Supreme Court of India
Polestar Electronic(P) Ltd vs Addl. Commissioner, Sales Tax ... on 20 February, 1978
Equivalent citations: 1978 AIR 897, 1978 SCR (3) 98
Author: P Bhagwati
Bench: Bhagwati, P.N.

PETITIONER:
POLESTAR ELECTRONIC(P) LTD.

Vs.

RESPONDENT:
ADDL. COMMISSIONER, SALES TAX DELHI

DATE OF JUDGMENT20/02/1978

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
BEG, M. HAMEEDULLAH (CJ)

CITATION:
1978 AIR 897 1978 SCR (3) 98
1978 SCC (1) 636
CITATOR INFO :
D 1981 SC1055 (16)
R 1982 SC 149 (248)
D 1985 SC1041 (7,9,10)
F 1986 SC2146 (10)

ACT:
Interpretation of statutes--Plain and natural meaning--Construction of a taxing statute--Letter of law or spirit of law--Construction of provision exposing an assessee to penalty.
Bengal Finance (Sales Tax) Act, 1947 as applied to Union Territory of Delhi--Sections 2(5) & 5(2)(a)(ii)--To get the benefit of Sale for resale or to a manufacturer--Whether subsequent sale should be within Union Territory of Delhi.

HEADNOTE:
Bengal Finance (Sales Tax) Act, 1947 was applied to the Union Territory of Delhi subject to certain modifications by a notification dated 28-4-1951. Every dealer whose gross turnover exceeds the taxable quantum is liable to pay tax on sales effected by him after a specified date and while he is liable to pay tax, he cannot carry on business unless he gets himself registered and possesses a registration certificate. The tax is leviable on a dealer in respect of

his taxable turnover. To compute taxable turnover of a dealer, certain deductions are required to be made from his gross turnover and one of the deductions is that set out in section 5(2)(a)(ii). What is permitted to be deducted under this provision is turnover of sales to a registered dealer of goods of the class or classes specified in his certificate of registration as being intended for resale by him or for use by him as raw materials in the manufacture of goods for sale. The first proviso enacts that the turnover of sales covered by s. 5 (2) (a) (ii) would be deductible only if a declaration duly filled in and signed by the Registered dealer to whom the goods are sold and containing the prescribed particulars in prescribed form is furnished by the selling dealer. The requirement of such declaration as condition of deduction is clearly intended to prevent fraud and promote administrative efficiency. The second proviso provides that where any goods specified in the certificate of registration are purchased by a registered dealer as being intended for resale by him or for use by him as raw materials in the manufacture of goods for sale but are utilised by him for any other purpose the price of the goods purchased shall be allowed to be, deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer.

There are broadly two groups in which the appeals and the writ petitions can be divided. One group consists of appeals where the assessees purchased goods of the class specified in the certificate of registration as being intended for resale by them and furnished to the dealers selling the goods, declarations in the prescribed form stating that the goods were intended for resale kind thereafter resold the goods though not within, the territory of Delhi. The second group consists of appeals where the assessees Purchased goods of the class specified in the certificate of registration as being intended for use by there. as raw materials in the manufacture of goods for sale and furnished to the prescribed particulars in prescribed form is furnished by the selling dealer, the dealers selling the goods declarations in the prescribed form stating that the goods were purchased by them for use as raw materials in the manufacture of goods for sale and thereafter used the goods purchased as raw materials in the manufacture of goods, in some cases outside Delhi and in some others inside, but in the after. sold the goods so manufacturer outside Delhi. The High Court of Delhi negatived the contention of the assessees that they were not covered by the second proviso to s. 5(2) (a) (ii). The High Court took the view that for the purposes of s. 5(2)(a)(ii) and the second proviso, resale of the goods purchased was confined to, resale inside Delhi and so also use of the goods purchased is raw materials in the manufacture of goods and

99

sale of manufactured goods were required to be, inside Delhi

and, therefore, if the assessees resold the goods outside Delhi or used them as raw materials in the manufacture outside Delhi, or even if the manufacture was inside Delhi sold the goods manufactured outside Delhi, there was utilisation of the goods by the assessees for a purpose other than that for which they were purchased and hence the second proviso to s. 5(2)(a)(ii) was attracted and the price of the goods purchased was liable to be included in the taxable turnover of the assessees

The question for consideration was whether "resale" under s. 5 (2) (a)(ii) and the second proviso means,resale any where without any geographical limitation or it is confined only to resale inside Delhi.

The Revenue contended

(1) the words "inside the Union territory of Delhi" are not to be found in s. 5 (2) (a) (ii) and the second proviso but they must be read in these provisions as a matter of construction because

(a) if resale outside Delhi were held to be within the terms of s. 5(2)(a)(ii) and the second proviso, the Union territory of Delhi would lose tax altogether in cases where the goods were resold outside Delhi. The intention of the Legislature was to recover tax at only one point while the goods were in the stream of trade.

(b) the Legislature had no legislative competence to tax sale outside Delhi. Therefore, resale ",'thin the meaning of s. 5(2)(a)(ii) and the second proviso could not possibly include resale outside Delhi.

(c) the words "by him" following upon the word "resale" in s. 5(2)(a)(ii) and the second proviso clearly indicated 'that the resale contemplated under these provisions was resale by the purchasing dealer as a registered dealer and since the concept of registered dealer has relation only to sale inside Delhi, the resale must be within the territory of Delhi.

Allowing the appeals and Writ Petitions,

HELD : 1. It is a well settled principle of interpretation that a statutory enactment must or ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible absurd unreasonable unworkable or totally irreconcilable with the rest of the statute. [11OA]

R. v. Dakees [1959] 2 All E.R. 350, Federal Steam Navigation Co. Ltd: v. V. Department of Trade & Industry, [1974] 2 All E.R. 97, Narayanaswani v. Pannersalvam & Ors. [1973] 1 SCR 172 relied on.

2. Addition to or modification of words used in statutory provision is generally not permissible but the court may depart from this rule to avoid a patent absurdity. There are no words such as 'inside the Union territory of Delhi" qualifying resale so as to limit it to resale within the territory of Delhi. The Legislature could have easily used such words if its intention was to confine resale within the territory of Delhi but it omitted to do so. [IIIA, B, E]

Attorney General-Sillen [1964] 2 H & C at 526 referred to.

The absence of specific words limiting resale inside the territory of Delhi is not without significance and it cannot be made good bya process of judicial construction, for to do so would be to attribute to the Legislature and intention which it has not chosen to express and to usurp the legislative function. It is obvious that resale is subsequent sale after the first and it must, therefore, have the some meaning as 'sale' defined in s. 2(g). The definition of sale in s. 2(g) is a general definition which does not limit it to a sale inside the territory of Delhi. Even a sale outside the territory of Delhi is within the coverage of the definition. Section 5(2)(a)(ii) does not see to impose any tax on resale. What it does is to provide deduction in respect of

100

sale to a registered dealer. Even under the second proviso, what is taxed is the' just sale made by tile, selling dealer and not the resale made by the purchasing dealer. Thus there is no tax sought to be imposed on the resale under section 5(2)(a)(ii) or the second proviso and the argument of lack of legislative competence has no substance. It would, be straining the language of the enactment too much to say that the words "by him" are intended to mean by him as a registered dealer. [112B-D, El G. 113D]

3. The argument of the Revenue that the Legislature could never have intended that the Union territory of Delhi should be altogether deprived of tax in cases of this kind is erroneous. It is not correct that the legislative intent was to exempt the sale. to the purchasing dealer only in those cases where the Union territory of Delhi would be able to recover the tax on resale of the goods by the purchasing dealer. It is now well settled that when the Court is construing a statutory enactment the intention of the Legislature should be gathered from the language used by it and it is not permissible to the court to speculate about the Legislative intent. [114C-D]

Saloman v. Saloman & Co. Ltd. [1897] A.C. 22, at 38 and, Back-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg [1975] 1 All E.R. 810 at 814, relied on.

4. Section 5(1)(a)(ii) and the second proviso occur in a taxing statute and it is a well settled rule of interpretation that in construing a taxing statute 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.

[116A]
Cape Brandy Syndicate v. Inland Revenue Commissioner [1921] 1 K. B. 64 referred to.

5. It would be flying in the face of well settled rules of construction of a taxing statute to read the words "inside the Union territory of, Delhi" in section 5(2)(a)(ii) and the second proviso, when the Plain and undoubted effect of the addition of such words would be to expose a purchasing dealer to penalty. [H116E]

6. During the period the department administered the Act in West Bengal and for few years in Delhi, they administered it on the basis that resale was not confined to resale inside the State of West Bengal or Union territory of Delhi. It is true that the view of the department as to the meaning of a Statute which is administered by them is not admissible as an aid to construction, because wrong practice does not make the law, but long acquiescence of the Legislature in the interpretation put upon an enactment may be regarded as some sanction and approval of it. The circumstance that for long years the Legislature did not intervene to amend the law by adding words "inside the Union territory of Delhi" even though the Revenue was continually administering the law on the basis that resale means resale anywhere does throw some light on the intention of the Legislature. The subsequent amendment also throws light on the intention of the Legislature. [117A-E, 118A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1290 of 1977. (Appeal by Special leave from the Order dated. the 31-1-1977 of the Additional Commr. of Sales Tax New Delhi in Appeal No. 665 of 1976-77).

