Supreme Court of India
A. V. Fernandez vs The State Of Kerala on 2 April, 1957
Equivalent citations: 1957 AIR 657, 1957 SCR 837
Author: N H Bhagwati
Bench: Bhagwati, Natwarlal H., Jagannadhadas, B., Imam, Syed Jaffer, Menon, P. Govinda, Kapur, J.L.

PETITIONER:
A. V. FERNANDEZ

Vs.

RESPONDENT:
THE STATE OF KERALA

DATE OF JUDGMENT:
02/04/1957

BENCH:
BHAGWATI, NATWARLAL H.
BENCH:
BHAGWATI, NATWARLAL H.
JAGANNADHADAS, B.
IMAM, SYED JAFFER
MENON, P. GOVINDA
KAPUR, J.L.

CITATION:
1957 AIR 657 1957 SCR 837

ACT:
Sales Tax-Assessment--Gross and net turnover--Purchase of copra--Sale of oil both inside and outside the State-Deductions- -Assessable turnover-Constitution of India, Art. 286--Travancore-Cochin General Sales Tax Act, 1125 (Act XI of 1125 M.E.), SS. 2 (j) (k), 3, 26--Travancore-Cochin General Sales Tax Rules, 1950, rr. 7 (k), 20 (2).

HEADNOTE:
The business of the appellant consisted in the purchase of copra, manufacture of cocoanut oil and cake therefrom and sale of oil and cake to parties inside the State of Travancore-Cochin and sale of oil to parties outside the State. Before the coming into force of the Constitution of India, under the provisions of the Travancore-Cochin General Sales Tax Act, 1125, and the rules made thereunder, for the purposes of assessment to sales tax, the appellant wag entitled to include in his gross turnover the total value of the oil sold by him whether inside the State or outside the State and to deduct therefrom the whole of the value of the

copra purchased by him. Subsequently, in 1951, the Act was amended by the addition of s. 26 which, inter alia, provided: "Notwithstanding anything contained in this Act..... a tax on the sale or purchase of any goods shall not, after the 31st day of March, 1951, be imposed where such sale or purchase takes place in the course of inter-,State trade..... For the year 1951-1952, the Sales Tax Officer assessed the appellant to sales tax on a net assessable turnover by taking the value of the whole of the copra purchased by him, adding thereto the respective values of the oil and the cake sold inside the State and deducting only the value of the copra corresponding to the oil sold inside the State. It was contended for the appellant that in the calculation of the net turnover he was entitled to include the total value of the oil sold by him, both inside and outside the State, and deduct therefrom the total value of the copra purchased by him, and further that, under the overriding provision of the Act under S. 26, he was entitled to have the value of the oil sold outside the State deducted.

Held, that the calculation made by the Sales Tax Officer of the net turnover was correct.

The non-obstante provision contained in S. 26 of the Act has the effect of taking transactions relating to inter-State trade out of the purview of the Act and they are excluded in the calculation

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of the gross turnover as well as the net turnover on which sales tax can be assessed.

Aswani Kumar Ghosh v. Arabinda Bose, (1953) S.C.R. 1, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 232 of 1955.

Appeal under Article 132 (1) of the Constitution of India from the Judgment and Order dated November 24, 1954, of the former Travancore-Cochin High Court in Original Petition No. 53 of 1954.

T.N. Subramania Iyer and R. Ganapathy Iyer, for the appellant.

K.S. Krishnaswamy Iyengar and Sardar Bahadur, for the respondent.

1957. April 2. The Judgment of the Court was delivered by BHAGWATI J.-This appeal with a certificate of fitness under Art. 132 (1) of the Constitution is directed against the order of the High Court of Travancore-Cochin dismissing the Original Petition No. 53 of 1954 filed by the appellant

under Art. 226 for quashing the order of the Sales Tax Officer, 2nd Circle, Quilon, assessing him to sales tax on a net assessable turnover of Rs. 7,54,144-8-4 for the year 1951-52 (1st April, 1951 to 31st March, 1952) and for issuing proper directions to the Sales Tax Authorities to assess the same according to law.

