A ASHOK LEYLAND LTD.

v.

STATE OF TAMIL NADU AND ANR.

JANUARY 7, 2004

B [V.N. KHARE, CJ., S.B. SINHA AND A.R. LAKSHMANAN, JJ.]

Central Sales Tax Act, 1956—Section 6A(2)—Inter-State Sale—Legal fiction created—Effect of—Acceptance of Form F filled by the assessee—
C *Held, legal fiction operates—Order accepting Form F becomes final and cannot be reopened unless found illegal/void/voidable—Tamil Nadu General Sales Tax Act, 1959—Section 16.*

*Code of Civil Procedure, 1908—Section 11—***Res Judicata***—Applicability of—Held, would not apply where jurisdictional question wrongly decided.*

D

Interpretation of Statute—Must be interpreted having regard to the text and context—Statute must be read in its entirety—General and special provision—Special provision prevails over general provision—Central Sales Tax Act, 1956—Tamil Nadu Sales Tax Act, 1959.

E *Words and Phrases—Legal Fiction—Meaning of.*

The appellants were manufacturers of commercial vehicles. They were registered under the Tamil Nadu General Sales Tax Act, 1959 and also the Central Sales Tax Act, 1956. They had several regional sales offices in States other than Tamil Nadu. The regional sales offices were registered
F **under the sales tax law governing the concerned State. The appellants transferred vehicles to the regional sales offices for marketing the products under the cover of stock transfer invoices and local sales tax was collected and paid by the regional offices on such vehicles. The appellants filled Form F in terms of Section 6 A of the Central Sales Tax Act, 1956 in Tamil**
G **Nadu stating that the transactions constituted transfer of stock and there was no inter-State sale. After enquiry, the assessing officer accepted Form F filed by the appellants holding that that there was only a stock transfer to the depots of the appellants situated in other States and no inter-State sale had taken place. The assessing authorities, thereafter, sought to review the order accepting Form F. The appellants contested the reopening of**

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the assessment on the ground that it cannot be reopened as under the provisions of Section 6 A (2) of the Central Sales Tax Act, 1956, the assessment attained finality on acceptance of Form F. However, the assessing authority reopened proceedings, held that the transfers made by the appellants were inter-State sales and also imposed penalty on the appellants.

The appellants filed writ petition before the High Court, which was dismissed. On appeal to the Court, a two-Judge Bench of the Court held that it was permissible for the assessing authority to reopen a proceeding even after acceptance of Form F. (*Ashok Leyland* v. *Union of India and Ors.*, [1997] 9 SCC 10).

Pursuant to the judgment of the Court, an order of reassessment was passed imposing tax on the appellants on the sales made by the regional sales offices of the appellants.

The appellants filed appeal to the Court and contended that when an order is passed by the assessing authority after holding an enquiry accepting the Form F declaration made by the assessee, the same could not be reopened. The judgment of the Court in *Ashok Leyland* v. *Union of India and Ors.*, [1997] 9 SCC 10 therefore, required reconsideration. The respondent contended, *inter alia*, that the earlier judgment of the Court would operate as *res judicata* and the issue raised by the appellants could not be re-examined.

Disposing of the appeal and allowing the appellants to move the High Court for redressal of their grievance, the Court

HELD: 1.1. In the rules of evidence, there exist several presumptions. These presumptions may be rebuttable or irrebuttable. Irrebuttable presumptions are referred to as conclusive presumptions as they stand as conclusive proof of certain facts and are open to challenge only on the meagre grounds. In several cases validity of rules of conclusive presumptions have been upheld. [336-F, G; 337-C]

Stumpf v. *Mantgomery*, (1924) 101 OKL 256; *Re Eric Holmes Ltd.*, [1965] 2 All E R 333; *Inzar Ahmad Khan* v. *Union of India*, [1962] Supp. 3 SCR 235; *M. Venugopal* v. *Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A. P. and Anr.*, [1994] 2 SCC 323; *The Municipal Board, Hapur* v. *Raghuvendra Kripal and Ors.*, AIR (1966) SC 693; *State of*

A *Madras* v. *M/s Radio and Electricals Ltd.*, [1966] Supp SCR 198; *Balabhagas Hulaschand* v. *State of Orissa*, [1976] 2 SCC 44 and *C.P.K. Trading Co.* v. *Additional Sales Tax Officer III Circle Mattancherry*, (1990) 76 STC 211, referred to.

1.2. Whenever a legal fiction is created by a statute, the same shall B be given full effect. Legal fictions have been applied in a number of cases. [340-G; 342-E]

Shrisht Dhawan v. *M/s. Shaw Brothers*, [1992] 1 SCC 534; *Roshan Deen*, v. *Preeti Lal*, AIR (2002) SC 33; *Smt. Anita* v. *R. Rambilas*, AIR (2003) A.P. 32; *Ram Preeti Yadav* v. *U.P. Board of High School and Intermediate* C *Education and Ors.*, [2003] 8 SCC 311 and *Ram Chandra Singh* v. *Sita Devi and Ors.*, [2003] 8 SCC 319, referred to.

1.3. The mere use of the word 'deemed' is not in itself sufficient to set up a legal fiction. [341-E]

D *Consolidated Coffee Ltd.* v. *Coffee Board*, [1980] 2 SCC 358; *St. Aubyn* v. *Attorney General*, [1951] 2 All E R 473; *Bhavnagar University* v. *Palitana Sugar Mills (P) Ltd.*, [2003] 2 SCC 111; *East End Dwellings Co. Ltd.* v. *Finsbury Borough Council*, [1951] 2 All E R 587and *ITW Signode India Ltd.* v. *Collector of Central Excise*, (2003) 9 SCALE 720, referred to.

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2.1. A statute, as is well known, must be interpreted having regard to the text and context thereof. A statute for the purpose of its interpretation must be read in its entirety. It is to be given a purposive construction. Mischief Rule may also be applied in a given case. While construing a statute, the object of the Act must be taken into consideration. F [342-F; 343-D]

Killick Nixon Ltd. v. *Deputy Commissioner of Income Tax*, [2003] 1 SCC 144, referred to.

2.2. Special provisions shall prevail over the general provisions. G [350-F]

South India Corporation (P) Ltd. v. *Secretary, Board of Revenue*, AIR (1964) SC 207, referred to.

3.1. There cannot be any doubt or dispute that while defining sale, H the situs of sale can be fixed by the Parliament which having regard to

Article 286 of the Constitution of India is within its exclusive domain. Once the situs of sale either by way of legal fiction or otherwise is determined, the State Legislature will be denuded of its power to fix another situs having regard to the fact that the Parliament alone has the exclusive jurisdiction therefor. [345-A;C] A

3.2. The principles for determination as to what would cause a inter-State sale is to be laid down in terms of the provisions of a Parliamentary Act having regard to the express provisions contained in Clause (3) of Article 269 and Clause (3) of Article 286 of the Constitution of India. [348-C] B

Consolidated Coffee Ltd. v. *Coffee Board,* [1980] 2 SCC 358, referred to. C

4.1. By reason of sub-section (2) of Section 6 A of the Central Sales Tax Act, 1956, a legal fiction has been created. The initial burden of proof is on the dealer to show that the movement has occasioned by reason of transfer of such goods which is otherwise than by reason of sale. The assessee may file a declaration. On a declaration so filed an inquiry is to be made by the assessing authority for the purpose of passing an order on arriving at a satisfaction that movement of goods has occasioned otherwise than as a result of sale. Whenever such an order is passed, a legal fiction is created. Through the means of a legal fiction if it is determined that the sale is not an inter-State sale, then it amounts to a transfer of stock. [336-D-F; 344-A] D E

Gannon Dunkerley and Co. v. *State of Rajasthan,* [1993] 1 SCC 364 and *State of Bombay* v. *Pandurang,* AIR (1953) SC 244, referred to. F

4.2. The finding under Section 6 A of the Central Sales Tax Act, 1956 is arrived at by the statutory authority who has the jurisdiction to do so and there is no provision for appeal. Therefore, the order made by such authority is conclusive in that it cannot be reopened on the basis that there had been a mere error of judgment. It also cannot be re-opened under the Tamil Nadu General Sales Tax Act, 1959, when the order had been made under the Central Sales Tax Act, 1956. The order of an authority under Section 6 A of the Central Sales Tax Act, 1956 is conclusive for all practical purposes. Thus, it is only in the limited cases of fraud, misrepresentation etc. that reassessment can be directed and not if there had been a mere error of judgement. [344-A-C] G H

A *Commissioner of Income Tax, Bombay* v. *M/s. Amritlal Bhogilal & Co.*, [1959] SCR 713; *Indian Handicrafts Emporium and Ors.* v. *Union of India and Ors.*, [2003] 7 SCC 589 and *Ameer Trading Corporation Ltd.* v. *Shapoorji Data Processing Ltd.*, JT (2003) 9 SC 109; Words and Phrases, Permanent Edition Vol. 41A; *H.L. Sud, Income Tax Officer, Companies Circle 1 (1), Bombay* v. *Tata Engineering and Locomotive Co. Ltd.*, AIR (1969) SC 319; B *M.K. Kochu Devassy* v. *State of Kerala etc.*, [1979] 2 SCC 117; *Shrisht Dhawan* v. *M/s. Shaw Brothers*, [1992] 1 SCC 534; *A.V. Fernandez* v. *The State of Kerala*, [1957] 1 SCR 837; *Sahney Steel & Press Works Ltd.* v. *CTO*, [1985] 4 SCC 173; *Sodhi Transport Co.* v. *State of U.P.*, [1986] 2 SCC 486; *State of A.P. etc.* v. *National Thermal Power Corpn. Ltd.*, [2002] 5 SCC 203 C and *M/s. Chunni Lal Parshadi Lal* v. *Commissioner of Sales Tax, U.P.*, [1986] 2 SCC 501; *20th Century Finance Corpn. Ltd. and Anr.* v. *State of Maharashtra*, [2000] 6 SCC 12 and *Mahant Dharam Das etc.* v. *The State of Punjab and Ors.*, [1975] 3 SCR 160, referred to.