AND CIVIL APPEAL NO. 1111 OF 1977 (Appeal by Special leave from the Judgment and Order dated the 17-7-1975 of the Allahabad High Court in C.M.W.P. No. 494 of 1975).

AND CIVIL APPEAL NO. 1352 OF 1977 (Appeal by Special Leave from the Judgment and Order dated the 30th April, 1977 of the Sales Tax Office at New Delhi).

AND CIVIL APPEAL NO. 1110 OF 1977 Appeal by Special Leave from the Judgment and Order dated the 22nd March, 1977 of the Sales Tax Officer at New Delhi in R.C. No 13754).

AND CIVIL APPEAL NO. 1085 OF 1977 (Appeal by Special Leave from the Judgment and Order dated 30-3-1977 of the Sales Tax Officer, New Delhi.) AND CIVIL APPEAL NO. 236 OF 1976 (Appeals by Special Leave from the Judgment and Orders dated the 18th December 1975 of the Sales Tax Officer, Ward No. 40, Delhi for the assessment year 1973-74 in Order No. 856A).

AND CIVIL APPEAL NO. 456 OF 1976 (Appeal by the Special Leave from the Judgment and Order dated the 16th September, 1975 of the Delhi High Court in Civil Writ No. 343 of 1975).

AND CIVIL APPEAL NO. 816 OF 1976 (Appeal by Special Leave from the Order dated the 30th June 1976 of the Addl. Commr. of Sales Tax, New Delhi in Appeal No. 8945 of 1975-76).

AND CIVIL APPEAL NO. 18 OF 1975 (Appeal by Special Leave from the Assessment Order No. 2667 dated the 6th September, 1974 of the Sales-tax Officer, Assessing Authority, Ward No. 40, Delhi, for the year 1971-

72).

AND CIVIL APPEAL NO. 1522 OF 1974 (From the Judgment and Order dated the 26th April, 1974 of the Delhi High Court in Civil Writ No. 1426 of 1973).

AND CIVIL APPEAL NO. 1526 OF 1974 (From the Judgment and Order dated the 26th April, 1974 of the Delhi High Court in Civil Writ No. 947 of 1973).

AND WRIT PETITIONS NOS. 166/77 & 329 OF 1975 WITH SLPs. NOs. 2522 & 2524 OF 1977 F. S. Nariman (in CA 1290, 1085 & 1352) A. K. Sen (in 1111), S. T. Desai (in 1110), Ravinder Narain, Talat Ansari & Balram Saingal (in CA 1290 & 1 1 1 1), Shri Narain (in CAs. 1352, 1085 & 1110) Arjun Anand for J. B. Dadachanji & Co. for the appellants in CAS. Nos. 1290, 1111, 1085, 1352, 1110 & 1526.

Shyamala Pappu, J. Ramamurthi & R. Vaigai in CAs. 236, 456/76 718 of 1975 for the appellants.

Sardar Bahadur & Bishnu Bahadur Saharya for the appellant in CA 1522 of 1974.

Yogeshwar Prasad, Rani Arora & Meera Bali for the appellant CAs. Nos. 816 & in W.P. No. 166.

G. S. Chatterjee, D. P. Mukherjee & A. K. Ganguli for the Petitioners in SLPs 2522 & 2524.

K. B. Rohatgi & M. K. Garg for the petitioners in W.P. No. 329/75.

S. V. Gupte Attorney General (in CAs. 1290, 1352, 816 & II

10), R. C. Chawla (in 1290 & W.P. 166 & CA 18/75) R. N. Sachthey and A. Subhashini for the respondents in C.A. Nos. 1290, 1111, 1085,1352, 1110, 236, 456, 816 of 1976, 18 of 1975, 1522 & 1526/74, W.P. Nos. 166, 329 & SLPS. Nos. 2522 & 2524/77.

The Judgment of the Court was delivered by BHAGWATI, J. These appeals raise a short but interesting question of law relating to the interpretation of section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941 as applied to the Union Territory of Delhi (hereinafter, for the sake of convenience referred to as Delhi). The Act was extended to Delhi subject to certain modifications by a Notification dated 28th April, 1951 issued by the Central Government in exercise of the powers

conferred by section 2 of the Part C States (Laws) Act, 1950 and it came into force in Delhi on 28th May, 1951 by virtue of a Notification issued under section 1, sub-section (3) of the Act. There have been several amendments made in the Act from time to time since the date of its application to Delhi but we are concerned in these appeals only with the assessment periods 1971-72 and 1972-73 and hence we shall confine ourselves to the relevant provisions of the Act as they stood during these assessment periods.

Section 2 enacted the definition provision and clause (c) of that section defined a 'dealer to mean any person who carries on the business of selling goods in Delhi. Clause

(g) of section 2 contained the definition of 'sale'. It was a definition in general terms and it mad,. no reference to the situs of the sale. It did not limit the definition to a sale inside Delhi. There was an explanation to this clause which laid down as to when a sale or purchase shall be deemed to take place inside Delhi. Section 4, sub-section (1) provided that every dealer whose gross turnover during the year immediately preceding the commencement of the Act exceeded the taxable quantum at any time within such year shall be liable to pay tax under the Act on all sales effected after the date notified by the Chief Commissioner and sub-section (2) of that section said that every dealer to whom sub-section (1) does not apply, shall, if his gross turnover calculated from the commencement of any year exceeds the taxable quantum at any time within such year, be liable to pay tax under the Act, on the expiry of two months from the date on which such gross turnover first exceeds the taxable quantum, on all sales effected after such expiry. Sub-section (5) of section 4 defined 'taxable quantum' to mean, in relation to any dealer who imports for sale any goods into Delhi or manufactures or produces any goods for sale, regardless of, the value of the goods imported, manufactured or produced, ten thousand rupees, and in relation to any other dealer, thirty thousand rupees. Sub-section (1) of section 5 provided different rates of tax, according as the goods fell within one category or another, at which the tax payable by a dealer shall be levied on his taxable turnover. What is- 'taxable turnover' was defined in subsection (2) of section 5 to mean :

> "that part of a dealer's gross turnover during any period which remains after deducting therefrom-
>
> (a) his turnover during that period on-
>
> (i) the sale of goods declared tax-free tinder section 6;
>
> (ii) sales to a registered dealer-of goods of the class or classes specified in the certificate of registration of such dealer, as being intended for resale by him, or for use by him as raw materials in the manufacture of goods for sale; and of containers or other materials for the packing of goods of the class or classes so specified for sale : Provided that in the case of such sales a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars on a prescribed from obtainable from the prescribed authority is furnished in the prescribed manner by the dealer who sells the goods. Provided further that where any goods specified in the certificate of registration are purchased

by a registered dealer as being intended for re-sale by him or for use by him as raw materials in the manufacture of goods for sale, but are utilised by him for any other purpose, the price of the goods purchased shall be allowed to be deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer.

(iii) Sales to a registered dealer engaged in the business of raising coal, of any goods which are shown to the satisfaction of the Commissioner to be required directly for use in connection with the raising of coal;

(iv) sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910 (IX of 1910) of goods for use by it in the generations distribution of such energy;

(v) Sales of goods which are shown to the satisfaction of the Commissioner to have been dispatched by, or on behalf of dealer to an address outside the (Union Territory) of Delhi;

(vi) such other sales as may be prescribed;" This was the definition until 28th May, 1972, when by Finance Act, 1972 the main enactment in section 5 (2) (a) (ii) was substituted by the following provision :

"(2) In this Act the expression 'taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom-

(a) his turnover during that period on-

(i) x x x

(ii) sales to a registered dealer- of goods of the class or classes specified in the certificate of registration of such dealer, as being intended for re-sale by him, or "for use by him as raw-materials in the manufacture in the Union Territory of Delhi (hereinafter in this subclause referred to as Delhi), of goods (other than goods declared tax free under section 6) (A) for sale inside Delhi; or (B) for sale in the course of inter-State trade or commerce, being a sale occasioning or effected by transfer of documents of title to such goods during the movement of such goods from Delhi; or (C) for sale in the course of export outside India being a sale occasioning the movement of such goods from Delhi, or a sale effected by transfer of documents of title to such goods effected during the movement of such goods from Delhi, to a place outside India and after the goods have crossed the customs frontiers of India; and of containers or other materials for the packing of goods of the class or classes so specified for sale;"