The appellant is a registered manufacturer of cocoanut oil and cake who has obtained a certificate of registration in Form VI as per sub-r. (i) of r. 20 of the Travancore- Cochin General Sales Tax Rules, 1950. The business of the appellant for the purposes of this appeal consisted in the' purchase of copra, manufacture of cocoanut oil and cake and sale of the same to parties inside the State of Travancore- Cochin and sale of the oil to parties outside the State. In the year 1951-52, the appellant purchased copra of the value of Rs. 7,16,048-1-4 and after manufacturing oil therefrom in his oil mills he sold the oil partly in the State and partly outside the State and the cake entirely within the State., The total value of the oil sold was Rs. 6,76,719-0-11 out of which the sales outside the State were of the value of Rs. 3,67,816-10-1 and the value of the cake sold in the State was Rs. 67,155-155. The total gross turnover of the appellant was thus Rs. 14,59,923-1-8 and he claimed to deduct therefrom the whole of the purchase price of the copra under r. 7 (1) (k) read with r. 20. The net turnover according to him was therefore only Rs. 7,43,875-0-4 and he claimed to deduct out of this a further sum of Rs. 3,67,816- 10-1 being the sale price of oil in inter-State transactions which could not be taxed under Art. 286 of the Constitution, thus showing a net assessable turnover of only Rs. 3,76 058-6-3.

The Sales Tax Officer, 2nd Circle, Quilon, however fixed the net assessable turnover of the appellant at Rs. 7,54,144-8-4. He took the purchase value of the copra at Rs. 7,16,048-1-4 but added thereto Rs. 3,08,902-6-10 and Rs. 67,155-15-5 being the respective values of the oil and the cake sold inside the State, excluding the sale price of inter-State sales of oil, namely, Rs. 3,67,816-10-1, from such computation. Having thus excluded the sale price of inter-State sales of oil, he deducted only the value of the copra corresponding to the oil sold inside the State namely, Rs. 3,35,216-0-0, as against the sum of Rs.7,16,048-1-4 deducted by the appellant. He added a sum of Rs. 3,385-0-3 being the price of gum sold by the appellant and deducted a further sum of Rs. 6,130-15-6 being the sales tax collected by him. He thus arrived at the net assessable turnover of Rs. 7,54,144-8-4 and assessed the appellant for sales tax on the same.

The appellant preferred an appeal to the Assistant Sales Tax Commissioner (S.T.A. No. 1480 of 1953-54) who dismissed the same by his order dated May 10, 1954. A further petition to the Government for redress met with the same fate and the appellant thereupon filed the petition in the High Court of Travancore. Cochin being O.P. No. 53 of 1954 with the result indicated above.

The decision of this appeal turns on the construction of the relevant provisions of the Travancore-Cochin General Sales Tax Act, 1125 (Act XI of 1125 M.E.) and the Travancore-Cochin General Sales Tax Rules, 1950, made thereunder which may be conveniently set out here. The preamble to the Act stated that it was enacted to provide for the levy of a general tax on the sale of goods in the United State of Travancore and Cochin. Section 2 (j) defined a " sale " as under:

" Sale " with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration..... Explanation (2) Notwithstanding anything to the contrary in the Sale of Goods Act for the time being in force, the sale or purchase of any goods shall be deemed for the purpose of the Act, to have taken place in the United State wherever the contract of sale or purchase might have been made. "

Section 2 (k) defined " turnover " as " the aggregate amount for which goods are either bought by or sold by a dealer, whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover. "

An explanation was added to this definition' which is, however, not material for our purpose.

Section 3 was the charging section and it provided for levy of taxes on sales of goods in the terms following:- " (1) Subject to the provisions of this Act;(a) every dealer shall pay for each year a tax on his total turnover for such year; and (b) the tax shall be calculated at the rate of three pies for every Indian rupee in such turnover.....

(3) A dealer whose total turnover in any year is less than ten thousand Indian rupees shall not be liable to pay any tax for that year under sub-section_ (1) or sub-section (2).