Black's Law Dictionary, 5th Edn.; Law Lexicon by P. Ramanatha D Aiyar, 2nd Edn. referred to.

4.3. Suppression of a material document would also amount to fraud on the Court. [354-C]

Gowrishankar and Anr. v. *Joshi Amba Shankar Family Trust and Ors.*, E [1996] 3 SCC 310 and *S.P. Chengalvaraya Naidu (Dead) by Lrs.* v. *Jaggannath (Dead) by LRs. and Ors*, [1994] 1 SCC 1 referred to.

4.4 An order passed by the statutory authority who has jurisdiction therefor would amount to a part of substantive and not procedural law. In addition to this there is no provision for appeal. [349-D] F

4.5 The particulars required to be furnished in Form F clearly manifest that the proof required is as to whether the goods were actually transferred to the assessee himself or his branch office or his agent and not to any third party. Any other enquiry is beyond the realm of the G assessing authority. The purpose of verification of the declaration made in Form F, therefore, is as to whether the branch office acted merely as a conduit or the transaction took place independent to the agreement to sell entered into by and between the buyer and the registered office or the office of the company situated outside the State. [349-G; 352-C, D]

H 5. The observations made by the Court in *Ashok Leyland* v. *Union of*

India and Ors., [1997] 9 SCC 10 to the effect that an order passed under sub-section (2) of Section 6 A of the Central Sales Tax Act, 1956 can be subject matter of reopening of a proceeding under Section 16 of the Tamil Nadu General Sales Tax Act, 1959 was not correct. However, the same would not mean that even wherein such an order has been obtained by commission of fraud, collusion, misrepresentation or suppression of material facts or giving or furnishing false particulars, the order being vitiated in law would not come within the purview of the aforementioned principle. [352-E, F] A B

Ashok Leyland v. *Union of India and Ors.*, [1997] 9 SCC 10, overruled.

6. The principle of *res judicata* is a procedural provision. A jurisdictional question if wrongly decided would not attract the principle of *res judicata*. When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking the procedural principles like estoppel, waiver or *res judicata*. [354-D-E] C D

Sri Ramnik Vallabhdas Madhvani and Ors. v. *Taraben Pravinlal Madhvani*, (2003) SCALE 412, referred to.

Dharam Dutt and Ors. v. *Union of India and Ors.*, (2003) 10 SCALE 141, referred to. E

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 976-979 of 2001.

From the Judgment and Order dated 12.3.1999 of the Tamil Nadu Sales Tax Appellate Tribunal, Chennai in T.A. Nos. 353, 456, 457/97 and 47 of 1998. F

WITH

C.A. Nos. 53/2004, 943, 944/2001 and W.P. (C) No.195 of 1999.

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K. Parasaran, A.K. Ganguli, B. Sen, P.P. Rao, A.T.M. Sampath, V. Balaji, Ms. T.S. Santhi, Ms. Aarthi Radhakrishnan, K.K. Mani, R.L. Ramani, Ms. Manika Pandey, K.V. Vijaykumar, Subramonium Prasad, Ms. Chitra Venkataraman, R. Gopalakrishnan, S.N. Jha, Dilip Sinha, J.R. Das, Guntur Prabhakar, Sanjay R. Hegde, V.G. Pragasam, Ms. Kiran Bharadwaj, K.C. Kaushik, Rajiv Tyagi, Ms. Anil Katiyar, (NP), D.S. Mahra (NP.), Ravindra H

A K. Adsure, Mukesh K. Giri, R.P. Wadhwani, (NP), B.S. Banthia, Naveen Sharma, Sakesh Kumar, Satish K. Agnihotri, Ms. Krishna Sarma, Ms. Asha G. Nair, V.K. Sidharthan, Ms. Hemantika Wahi, P.R. Ramasesh, (NP), R.S. Hegde, Chandra Prakash, Devish P., Ms. Savithri Pandey, P.P. Singh, B.B. Singh, (NP), M.N. Shroff. (NP), G. Prakash, (NP), N. Ganapathy, (NP), K. Ram Kumar, (NP), V. Krishnamurthy, (NP), V. Ramasubramaniam, (NP) for B the appearing parties.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted in S.L.P. (Civil) No.5579 of 2001.

C Interpretation of Section 6A of the Central Sales Tax Act, 1956 is involved in these appeals and the writ petition. The appeals arise out of judgments and orders dated 12.3.1999 passed by the Tamil Nadu Sales Tax Appellate Tribunal in T.A. Nos. 353, 456 and 457 of 1997 and 47 of 1998; dated 13.11.2000 in STA No.459 of 1999; dated 14.11.1997 in Appeal No. D 383 of 1996; and dated 2.12.1997 in Tax Case (Revision) No.1096 of 1990 passed by the High Court of Madras.

The writ petition under Article 32 was filed by the Petitioner *inter alia* for declaring that Section 9(2) of the Central Sales Tax Act, 1956 designating the authorities of the movement State to adjudicate upon the situs of sales E and character of a transaction in the course of an inter-State sale, whether as falling under Section 3 or under Section 4 of the Central Sales Tax Act, 1956, is arbitrary, unworkable and *ultra vires* Articles 14, 19(1)(g) and Chapter XIII of the Constitution of India, in matters involving elements of transactions taking place in more than one State.

F BACKGROUND FACTS:

Civil Appeal Nos. 976-979 of 2001

The appellants herein are engaged in manufacture of commercial vehicles. They have their factories at Bhandara in the State of Maharashtra G and Alwar in the State of Rajasthan for manufacture of popular models of passenger chassis. They are, *inter alia*, registered under Tamil Nadu General Sales Tax Act, 1959 (hereinafter called for the sake of brevity as "the State Act") as also the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act". They are registered as dealers in the Office of Assistant H Commissioner (Central Assessment Circle-III), the third respondent herein,

under both the Acts.

Indisputably, the appellants have several regional offices throughout the country wherewith Regional Sales Offices are attached for the purpose of receiving, warehousing and selling the vehicles produced by the appellants. The appellants contend that they transfer both goods vehicle and passenger chassis to their different Regional Sales Offices for marketing the products which in turn are registered under the Sales Tax laws governing the State in question. The stock of vehicles are transferred to the Regional Sales Offices under the cover of stock transfer invoices, excise gate pass, and entrusted to the transport contractors for movement and delivery thereof where upon transfer of such vehicles local sales tax are collected and paid by the different Regional Sales Offices. The appellants herein upon transfer of such purported stocks of vehicles filled up forms in terms of Section 6A of the Central Act, the original whereof having been filed before the assessing authority of the State of Tamil Nadu, an enquiry was made and/or caused to be made pursuant whereto and in furtherance whereof the claim of the appellants to the effect that by reason of such transactions transfer of stock of goods had taken effect as contra-distinguished from inter-State sale was accepted. On or about 29.11.1990, the assessing authority upon completion of the order of original assessment under the Central Act allowed transfer of stocks of the motor vehicle chassis and other automobile parts to the branches stating:

> "The dealers have got 26 branch sales depots in other States. They have despatched their products - chassis, spare parts etc., to their own sales depots in other States for sales and the goods involved in the stock transfer have moved from Tamil Nadu to other State as ''stock transfer'', i.e., the movement was occasioned by reason of branch transfer and not by reason of sale. The despatches are supported by stock transfer invoices, transport details and Form F. These records have been verified with the exemption claimed."

An order of assessment for the year 1987-88 dated 28.8.1991 was passed finding:

> "The dealers have filed detailed statement of stock transfer of vehicles to their outside State Regional Sales Offices and Spares to their warehouses. The statement was verified in detail with reference to Form "F" declaration filed by them and despatching documents. *The dealers have also filed completed assessment orders of their Regional Sales Offices in other States.* Their claim was examined in length and

found to be in order. The Form "F" filed by them are accepted and the exemption granted."

(Underlining is mine for emphasis)

The assessing authority despite the said findings issued notices directing the appellants to show cause as to why the order dated 29.11.1990 should not be revised and the stock of vehicles allegedly transferred to the Regional Sales Offices so far as the same related to the State Transport Undertakings are concerned should not be taxed as inter-State sales taxable in Tamil Nadu.

The appellants filed their show cause *inter alia* questioning the jurisdiction of the assessing authority to reopen the assessment *inter alia* on the ground that the issues stood determined in terms of the provisions of Sub-Section (2) of Section 6A of the Central Act relying or on the basis of the declarations made by the appellants in terms of Form F. However, the reassessment proceeding was completed relying upon the provisions contained in Section 16 of the State Act read with Section 9(2) of the Central Act as also in terms of the decision of this Court in *Sahney Steel & Press Works Ltd.* v. *CTO*, [1985] 4 SCC 173: 60 STC 301 (SC). Consequent to the said order the sales of the Regional Sales Offices in relation to the deliveries made to the State Transport Undertakings of other States were reassessed. Penalty for non-disclosure of the turnover as taxable sales in terms of Section 16(2) of the State Act read with Section 9(2) of the Central Act was also imposed. Similar show cause notices were issued in relation to other assessment years also.

A writ petition was filed by the appellants before the Madras High Court questioning the said orders *inter alia* contending that having regard to the provisions contained in Section 6A of the Central Act and further having regard to the fact that the appellants had paid tax to the other States the orders impugned therein were illegal. The States wherein the local sales tax had been paid in terms of the respective State Acts, namely, State of Kerala, Karnataka, Andhra Pradesh, Maharashtra and Gujarat, were impleaded as parties therein and they in turn also questioned the jurisdiction of the authorities of the State of Tamil Nadu to enquire about the transactions carried out by the appellants. A question was also raised that the Madras High Court had no jurisdiction to grant any relief touching the orders of assessment completed under the respective State law. Upholding the jurisdiction of Tamil Nadu authorities to reopen an assessment completed despite acceptance of declaration in Form F, the Madras High Court by a judgment and order dated 13.6.1996

dismissed the said writ application *inter alia* holding that they had no jurisdiction to grant any relief. Thereafter the reassessment was completed and penalty was imposed.