Section 7, sub-section (1) laid down that no dealer shall, while being liable to pay tax under section 4, carry on business as a dealer unless he has been registered and possesses a registration certificate and subsection (3) of that section provided for grant of a certificate of regis- tration to a dealer on an application being made by him under subsection (2) and said that such certificate of registration shall specify the class or classes of goods for the purposes of sub-clause (ii) it clause (a) of sub-section (2) of section 5. Section 26 conferred power on the Chief Commissioner to make rules for carrying out the purposes of the Act and in exercise of this power, the Delhi Sales Tax Rules, 1951 were made by the, Chief Commissioner. These rules prescribed not only the form of the application for registration but also the form of the certificate of registration. Clause (3) of the form of the certificate- of registration provided that the sale of the specified goods to the dealer "for purposes of manufacture" and "for re- sale" will be free of tax. This was in conformity with the requirement of section 5 (2) (a) (ii) as it stood prior to its amendment and though section 5 (2) (a) (ii) was substituted by the Finance Act of 19 72, no amendment was made in the form of the certificate of registration and it was only on 29th March, 1973 that clause (3) of the form of the certificate of registration was substituted so as to declare that the sales of the specified goods to the dealer will be free of tax when they are "for use as raw materials in the manufacture in the Union territory of Delhi of goods- for sale in the, manner specified in section 5 (2) (a) (ii) or "for resale". Similarly, the form of declaration to be furnished by the purchasing dealer in order to entitle, the dealer who has sold the goods to claim deduction of the amount in respect of such sales under section 5 (2) (ii), which was prescribed by Rule 26, was also not amended until 29th March, 1973 and it continued to be in the following terms :

> "Certified that the goods mentioned in the cash memo/ Bill No---------- dated----------have been purchased by me/us from M/s.----------and are duly covered by our Registration Certificate No.----------dated ----------and are required by me/us for, re-sale/for use as raw materials in the manufacture of goods for sale/for use in the execution of contract. Signature Dealer"
>
> It was only on 29th March, 1973 that the form of the declaration was substituted by amending Rule 26 so as to bring it in line with the amended section 5 (2) (a) (ii) and after the substitution it ran as follows : " Certified that the goods mentioned in the Cash Memo/ Bill No.-------dated---------have been purchased by me/us from M/s.----------and are duly covered by me/our registration certificate No.
>
> ----------valid from ----------and are required by me/us for 8-211 sci/78 re-sale/ for use as raw-material, in the manufacture in Delhi in accordance with the provisions contained in section 5 (2) (a) (ii) of the Bengal Finance (Sales Tax) Act, 1941 as in force. in the Union Territory of Delhi, of goods for sale.
>
> Signature.....
>
> Dealer.....

> The Act as originally enacted ended with Section 26 but by Amending Act of 1959, Section 27 was introduced in the Act with effect from 1st October, 1959 and this section provided that nothing in the Act or under the rules shall be deemed to impose or authorise the imposition of a tax on any sale or purchase of any goods, if such sale or purchase takes place :
>
> (i) in the course of Inter-state trade or commerce;
>
> (ii) outside the Union territory of Delhi, or
>
> (iii) in the course. of import of the goods into, or export of the goods out of, the territory of India.
>
> This section was obviously introduced with a view to bring the Act into conformity with Article 286 of the Constitution.

These are the relevant provisions of the Act in the light of which we have to decide the question of law arising in the appeals. The assessees in all the appeals are registered dealers and during the relevant assessment periods they held certificates of registration specifying the class or classes of goods intended for resale by them or for use by them as raw-materials in the manufacture of goods for sale. The certificates of registration were in the form as it stood prior to its amendment on 29th March, 1973 and they did not specify that the resale of the goods purchased or their use as raw-materials in the manufacture of goods, or the sale of manufactured goods should be inside Delhi. There are broadly two groups in which the appeals can be. divided for the sake of convenience. One group consists of appeals where the assessees purchased goods of the class specified in the certificate of registration as being intended for resale by them and furnished to the dealers selling the goods declarations in the prescribed form, as it stood prior to 29th March, 1973, stating that the goods were intended for resale and thereafter resold the goods, though not within the territory of Delhi, while the other consists of appeals where the assessees purchased goods of the class specified in the certificate of registration as being intended for use by them as raw materials in the manufacture of goods for sale and furnished to the dealers selling the goods declarations in the prescribed form, as it stood prior to 29th March, 1973, stating that the goods were purchased by them for use as raw-materials in the manufacture of goods for sale and thereafter used the goods purchased as law- materials in the manufacture of goods, in some cases outside Delhi and in some others inside, but in the latter, sold the goods so manufactured outside Delhi. Civil Appeals Nos. 1110 of 1977, 1111 of 1977 and 1290 of 1977 are representative appeals belonging to the first group while Civil Appeals Nos. 1526 of 1972, 1085 of 1977, and 1352 of 1977 are illustrative of the appeals belonging to the second group. Some of the appears are brought by special leave directly from the orders of the assessing authority and some others from the appellate or Previsional orders. Special leave was granted in these cases without requiring the assessees to exhaust their remedies under the Act and to approach the High Court of Delhi in the first instance, because a decision was already given by the High Court of Delhi on 26th April, 1974 in Fitwell Engineers v. Financial Commissioner of Delhi negativing the contentions of the assessees. The view taken in the orders impugned in the appeals and accepted by the High Court of Delhi in Fitwell Engineers' case was that for the purpose

of section 5 (2)

(a) (ii) and the Second Proviso, resale of the goods purchased was confined to resale inside Delhi and so also, use of the goods purchased as raw-materials in the manufacture of goods and sale, of manufactured goods were required to be inside Delhi, and, therefore, if the assessees resold the :.goods outside Delhi or used them as, raw-materials in manufacture outside Delhi, or even if the manufacture was inside Delhi, sold the goods manufactured, outside Delhi, there was utilisation of the goods by the assessees for a purpose other than that for which they were purchased and hence the, Second Proviso to section 5 (2) (a)

(ii) was attracted and the price of the goods purchased was liable to be included in the taxable turnover of the assessees. The question which arises for determination in the appeals is whether this view'taken by the Taxing Authorities and approved by the High Court of Delhi in Fitwell Engineers' case is correct and can be sustained. We may first examine the scheme of the relevant provisions of the Act in so far as it bears on the present controversy. Every dealer, whose gross turnover exceeds the taxable quantum is liable to pay tax on sales effected by him after a specified date and while he is liable to pay tax, he cannot carry on business unless he gets himself registered and possesses a registration certificate. Though his liability to tax is deter-mined by reference to his gross turnover, whether it exceeds the taxable quantum or not, tax is leviable on him only in respect of his taxable turnover. *The concept of taxable turnover is different from that of gross turnover and to compute taxable turnover of a dealer, certain deductions are required to be made from his gross turnover and one of the deductions is that set out in section 5 (2) (-a) (ii). What is Permitted to be deducted under this provision is turnover on sales by a registered dealer of goods of the class or classes specified in his certificate of registration as being intended for resale by him or for use by him as raw-materials in the manufacture of goods for sale. This deduction is allowed with reference to the intended end-use of the goods, namely, that they will be resold or they will be used as raw materials in the manu- facture of goods for sale, according as they are purchased for one purpose or the other. But in view of the innumerable transactions that May be entered into by the dealers, it would be well nigh impossible for the taxing authorities to ascertain in each case whether the the goods were purchased as being intended for resale or for use as raw-materials in the manufacture of goods for sale and hence the the First Proviso was enacted qualifying the substantive provision by saying that the turnover the sale covered by the terms of section 5 (2) (a) (ii). would be deductible only if "a declaration duly filled in and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars on a prescribed form- is furnished" by the selling dealer. The result is that a dealer cannot get deduction in respect of the turnover of his sales falling within section 5 (2) (a) (ii) unless he furnishes a declaration containing the prescribed particulars on the prescribed form duly filled in and signed by the purchasing dealer. The form of declaration prescribed under Rule 26 as it stood upto 29th March, 1973 contained an expression of intention of the purchasing dealer to resell the goods purchased or to use them as raw- materials in the manufacture of goods for sale. Such declaration given by the purchasing dealer to the dealer selling the goods would afford evidence that the goods were purchased by the purchasing dealer "as being intended for resale by him or for use by him as raw-materials in the manufacture of goods for sale". The dealer selling the goods would be granted deduction in respect of the sales on the strength of such declaration given by the purchasing dealer. The requirement of such declaration as condition

of deduction is clearly intended to prevent fraud and promote administrative efficiency. [Vide Kedarnath Jute Mfg. Co. Ltd. v. Commercial Tax Officer(1).] But what would be the position if the purchasing dealer does not act according to the intention expressed by him in the declaration given to the selling dealer and in the one case, does not resell the goods and in the other, does not use them as raw-materials in the manufacture of goods for sale. The selling dealer is granted deduction in respect of the sales made by him because the goods are purchased for resale or for use as raw-materials in the manufacture of goods for sale and this intended and-use of the goods purchased is sought to be ensured by taking a declaration in the prescribed form from the purchasing dealer. But if the goods are utilised by the purchasing dealer for some other purpose contrary to the intention expressed by him in the declaration, the object and purpose of giving deduction to the selling dealer would be defeated. Even so, it would not be right to withdraw the deduction. granted to the selling dealer because that would be penalising the selling dealer for a breach of faith committed by the purchasing dealer. The legislative wrath should in all fairness fall on the purchasing dealer and that is why the Second Proviso has been introduced in the Act by Delhi Amendment Act 20 of 1959. The object of the Second Proviso is to ensure that the intention expressed by the purchasing dealer in the declaration given by him is carried out and he acts in conformity with that intention. Where the purchasing dealer gives a declaration of intention to resell the goods purchased or to use them as raw-materials in the manufacture of goods for sale, he must act in accordance with that intention, because it is on the basis of that intention that deduction is allowed,to the selling dealer and if he does not carry out that intention and utilises the goods for any other purpose, it stands to reason that the tax which is lost to the Revenue by reason of deduction granted to the selling dealer should be recoverable from him, that is, the purchasing dealer. If no deduction were granted to the selling dealer, he would be liable to (1) 16 S.T. Cases, 607.