(4) For the purposes of this section and the other provisions of this Act turnover shall be determined in accordance with such rules as may be prescribed. (5) The taxes under sub-sections (1) and (2) shall be assessed, levied, and collected in such manner and in such instalments, if any, as may be prescribed. Provided that:-

(i) in respect of the same transaction of sale, the buyer or the seller but not both, as determined by such rules as may be prescribed, shall be taxed; (ii) where a dealer has been taxed in respect of the purchase of any goods in accordance with the rules referred to in clause (i) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him."

Section 4 enacted that the provisions of the charging section shall not apply to the sale of electrical energy and any goods other than arrack and foreign liquor on which duty is or may be levied under the Travancore or Cochin Abkari Act, or the Travancore or Cochin Opium Act. Section 24 conferred upon the Government power to make rules to carry out the purposes of the Act.

The Act as originally enacted received the assent of the Rajpramukh on January 5, 1950. After the advent of the Constitution, however, the Act was amended by the Travancore-Cochin General Sales Tax (Amendment) Act, 1951, and s. 26 was added thereto which ran as under: ' " Notwithstanding anything contained in this Act :-

(a) a tax on the sale or purchase of goods shall not be imposed under this Act (i) where such sale or purchase takes place outside the State of Travancore-Cochin; or (ii) where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territory of India ; (b) a tax on the sale or purchase of any goods shall not, after the 31st day of March, 1951, be imposed where such sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide. (2) The explanation to clause (1) of Art. 286 of the Constitution of India shall apply for the interpretation of sub-clause (i) of clause(a) of sub-section (1)."

The Travancore-Cochin General Sales Tax Rules, 1950, which were made by_the Government under the rule-making power conferred upon it by sub-ss. 4 & 5 of s. 3 read with s. 24 of the Act laid down inter alia the provisions in regard to the determination of the total turnover of a dealer which was liable to be taxed. Rule 4 provided for the determination of the gross turnover:

" (1) Save as provided in sub-rule (2) the gross turnover of a dealer for the purposes of these rules ,shall be the amount for which goods are sold by him. (2) In the case of the undermentioned goods the gross turnover of a dealer for the purposes of these rules shall be the amount for which the goods are. bought by him.

(a) Cocoanut, copra, ground-nut and its kernel.

(b) Cashew, and its kernel.

Rule 7 provided that the tax or taxes under s. 3 or 5 or the notification,or notifications under s. 6 shall be levied on the net turnover of a dealer. It further provided that in determining the net turnover, the amounts specified in cls.

(a) to (k) were, subject to the conditions specified therein, to be deducted from the gross turnover. Clause (k) is relevant for our purpose. It specified " all amounts which a registered manufacturer of cocoanut and/or groundnut oil and cake may be entitled to deduct from his gross turnover under Rule 20 subject to the conditions specified in the rule. "

Rule 20 so far as it is material for our purpose provided:

" 1. Any dealer who manufactures cocoanut/ groundnut oil and cake from cocoanut and/or copra or groundnut and/or/kernel purchased by him may on application to the assessing authority having jurisdiction over the area in which he carries on his business, be registered as a manufacturer of cocoanut/groundnut oil and cake and a certificate issued in Form VI.

2. Every such manufacturer shall be entitled to a deduction under clause (k) of sub-rule (i) of rule 7 equal to the value of the cocoanut and/or copra or groundnut and/or kernel purchased and converted by him into oil and cake provided that the amount for which the oil is sold is included in his turnover."

It is not necessary to refer to any other rule for the purposes of this appeal.

The main controversy between the parties centres on the method of calculation of the net turnover. The appellant contends that in the calculation of such net turnover he is entitled to include the total value of the oil sold by him, viz., Rs. 6,76,719-0-11, irrespective of the fact whether these sales were effected inside the State or outside the State and deduct therefrom the total value of copra purchased by him from which the whole quantity of oil sold by him was manufactured, viz., Rs. 7,16,048-1-4. The resultant figure, according to him, represents the net assessable turnover on which the Sales Tax Authorities would be entitled to assess him to sales tax if the position in law was as is stood before the amendment of the Act by the Travancore-Cochin General Sales Tax (Amendment) Act, 1951. He next contends that s. 26 which was added to the Act by the Travancore-Cochin General Sales Tax (Amendment) Act 1951, prohibits the levy amongst others of a tax on the sale or purchase of goods where such sale or purchase takes place in the course of inter-State trade or commerce. This is an overriding provision which, it is contended, entitled him to deduct the value of the oil sold outside the State, viz., Rs. 3,67,816-10-1, from the assessable turnover arrived at as above. The result of this mode of calculation is that he claims to deduct from the gross turnover the whole of the purchase price of copra, viz., Rs. 7,16,048-1-4 and not the purchase price of copra which can be allocated to his sales of oil inside the State.