JUDGMENT OF THIS COURT :

The matter came up for consideration before this Court in *Ashok Leyland* v. *Union of India and Ors.*, since reported in [1997] 9 SCC 10 at the instance of the appellant herein; and upon referring to the decisions rendered in *Balabhagas Hulaschand* v. *State of Orissa,* [1976] 2 SCC 44, *Izhar Ahmad Khan* v. *Union of India,* [1962] Supp. 3 SCR 235, *Sodhi Transport Co.* v. *State of U.P.,* [1986] 2 SCC 486 and several others, this Court by a judgment dated 20.2.1997 held:

(a) Section 6A does not create conclusive presumption as contended on behalf of the assessee.

(b) An order of assessing authority accepting Form F, whether passed during the assessment or at any point earlier thereto, forms part and parcel of the order of assessment.

(c) Its amenability to the power of reopening and revision depends upon the provisions of the concerned sales tax enactments by virtue of the operation of Section 9(2) of the Central Act.

(d) It is not possible to accept that an order under Section 6A(2) has an independent existence.

(e) An order refusing to accept Form F may or may not be appealable independently depending upon the provisions of the State sales tax enactments, but it is certainly capable of being questioned if an appeal is preferred against the order of assessment.

(f) If orders accepting Form F are sought to be reopened, it can be done as part of reopening of assessment or may be done independently, which would depend upon the language of the relevant provisions of the concerned State Acts.

(g) It is permissible to reopen an assessment accepting Form F as true, without, even though such a reassessment necessarily leads to revision/ modification of the assessment order.

(h) If the reopening is confined to the order accepting Form F as true, the enquiry shall be confined to the matters relevant thereto.

A In that case, it was noticed that the assessments were sought to be reopened only in respect of the turnover relating to sales of vehicles to State Transport Undertakings and not turnover relating to persons other than State Transport Undertakings.

(i) In the facts of the case, the question as to whether the power had B been exercised validly or not did not call for consideration. If the assessing authority decided against the appellants, it would be open to the assessee to file appeal (s) directly before the Tribunal (in order to shorten the litigation and in the interest of justice). If and when the Tribunal decides against the appellants, it shall be open to the appellants to approach the Supreme Court.

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Having said so, this Court noticed the anomalous situation created by reason of the absence of a proper mechanism to adjudicate the question as to whether a particular transaction is an inter-State sale or a local sale in the presence of an assessee and the relevant States concerned and the need for the Parliament to intervene and provide for a suitable mechanism.

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The Court appreciated the difficulties to be faced by the appellant having regard to the fact that it had paid tax to the other State Governments. This Court further noticed the contention of the appellant that the attitude adopted by the sales tax authorities in Tamil Nadu is not conducive of judicial E conduct as they are pre-determined to treat the transactions as inter-State sale and levy tax thereon ignoring the fact and correct legal situation, but did not express any opinion on the correctness or otherwise of the said submissions. It, however, felt the necessity of evolving a central mechanism which would decide once for all questions of this nature. Elucidating certain instances, it was opined that although the assessment proceedings before certain States F had become final, this Court in exercise of its jurisdiction under Article 32 or 136 or 142 of the Constitution of India may issue appropriate directions, whereupon the following directions were issued:

"22...Let the Tamil Nadu assessing authorities first decide the matters before them. Thereafter, if the orders are against the appellant, we G permit the appellant to file the appeal(s) directly before the Tribunal. If the Tribunal decides in favour of the appellant, no further question would arise. But if it decides against the appellant, to wit, if it holds that the sale of vehicles to the STUs of various States are inter-State sales and if it is found that those very transactions have also been H taxed as intra-State sales under the State sales tax enactments of

another State, that would be the stage for considering the advisability of giving appropriate directions of the nature contemplated above by this Court-that is, of course, if by that time, no Central mechanism to meet such a situation comes into existence.

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

SUBSEQUENT PROCEEDINGS :

Pursuant to or in furtherance of the said directions an order of reassessment was passed for the years 1988-89 imposing tax on the sales of the appellants to the State Transport Undertakings at the respective Regional Sales Offices by an order dated 12.12.1997. It, however, appears that when companies similarly situated, as for example, Indicarb Limited approached the State Appellate Tribunal, it refused to entertain an appeal there against holding that the direction of this Court in *Ashok Leyland* (supra) was confined to the fact of that case. The Special Leave Petitions having been filed by the assesses, this Court in Civil Appeal No. 14406-14408 of 1997 by an order dated 17.3.1998 held:

"As these special leave petitions and writ petitions involve important questions involving conflict between States' sales tax assessment proceedings and the Central sales tax assessment proceedings regarding the alleged very same sale transactions and as the problem is of a recurring nature and as a decision of a Bench of two Judges of this Court in *Ashok Leyland Ltd.* v. *Union of India and Ors.*, 105 STC 152, has to be applied with suitable modifications, if required, it would be appropriate that these matters are heard by a Bench of three learned Judges. In the meantime, the Union of India who is one of the respondents in these proceedings, may have to be heard with a view to suggest a *modus operandi* to resolve this conundrum. We, therefore, request the learned Attorney General to appear for respondent No. 2 Union of India for assisting the court in these proceedings.

The office may obtain orders from Hon'ble the Chief Justice for placing these matters before an appropriate Bench of three learned

A Judges."

Notices, pursuant to the said directions, were issued to the concerned States. Thereafter, even for the subsequent periods also the Appellate Tribunal upheld the order passed in Indicarb Limited which are also the subject matter of challenge before us.

B

PARLIAMENTARY INTERVENTION :

We may notice that having regard to the several orders passed in the connected matter, the Parliament enacted Central Sales Tax (Amendment) Act, 2001 and Finance Act, 2002. Suggestions, as regards certain provisions C of the said Acts, however, having been mooted at the Bar, the matter is said to be receiving fresh consideration at the hands of the Central Government.

It is also not in dispute that by enacting Central Sales Tax (Amendment) Act, 2001 by Central Act 20 of 2002, which came into force from 11th May, 2002, Section 2(g) of the Act has been substituted by a new sub-section by D which the definition of sale has been widened to include the deemed sales defined by Article 366 (29-A) of the Constitution to enable the levy of Central Sales Tax *inter alia* on the transactions involving transfer of property in the goods involved in the execution of works contract or transfer of the right to use the goods so that now even these transactions are open to levy E by two different States either as inter-State transaction, or intra-State transaction. Section 6A of the Central Act was also amended insofar as in sub-Section (1) thereof the following words have been inserted:

> "If the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed, for all purposes of this Act, to have been F occasioned as a result of sale."

The appellants filed applications in these appeals, seeking leave to raise additional grounds in the light of the said amendment.

SUBMISSIONS:

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Mr. K. Parasaran, learned senior counsel appearing on behalf of the appellants would *inter alia* submit that the ratio arrived at by this Court in Ashok Leyland (supra) requires a fresh look insofar as by reason of sub-Section (2) of Section 6A of the Central Act, the statute provided for conclusive evidence as regards the nature of transaction and as the orders passed H thereunder attained finality, the same could not have been reopened on any

ground whatsoever. Drawing our attention to the history of legislation as also the case laws leading to incorporation of Article 286, enactment of the Central Act as also amendments made in Article 269 of the Constitution of India, the learned counsel would submit that once by reason of the Central Act in terms of the determination made by the statutory authorities thereunder, certain transactions by creating a legal fiction were kept outside the purview of the Central Act, the assessing authorities cannot exercise their purported jurisdiction of reopening an order of assessment under Section 16(2) of the State Act or Section 9(2) of the Central Act. Formulation of principles for determining when a sale or purchase of consignment of goods takes place in the course of inter-state trade or commerce being within the exclusive domain of the Parliament having regard to Clause (3) of Article 269 of the Constitution of India, Mr. Parasaran, would contend; statutory authorities created under the State Act could not exercise any jurisdiction contrary to or inconsistent therewith.

The learned counsel would submit that the word "determination" signifies expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under a valid law.

Mr. Parasaran would contend that in terms of Section 6A of the Central Act, as it then stood, the assessee had two options, namely, to file Form F or subjected himself to an assessment proceeding. If the assessee opts to file a declaration in terms of Form F, whereupon an order is passed holding an enquiry by the assessing authority; the same being conclusive in nature, no proceeding for reopening the same would be permissible in law. Reliance in this connection has been placed on *Izhar Ahmad Khan* (supra), *Balabhagas Hulaschand* (supra) *and Mahant Dharam Das etc.* v. *The State of Punjab and Ors.*, [1975] 3 SCR 160.

The learned counsel would argue that the expressions "for the purpose of the Act" would imply "for the purpose of all the provisions of the Act" and, thus, once an order is passed under Sub-Section (2) of Section 6A of the Central Act, Section 9(2) thereof will have also no application whatsoever. Reliance in this behalf has been placed by Mr. Parasaran on *M.K. Kochu Devassy v. State of Kerala,* [1979] 2 SCC 117.

Mr. Parasaran would urge that while exercising the option, it is mandatory for the assessee to supply all information(s) which are required in terms of Form F and once compliance of statutory requirements are made, the adjudication thereupon shall become final and binding. He in support of

A the said contention placed reliance on *Shrisht Dhawan* v. *M/s. Shaw Brothers*, [1992) 1 SCC 534.

According to the learned counsel, such a provision has been inserted so as to emphasise the necessity of expeditious determination as regard a transaction involving transfer of goods in terms whereof different States claim B themselves to be entitled to levy different rates of taxes under the respective State Acts. If with a view to give effect thereto, no appeal has been provided, the same would not invalidate the law. In other words, argument of Mr. Parasaran is that Section 6A has been granted a higher status than the proceeding of assessment under the general law.