pay tax on the sale made by him and ultimately the incidence of that tax would be passed on to the purchasing dealer, but by reason of deduction allowed to the selling dealer, the purchasing dealer escapes this incidence of tax and, therefore, the Second Proviso 'enacts that where the purchasing dealer acts contrary to the intention declared by him, the selling dealer shall not be penalised for the sin of the purchasing dealer and he shall continue to have his deduction, but the price of the goods purchased shall be included in the taxable turnover of the purchasing dealer. The Second Proviso is thus intended to provide the consequence of the purchasing dealer not complying with the statement of intention expressed in the declaration given by him to the selling dealer under the First Proviso. This is broadly the scheme and intendment of section 5 (2) (a) (ii) and its two Provisos read in the context of the other provisions of the Act.

Now, the first question that arises for consideration is whether 'resale' in section 5 (2) (a) (ii) and the, Second Proviso means resale any where without any geographical limitation or it is confined only to resale inside Delhi. The contention of the Revenue was that though the words "inside the Union Territory of Delhi" are not to be found in section 5 (2) (a) (ii) and the Second Proviso, they must be read in these provisions as a matter of construction and three reasons were given in support of this contention. The first reason was that if resale outside Delhi were held to be within the terms of section 5 (2) (a) (ii) and the Second Proviso, the Union Territory of Delhi would lose tax altogether in cases where the goods were resold outside Delhi, because in that event the first sale would escape tax by reason of the deduction granted under section 5 (2) (a) (if) and the resale would

also be free from tax since, it is outside Delhi and- hence covered by the exempting provision contained in section 27. The Legislature could never have intended to bring about such a result where the Union Territory of Delhi would be deprived altogether of tax. The intention of the Legislature was to recover tax at only one point whilst the goods were in the stream of trade and the Legislature, therefore, granted deduction in respect of the first sale on the basis that it would be levying tax when the goods were resold and that postulated the requirement that the resale should be inside Delhi. Secondly it was urged that the Legislature had no legislative competence to tax sale outside Delhi and moreover, by reason of section 27 sale outside Delhi was taken out of the purview of the Act and resale within the meaning of section 5 (2) (a) (ii) and the Second Proviso could not, therefore, possibly include resale outside Delhi. The last argument was that the words 'by him following upon the word 'resale' in section 5 (2)

(a) (ii) and the Second Proviso clearly indicated that the resale contemplated under these provisions was resale by the purchasing dealer as registered dealer and since the concept of registered dealer has relation only to sale inside Delhi, the resale must be within the territory of Delhi. We do not think there is any substance or validity in these arguments and we see no cogent or compelling reasons to add the words "inside the Union Territory of Delhi" to qualify 'resale' in section 5 (2) (a) (ii) and the Second Proviso.

Now, if there is one principle of interpretation more well settled than any other, it is that a statutory enactment must ordinarily be construed according to the plain natural meaning of its languageand that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from beingunintelligible, absurd, unreasonable, unworkable or total irreconcilable with the rest of the statute. This rule of literal construction is, firmly established and it has received judicial recognition in numerous cases. Crawford in his book on "Construction of Statutes" (1940 ed.) at page 269 explains the rule in the following terms:

> "Where the statute's. meaning is clear and explicit, words cannot be interpolated. In the first place, in such a case they are not needed. If they should be interpolated, the statute would more than likely fail to express the legislative intent as the thought intended to be conveyed might be altered by the addition of new words. They should not be interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear, and sensible, either with or without the omitted word, interpolation is improper, since the primary source of the legislative intent is in the language of the statute."
>
> Lord Parker applied the rule, in R. v. Dakes(1) to: construe "and", as "or" in section 7 of the Official Secrets Act, 1920 and stated "It seems to this Court that where the literal reading of a statute, and a penal statute, produces an intelligible result, clearly there is no ground for reading in words or changing words according to what may be the supposed intention of Parliament. But here we venture to think that the result is unintelligible." Lord Reid also with great clarity and precision which always characterise his judgments enunciated the rule as follows in Federal Steam

> Navigation Co. Ltd. v. Department of Trade and Industry(2) : "Cases where it has properly been held that a word can be struck out of a deed or statute and another substituted can as far as I am aware be grouped under three heads : where without such substitution the provision is unintelligible or absurd or totally unreasonable where it is unworkable and where it is totally irreconcilable with the plain intention shown by the rest of the deed or statute."

This rule in regard to reading words into a statute was also affirmed by this Court in several decisions of which we may refer only to one, namely, Naraynaswami v. Pannerselvam & Ors.(3) where the Court pointed out that: (1) [1959] 2 All E.R. 350.

(2) [1974] 2 All E.R. 97.

(3) [1973] 1 S.C.R. 172.

".... addition to or modification of words used in statutory provision is generally not permissibly but " courts may depart from this rule to avoid a patent absur- dity."

Here, the word used in section 5 (2) (a) (ii) and the Second Proviso is 'resale' simpliciter without any geographical limitation and according to its plain natural meaning it would mean resale any where and not necessarily inside Delhi. Even where the purchasing dealer resells the goods outside Delhi, he would satisfy the requirement of the statutory provision according to its plain grammatical meaning. There are no words such as 'inside the Union Territory of Delhi' qualifying 'resale' so as to limit it to resale within the territory of Delhi. The argument urged on behalf of the Revenue requires us to readsuch limitative words in section 5 (2) (a) (ii) and the Second Proviso. The question is whether there is any necessity or justification for doing so? If 'resale is construed as not confined to the territory of Delhi, but it may take place any where, does section 5 (2) (a) (ii) or the Second Proviso lead to a result manifestly unintelligible, absurd, unreasonable, unworkable or irreconcilable with the rest of the Act ? Is there any compulsive necessity to depart from the rule of plain and natural construction and read words of limitation in section 5 (2) (a) (ii) and the Second Proviso when such words have been omitted by the law-giver ? We do not think so.

It may be pointed out in the first place that the Legislature could have easily used some such,words as "inside the Union Territory of Delhi" to qualify the word 'resale', if its intention was to confine resale within the territory of Delhi, but it omitted to do what was obvious and used the word 'resale' without any limitation or qualification, knowing full well that unless restriction were imposed as to situs, 'resale would mean resale any where and not merely inside the territory of Delhi. The Legislature was enacting a piece of legislation intended to levy tax on dealers who are laymen and we have no doubt that if the legislative intent was that 'resale' should be within the territory of Delhi and not outside, the.Legislature would have said so in plain unambiguous language which no laymen could possibly misunderstand. It is a well settled rule of interpretation that where there are two expressions which might have been used to convey a certain intention, but one of those expressions will convey that intention more clearly than the other, it is proper to conclude that, if the legislature used that one of the two expressions which would convey the intention less clearly, it

does not intend to convey that intention at all. We may repeat what Pollock C. B. said in Attorney-General v. Sillen(1) that "If this had been the object of our legislature, it might have been accomplished by the simplest possible piece of legislation; it might have been expressed in language so clear that no human being could entertain a doubt about it". We think that in a taxing statue like the present which is intended to tax the dealings of ordinary traders, if (1) (1964) 2 W & C 431 at 526.

the intention of the legislature were that in order to qualify a sale of goods for deduction, 'resale' of it must necessarily be inside Delhi, the Legislature would have expressed itself clearly and not left its intention to be gathered by doubtful implication from other provisions of the Act. The absence of specific words limiting 'resale' inside the territory of Delhi is not without significance and it cannot be made good by aprocess of judicial construction, for to do 'so would be to attribute to the legislature an intention which it has chosen not to express and to usurp the legislative function.