The Sales Tax Authorities on the other hand, contend that the appellant is not entitled to take into computation at all his 'sales of oil outside the State and is also not entitled to deduct from his gross turnover the purchase price of copra allocated to the oil sold to persons outside the State. They claim to lift the whole of these sales of oil outside the State inclusive of the purchase price of the copra which can be allocated to them out of the calculations of the net turnover because of the provisions of s. 26 set out above, relying upon the non-obstante provision contained therein, viz., "Notwithstanding anything contained in this Act, a tax on the sale or purchase of goods shall not be imposed under this Act where such sale or purchase takes place in the course of inter-State trade or commerce."

We have to decide which of these calculations of the net turnover is correct having regard to the relevant provisions of the Act and the rules made there-under.

The definition of 'sale" contained in s. 2 (j) is wide enough to include, the sales of oil manufactured by the appellant whether these sales are effected inside the State or outside the State. The definition of " turnover " contained in s. 2 (k) of the Act also makes no distinction between the sales inside the State and out,side the State. The " turnover " is there defined as the aggregate amount for which goods are either bought or 3old by a dealer and, that definition comprises within its scope both these types of sales whether inside the State or outside the State. This turnover of a dealer is under s. 3, sub-s. (4) to be determined in accordance with such rules as may be prescribed. Rule 4 made by the Government under the rule- making power prescribes that the gross turnover of a dealer for the purposes of the rules shall be the amount for which the goods are sold by him. This rule also does not make any distinction between sales inside the State or outside the State. After having thus provided for the inclusion of all sales within the gross turnover, r. 7 provides that the tax or taxes under s. 3 (which is the charging section) shall be levied on the net turnover of a dealer. Such net

turnover is to be arrived at after deducting from the gross turnover various amounts specified in cls. (a) to (k) thereof and cl. (k) provides that a registered manufacturer of cocoanut and/or groundnut oil and cake will be entitled to deduct from his gross turnover such amounts as are mentioned in r. 20 subject to the conditions specified therein. The-deduction under r. 20 is available to a dealer who manufactures cocoanut/groundnut oil and cake from cocoanut and " /or copra or groundnut and/or kernel purchased by him and he is entitled to deduct the value of the cocoanut and/or copra or groundnut and/or kernel purchased and converted by him into oil and cake provided that the amount for which the oil is sold is included in his turnover. Here also we find no distinction made between sales inside the State or outside the State.

On a prima facie reading of these provisions contained in the Act and the rules made thereunder it would appear that a manufacturer of cocoanut or groundnut oil and cake would be entitled to include in his gross turnover the total value of the oil sold by him Whether inside the State or outside the State and to deduct from such gross turnover the whole of the value of the copra purchased by him and converted into oil and cake irrespective of the fact whether such oil or cake was sold by him inside the State or outside the State. The only thing which he had to do under r. 20, sub-r.(2) was to include the amount for which the oil is sold in his turnover and he would then under r. 7(1)(k) be entitled to deduct from his gross turnover the whole of the price of the copra purchased and converted by him into oil and cake, again irrespective of the fact whether the same had been sold by him inside the State or outside the State. This was certainly the position as it obtained prior to the addition of the s. 26 to the Act by the Travancore-Cochin General Sales Tax (Amendment) Act, 1951. We have, therefore., to consider what is the impact of s. 26 on the other provisions of the Act and the rules made thereunder. The High Court decided against the appellant observing that the definitions given in s. (2)(j) and (k) of the Act applied only in the absence of "anything repugnant in the subject or context", and on a perusal of the relevant provisions of the Act and the rules made thereunder, it was of opinion that these definitions were clearly inapplicable for the following reasons: "There can be no doubt that what has been intended is a taxation of copra at the purchase point and the avoidance of sales tax in respect of the oil extracted by a registered manufacturer from such copra to the extent of the value of the copra used for the said manufacture in all those cases where but for the concession he would have been liable to pay both the purchase tax on copra and the sales tax on oil under the Travancore-Cochin General Sales Tax Act, 1125. In other words, the object is the avoidance of a double taxation by the State, one at the purchase point of copra and the other at the sale point of oil, and it is impossible to invoke the definition and say that the concession will be available to a registered manufacturer even in those cases where only one and not both the taxes can be realized from him under the provisions of the Act."