C Mr. B. Sen, the learned senior counsel appearing on behalf of the State of West Bengal while supporting the submission of Mr. Parasaran would further argue that the Central Act being relatable to Article 286 of the Constitution of India as also Entry 97 of List I of the Seventh Schedule of the Constitution, a presumption must be drawn that the purpose thereof was D to take away the taxing power of the State taken away and, thus, in relation to such transactions the State cannot levy any tax. It is evident that order of such nature passed by the assessing authorities of the State of Tamil Nadu would not only affect the assesses but also other States as well and once it is held that the burden of proof has been discharged by the assessee, such transactions must be held to have taken place outside the purview of the E Central Act.

Mr. A.K. Ganguli, the learned senior counsel appearing on behalf of the respondents, *per contra*, would contend that the question as regard the conclusiveness or otherwise of an order under Sub-Section (2) of Section 6A F of the Act shall operate as *res judicata*, keeping in view the fact that the said issue has already been determined by this Court in Ashok Leyland (supra) and, thus, binds the parties herein. The learned counsel would contend that Section 6A of the Act cannot be given a higher status than the State Act or Section 9(2) of the Central Act inasmuch as an order passed in terms of Sub-Section (2) thereof is passed merely in aid of assessment and in that view of G the matter if an order of assessment can be appealed against or subjected to a reopening proceeding, the same legal provisions must be held to be applicable also in relation to an order passed under Sub-Section (2) of Section 6A.

Mr. Ganguli has drawn our attention to the findings of the Tribunal to the effect that raids were conducted by the authorities and that the appellant H herein had escaped proper assessment by taking recourse to *suppressio veri*

and *suggestio falsi*. According to the learned counsel, as fresh materials had been discovered, a reasoned show cause notice was issued and pursuant thereto and in furtherance thereof, the impugned orders had been passed, and in that view of the matter no case has been made out for interference therewith.

STATUTORY PROVISIONS:

'Sale' has been defined in Tamil Nadu General Sales Act, 1959 as:

"2(n) "Sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of business for cash, deferred payment or other valuable consideration and includes -

(i) a transfer otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;..."

'Turnover' in the said Act has been defined as under:

"2(r) "turnover" means the aggregate amount for which goods are brought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (n), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuation consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea and rubber (natural rubber latex and all varieties and grades of raw rubber), grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover;"

Section 12 of the said Act provides for the procedure to be followed by the assessing authority in terms whereof the dealer is required to file the prescribed return relating to his turnover submitted in the prescribed manner within the period prescribed therefor. The Act provides for self-assessment subject of course to the exceptions contained in Clause (b) of Sub-Section (1) of Section 12. The errors contained in the return can, however, be corrected. A dealer making self-assessment is required to make true and correct statements

A of fact. In the event, the dealer does not file a return within the prescribed period and the return is found to be incorrect; in addition to the tax assessed, the assessing authority may direct it to pay the amount of penalty levied in terms of Sub-Section (3) of Section 12.

Section 16 provides for assessment of escaped turnover which reads
B thus:

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

D

(b) where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within period of five years from the date of order of the final assessment by the assessing authority reassess the tax due after making such enquiry as it may consider necessary
E and after giving the dealer a reasonable opportunity to show cause against such re-assessment."

In case of willful non-disclosure of assessable turnover by the dealer while passing an order of reassessment, penalty can also be imposed. Sub-Section (3) of Section 16 provides for the manner in which limitation is to
F be computed. Section 31 of the Act provides for appeal.

The relevant provisions of the Central Sales Tax Act, 1956 are as under:

2(b) "dealer" means any person who carries on (whether regularly or
G otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash or for deferred payment, or for commission remuneration or other valuable consideration, and includes—

(i) a local authority, a body corporate, a company, any co-operative
H society or other society, club, firm, Hindu undivided family or other

association of persons which carries on such business; A

(ii) a factor, broker, commission agent, del credere agent, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or distributing, goods belonging to any principal whether disclosed or not; and (iii) an B auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or nominee of the principal.

Explanation 1.—Every person who acts as an agent, in any State, C of a dealer residing outside that State and buys, sells, supplies, or distributes, goods in the State or acts on behalf of such dealer as-

(i) a mercantile agent as defined in the Sale of Goods Act, 1930 (3 of 1930). or

D

(ii) an agent for handling of goods or documents of title relating to goods, or

(iii) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or payment, and every local branch or office in a State of a firm registered outside that State E or a company or other body corporate, the principal office or headquarters whereof is outside that State, shall be deemed to be a dealer for the purposes of this Act.

Explanation 2.—A Government which, whether or not in the course of business, buy, sells, supplies or distributes, goods, directly F or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration, shall except in relation to any sale, supply or distribution of surplus, un-serviceable or old stores or materials or waste products or obsolete or discarded machinery or parts or accessories thereof, be deemed to be a dealer for the purposes of this Act; G

(g) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes,-

H

A (i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

B

(iii) a delivery of goods on hire-purchase or any system of payment by instalments;

(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or C other valuable consideration;

(v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

D (vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, but does not include a mortgage or hypothecation of or a charge or pledge on goods;

E

(j) "turnover" used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in accordance with the provisions of this Act and the rules made F thereunder;

6. *Liability to tax on inter-State sales.*-(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the G date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

Provided that a dealer shall not be liable to pay tax under this Act H on any sale of goods which, in accordance with the provisions of sub-

section (3) of section 5 is a sale in the course of export of those goods out of the territory of India. A

(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State. B

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods form one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods,— C

(a) to the Government, or

D

(b) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act.

6A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale.-(1) Where any dealer claims that he E is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State of another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer F and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in G the prescribed form obtained from the prescribed authority, along with the evidence of dispatch of such goods.

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true he H

A may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale.

B *Explanation.*—In this section, "assessing authority", in relation to dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act."

It may be noticed that by reason of Section 151 by Act No. 20 of 2002 the following has been added in sub-Section (1) of Section 6A after the C words "despatch of such goods":

"and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale." " ..

D Section 9 of the said Act reads as under:

"9. Levy and collection of tax and penalties. - (1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government E of India and the tax so levied shall be collected by that Government in accordance with the provision of sub-section (2), in the State from which the movement of the goods commenced:

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in F respect of the same goods and being also a sale which does not fall within sub-section (2) of section 6, the tax shall be levied and collected-

(a) where such subsequent sale has been effected by a registered dealer, in the State from which the registered dealer obtained or, as the case may be, could have obtained, the form prescribed for the G purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods; and

(b) where such subsequent sale has been effected by an unregistered dealer in the State from which such subsequent sale has been effected.

H (2) Subject to the other provisions of this Act and the rules made

thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess re-assess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm of Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly.

Form 'F' which is relevant for the purpose of the case reads thus :

"ORIGINAL

THE CENTRAL SALES TAX

(REGISTRATION AND TURNOVER) RULES, 1957

FORM F

[Form of declaration to be issued by the transferee]

[See rule 12(5)]

Serial No.....

Name of the issuing State .....

Office of issue.....

Date of issue.....

Name and address of the person to whom issued along with his Registration Certificate No.....

Date from which registration is valid..... ...

Seal of Issuing Authority

To.....(Transferor)

Registration Certificate No. of the Transferor.....

Certified that the goods transferred to me/us as per details below have been received and duly account for.

Description of the goods sent.....

Quantity or weight.....

Value of the goods.....

Number and date of invoice [or challan or any other documents under which goods were sent.]

Name of Railway Steamer or Ferry Station or Air Port or Post Office or Road Transport Company's Office from where the goods were despatched.....

No. and Date of Railway Receipt or Postal Receipt or Goods Receipt with trip sheet of lorry or any other documents indicating the means of transport.....

Date on which delivery was taken by the transferee.....

The above statements are true to the best of my knowledge and belief.

(Signature)

(Name of the person signing the declaration)

*(Status of the person signing the declaration in relation to the transferee)

*(Status of the person signing the declaration in relation to the transferor)

Date.....

*Strike out whichever is not applicable

(Note-To be furnished to the assessing authority in accordance with the rules framed under section 13(4)(e).)"

Having noticed the relevant provisions of the statute, we may notice the

following constitutional provisions: A

"245. Extent of laws made by Parliament and by the Legislatures of States.—(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. B

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation

268. Duties levied by the Union but collected and appropriated by the States.—(1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected— C

(a) in the case where such duties are leviable within any Union territory, by the Government of India, and

(b) in other cases, by the States within which such duties are respectively leviable. D

(2) The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State. E

269. *Taxes levied and collected by the Union but assigned to the States.*-(1) Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2). F

Explanation.—For the purposes of this clause,-

(a) the expression "taxes on the sale or purchase of goods" shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce; G

(b) the expression "taxes on the consignment of goods" shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment H

A takes place in the course of inter-State trade or commerce.

(2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that B year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.

(3) Parliament may by law formulate principles for determining when a sale or purchase of, or consignment of, goods takes place in the C course of inter-State trade or commerce."

Article 286 as it stood prior to 6th Amendment Act, 1956 reads thus:

"286. Restrictions as to imposition of tax on the sate or purchase of D goods. — (1) No law of a State shall impose, or authorise imposition of a tax on the sale or purchase of goods where such sale or purchase takes place —

(a) outside the State; or

E (b) in the course of import of goods into, or export of goods out of, the territory of India.