It is true that the Legislature had no legislative competence to tax sale outside the territory of Delhi and section 27 also in clear and explicit terms exempts sale outside the territory of Delhi from liability to tax under the Act, but we fail to see how this circumstance can require us to construe 'resale' in section 5 (2) (a) (ii) and the Second Proviso as excluding resale outside the territory of Delhi. It is obvious that resale is subsequent sale after the first and it must, therefore, have the same meaning as ' sale' defined in section 2(g). The definition of 'sale' in section 2(g) is a general definition which does not limit it to- a sale inside the territory of Delhi. Even a sale outside the territory of Delhi is within the coverage of the definition. That is why section 27 provides that nothing in the Act or the rules made thereunder shall be deemed to impose or authorise imposition of a tax on any sale outside the territory of Delhi. This provision was introduced to bring the Act into conformity with Article 286 of the Constitution. Therefore, for the purpose taxability only 'sale outside the territory of Delhi would be excluded from the scope and purview of the Act. But section 5 (2)

(a) (ii) does not seek to impose any tax on resale. What it does is to provide deduction in respect of sale to a registered dealer provided the condition is satisfied that the goods purchased are of the class or classes specified in the certificate of registration of the purchasing dealer as being intended for resale by him and a declaration is given by the purchasing dealer that he has purchased the same for resale. Undoubtedly, where the purchasing dealer does not act in conformity with the intention expressed by him and utilises the goods for any other purpose, he becomes liable to tax under the Second Proviso, but even there, what is taxed in his hands is the price of the goods purchased by him, that is, the turnover exempted in the hands of the selling dealer-and not the turnover of resale made by him. It is still the first sale made by the selling dealer which is taxed and not the resale made by the purchasing dealer. Thus there is no tax sought to be imposed on the resale under section 5 (2) (a) (ii) or the Second Proviso, but resale is made a condition of granting deduction in respect of the first sale. It is, therefore, difficult to see how lack of legislative competence on the part of the Legislature to tax sale outside Delhi or exemption from tax provided to sale outside Delhi under section 27 can operate to cut down the plain meaning of resale' so as to exclude resale outside Delhi.

The Revenue placed some reliance on the words 'by him' following upon 'resale' in section 5(2) (a) (ii) and the Second Proviso for the purpose of contending that the resale contemplated there is resale by the purchasing dealer, as a registered dealer and since a registered dealer is a dealer who carries on business in Delhi and whose liability to tax is determined by reference to his gross turnover in Delhi, resale by him must be resale within the territory of Delhi. But this contention has no merit and the utmost that can be said about it is that it raises a point that has position, but no magnitude. The words 'by him' are merely descriptive of the purchasing dealer and they are introduced merely with a view to emphasizing that the goods must be resold by the same person who has purchased them. It is clear from the scheme of the Act that a dealer who carries on business of selling goods in the territory of Delhi and who is liable to pay tax under section 4 of the Act is required to be registered and he must possess a registration certificate. If such a dealer purchases goods of the class or classes specified in his certificate of registration on furnishing a declaration that the same are intended for resale "by him, the sale to him would be exempt from tax and hence he would not have to pay any amount by way of tax to the selling dealer. But then the goods must be resold by the purchasing dealer himself and, in case of such resale the requirement of the statutory provision as well as the declaration would be satisfied and there will be no breach of the statement of intention contained in the declaration. The emphasis which is sought to be added by the words 'by him' is that the goods must be resold by the same person who has purchased them, namely, the purchasing dealer. It would be straining the language of the enactment too much to say that the words 'by him' are intended to mean 'by him as a registered dealer'. Moreover, it may be noted that though a registered dealer has to be a person who carries on business of selling goods in the territory of Delhi. there is no requirement of law that a registered dealer must effect sales only in Delhi and not outside. There is nothing in the Act which prohibits a registered dealer from selling goods outside Delhi. If a registered dealer can effect sales outside Delhi it is impossible to see how, by any stretch of reasoning, the words 'by him' can be pressed into service for the, purpose of resting 'resale to that inside Delhi.

We fail to see any reason why the word 'resale' in section 5 (2) (a) (ii) and the Second Proviso should not be construed according to its plain natural meaning to comprehend resale taking place any where without any limitation as to situs and it should be read as referring only to resale inside, Delhi as if the words 'inside the Union Territory of Delhi' were added by way of limitation or restriction. Even without such words and reading the statutory provision according to its plain natural sense as referring to resale, irrespective whether it is inside or outside Delhi, section 5 (2) (a) (ii) and the Second Proviso do not become absurd unintelligible, unworkable or unreasonable, nor is it possible to say that they come into conflict with any other provision of the Act. We have already explained the scheme of section 5 (2) (a) (ii) and its two provisos and, even on the view that 'resale means resale any where and not necessarily inside Delhi, they enact a statutory provision which is quite intelligible, reasonable and workable. The selling dealer is granted deduction in respect of sale to a registered dealer where the goods purchased are of the class or classes specified in the certificate of registration of the purchasing dealer as being intended for resale by him and the purchasing dealer gives a declaration that the goods are purchased by him for resale. So long as the goods are required by the purchasing dealer for resale, whether inside or outside Delhi, the sale to the purchasing dealer is exempted from tax. It is true that if the purchasing dealer resells the goods outside Delhi, the Union Territory of Delhi would not be able to recover any tax since the sale to the purchasing

dealer would be exempt from tax under section 5(2) (a) (ii) and the resale by the purchasing dealer would also be free from fax by reason of section 27. But that is not such a consequence as would compel us to read the word 'resale' as limited to resale inside Delhi. The argument of the Revenue was that the Legislature could never have intended that the Union Territory of Delhi should be altogether deprived of tax in cases of this kind. The legislative intend could only be to exempt the sale to the purchasing dealer in those cases where the Union Territory of Delhi would be able to recover tax on resale of the goods by the purchasing dealer. The goods must be taxed at least at one point and it could- not have been intended that they should not be taxable at all at any point by the Union Territory of Delhi. The Revenue urged that it was for the purpose of taxing the goods at least at one point that the Second Proviso was enacted by the Legislature. We do not think this contention based on the presumed intention of the Legislature is. well founded. It is now well settled that when the court is construing a statutory enactment, the intention of the Legislature should be gathered from the language used by it and it is not permissible to the court to speculate about the legislative intent. Some eighty years ago, as far back as 1897, Lord Watson said in an oft quoted passage in Saloman v. Saloinan & Co. Ltd.(1) " 'The intention of the legislature' is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a court of law or equity, what the legislature intended to be done or not to be done can only be legimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

The same view was echoed by Lord Reid in Black-Clawson International Ltd. v.

Papierwerke Waldh of Aschaffenburg "We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said."

(1) [1897] A.C. 22, at 38, (2) [1975] 1 All E.R. 810, at 814.

If the language of a statute is clear and explicit, effect must be given to it for in such a case the words best declare the intention of the law giver. It would not be right to refuse to place on the language of the statute. the plain and natural meaning which it must bear on the ground that it produces a consequence which could not have been in- tended by the legislature. It is only from the language of the statute that the intention of the Legislature must be gathered, for the legislature means no more and no less than what it says. It is not permissible to the Court to speculate as to what the Legislature must have intended and then to twist or bend the language of the statute to make it accord with the presumed intention of the legislature. Here, the language employed in section 5 (2) (a) (ii) and the Second Proviso is capable of bearing one and only one meaning and there is nothing in the Act to show that the legislature exempted the sale to the purchasing dealer from tax on the hypothesis that the Union Territory of Delhi would be entitled to tax the resale by the purchasing dealer. The intention of the legislature was clearly not that the Union Territory of Delhi should be entitled to tax the goods at least at one point so that if the sale to the purchasing dealer is exempt, the resale by the purchasing dealer should be taxable. We do not find evidence of such legislative

intent in any provision of the Act. On the contrary, it is very clear that there are certain categories of resales by the purchasing dealer which are admittedly free from tax. If, for example, the purchasing dealer resells the goods within the territory of De1hi, but such resale is in the course of inter-State trade or commerce, or in the course of export out of the territory of India, it would be exempt from tax and yet, even on the construction.suggested on behalf of the Revenue, the sale to the purchasing dealer would not be liable to tax. Both the sale as well as the resale would be free of tax even if the word 'resale' were read as limited to resale inside the territory of Delhi. Then again, take a case where the resale by the purchasing dealer, though inside the territory of Delhi, falls within section 5 (2) (a) (v). The resale in such a case would be exempt from tax and equally so would be the sale. So also the resale would not be taxable if it falls within Rule 29 and in that case too the sale as well as the resale would both be exempt from tax. it will, therefore, be seen that it is not possible to discover any legislative intent to tax the goods at least at one point and to exempt the sale to the purchasing dealer only if the resale by the purchasing dealer is liable to tax. The Second Proviso too does not support any such legislative intent, for in the event there contemplated, namely, where the purchasing dealer utilises the goods for any purpose other than 'resale', what is taxed in the hands of the purchasing dealer is not the resale, by him but the sale to him and that is done not with a view to ensuring that the goods must suffer tax at least at one point, but because the purchasing dealer having committed a breach of the intention expressed by him in the declaration, on the basis of which exemption is granted to the selling dealer, he should not be, allowed to profit from his own wrong and to escape the amount of tax on the sale. We do not, in the circumstances, see any cogent or, compelling reason for reading the words 'inside the Union Territory of Delhi' after 'resale' in section 5(2)(a)(ii) and- the Second Proviso.