The answer given by the learned counsel for the appellant to the above reasoning was that in fiscal statutes what you have got to look to is not the spirit of the statute but the letter of the law; and if you could not bring a particular tax within the letter of the law, the subject could not be made liable for the same. Our attention was drawn in this connection to the observations of Lord Russell of Killowen in Inland Revenue Commissioners v. Duke of Westminster(1) : "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." As Lord Cairns said many years ago in Partington v. The Attorney General (1):-"As I understand the (1) [1936] A.C. 1, 24.

(2)(1869) 4 H.L. 100, 122.

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."

The passage was quoted with approval by the Privy Council in the Bank of Chettinad v. Income Tax Commissioner (1) and the Privy Council registered its protest against the suggestion that in revenue cases "the substance of the matter" may be regarded as distinguished from the strict legal position. (See also F. L. Smidth & Co. v. F. Greenwood (2)). It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. We must of necessity, therefore, have regard to the actual provisions of the Act and the rules made thereunder before we can come to the conclusion that the appellant was liable to assessment as contended by the Sales Tax Authorities. It may be noted at the outset that the main bulk of the Sales Tax Acts enacted by the various Provincial Legislatures was enacted before the Constitution. There were on the Statute Book various Sales Tax Acts enacted by the Provincial Legislatures, viz., Bihar Sales Tax Act, 1947, Bengal Finance (Sales Tax) Act, 1941, Madhya Pradesh Sales Tax Act, 1947, Madras Sales Tax Act, 1939, Mysore Sales Tax Act, 1948, Orissa Sales Tax Act, 1947, East Punjab General Sales Tax Act, 1948, and the Uttar Pradesh Sales Tax Act, (1) A.I.R. (1940) P.C. 183. (2) VIII T.C. 193, 206, 1948,---all of which levied sales tax on a more or less uniform basis bringing within their ken not only the sales which were actually effected within the territory but also sales where adopting the nexus theory eve1 one of the ingredients of sale was found to have taken place within the territory. The Assam Sales Tax Act, 1947, and the Hyderabad General Sales Tax Act, 1950, also followed the same pattern. When the Constitution came to be inaugurated on January 26, 1950, Art. 286(2) laid down restrictions on the State Legislatures to enact laws imposing or authorising the imposition of tax on the sale or purchase of goods in certain cases therein specified, so that after January 26, 1950, no State could impose a tax on the sale or purchase of goods falling within these categories. The Sales Tax Acts enacted by the various Provincial Legislatures had, therefore, to be brought in line with this provision of the Constitution and various expedients were devised by the State Legislatures in order to effectuate this object. This object was sought to be achieved in the main bulk of the Sales Tax Acts by adding towards the end of the Acts sections like s. 26 of the Travancore-Cochin General Sales Tax Act, 1125, incorporating therein the terms of Art. 286 of the Constitution. The non-obstante provision was thus enacted in the main bulk of the Sales Tax Acts which laid down:

"Notwithstanding anything contained in this Act the tax on the sales or purchase of goods shall not be imposed under this Act where..... (and the provisions of Art. 286 were in terms incorporated therein)." A different expedient was adopted in the Assam Sales Tax Act, 1947 and the Hyderabad General Sales Tax Act, 1950. The Assam Sales Tax Act, 1947, had incorporated therein an addition to the charging section (section 3 of the Act) and s. 3 (1-A) which was inserted by s. 3 of the Assam Sales Tax (Amendment) Act, 1947 (Assam Act IV of 1951) was to the following effect:

"Nothing in sub-section (1) shall,except in cases covered by the first proviso to sub-section (12) of section 2 of this Act be deemed to render any dealer liable to tax on the sale of goods-where such sale takes place:

(1) outside the State of Assam;

(2) in the course of the import of the goods into, or export of the goods out of, the territory of India; or (3) in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide. The Hyderabad General Sales Tax Act, 1950 had a similar provision incorporated in its definition of sale given in s. 2 (k) of the Act. The Explanation (2) which was substituted for the original Explanation (2) by s. 2 of the Hyderabad General Sales Tax (Amendment) Act, 1950 (Hyderabad Act XXXII of 1950) read as under:

Explanation (2)-" Notwithstanding anything to the contrary in any other law for the time being in force, a transfer of goods in respect of which no tax can be imposed by reason of the provision contained in Article 286 of the Constitution, shall not be deemed to be "sale" within the meaning of this clause. "

A further expedient which was adopted in this connection may be noted in r. 5 of the Bombay Sales Tax Rules, 1952, enacted under the Bombay Sales Tax Act, 1952-(Bombay Act XXIV of 1952), which authorised the deduction of certain sales coming within Art. 286 of the Constitution while calculating the taxable turnover of a dealer. We are not called upon to express any opinion as to whether the incorporation of the provisions of Art. 286 of the Constitution in the charging section as it was done in the Assam Sales Tax Act, 1947, or in the definition of "sale" as it was done in the Hyderabad General Sales Tax Act, 1950, or even in the rules in regard to the calculation of taxable turnover as it was done in the Bombay Sales Tax Rules, 1952, had the effect of taking the sales falling within the categories specified in Art. 286 out of the purview of the respective Sales Tax Acts, so that they would not be included at all within the calculation of the net turnover on which only the sales tax could be levied. What was done in the instant case before us as in the bulk of the Sales Tax Acts above noted was the incorporation of those provisions of Art. 286 of the Constitution therein by adding a non-obstante provision at the end of the respective Sales Tax Acts in the manner above indicated. The definition of "sale" was not amended nor was the charging section. The rules as to the calculation of the net turnover also remained the same, without any deduction in regard to sales coming within Art. 286 of the Constitution being incorporated therein, with the result that the Sales Tax Authorities founded themselves upon the non-obstante provision incorporated in the Act by the addition of s. 26 therein by the Travancore-Cochin General Sales Tax (Amendment) Act, 1951.

What, then, is the effect of this non-obstante provision ? This Court in Aswani Kumar Ghosh v. Arabinda Bose (1) made the following observations in connection with the non-obstante clause:

"It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non-obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment." The same ratio applies to the construction of the non- obstante provision contained in s. 26 of the Act with reference to all the other provisions of the Act that preceded the same.

In our opinion, s. 26 of the Act, in cases falling within the categories specified under Art. 286 of the Constitution has the effect of setting at nought and of obliterating in regard thereto the provisions contained in the Act relating to the imposition of tax on the sale or purchase of such goods and in particular the provisions contained in the charging section and the provisions contained in r. 20 (2) and other provisions which are incidental to the process of levying such tax. So far as sales falling within the categories specified in Art. 286 of the Constitution and the corresponding s. 26 of the Act are concerned, they are, as it were, (1) [1953] S.C.R. 1, 21, 22.

taken out of the purview of the Act and no effect is to be given to those provisions which would otherwise have been applicable if s. 26 had not been added to the Act. If these provisions of the Act and the rules made thereunder do not apply to. the sales falling within those categories, the value thereof cannot be included in the turnover of the dealer and no question would &rise of the applicability of r. 7 (1) (k) and r. 20 (2) at all to these cases. The amount for which the oil is sold in inter-State trade or commerce would not be lawfully included in the turnover of the dealer and if the amount for which such oil is sold cannot thus be included in his turnover no occasion would arise for the deduction under r. 7 (1) (k) of the value of the cocoanut and/or copra or groundnut and/or kernel purchased and converted by the dealer into such oil and cake.