Explanation: For the purposes of sub-clause (a) a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase F for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorize the imposition of, a tax on G sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce:

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of H this Constitution shall, notwithstanding that the imposition of such

tax is contrary to the provisions of this clause continue to be levied until thirty first day of March, 1951. A

(3) No law made by the Legislature of a State imposing, or authorizing the imposition of a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent." B

Paragraph 16 of Second Report of the Law Commission of India states:

"16. The question whether on the analogy of the principles adopted in connection with sales or purchase in the source of import or export, C a sale effected by the transfer of documents during the movement of goods from one State to another should be regarded as an inter-State sale or purchase has received our careful consideration. We are of the view that such sales or purchases should be regarded as inter-State transactions. It was suggested that if the rate of inter-State tax happened to be lower than the rate of tax levied by the State on intra-State D transaction the adoption of this principle might lead to attempts by dealers to evade the higher tax of the State by giving intra-State transactions the appearance of inter-State transactions by the creation of fictitious records showing the movement of the goods from one State into another. We are not inclined to attach much importance to E this suggestion as in any case the sale or purchase will not escape taxation altogether and it is unlikely that dealers would resort to such attempts in order to save the difference between the inter-State and the intra-State tax. Moreover, if this principle is not applied considerable administrative and other difficulties will arise. We are, therefore, of the view that sales and purchases effected by a transfer F of documents during the movements of goods from one State to another should be regarded as inter-State transactions."

Thereafter the following Bill was introduced pursuant thereto:

"In clause 2, it is proposed to add a new entry 92A in the Union List G placing taxes on inter-State sales and purchases within the exclusive legislative and executive power of the Union, and to make entry 54 of the State List "subject to the provisions" of this new entry.

In clause 3, it is proposed to add these taxes to the list given in clause (1) of article 269, so that, although they will be levied and collected H

A in accordance with an Act of Parliament, they will not form part of the Consolidated Fund of India, but will accrue to the States themselves in accordance with such principles of distribution as may be formulated by Parliament by law. A further provision is proposed in article 269 expressly empowering Parliament to formulate by law principles for determining when a sale or purchase of goods takes place in the B course of inter-State trade or commerce.

It is proposed in clause 4 to omit from clause (1) of article 286 the explanation which has given rise to a great deal of legal controversy and practical difficulty. In view of the centralization of inter-State sales tax proposed in clause 2 of this Bill, clause (2) of article 286 C in its present form will cease to be appropriate. In its place it is proposed to insert a provision empowering Parliament to formulate principles for determining when a sale or purchase of goods takes place (a) outside a State, or (b) in the course of import of the goods into the territory of India, or (c) in the course of export of the goods D out of the territory of India.

It is further proposed to replace clause (3) of article 286 by a new clause on the lines recommended by the Taxation Enquiry Commission. Under this revised clause Parliament will have the power to declare by law the goods which are of special importance in inter- E State trade or commerce and also to specify the restrictions and conditions to which any State law (whether made before or after the Parliamentary law) will be subject in regard to the system of levy, rates and other incidents of the tax on the sales or purchase of those goods."

F Pursuant to or in furtherance of the Report of the Law Commission of India, Article 286 was amended. Article 286(3) now reads as under:

"(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,—

G (a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of H clause (29A) of Article 366, be subject to such restrictions and

conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify." A

The history of legislation as also constitutional amendments in relation to inter-State movement of goods has been noticed in *State of A.P. etc.* v. *National Thermal Power Corpn. Ltd. and Ors. etc.*, [2002] 5 SCC 203 and as such it may not be necessary to reiterate the same once over again. B

SECTION 6A OF THE CENTRAL ACT:

Prior to amendment of Section 6A of the Central Act, filing of Form F was optional. The dealer was, thus, entitled either to file such form or not to file the same. Only because such form is not filed, the same would not C mean that the dealer was prohibited from raising a plea that no stock of transfer from his Head Office to Regional Offices or Regional Sales Offices has taken place. It was entitled to plead that by reason of such transactions which are intra-organisation, sale was not occasioned by movement of goods. The question which was required to be posed and answered by the assessing D authority was, thus, required to be confined only to the fact as to whether any sale has occasioned by movement of goods or not. In other words, an exception had been made to the concept of inter-State sale by invoking the provisions of the Central Act; when such movement of goods was by way of transfer of stock; in terms whereof no tax under the Central Act was payable. Indisputably determination of such a question at the hands of the assessing E authority was required for arriving at a finding of fact as to whether the Central Sales Tax or the local sales tax would become payable. The States, where manufacturing of goods takes place in case involving such nature of transaction, presumably would like to invoke the provisions of the Central Sales Tax as in terms of Article 270 of the Constitution of India despite the F fact that the Central Sales Tax is payable to the Central Government, the amount is invariably passed on to the State concerned. On the other hand, the purchaser when it is a public sector undertaking, would like to see that the purchase and sale takes place within the State so as to entitle the concerned State to collect the local sales tax, a rate therefor would normally be higher. There, thus, exists conflict in interest of the States particularly having regard G to the financial crunches faced by them.

Having regard to the Statement of Objects and Reasons of the Central Sales Tax Act *vis-à-vis* the recommendations made by the Law Commission, as referred to hereinbefore, it would appear that the Parliament with a view to bring in expediency in such a matter so that the dispute can be determined H

A as expeditiously as possible amended Section 6A. Section 6 of the Act provides for liability to tax on inter-State sales in terms whereof every dealer is liable to pay tax thereunder on sales effected by him in the course of inter-State trade or commerce subject to the exception contained in the proviso appended thereto. Such tax would be leviable notwithstanding the fact that no tax is leviable either on seller or the purchaser under the State tax laws of the B appropriate State if that sale had taken place inside the State.

The liability to tax on inter-State sale as contained in Section 6 is expressly made subject to the other provisions contained in the Act. Sub-Section (2) of Section 9, on the other hand, which is a procedural provision C starts with the words "subject to the other provisions of this Act and the rules made thereunder". Section 6A provides for exception as regard the burden of proof in the event a claim is made that transfer of goods had taken place otherwise than by way of sale. Indisputably, the burden would be on the dealer to show that the movement of goods had occasioned not by reason of any transaction involving sale of goods but by reason of transfer of such D goods to any other place of his business or to his agent or principal, as the case may be. For the purpose of discharge of such burden of proof, the dealer is required to furnish to the assessing authority within the prescribed time a declaration duly filled and signed by the principal officer of the other place of business or his agent or principal. Such declaration would contain the E prescribed particulars in the prescribed form obtained from the prescribed authority. Along with such declaration, the dealer is required to furnish the evidence of such dispatch of goods by reason of Act 20 of 2002. In the event, if it fails to furnish such declaration, by reason of legal fiction, such movement of goods would be deemed for all purposes of the said Act to have occasioned as a result of sale. Such declaration indisputably is to be filed in Form F. The F said form is to be filled in triplicate. The prescribed authority of the transferee State supplies the said form. The original of the said form is to be filed with the transferor State and the duplicate thereof is to be filed before the authorities of the transferee State whereas the counterfoil is to be preserved by the person where the agent or principal of the place of business of the company is situated. G

When the dealer furnishes the original of Form F to its assessing authority, an enquiry is required to be held. Such enquiry is held by the assessing authority himself. He may pass an order on such declaration before the assessment or along with the assessment. Once an order in terms of Sub-H Section 2 of Section 6A of Central Act is passed, the transactions involved

therein would go out of the purview of the Central Act. In other words, in relation to such transactions, a finding is arrived at that they are not subjected to the provisions of the Central Sales Tax. It is not in dispute thereunder no appeal is provided thereagainst.

In *M/s. Chunni Lal Parshadi Lal* v. *Commissioner of Sales Tax, UP,* [1986] 2 SCC 501.

> "23. It means that a sale of any of the goods specified in sub-section (1) to a registered dealer who has purchased them or to any unregistered dealer, shall for the purpose of this section, be deemed to be a sale to the consumer unless the purchasing dealer purchases the said goods for resale in the same condition. It merely strengthens the provisions of sub-section (2) of Section 3-AA i.e. unless the dealer proves otherwise, every sale shall, for the purpose of sub-section (1), be presumed to be to a consumer. The combined effect of sub-sections (1), (2) and (3), of Section 3-AA of the Act is that tax would be payable if the goods in question i.e. cotton yarn, in this case, are sold to a dealer for consumption. Unless the dealer proves otherwise every sale by a dealer shall for the purpose of sub-section (1) be presumed to be a sale to a consumer. A sale of any of the goods mentioned in sub-section (1) to a registered dealer who does not purchase them for resale in the same condition, without processing or sale to unregistered dealer shall be deemed to be a sale to the consumer. Therefore, a registered dealer has to prove that a sale to another registered dealer or an unregistered dealer is not for consumption. In order to facilitate the working of the Act, by Rule 12-A a method of proving has been provided that the sale is not a sale to the consumer. The reading of the rule along with relevant provisions of the Act leads to the conclusion that Rule 12-A method,- furnishing of certificate in the form and with the particulars-is one of the methods of proving that sale by a registered dealer is not for consumption. Neither the rule nor the provision of the section suggests that this is the only method. If a dealer can prove by any other way than the way contemplated by Rule 12-A then he is not so precluded. For the rule to say otherwise would be exceeding the provision of the section. The purpose for the making of the rule would however, be frustrated if after the dealer proves in the manner indicated in Rule 12-A he has to prove again how the purchasing dealer has dealt with the goods after he obtains the certificate from a registered dealer.

A That would make the working of the Act and Rule unworkable.

24. There is no dispute that in this case certificates as mentioned in Rule 12-A were furnished.

25. The questions involved in this case are whether by furnishing
B certificate in Form III-A and the details of such certificate given in Form IV, the selling dealer got exemption and Rule 12-A created an irrebuttable presumption i.e. that no further evidence is required in this matter to prove that the goods were sold to a dealer for resale in the same condition and not to be consumed by the purchasing dealer."

C By reason of Sub-Section (2) of Section 6A, a legal fiction has been created for the purpose of the said Act to the effect that transaction has occasioned otherwise than as a result of sale.

On an analysis of the aforementioned provisions, therefore, the following propositions of law emerge:

D

(i) The initial burden of proof is on the dealer to show that the movement has occasioned by reason of transfer of such goods which is otherwise than by reason of sale. The assessee may file a declaration. On a declaration so filed an inquiry is to be made by the assessing authority for the purpose of passing an order on
E arriving at a satisfaction that movement of goods has occasioned otherwise than as a result of sale.

(ii) Whenever such an order is passed, a legal fiction is created.