It must also be remembered that section 5(2)(a)(ii) and the Second Proviso occur in a taxing statute and it is a well settled rule of interpretation that in construing a taxing statute "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". The oft quoted words of Rowlett, J., in Cape Brandy Syndicate v. Inland Revenue Commissioner(1) lay down the correct rule of interpretation in case of a (fiscal statute : "in a taxing. Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used". It is a rule firmly established that "the words of a taxing Act must never be stretched against a tax-payer". If the legislature has, failed to clarify its meaning by use of appropriate language, the benefit must go to the tax-payer. Even if there is any doubt as to interpretation, it must be resolved in favour of the subject. We would, therefore, be extremely loathe to add in section 5(2)(a) (ii) and the Second Proviso words which are not there and which, if added, 'would have the effect of imposing tax liability on the purchasing dealer. Moreover, it may not noted that if the purchasing dealer resells the goods outside Delhi, then, on the construction contended for on behalf of the Revenue, he would be liable to include the price of the goods paid by him in his return of taxable turnover and pay tax on the basis of such return and if he fails to do so, he would expose himself to penalty, through he has complied literally with the declaration made by him. We find that in fact a penalty of Rs. 2 lacs has been imposed on the assessees in Civil Appeal No. 1085 of 1977 for not including the price of the goods purchased by them in their return of taxable turnover and paying tax on the basis of such return. It would be flying in the face of well settled rules of construction of a taxing statute to read the words 'inside the

Union Territory of Delhi' in section 5(2)(a)(ii) and the Second Proviso, when the plain and undoubted effect of the addition of such words would be to expose a purchasing dealer to penalty.

It is also significant to note that if the words 'inside the Union Territory of Delhi' are to be read after 'resale' in section 5(2)(a)(ii) and the Second Proviso, they would also have to be read in the prescribed form of the declaration to be given by the purchasing dealer. But we fail to see how any such words can be read in a declaration of intention which refers to resale simpliciter without any restriction as to place. When a declaration of intention in the prescribed for without the words 'inside the Union Territory of Delhi' is given by the purchasing dealer at the time of purchase, how can these words be read in the declaration when they are not there. It might be permissible to read such words in a statutory Provision like section 5 (2) (a)

(ii) and the Second Proviso, but we fail to see how such 'Words can be read in a declaration of intention furnished by a purchasing dealer.

It may also be pointed out that the Act in the present case was originally enacted by the Bengal Legislature in 1941 and it was (1) [1921] 1 k.B. 64.

applied in Delhi with certain modifications by the Central Government (in 28th April, 1951. The Act was: thus in operation prior to 15th August 1947 in Bengal and thereafter in 'West Bengal for an aggregate period of about ten years before it was made applicable to Delhi. It was not disputed on behalf of the Revenue that during this period the Department administered the provision of section 5(2)(a)(ii) on the basis that 'resale' was not confined to resale inside the State of Bengal or West Bengal, as the case may be, but it also included outside State resale. When the Central Government applied the Act to the territory of Delhi, it must be presumed to be aware of this, interpretation which had been placed on section 5(2)(a)(ii) by the Revenue in the State of West Bengal. Even so, the Central Government, whilst it made several other modifications in the Act while applying it to the territory of Delhi, did not add the words 'inside the Union Territory of Delhi', to qualify 'resale'. Then again, it was common ground that at least for a few years after the Act was made applicable to the territory of Delhi, the Revenue interpreted 'resale' in section 5 (2) (a)

(ii) to mean resale any where and not necessarily inside the territory of Delhi and administered the law on the basis of such interpretation. It is, no doubt, true that the view of the Department as to the meaning of a statute which is- administered by them is not admissible as an aid to construction because wrong practice does not make the law, but, as pointed out by Maxwell in his well-known work on 'The Interpretation of Statutes' (12th ed.) at page 264 : "- the long acquiescence of the legislature in the interpretation put upon its enactment by notorious practice may, perhaps, be regarded as some sanction and approval of it". The circumstance that for long years the Legislature did not intervene to amend the law by adding the words 'inside the Union Territory of Delhi' in section 5(2)(a)(ii) even though the Revenue was continually administering the law on the basis that 'resale' in section 5(2)(a)(ii) means resale any where and not necessarily inside the territory of Delhi and acquiescence in this interpretation placed by the Revenue is a circumstance which does throw some little light on the intention of the Legislature and indicates that the Legislature did not intend to restrict resale to the territory of Delhi.

Similarly, for the same reasons which we need not repeat again, 'manufacture' and 'sale' in section 5(2)(a)(ii) and the Second Proviso mean manufacture and sale any where without any geographical limitation and neither 'manufacture' nor 'sale' is restricted to the territory of Delhi. There are no words like 'inside the Union Territory of Delhi' to qualify ' manufacture' or 'sale' and there is no cogent or compelling reason for reading such words in section 5(2)(a)(ii) and the Second Proviso. The use of the goods purchased as raw-materials in the manufacture of goods may, therefore, take place any where and not necessarily inside Delhi and equally the sale of the goods so manufactured may be effected any where, whether inside or outside Delhi. The only end-use of the goods purchased required to be made for attracting the applicability of section 5(2)(a)(ii) is that the goods must be utilised by the purchasing dealer as raw-materials in the manufacture of goods and the goods so manufactured must be sold, irrespective whether the manufacture or sale takes place inside Delhi or outside. If the purchasing dealer does not use the goods purchased as raw-materials in the manufacture of goods or having manufactured the- goods does not sell them, he would commit a breach of the intention expressed by him in the declaration furnished to the selling dealer and the Second Proviso would immediately be attracted and the price of the goods purchased by him would be liable to be included in his taxable turnover. But so long as he carries out the intention expressed in the declaration and uses the goods purchased as raw-materials in the manufacture of goods, whether inside or outside Delhi, and sells the goods so manufactured in Delhi or outside, he would not tall within the Second Proviso and the sale to him would not be taxable in his hands.

The subsequent history of the Act also supports the construction which we are inclined to place on section 5 (2)

(a) (ii) and the Second Proviso. Section 5(2)(a)(ii) was amended with effect from 28th May, 1972 by Finance Act, 1972 and the words 'in the Union Territory of Delhi' were added after the word 'manufacture' so as to provide that manufacture should be inside the territory of Delhi. It was also provided by the amendment that the sale of manufactured goods should be inside Delhi or in the course of inter-State trade or commerce or in the course of export outside India. This amendment clearly excluded manufacture of goods as also sale of manufactured goods outside Delhi. It is clear from the statement of objects and reasons that this amendment was not introduced by Parliament ex abundant cautela, but in order to restrict the applicability of the exemption clause in S. 5(2)(a)(ii). The statement of objects and reasons admitted in clear and explicit terms that "at present sales of raw-materials in Delhi are exempted from tax irrespective of the fact whether the goods manufactured therefrom are sold in Delhi or not. It is, therefore, made clear that sales of raw-materials will be tax free only when such sales are made- by those who manufacture in Delhi taxable goods for sale."

It is obvious that under section 5(2)(a)(ii), as it stood prior to the amendment, the exemption was available to the selling dealer even if the purchasing dealer used the goods purchased as rawmaterials in manufacture outside Delhi, or having manufactured the goods, sold them outside Delhi. That is why Parliament amended section 5(2)(a)(ii) with a view to restricting manufacture as well as sale inside the territory of Delhi. It is of' course true that a parlia- mentary assumption may be unfounded and an amendment may proceed on an erroneous construction of the statute and, therefore, it cannot alter the correct interpretation to be placed upon the statute; but if there is any

ambiguity in the statute, the subsequent amendment can certainly be relied upon for fixing the proper interpretation which is to be put upon the statute prior to the amendment. The amendment made in section 5(2)-(a)(ii) read with the statement of objects and reasons thus clearly supports the construction that under the unamended section manufacture as well as sale could be any where and not necessarily inside the territory of Delhi. It is also significant to note that though Parliament amended section 5(7)(a)(ii) for restricting manufacture as well as sale to the territory of Delhi, it did not carry- out any amendment in the section with a view to limiting resale in the same manner by the addition of some such words as 'in the Union 'Territory of Delhi' or 'inside Delhi'. This clearly evinces parliamentary intent not to insist upon resale being restricted to the territory of Delhi. It is a circumstance which lends support to the view that 'resale' in section 5(2)(a)(ii) and the Second Proviso meant resale outside as well as inside Delhi.

