outside their respective States for the supply of goods conforming to definite specifications and drawing and advised the registered office at Hyderabad. The petitioner thereupon manufactured the goods according to the said design and specification, at Hyderabad, and despatched them to the respective branches by way of transfer of stock. Such goods were booked to "self" and sent by lorries. The goods received by the branches were entered into the stock account of the branches and kept in stock for ultimate delivery to the customers. The customers examined the goods at such branches and accepted them. The branches raised the bills and received the sale price. They also furnished Form `F' to the registered office at Hyderabad. On these facts, the question arose whether it is an inter-State sale taxable in the State of Andhra Pradesh or whether it is an intra-State sale in the other State where the goods are delivered. It was held that it was a case of an inter-State sale and that the movement of goods from Hyderabad in Andhra Pradesh to the other State was as a result of an on incident of the contract of sale. Of course, it was a case where the goods were manufactured according to the design and specification supplied by customers and them despatched from Hyderabad to such other State. Be that as it may, since we are not concerned with the facts in these appeals, it is not for us to say what is the factual situation in the matter now pending before the assessing authorities and what is the proper inference to be drawn therefrom.

The last decision relied upon by Sri Parasaran is in Chunni Lal Parshadi Lal v. Commissioner of Sales Tax, Lucknow [(1986) 62 S.T.C. 112]. Where a dealer sold the goods to another registered dealer and if the purchasing dealer furnished the certificate in Form III-A [which means that the goods purchased were intended for resale in the same condition] the selling dealer was not liable to pay tax under the Uttar Pradesh Sale Tax Act. In that case, the purchasing dealer furnished Form III-A which was produced by the assessee-dealer and on that basis, his sale was not taxed. Subsequently, it was found that the purchasing dealer did not resell those goods but used them otherwise. On that basis, the assessment of the selling dealer was sought to be reopened. It was held by this Court that the reopening of assessment was incompetent in law inasmuch as there was no

finding that there was collusion between the selling dealer and the purchasing dealer. It was held that the mere fact that the purchasing dealer. It was held that the mere fact that the purchasing dealer is subsequently found to have issued Form III-A wrongly does not confer upon the assessing authority the jurisdiction to reopen the assessment of the selling dealer. The principle of this decision, we find, has no analogy to the situation in the appeals before us.

We are, therefore, of the opinion that Section 6-A does not create a conclusive presumption and that an order accepting Form `F', whether passed during the assessment or at any point earlier thereto, is ultimately a part and parcel of the order of assessment. Its amenability to power of reopening and revision depends upon the provisions of the concerned State sales tax enactment by virtue of Section 9(2). It is also not possible to agree that an order under Section 6-A(2) has an independent existence. It does not have. An order refusing to accept Form `F' may or may not be appealable independently depending upon the provisions of the local sales tax enactment but it is certainly capable of being questioned in the appeal preferred against the order of assessment - for the simple reason that an order accepting or rejecting Form `F' does affect the quantum of turnover taxable under the Act. So far as the power of reopening is concerned, it is enough for us to say that if the order(s) accepting Form(s) `F' is sought to be reopened, it can be done as part of reopening of assessment or , may be, independently - that depends upon the language of the relevant provision in the local sales tax enactment. In the present case, the provision relevant is Section 16 of the Tamil Nadu General Sales Tax Act. From the language of Section 16, it appears that it may be possible to reopen an order accepting Form `F' as true without, at the same time, reopening the assessment. Even so, it must be noticed that such a reopening necessarily leads to revisions/modification of the assessment order. It is equally obvious that if the reopening is confined to the order accepting Form `F' as true, the inquiry shall be confined to the matters relevant thereto. Whether that power has been exercised validly in these case does not fall for our consideration. Hence, no opinion need be expressed on that aspect. The fact that the assessments are sought to be reopened only in respect of the turnover relating to sale of vehicles to State Transport Undertakings in various States but not with respect to turnover relating to sales to persons other than S.T.Us. cannot be a ground to invalidate the proceedings taken.