Legal fiction, as is well-known, must be given its full effect.

F In the rules of evidence, there exist several presumptions. These presumptions may be rebuttable or irrebuttable. Irrebuttable presumptions are referred to as conclusive presumptions as they stand as conclusive proof of certain facts and are open to challenge only on very meagre grounds. Under the Indian Evidence Act, Sections 41, 112 and 133 deal with conclusive
G presumptions. Even in other enactments, like the Indian Companies Act, 1956, such provisions exist.

In the case at hand it is necessary to determine whether Section 6A of the Central Sales Tax Act sets up a conclusive presumption.

H "Presumptions may be looked upon as the bats of law, flitting in the

twilight, but disappearing in the sunshine of facts." A

This metaphor used by Cochran, J. in *Stumpf* v. *Mantgomery,* (1924) 101 OKL 256 Pac 85. pithily states the law.

However, the rule of conclusive proof stands on a different footing. Once it is held, as we do, that Section 6A of the Central Act provides for a B conclusive proof, except on a limited ground, reopening of assessment would not be permissible.

RULE OF CONCLUSIVE PRESUMPTION : SOME CASE LAWS:

In several cases validity of rules of conclusive presumptions have been C upheld.

However, in *Ashok Leyland* (supra), it was held:

> "Section 6 A does not create a conclusive presumption and that an order accepting Form F, whether passed during the assessment or at D any point earlier thereto, is ultimately a part and parcel of the order of assessment. Its amenity to power of re-opening and revision depends upon the provisions of the concerned State sales tax enactment by virtue of Section 9(2)."

We do not think that the aforesaid view is correct. E

In *Re Eric Holmes Ltd,* [1965] 2 All ER 333, it was held,

> "that the giving of the certificate by the Registrar is conclusive that the document creating the charge was properly registered, even if in fact it was not properly registered." F

A discussion may also ensue as to whether a conclusive presumption is one of substantive or of procedural law. This was discussed in *Izhar Ahmad Khan* (supra) and was held to be part of the latter and not the former as it found place in the Indian Evidence Act (among other reasons). The decision G runs as follows:

> "It was not correct to say that r. 3 of Sch III of the Citizenship Rules, 1956, which made it obligatory on the authority to infer the acquisition of foreign citizenship from the fact of obtaining a passport from a foreign country was not a rule of evidence but a rule of substantive H

A law.

Like the rules of rebuttable presumption, which was undoubtedly a rule of evidence. The function of an irrebuttable presumption was also to help the judicial mind in appreciating the existence of facts with this difference that while the former was open to rebuttal, the B latter was placed beyond rebuttal. So considered a rule of irrebuttable presumption could not be said to fall to fall outside the law of evidence.

That such a rule might in some cases lead to hardship and injustice was not a relevant consideration in judging its constitutional validity.

C The real test whether a rule of irrebuttable presumption was one of evidence was inherent relevancy. If the fact from the proof of which the presumption was required to be drawn was inherently relevant in proving it, the rule was one of evidence, no matter whether the presumption prescribed was rebuttable or irrebuttable.

D The expression 'rules of evidence' in Section 9(2) must be construed in the light of its legislative history. Ever since the passing of the Evidence Act a conclusive presumption has been a part of the law of evidence. It is well settled that the scope of power to legislate on a topic had to be determined by the denotation of that topic E obtaining in legislative practice."

However, in the minority opinion it was observed,

"A rule of conclusive presumption made with a view to affect specified substantive right was a rule of substantive law and did not cease to F be so because it rested on a fact which was relevant to it. The test was not one of relevancy but whether it was intended to affect a specified substantive right or provide a method of proof."

The said principle has been reiterated by this Court in *M Venugopal* v. *Divisional Manager, Life Insurance Corporation of India, Machilipatnam,* G *A.P. and Anr.*, [1994] 2 SCC 323.

In the case at hand, a statutory authority that had jurisdiction to pass such an order has passed the order. In addition there is no provision for appeal, which goes to show that this is part of the substantive law and not procedural law. This order is conclusive for all purposes, as H the above two stated elements clearly go out to show. No appeal has

been provided for depicting the will of the legislature to make the order of such authority final. A

In T*he Municipal Board, Hapur* v. *Raghuvendra Kripal and Ors.*, AIR (1966) SC 693 this Court stated:

> "...The provision making the notification conclusive evidence of the proper imposition of the tax is conceived in the best interest of compliance of the provisions of the Boards and not to facilitate their breach. It cannot, therefore, be said that there is excessive delegation." B

In *State of Madras* v. *M/s. Radio and Electricals Ltd.*, [1966] Supp. SCR 198, it has been held that satisfaction once reached in absence of any provision, review of such an order is not permissible. C

In *Balabhagas Hulaschand,* (supra) [1976] 2 SCC 44, this Court has given an example.

> "Case No. II-A who is a dealer in State X agrees to sell goods to B but he books the goods from State X to State Y in his own name and his agent in State Y receives the goods on behalf of A. Thereafter the goods are delivered to B in State Y and if B accepts them a sale takes place. It will be seen that in this case the movement of goods is neither in pursuance of the agreement to sell nor is the movement occasioned by the sale. The seller himself takes the goods to State Y and sells the goods there. This is, therefore, purely an internal sale which takes place in State Y and falls beyond the purview of Section 3(a) of the Central Sales Tax Act not being an inter-State sale. D E

In *C.P.K. Trading Co.* v. *Additional Sales Tax Officer, III Circle Mattancherry,* (1990) 76 STC 211, the law is stated in the following terms: F

> "...A plain reading of section 6A(2) of the Central Sales Tax Act points out that in cases where the dealer exercises the option of furnishing the declaration (F forms), the only further requirement is that the assessing authority should be satisfied, after making such enquiry, as he may deem necessary, that the particulars contained in the declaration furnished by the dealer are "true". The scope or frontiers of enquiry, by the assessing authority under Section 6A(2) of the Central Sales Tax Act is limited to this extent, namely, to verify whether the particulars contained in the declaration (F forms) furnished by the dealer are "true". It means, the assessing authority can conduct G H

A an enquiry to find out whether the particulars in the declaration furnished are correct, or dependable, or in accord with facts or accurate or genuine. That alone is the scope of the enquiry contemplated by section 6A(2) of the Act. On the conclusion of such an enquiry, he should record a definite finding, one way or the other. As to what should be the nature of the enquiry, that can be conducted by the B assessing authority under section 6A(2) of the Act, is certainly for him to decide. It is his duty to verify and satisfy himself that the particulars contained in the declaration furnished by the dealer are "true". As a quasi-judicial authority, the assessing authority should act fairly, and reasonably in the matter. During the course of the C enquiry, under Section 6A(2) of the Act, it is open to him to require the dealer to produce relevant documents or other papers or materials which are germane or relevant, to find whether the particulars contained in the declaration (F forms) are "true". It is not possible to specify the documents or other materials or papers that may be required, to be furnished in all situations and in all cases. It depends D upon the facts and circumstances of each case. The power vested in the officer is a wide discretionary power, to find, whether the particulars contained in the declaration (F forms) are "true". It is not possible or practicable to lay down the exact documents or materials that may be required in all the cases, by the assessing authority, to E come to a proper and just finding as required by section 6A(2) of the Act."

Thus from the above, we can conclude that the order of an authority under Section 6 A is conclusive for all practical purposes.

F LEGAL FICTION :

The question that arises is whether a legal fiction can be applied to determine whether a particular interstate transaction amounted to an interstate sale or a mere transfer of stock. Legal fictions have been applied in a number of cases.

G

In *Gannon Dunkerley and Co.* v. *State of Rajasthan,* [1993] 1 SCC 364 at p. 365, it was held that, "Sections 3, 4, and 5 (of the Central Sales Tax Act) were applicable to such contracts containing two separate agreements, these provisions would apply to a contract which, though single and indivisible, by legal fiction introduced by the 46th Amendment has been altered into a H contract which is divisible into one for sale of goods and other for labour and

services. Such a deemed sale has all the incidents of a sale of goods involved in the execution of a works contract where the contract is divisible into one for sale of goods and the other for supply of labour and services. Sections 14 and 15 of the Central Sales Tax Act would also be applicable to the deemed sales resulting from transfer of property in goods involved in the execution of a works contract. The absence of any amendment in the definition of sale contained in Section 2 (g) of the Central Sales Tax Act, 1956 so as to include transfer of property in goods involved in execution of a works contract, therefore, does not in any way affect the applicability of Sections 3, 4 and 5 and Sections 14 and 15 of the Central Sales Tax to such transfers.

In *State of Bombay* v. *Pandurang*, AIR (1953) SC 244 at Para 5 it was held,

> " When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion."

A legal fiction can be utilised in several ways wherein the word *'deemed'* is used. However, the mere use of the word 'deemed' is not in itself sufficient to set up a legal fiction as was held in *Consolidated Coffee Ltd.* v. *Coffee Board,* [1980] 2 SCC 358 at Para 11, stating that, "the word 'deemed' is used a great deal in modern legislation in different senses and it is not that a deeming provision is every time made for the purposes of creating a fiction. A deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word of phrase that would not otherwise prevail, but in each case it would be a question as to with what object the legislature has made such a deeming provision."

The Court went further to quote the position taken in *St. Aubyn* v. *Attorney General,* [1951] 2 All ER 473 wherein Lord Radcliffe observed thus,

> "The word 'deemed' is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a

A comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense impossible."

In *Bhavnagar University* v. *Palitana Sugar Mill (P) Ltd.*, [2003] 2 SCC 111 at p. 123 it was stated that the purpose and object of creating a legal fiction in the statute is well known. But when a legal fiction is created it must B be given its full effect. It was held in *East End Dwellings Co. Ltd.* v. *Finsbury Borough Council,* [1951] 2 All ER 587:

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had C in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of D that state of affairs."