We must, therefore, reach the conclusion that during the relevant assessment years, 'resale' within the meaning of section 5(2)(a)(ii) and the Second Proviso was not confined to the territory of Delhi, but also included resale outside the territory of Delhi and similarly, for the period upto 28th May, 1972 when section 5(2)(a)(ii) was amended by Finance Act, 1972 'manufacture and 'sale' contemplated by the section were not restricted to the territory of Delhi but could also be outside. There was no geographical limitation confining 'resale', 'manufacture' or 'sale' to the territory of Delhi. On this construction, the Second Proviso would be attracted only if the purchasing dealer, in the former case, did not resell the goods at all and in the latter case, did not use them as raw-materials in the manufacture of goods, or even if he manufactured the goods, failed to sell them and thus utilised the goods purchased for a purpose different from that for which they were purchased. Now, the burden of proving that the goods purchased were utilised by the purchasing dealer for a different purpose would be on the Revenue if the Revenue wants to include the price of the goods purchased in the taxable turnover of the purchasing dealer, and it would, therefore. be for the Revenue to show in a given case that the goods purchased were utilised by the purchasing dealer for a different purpose, that is, where he purchased the goods for resale, he did not resell them and where he purchased the goods for use by him as raw-materials in the manufacture of goods for sale, he either did not use them as raw-materials in the manufacturer of goods, or even if he did so, the goods manufactured were not sold by him. Here in the present appeals, the assessees were purchasing dealers and in some of the cases, they purchased goods for resale and in others, for use as Taw-materials in the manufacture of goods for sale. This intention of the assessees was evidenced by the declarations given by them to the selling dealers at the time of purchase of the goods. On the view taken by us, it was immaterial where the assessees who purchased goods for resale, resold them inside Delhi or outside : in either case the Second Proviso would not be applicable and the assessees would not be liable to be taxed on the price of the goods purchased by them. Equally, for the period.upto 28th May, 1972, it did not make any difference whether the assessees, in those cases where they purchased goods for use as raw-materails in the manufacture of goods for sale used them as raw materials inside Delhi or out-side, or having manufactured the goods, sold them inside or outside Delhi, for in either case the Second Proviso would not be attracted and the price of the goods purchased by them would not be includable in their taxable turnover. The burden of showing that the assessese utilised the goods purchased for any other purpose that is, for a purpose different from that for which the goods were purchased as evidenced by the declaration, would be on the Revenue and the Revenue may discharge this burden by calling upon the assessees to produce evidence to

show, in one case that the goods were resold by them, and in the other, that the goods were used by them as raw-material in the manufacture of goods and the goods so manufactured were sold. This would be a fact exclusively within the knowledge of the assessees and it the assessees do not produce sufficient evidence to establish this fact, it might be legitimate for the Revenue to raise an inference that the assessees did not utilise the goods for the purpose for which they were purchased, but utilised them for 'any other purpose?'.

The question still. remains in regard to the taxability of the assessees under the Second Proviso subsequent to 28th May, 1972 in cases where the goods were purchased for use as raw-materials in the manufacture of goods for sale, because some of the appeals relate to the assessment year 1972-73 which comprises the period from 28th May, 1972 to 31st March, 1973. We have already pointed out that on 28th May, 1972, section 5(2)(a)(ii) was amended by Finance Act, 1972 and the words 'in the Union Territory of Delhi' were added after the word 'manufacture' and the words 'inside Delhi after the word 'sale'. It is clear from this amendment that from and after 28th May 1972, sale of goods was exempted from tax only if the goods were purchased by the purchasing dealer "as being intended-for use by him as raw-materials in the manufacture in the Union Territory of Delhi-of goods-for sale inside Delhi". Both 'manufacture' and ;'sale' were now required to be in the territory of Delhi and not outside. But the form of the declaration to be, given by the purchasing dealer' to the selling dealer, as prescribed in Rule 26, was not amended until 29th March, 1973 with a view to bringing it in conformity with the amended section 5 (2)

(a) (ii). The result was that from 28th May, 1972 to 29th March, 1973 the form of the declaration continued to be the same as before and carried the statement that the goods were purchased by the purchasing dealer "for use by him as raw- matinal in the manufacture of goods for sale" without any restriction as to place of manufacture or sale and this was the form in which declarations were given by the, assessees to the selling dealers when they purchased the goods. The declarations given by the assessees did not state that the goods were purchased for use by them as raw-materials in the manufacture in the-territory of Delhi of goods for sale inside Delhi, since that was not the prescribed form and the First Proviso required that the declaration should be given only on the prescribed form. Now, if the declarations given by the assessees stated the purpose of purchase of goods to be used as raw-materials in the manufacture of goods for sale and did not specify that the manufacture and sale will be inside the territory of Delhi, it is difficult to see how the assessees could be said to have utilised the goods for "any other purpose" if they used the goods as raw- materials in manufacture outside Delhi or sale the goods manufactured outside Delhi. Even if they manufactured goods outside Delhi and sold the goods so manufactured outside Delhi, the use by them of the goods purchased would be for the purpose stated in the declarations and it would not be right to say that they utilised the goods for any other purpose. The problem can also be looked at from another point of view and that too yields the same conclusion. We may assume for the purpose of argument that since the words 'in the Union Territory of Delhi' and 'inside Delhi' were added after 'manufacture? and 'sale' respectively section 5 (2) (a) (ii), a similar amendment may also be taken to have been effected in the Second Proviso and we may read there the words 'in the Union Territory of Delhi' after the word 'manufacture' and the words 'inside Delhi' after the word 'sale'. What the Second Proviso, on this construction, postulates in that the goods must be purchased by the purchasing dealer as being intended for use by him as raw- materials in the manufacture 'in the territory of

Delhi' of goods for sale 'inside Delhi'. But the declarations given by the assessees being in the unmended form, it would not be possible to say that the goods were purchased by the assessees as being intended for use as raw-materials in the manufacture, 'in the territory of Delhi' of goods for sale 'inside Delhi'. The condition for the applicability of the Second Proviso was, therefore clearly not satisfied and the Second Proviso could not be invoked for including the price of the goods purchased in the taxable turnover of the assessees. Even if we take the view that by reason of the amendment of section 5 (2) (a) (ii) the form of the declaration also stood amended, though in fact no amendment was made in it until 29th March, 1973, it would not help the Revenue, because in that case the declarations given by the assessees to the selling dealers could not be said to be on the prescribed form and in terms of section 5 (2) (a) (ii) and the consequence of that would be that the selling dealers would be disentitled to exemption under section 5 (2) (a) (ii) and not that the price of the goods purchased would be includable in the taxable turnover of the assessees. Exemption would be available to the, selling dealers under section 5 (2) (a) (ii) only if they could show that they have obtained proper declarations from the assessees and consequently if the declarations are not on the prescribed form or in terms of section 5 (2) (a) (ii) (on the assumption that they are required to be in conformity with that provision), it is the selling dealers who would be ineligible for exemption and there would be no question of the assessees being made liable to tax under the Second Proviso. It would not be competent to the assessing authority to read the words 'in the territory of Delhi' after the word 'manufacture' and the word inside Delhi after the word "said" in the declaration given by the assessees when these words are conspicuous by their absence and on that basis to grant exemption to the selling dealers and then to seek to impose liability on the assessees under the Second Proviso. It Is indeed difficult to see how the assessees could be saddled with liability to tax under the Second Proviso when they have literally complied with the statement of intention expressed in the declarations given by them to the selling dealers.

9-211 SCI/78 The Revenue strongly relied on the decision of this Court in Modi Spinning and Weaving Mills Co. Ltd. v. Commissioner of Sales Tax, Punjab & Anr.(1) in support of its contention, but we fail to see how this decision can be of any help to the Revenue. It is necessary to refer briefly to the facts of this case in order to understand the true ratio of Its decision. The assessment year for which the appellants were being assumed in this case was the financial year 1959-60 and the assessment was being made under the Punjab General Sales Tax Act, 1948. Section 5(2)(a)(ii) of the Punjab Act, as it stood prior to its amendment, was in material respects identical with the unmended section 5 (2) (a) (ii) of the Delhi Act. However, it was amended by Punjab Act No. 13 of 1959 by the addition of the words "in the State of Punjab" after the word 'manufacture' and the amended section applied during the relevant assessment year. When section 5 (2) (a)

(ii) was amended, the rule making authority also simultaneously amended Rule 26 and Form S.T. XXII which was the prescribed form of declaration, by the addition of the same words 'in the State of Punjab'. The result was that not only was section 5 (2) (a) (ii) amended to make it clear that the manufacture must be in the State of Punjab but also Rule 26 and the form of declaration were also amended so as to provide that the declaration must set but the intention of the purchasing dealer to use the goods purchased in the manufacture 'in the State of Punjab' of goods for sale. The appellants gave declarations in the amended form with the word 'in the State of Punjab' after the word 'manufacture' against purchases of raw cotton made by them and they ginned the cotton in their

ginning mills and sent the bales to their spinning and weaving mills situated in the State of Uttar Pradesh for the purpose of manufacture of cloth. The question arose whether the price of the raw-cotton was liable to be included in the taxable turnover of the appellants under the Second Proviso which was in identical terms with the Second Proviso in the present case. The principal argument advanced on behalf of the appellants for repelling the applicability of the Second Proviso was that since the certificate of registration held by them was not amended by the addition of the words 'in the State of Punjab' and there was no condition in it that the goods must be purchased for use in the manufacture 'in the State of Punjab' of goods for sale, they were not bound to use the cotton purchased in the manufacture of cloth in the State of Punjab and even if they did so outside the State of Punjab, the Second Proviso was not attracted. The reason why the appellants continued to have the old certificate of registration in the unamended form was that though section 5 (2) (a) (ii) was amended, no corresponding amendment was made in the form of the certificate of registration until 29th September, 1961 long after the expiration of the relevant assessment year. This argument was, however, rejected by a bench of five Judges of this Court on the ground that it was not right to read the certificate of registration by itself but that "sections 5 and 7 have to be read with Rule 26 and Form S.T. XXII, the declaration" and so read, "the old registration certicate, even though it did not contain the words 'in the State of Punjab' would stand impliedly modified by the sections and the Rule and Form ST. XXII operating together". This Court emphasised that the appel-