Sri Parasaran laid stress upon the meaning and content of Section 4 of the Central Sales Tax Act. He submitted that the law is different in the case of specific or ascertained goods and unascertained or future goods. According to the principles of this section, Sri Parasaran says, the sale of vehicles must be held to have taken place in the State in which they are delivered [to the S.T.U. concerned]. But this is again a question of fact upon which no opinion can be expressed in these proceedings. Whether the contract of sale was in respect of specific or ascertained goods or whether it was in respect of unascertained or future goods and if it is the latter, when did the appropriation of the goods to the contract of sale take place are all questions of fact which do not arise for consideration in these appeals. Sri Parasaran says that even according to the show-cause notices issued by the Tamil Nadu authorities under Section 16 of the Tamil Nadu General Sale Tax Act read with Section 9(2) of the Central Sales Tax Act, there is only one sale, namely, the sale to the S.T.U. in the other State concerned. This sale, according to the learned counsel, has taken place in the other State. May be or may not be According to the respondents, the sale that has taken place is an inter-State sale. This is yet again a question of fact.

Having thus disposed of the main contentions of the appellant, we must yet say that the situation the appellant, we must yet say that the situation the appellant is facing is no doubt real, which may indeed put it in good amount of jeopardy. If the vehicles which have been sold to, say, Maharashtra S.T.U. have been moved to the appellant's R.S.O in Maharashtra and that R.S.O. has issued Form `F' [which Form `F' has been accepted by the Tamil Nadu authorities during the course of assessment of the appellant for the relevant assessment year] reopening the said assessment/orders accepting Form `F' after a number of years, seeking to treat the said movement of goods as consequent upon or incidental to contract(s) of sale [and, therefore, amounting to inter-State sale taxable in the State of Tamil Nadu] does present the appellant with a serious problem inasmuch as it says that it has already paid tax on sale of said vehicles in Maharashtra under the Bombay Sale Tax Act. Sri Parasaran submits that unless the sales are effected within the purchasing State, those States [and their S.T.Us.] are not willing to purchase from the appellant. Learned counsel suggests that inasmuch as the State governments, generally speaking, are strapped for funds and since sales tax is the major source of revenue for all of them, every State is trying to derive the maximum revenue on this account and because the Central sales tax levied and collected in a State ultimately goes back to that State, the Tamil Nadu State is anxious to treat the consignment/transfer of vehicles as inter-State sales. The learned counsel bitterly complains about the attitude adopted by the Sale Tax authorities in Tamil Nadu who, according to him, are pre-determined to treat the transactions as inter-State sales and levy tax thereon ignoring the true facts and the correct legal situation. While we do not express any opinion on the correctness or otherwise of this submission, this case brings to the fore the advisability or necessity of having a Central mechanism which would decide once for all questions of this nature. We may elucidate the point. The Maharashtra State has levied tax upon the sale of vehicles by the appellant to Maharashtra S.T.U. under the Bombay Sales Tax Act treating them as sales effected in the State of Maharashtra. Those orders have become final. Now, the Tamil Nadu authorities are seeking to reopen the assessment and proposing to treat the said movement of vehicles from Tamil Nadu to Maharashtra as inter-State sales. Suppose, tomorrow it is held by the Tamil Nadu authorities that they were indeed inter-State sales and tax is levied and collected by the Tamil Nadu State, can the appellant go and legitimately ask the Maharashtra authorities to refund the tax paid by it on the sale of vehicles in Maharashtra? It may not be able to do so, as the law now stands. The Maharashtra authorities may well tell the appellant that those orders have become final and their orders cannot be reopened because authorities of another State have taken a contrary view. We are not sure whether it is possible to stipulate that while deciding the question whether the said transfer of vehicles constitutes inter-State sale or not, the Tamil Nadu authorities shall give notice to, implead the Maharashtra Sales Tax authorities, hear them and decide so that their decision would be binding upon the Maharashtra authorities. The law as now in force does not appear to permit such a course more particularly in a situation where the orders of Maharashtra Sales Tax authorities have become final, as stated above. The Maharashtra authorities may well refuse to appear before the Tamil Nadu authorities. They may not accept the jurisdiction of Tamil Nadu authorities over them or over the order passed by them. They may also refuse to submit to the jurisdiction of the Tamil Nadu authorities. On this aspect, we must, however, notice an observation in a recent decision of this Court in Bharat Heavy Electricals Limited v. Union of India [1996 (4) S.C.C. 230], wherein the following observation occurs at page 239:

> "If a dispute arises in which State is the tax lawfully leviable, the authorities under the Act have got to decide it. If, in a given case, an assessee says that the particular transaction which is sought to be taxed in State `A' has already been taxed in State `B', nothing prevents him from impleading State `B' in proceeding in State `A' and have the matter decided in the presence of all parties. It must be remembered that while acting under the Central Government and not as the machinery of the State Government. This view of ours get reinforced if one keeps the provisions in Section 8(2-A) of the Central Sales Tax Act in view."

The said observation, no doubt, projects a point of view, but it has to be understood in the particular facts of that case. In that case, orders of Sales Tax authorities of any particular State had not become final. When more than one State sought to tax the same transaction on different bases, B.H.E.L. came to this Court by way of a writ petition under Article 32 of the Constitution and certain directions were made by this Court. Moreover, the matter there was decided by the High Court and the various State governments who were impleaded as respondents did not object to the jurisdiction of the High Court to decide the dispute - dispute as to the true nature of the transaction and who should tax it. In this matter, the situation is different. The orders of several State authorities have become final and there is no way provided by the Act following which the finality of those orders can be undone and the question of the true nature of the transaction decided afresh with participation of the State authorities of both the States. There is yet another fact, viz., the State governments are objecting to the jurisdiction of Tamil Nadu Sale Tax authorities to summon them and decide the question which may require them to revise own orders. This situation did not arise in B.H.E.L. It is in this situation that the idea of a Central mechanism has come to fore. This does not, of course, mean that this court cannot devise an appropriate method to meet the interests of justice. It can Appropriate directions can always be given to both the concerned States to submit to the jurisdiction of the particular designated Court or Tribunal which will decide the questions regarding the true nature of the transaction after hearing all the affected parties. The fact that those orders of authorities in certain proceedings have become final may not stand in the way of this Court giving appropriate directions under Article 32 or 136 or 142, as the case may be, but that situation has not yet arisen in this case. Let the Tamil Nadu assessing authorities first decide the matter before them. Thereafter, if the orders are against the appellant, were permit the appellant to file the appeal (s) directly before the Tribunal. If the Tribunal decides in favour of the appellant, no further question would arise. But if it decides against the appellant, to wit, if it holds that the scale of vehicles to the S.T.Us. of various State are inter- State sales and if it is found that those very transaction have also been taxed as intra-State sales under the State sales tax enactments of another State, that would be the stage for considering the advisability of giving appropriate directions of the nature contemplated above by the Court - that is, of course, if by that time, no central mechanism to meet such a situation comes into existence.

In the interest of inter-State trade and commerce, the suggestion for creation of a central mechanism to decide such disputes - which are really in nature of inter-State disputes - may be well worth considering; every dealer affected may not be in a position to approach this Court for appropriate directions. it is for the Government of India to consider this aspect and take necessary decision in that behalf.

In the light of the above discussion, we dismiss these appeals. If the assessing authorities decide against the appellant, it shall be open to them to file appeal(s) before the Tribunal directly. [This direction is given to shorten the litigation and in the interests of justice.] If and when the Tribunal decides against the appellant, it shall be open to the appellant to approach this Court for appropriate directions. In the circumstances of the case, it is further directed that in case the Tamil Nadu Sale Tax Appellant Tribunal comes to the conclusion that the transactions in question are inter-State sales upon which Central sales tax is leviable in the State of Tamil Nadu, the State of Tamil Nadu shall not enforce their demand for a period of eight weeks from the date of the decision of the Tribunal. Further, till the issue is decided by the Sale Tax Appellate Tribunal, no Central sales tax shall be demanded from the appellant, provided it is established by the appellant that in respect of the transaction, the appellant has paid tax in another State treating it as an intra-State sale in that other State.

The appeals are accordingly dismissed. No Costs.