[See also *ITW Signode India Ltd.* v. *Collector of Central Excise* (2003) 9 SCALE 720-para 58

These decisions, therefore, show that whenever a legal fiction is created E by a statute, the same shall be given full effect.

INTERPRETATION OF SECTION 6A OF THE CENTRAL ACT :

A statute, as is well-known, must be interpreted having regard to the text and context thereof. Mischief Rule may also be applied in a given F case.

While construing a statute, the object of the Act must be taken into consideration. (See *Killick Nixon Ltd.* v. *Deputy Commissioner of Income Tax,* [2003] 1 SCC 144)

G Section 6A of the Act although provides for a burden of proof, the same has to be read in the context of Section 6 of the said Act. Section 6 provides for liability to pay tax on inter-State sales. Any transaction which does not fall within the definition of 'sale' would not be exigible to tax, the burden whereof would evidently be on the assessee. We have noticed hereinbefore that whereas prior to the amendment in sub-section (1) of Section H 6A the dealer had an option of filing a declaration in Form-F; after such

amendment, he does not have such option, insofar as in terms of the amended provision, if the dealer fails and/or neglects to file such a declaration, the transaction would be deemed to be an inter-State sale. It is to be noticed that for the aforementioned purpose also, the Parliament advisedly used the expression 'deemed'. If the expression 'deemed' is interpreted differently, an incongruity would ensue.

A

B

In absence of any indication that the Parliament while enacting sub-section (2) of Section 6A did not intend to make the deeming provisions to be a conclusive fact as regard occasion of the transaction having taken place otherwise than as a result of sale, it would have dealt with the matter differently.

C

Section 6A(2) of the Act uses the following expressions which are important : (1) 'thereupon'; (2) 'for the purpose of this Act'; (3) 'the movement of goods to which the declaration related shall be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale'.

Each of them must be given its proper meaning.

D

A statute for the purpose of its interpretation must be read in its entirety. It is to be given a purposive construction. Applying Heydon's rule, it must be held that the amendment was necessitated not only to make the dealer to file such a declaration imperatively but also to see that such movement of goods becomes inter-State sale by raising a legal fiction, as 'having been occasioned in course of a inter-State sale'. In other words, if such a declaration is filed and on an inquiry made pursuant to or in furtherance of the particulars furnished are found to be correct by the assessing authority, the result thereof which is evidenced by the expression 'thereupon' shall in view of the legal fiction created would be a transaction otherwise than as a result of an inter-State sale. Furthermore, once such a legal fiction is drawn, the same would continue to have its effect not only while making an order of assessment in terms of the State Act but also for the purpose of invoking the power of reopening of assessment contained in Section 9(2) of the Central Act as well as Section 16 of the State Act.

E

F

G

See *Indian Handicrafts Emporium and Ors.* v. *Union of India and Ors.*, [2003] 7 SCC 589, *Ameer Trading Corporation Ltd.* v. *Shapoorji Data Processing Ltd.*, JT (2003) 9 SC 109 = (2003) 9 SCALE 713.

OUR ANALYSIS :

In the case at hand it has to be determined whether the sale in question

H

A is an interstate one. If through the means of a legal fiction it is determined that this is not an interstate sale, then it amounts to a transfer of stock. This finding is made by a statutory authority who has the jurisdiction to do so and there is no provision for appeal. Therefore, the order made by such authority is conclusive in that it cannot be reopened on the basis that there had been a mere error of judgment. It also cannot be re-opened under another statute, B for examples, the Sales Tax Act of the State concerned, when the order had been made under the Central Act. Section 9(2) of the Act is subject to the other provisions of the Act which would include sub-section (2) of Section 6A of the Act. "Subject to" is an expression whereby limitation is expressed. The order is conclusive for all purposes. It can only be re-opened on a small C set of grounds such as fraud, misrepresentation, collusion etc.

It is also to be borne in mind that no presumption when movement of goods has taken place in the course of inter-State sales may be raised in the case of standard goods but the same is not conclusive. It is only one the factors which is required to be taken into consideration along with others. In D a case, however, where the purchaser places order on the manufacturer for manufacturing goods which would be as per his specifications, a presumption that agreement to sell has been entered into may be raised.

The purport and object of Section 6A of this Act need not detain us for long as the same has been considered at some details recently in *20th Century* E *Finance Corpn. Ltd. and Anr.* v. *State of Maharashtra,* [2000] 6 SCC 12 stating:

> "While examining the power of State Legislatures under Entry 54 of List II in the earlier part of this judgment, we have noticed that the situs of the sale or purchase is wholly immaterial as regards the inter- F State trade or commerce, as held in *Bengal Immunity Co. Ltd.* case AIR (1955) SC 661 : [1955] 2 SCR 603. Further, the State Legislature cannot by law, treat sales outside the State and sales in the course of import as "sales within the State" by fixing the situs of sales within its State in the definition of sale, as it is within the exclusive domain G of the appropriate legislature, i.e., Parliament to fix the location of sale by creating legal fiction or otherwise."

In *Mahant Dharam Das* (supra), it has been held that the object of the Act is to get rid of protracted litigation. The same is also required to be borne in mind while interpreting the relevant provisions of the Central and the State H Acts.

There cannot be any doubt or dispute that while defining sale, the situs of sale can be fixed by the Parliament which having regard to Article 286 is within its exclusive domain and in the context of Article 269(3) having regard to the following factors:

(i) Place where agreement of sale is concluded;

(ii) Passing of property in the goods;

(iii) Where the parties to the contract reside; and

(iv) Goods are located or manufactured.

Once the situs of sale either by way of legal fiction or otherwise is determined, the State Legislature will be denuded of its power to fix another situs having regard to the fact that the Parliament alone has the exclusive jurisdiction therefor. A sale may have several elements and all of them need not necessarily take place in one State and in that view of the matter a presumption had to be provided for by a deeming provision as a logical corollary of the principles laid down by a law of Parliament.

It has not been disputed before us that all the requisite particulars are to be stated in Form F. Once a determination is made that such statements are correct, the curtain is drawn keeping in view the expression "thereupon". The said word is of great significance and must be given its full effect.

In Words and Phrases, Permanent Edition, Volume 41A, 'thereupon' is defined as:

> "Thereupon" has at least two meanings and may mean either immediately or without delay or lapse of time. It has been defined as meaning upon this or that and is used for the purpose of referring to a cause or condition precedent. It is also frequently used to denote a following or consequence of preceding events and when considered in statutory interpretation it is often construed to refer to a succession of events in the order or sequence of their performance rather than as an adverb of time. *State ex rel. Warnick* v. *Wilson*, 178 P.2d 277, 282, 162 Kan. 507."

The expression "For the purpose of this Act", unless the context otherwise requires would mean "all the purposes" thereof.

In *H.L. Stud, Income Tax Officer, Companies Circle 1(1), Bombay* v.

A *Tata Engineering and Locomotive Co. Ltd..*, AIR (1969) SC 319 at 319, this Court held:

> "The expression "for all purposes", used in S. 43 only indicates that when an appointment is made for a particular assessment year it is stood for all purposes as far as that assessment is concerned i.e., for
B all purposes for imposing tax liability, determining the quantum of the liability and for recovering it. The expression does not extend the liability to any other assessment excepting the liability for the assessment year for which the appointment is made."

The expression "for the purpose of the said Act" must also be given
C effect to. The same would ordinarily mean "for the purpose of all the provisions of the said Act".

In *M.K. Kochu Devassy* v. *State of Kerala etc.*, [1979] 2 SCC 117, it is stated:

D
> 13. We find ourselves wholly unable to accept any of the contentions. The terms of Section 2 of the 1947 Act as substituted by Section 3 of the Kerala Act are absolutely clear and unambiguous and when they lay down that the expression "public servant" shall have a particular meaning for the purposes of the Act, that meaning must be
E given to the expression wherever it occurs in the Act. "For the purposes of the Act" surely means for the purposes of all and not only some of the provisions of the Act. If the intention was to limit the applicability of the definition of the expression "public servant" as contended, the language sed would not have been "for the purposes of the Act" but something like "for the purposes of the Act insofar
F as they relate to the offences under Sections 161 to 165A of the Indian Penal Code".

In *Shrisht Dhawan* (supra), the law is stated in the following terms:

> "Thus a tenant cannot wait for the entire period of lease and then
G raise objection to execution on fraud or collusion unless he is able to establish that it was not known to him and he came to know of it, for the first time only at the time of execution. In other words the Controller shall not be justified in entertaining an objection in execution unless the tenant establishes, affirmatively, that he was not
H aware of fraud before expiry of the period of lease. To the following

extent, therefore, the law on procedural aspect should be taken as settled.

(1) Any objection to the validity of sanction should be raised prior to expiry of the lease.

(2) The objection should be made immediately on becoming aware of fraud, collusion etc.

(3) A tenant may be permitted to raise objection after expiry of lease in exceptional circumstances only.

(4) Burden to prove fraud or collusion is on the person alleging it."

It was further observed :

"...An action is mindless when it is thoughtless or without any care or caution. In law it is passing of an order without any regard to the provision of law. If the section requires the authority to pass an order on inquiry or on being satisfied of existence or non-existence of a fact then the duty cast is higher and an order which is passed without due regard to duty to investigate then the order may be mindless..."

Furthermore, the expression 'subject to' must be given effect to.

In Black's Law Dictionary, Fifth Edition at page 1278 the expression "Subject to" has been defined as under :

"Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided, answerable for. *Homan* v. *Employers Reinsurance Corp.*, 345 Mo. 650, 136 S.W. 2d 289, 302"

The word "Determination" must also be given its full effect to, which pre-supposes application of mind and expression of the conclusion. It connotes the official determination and not a mere opinion of finding.