(1) 16 S. T. Cases 310.

lants had to comply With the Act and the Rules and could not take shelter behind the unamended certificate and the only question which Court had to consider was whether the appellants had complied. with the Act and the Rules and since the Act and the Rules required that the manufacture must be in the State of Punjab, the appellants, who manufactured cloth, out of the cotton purchased, outside the State of Punjab, could not be said to have complied with the Act and the Rules and hence the Second Proviso was applicable to them. It would be seen that the only question before the Court was as to what was the effect of absence of the words 'in the State of Punjab' in the certificate of registration in a case where Rule 26 and Form S.T. XXII were both simultaneously amended along with section 5 (2) (a)

(ii) and the declaration on given by the purchasing dealer contained the words 'in the State of Punjab' after the word 'manufacture' so that there was a breach of the statement contained in the declaration when the purchasing dealer used the goods purchased in manufacture outside the-State of Punjab. The Court was not concerned- with a case where Rule 26 and Form S.T. XXIII continued to stand unamended and the declaration given by the purchasing dealer did not state that the use of the goods purchased in manufacture would be in the State of Punjab, but merely contained a general statement that the goods purchased would be used in the manufacture of goods for sale and the purchasing dealer utilised the goods purchased in manufacture outside the State of Punjab without committing a breach of the statement in the declaration. That is the case before us and it is entirely different from the case decided by the Court in Modi Spinning & Weaving Mills case (supra). The decision in Modi Spinning & Weaving Mills case is, therefore, no authority for the proposition that even where the deolara- tion is given on the Prescribed form by a purchasing dealer. which does not

contain a statement that the manufacture of goods would be in Delhi or the manufactured goods would be sold in Delhi, this condition should be read into the declaration by the addition of some such words as 'inside Delhi' after 'manufacture and 'sale, so that if the goods purchased are not used as raw-materials in manufacture in Delhi or the goods manufactured are sold outside Delhi, the purchasing dealer could be said to have committed a breach of the statement made in the declaration so as to attract the applicability of the Second Proviso. We are clearly of the view that such is not the correct legal position and the Second Proviso is not attracted in such a case. We are conscious that the result of this view which we are taking would be that both the selling dealers as well as the assessees would escape tax even in cases where the assessees have manufactured goods outside Delhi or having manufactured goods, sold them outside Delhi. But that is an unfortunate result for which the blame must lie fairly and squarely at the door of the administration. We fail to understand why the administration should not have amended Rule 26 and the form of the declaration until 29th March, 1973, when the amendment in section 5 (2) (a) (ii) was made as far back as 28th May, 1972. The lethargy and inaction on the part of the administration are inexplicable and it is a matter of regret that the Union Territory of Delhi should have lost- a large amount of Revenue entirely due to gross negligence and default on the part of the administration.

We may refer to one other contention advanced on behalf of the appellants in Civil Appeals Nos. 17 and 18 of 1975 and 236 and 450 of 1976. The contention was that what the Second Proviso sought to do, in effect and substance, was to tax purchases made by the purchasing dealer by including the price of the goods purchased in his taxable turnover but this was impermissible because section 4 was the only charging section in the Act and under that section, tax was payable only on sales effected by a dealer and purchases effected by him could not be taxed. No tax, it was argued, could be levied on purchases effected by a dealer even by resorting to the fiction of deeming them to the sales. This contention, we are afraid, is rather difficult to appreciate. We asked the learned counsel appearing on behalf of the appellants in these appeals as to what was the sequester of this contention and whether it was her submission that the Second proviso was void as being outside the legislative competence of the Legislature. But she frankly conceded that it was not possible for her to challenge the vires of the Second Proviso on ground of lack of legislative competence, because it is competent to the Legislature to impose a tax as much on purchase as on sale. She, however, urged that in her submission the Second Proviso was inconsistent with section 4 and, therefore no effect should be given to it. This contention is, in our opinion, wholly unsustainable. We fail to see how the Second Proviso can be said to be inconsistent with section

4. It may be pointed out that even if there were some conflict, which we do not think there is, it would have to be reconciled by a harmonious reading of the two sections and it would not be right to adopt a construction which tenders one of the two sections meaningless and ineffectual unless the conflict between the two is so utterly irreconcilable that the Court is driven to that conclusion. Here we find that section 4 merely imposes liability on a dealer to pay tax if his gross turnover exceeds the taxable quantum. It is really section 5 which provides for levy of tax and it says that the tax payable by a dealer shall be levied on his 'taxable turnover. Now, 'taxable turnover' is a concept entirely different from gross turnover and it is arrived at by making certain additions and deductions to the gross turnover. Section 5 (2) (a) (ii) provides for a deduction while the Second Proviso speaks of an addition. Where the conditions of the Second Proviso are satisfied, the price of the goods purchased

is to be added to the 'taxable turnover' of the purchasing dealer and it would then form part of the 'taxable turnover on which the tax is levied. This provision has been made in order to ensure that the purchasing dealer does not commit a breach of the declaration given by him on the basis of which exemption is given to the selling dealer. The sale to the purchasing dealer is exempted from tax in the hands of the selling dealer but it is taxed in the hands of the purchasing dealer on account of breach of faith committed by him. We do not, therefore, see any inconsistency at all between section 4 and the Second Proviso and the contention urged on behalf of the appellants in these appeals must be rejected. Lastly, it was contended that the resales effected by the branches of the assessees outside Delhi could not be regarded as resales by the assessees within the meaning of section 5 (2) (a) (ii) and the Second Proviso and hence the assessees must be held to have utilised the goods for a purpose different from that for which the goods were purchased, namely, resale by them and the price of the goods purchased must be included in their taxable turnover under the Second Proviso. But this contention fails to take into account the plain and obvious fact that when the branches of the assessees resell the goods outside Delhi, it is really the assessees who resell the goods, for the branches are not distinct and independent from the, assessees but are merely establishments of the assessees. Resales effected by the branches are nothing else than resales made by the assessees at the, branches and hence it is not possible to say that when the goods were resold by the branches, the resales were not by the ass so as to attract the applicability of the Second Proviso. That leaves only one other point and that relates to the imposition of penalty of Rs. two lakhs on the assessees in Civil Appeal No. 1085 of 1977. This penalty was imposed on the assessees on the ground that they failed to include in the returns filed by them for the period from 8th May, 1972 to 29th March, 1973 the price of the goods purchased by them for use as raw-materials in the manufacture of goods for sale and to pay tax on the amount of such price along with the submission of the returns. There were several grounds on which the imposition of this penalty was challenged on behalf of the assessees, but it is not necessary to refer to all of them, since there is one ground which is, in our opinion sufficient to invalidate the order imposing the penalty. We have already pointed out that even where the assessees used the goods purchased as raw-materials in the manufacture of goods outside Delhi or having manufactured the goods, sold them outside Delhi, there was no breach of the intention expressed by them in the declarations given to the selling dealers and they could not be said to have utilised the goods for any purpose other than that for which they were purchased so as to attract the applicability of the Second Proviso. Now, if the Second Proviso was not attracted in the case of the assessees even where then, used the goods purchased as raw-materials in manufacture outside Delhi or sold the manufactured goods outside Delhi, there could be no obligation on the assessees to include the price of the goods purchased in their returns or to pay tax on the amount of such price along with the returns. The assessees could. if at all, be made liable for penalty only if it could be shown that they did not use the goods purchased as raw-materials in manufacture of goods or having manufactured the goods, did not sell them but utilised them for any other purpose. But of this there was no evidence at all before the assessing authority and the order imposing penalty was, therefore, plainly unjustified. It was based on misconstruction of section 5 (2) (a) (ii) and the Second Proviso and it must, therefore, be quashed and set aside. We accordingly allow the appeals and the writ petitions, set aside the orders passed by the High Court in Civil Appeals Nos. 1724 of 1974 and 456 of 1976 as also the orders passed by the assessing authority which are impugned in the appeals and the writ petitions and direct the assessing authority whose orders are set aside to pass fresh orders in each case in the light of the above decision given by us. We may make it clear that the

assessee shall not be entitled to reagitate before the assessing authority any other point except that relating to the taxability of the price of the goods purchased by the assessees tinder the Second Proviso. We also set aside the order passed by the assessing authority imposing penalty of Rs. two lakhs on the assessees in Civil Appeal No. 1085 of 1977. The respondent will pay the costs of the appellants/petitioners in each appeal and writ petition.

P.H.P.

Appeals allowed.