A distinction was sought to be made between the inclusion of the value of such oil in the turnover of the dealer for the purpose of assessment and the levy of tax thereupon. It was urged that the inclusion of such oil in the turnover for the purpose of assessment was quite distinct from the liability for tax which was the only thing prohibited by s. 26 of the Act and therefore the value of such oil could be lawfully included in the turnover involving as a necessary consequence the deduction of the value of the copra purchased by the dealer and converted by him into such oil from such turnover, the resultant turnover being the net turnover for the purposes of assessment, the value of the oil sold in the course of inter-State trade or commerce being further deducted therefrom by reason of the operation of s. 26 of the Act, thus making in effect a distinction between assessable turnover and the taxable turnover. Reliance was placed in support of this position on the observations of this Court in Messrs. Chatturam Horilram Ltd. v. Commissioner of Income-Tax, Bihar and Orissa(1): " As has been pointed out by the Federal Court in Chatturam v. C.I.T., Bihar(,) (quoting from the (1) [1955] 2 S.C.R. 290, 297. (2) [1947] F.C.R. 116, 126.

judgment of Lord Dunedin in Whitney v. Commissioners of Inland Revenue (1) 'there are three stages in the imposition of a tax. There is the declaration of liability, that is the part of the statute

which determines what person in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex-hypothesi, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery if the person taxed does not voluntarily pay"

The appellant, however, forgets that the three stages in the imposition of a tax which are laid down here predicate, in the first instance, a declaration of liability as the starting point. If there is a liability to tax, imposed under the terms of the taxing statute, then follow the provisions in regard to the assessment of such liability. If there is no liability to tax there cannot be any assessment either. Sales or purchases in respect of which there is no liability to tax imposed by the statute cannot at all be included in the calculation of turnover for the purpose of assessment and the exact sum which the dealer is liable to pay must be ascertained without any reference whatever to the same'.

There is a broad distinction between the provisions contained in the statute in regard to the exemptions of tax or refund or rebate of tax on the one hand and in regard to the non-liability to tax or non-imposition of tax on the other. In the former case, but for the provisions as regards the exemptions or refund or rebate of tax, the sales or purchases would have to be included in the gross turnover of the dealer because they are prima facie liable to tax and the only thing which the dealer is entitled to in respect thereof is the deduction from the gross turnover in order to arrive at the net turnover on which the tax can be imposed. In the latter case, the sales or purchases are exempted from taxation altogether. The Legislature cannot enact a law imposing or authorising the imposition of a tax thereupon and they are not liable to any such imposition (1) [1926] A.C. 37.

of tax. If they are thus not liable to tax, no tax can be levied or imposed on them and they do not come within the purview of the Act at all. The very fact of their non- liability to tax is sufficient to exclude them from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed. If this distinction is borne in mind, it is clear that s. 26 of the Act enacts a provision with regard to nonliability of these transactions to tax and these transactions were therefore taken out of the purview of the Act. We are therefore of opinion that the non-obstante provision contained in s. 26 of the Act has the effect of taking these transactions out of the purview of the Act with the result that the dealer is not required nor is he entitled to include them in the calculations of his turnover liable to tax thereunder.

This position is not at all affected by the provision with regard to registration and submissions of returns of the sales tax by the dealers under the Act. The legislature, in spite of its disability in the matter of the imposition of sales tax by virtue of the provisions of Art. 286 of the Constitution, may for the purposes of the registration of a dealer and submission of the returns of sales tax include these transactions in the dealer's turnover. Such inclusion, however, for the purposes aforesaid would not affect the non-liability of these transactions to levy or imposition of sales tax by virtue of the provisions of Art. 286 of the Constitution and the corresponding provision enacted in the Act, as above.

We are, therefore, of opinion that the conclusion reached by We are therefore therefore, of opinion that the conclusion reached by the High Court was correct; the calculations of the net turnover made

by the Sales Tax Authorities were also correct; and this appeal must stand dismissed with costs.

Appeal dismissed.