In Law Lexicon by P. Ramanatha Aiyar, Second Edition, it is stated:

"Determination or order. The expression "determination" signifies an effective expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under a valid law for disposal. The expression "order" must have also a similar meaning, except that it need not operate to end the dispute, Determination or

A order must be judicial or quasi-judicial. *Jaswant Sugar Mills* v. *Lakshmi Chand,* AIR (1963) SC 677, 680. [Constitution of India Art. 136]"

In Black's Law Dictionary, 6th Edition, it is stated:

"A "determination" is a "final judgment" for purposes of appeal when
B the trial court has completed its adjudication of the rights of the parties in the action. *Thomas Van Dyken Joint Venture* v. *Van Dyken,* 90 Wis. 236, 279 N.W. 2d 459, 463."

It is not in dispute that the principles for determination as to what would cause a inter-state sale or intra-state sale is to be laid down in terms
C of the provisions of a Parliamentary Act having regard to the express provisions contained in Clause (3) of Article 269 and Clause (3) of Article 286 of the Constitution. What principles can be deduced by reason of such a legal fiction has been stated by this Court in *Consolidated Coffee Ltd.* (supra) in the following terms:

D "A 'principle' means a general guiding rule, and does not include specific directions, which vary according to the subject-matter per Shearman, *J., in M'Creagh* v. *Frearson,* (1922) WN 37, 38.

Similarly in WORDS AND PHRASES, Permanent Edition, Vol. 33-
E A at page 327 it is explained that "principle means a general law or rule adopted or professed as a guide to action. "In other words, as opposed to any specific direction governing any particular or specific instance, transaction or situation a principle would be a guiding rule applicable generally to cases or class of cases. Looked at from this angle it will be clear that sub-section (3) of Section 5 formulates a
F principle inasmuch as it lays down a general guiding rule applicable to all penultimate sales that satisfy the two conditions specified therein and not any specific direction governing any particular or specific transaction of a penultimate sale. In other words the content of the provision shows that it lays down a principle."

G It was opined :

"Two things become clear from this Statement; first, Mohd. Serajuddin decision [1975] Supp SCR 169 : 36 STC 136 : [1975] 2 SCC 47 : [1975] SCC (Tax) 269 is specifically referred to as necessitating the
H amendment and secondly, penultimate sales made by small and

medium scale manufacturers to an export canalising agency or private export house to enable the latter to export those goods in compliance with existing contracts or orders are regarded as inextricably connected with the export of the goods and hence, earmarked for conferal of the benefit of the exemption. But here again, 'existing contract' with whom is not clarified. In other words, on this crucial point the Statement is silent and does not throw light on whether the existing contract should be with a foreign buyer or will include any agreement with a local party containing a covenant to export. Therefore, the question will again depend upon proper construction and as we have said above, in the matter of construction the two aspects as discussed earlier show that by necessary implication 'the agreement' spoken of by Section 5(3) refers to the agreement with a foreign buyer."

In terms of Clause (3) of Article 269, *inter-state* sale is contrasted from local sale.

An order passed by the statutory authority who has jurisdiction therefor, the same would amount to a part of substantive and not procedural law. In addition to this there is no provision for appeal. Thus, it is only in the limited cases of fraud, mis-representation etc. that reassessment can be directed and not if there had been a mere error of judgment.

If it is not an inter-State sale provided through a legal fiction, then it amounts to transfer of stock and this is a finding which has been arrived at by a statutory authority wherefor there does not exist any provision for appeal. Therefore, it cannot be reopened on the premise that there was a mere error of judgment or change in opinion.

Once it is held that such determination of an issue having regard to legal fiction created in terms of Sub-Section (2) of Section 6A is conclusive, it must a fortiorari follow that the same is binding.

The particulars required to be furnished in Form F clearly manifest that the proof required is as to whether the goods were factually transferred to the assessee himself or his branch office or his agent and not to any third party. Any other enquiry is beyond the realm of the assessing authority.

It is true that this Court in Ashok Leyland (supra) upon consideration of the matter holding that no statutory conclusiveness had been attached by reason of a legal fiction in terms of Sub-Section (2) of Section 6A. This

A Court opined:

> "After all Section 6A is also one of the provisions of this Act. There is no reason to elevate it to a higher status than the rest of the provisions".

B With utmost respect, therein the Court did not take into consideration that the provisions of Section 6A having been provided by way of exclusionary clause subject to the satisfaction of the conditions precedent contained therein, and, thus, the same stand at an elevated stage over charging Section 6 of the Act. The assessing authority while passing an order is required to take into consideration the jurisdictional fact. Once it is found, having been conferred C with a plenary power to determine its own jurisdiction, that he did not have any jurisdiction under the Act, the opinion of the assessing authority attains finality. What would be a jurisdictional fact has been noticed by this Court in Shrisht Dhawan (supra) in the following terms:

D

> "19... A Jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a court, tribunal or an authority. In Back's Legal Dictionary it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or E tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order *ultra vires* and bad... "

F In *South India Corporation (P) Ltd.* v. *Secretary, Board of Revenue.*, AIR (1964) SC 207, this Court has held that special provisions shall prevail over the general provisions.

It is further trite that an administrative authority or a quasi-judicial authority while adjudicating upon a lis is obligated to pose and answer a right G question so as to enable it to arrive at a conclusion as to whether he has jurisdiction in the matter or not. By reason of a legal fiction which becomes attracted in terms of determination made thereunder, the provisions of the Central Act shall stand excluded.

H In *A.V. Fernandez* v. *The State of Kerala*, 8 STC 561 at 574: (1957) 1

SCR 837, this Court observed: A

> "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 B 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 C 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 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 D of the gross turnover as well as the net turnover on which sales tax can be levied or imposed. "

In *Sahney Steel* (supra) whereupon reliance has placed by the assessing authority, a contention was raised that the registered office and the branch office were separately registered as dealers under the sales tax law and E transaction effected by the branch office should not be identified with transactions effected by the registered office. Pathak, J., as the learned Chief Justice then was, observed :

> "...We are unable to agree. Even if, as in the present case, the buyer places an order with the branch office and the branch office F communicates the terms and specifications of the orders to the registered office and the branch office itself is concerned with the sales despatching, billing and receiving of the sale price, the conclusion must be that the order placed by the buyer is an order placed with the Company and for the purpose of fulfilling that order the manufactured G goods commence their journey from the registered office within the State of Andhra Pradesh to the branch office outside the State for delivery of the goods to the buyer..."

The Court in the facts of that case held that the movement from the head office to the branch office was for the purpose of delivery to the branch H

A office, thereafter to the buyer through the branch office. The branch office merely acted as a conduit through which the goods passed on their way to the buyer. It is, however, relevant to note that the Court noticed :

> "...It would have been a different matter if the particular goods had been despatched by the registered office at Hyderabad to the branch
B office outside the State for sale in the open market and without reference to any order placed by the buyer. In such a case if the goods are purchased from the branch office, it is not a sale under which the goods commenced their movement from Hyderabad. It is a sale where the goods moved merely from the branch office to the
C buyer..."

The purpose of verification of the declaration made in Form F, therefore, is as to whether the branch office acted merely as a conduit or the transaction took place independent to the agreement to sell entered into by and between the buyer and the registered office or the office of the company situated
D outside the State. The said decision therefore, does not run counter to our reading of the said provision. Furthermore, the question which has been raised before us had not been raised therein.

We, therefore, are of the opinion that the observations made by this Court in *Ashok Leyland* (supra) to the effect that an order passed under Sub-
E Section (2) of Section 6A can be subject matter of reopening of a proceeding under Section 16 of the State Act was not correct.

However, we may hasten to add that the same would not mean that even wherein such an order has been obtained by commission of fraud, collusion, misrepresentation or suppression of material facts or giving or
F furnishing false particulars, the order being vitiated in law would not come within the purview of the aforementioned principle.

An order of assessment is albeit passed under the State Act. But once it is held that the concerned State Act as also the Central Act is not applicable, as a consequence whereof sales tax would be payable under another State
G Act, it is doubtful as to whether the power to reopen the proceedings under the State Act or the Central Act would be attracted. There does not exist any power in the statute to rectify a mistake. In that view of the matter, mere change in the opinion of the assessing authority or to have a relook at the matter would not confer any jurisdiction upon him to get the proceedings
H reopened. Discovery of a new material although may be a ground but that

itself may not be a ground for reopening the proceedings unless and until it is found that by reason of such discovery, a jurisdictional error has been committed. In other words, when an order passed in terms of Sub-Section (2) of Section 6A is found to be illegal or void *ab initio* or otherwise voidable, the assessing authority derives jurisdiction to direct reopening of the proceedings and not otherwise.

In *Shrisht Dhawan* (supra) this Court has held:

> "20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likes a fraudster to Milton's sorcerer, Comus who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words of by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act defines fraud as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of the fact with knowledge that it was false. In a leading English Case (*Derry* v. *Peek,* [1886-90] All ER 1 what constitutes fraud was described thus: (ARR ER p. 22 B-C):

A Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false."

This aspect of the matter has been considered recently by this Court in *Roshan Deen* v. *Preeti Lal,* AIR (2002) SC 33, *Smt. Anita* v. *R. Rambilas,* B AIR (2003) AP 32, *Ram Preeti Yadav* v. *U.P. Board of High School and Intermediate Education and Ors.,* [2003] 8 SCC 311 and *Ram Chandra Singh* v. *Savitri Devi and Ors.,* [2003] 8 SCC 319.

Suppression of a material document would also amount to a fraud on the Court. (See *Gowrishankar and Anr.* v. *Joshi Amba Shankar Family Trust* C *and Ors.,* [1996] 3 SCC 310 and *S.P. Chengalvaraya Naidu (Dead) By LRs.* v. *Jagannath (Dead) by Lrs. and Ors.,* [1994] 1 SCC 1.

There is no law that only because no appeal is provided the order would not attain finality. (See *Commissioner of Income Tax, Bombay* v. D *M/s. Amritlal Bhogilal & Co.* [1959] SCR 713.

RES-JUDICATA:

The principle of res judicata is a procedural provision. A jurisdictional question if wrongly decided would not attract the principle of res judicata. E When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking the procedural principles like, estoppel, waiver or res judicata. This question has since been considered in *Sri Ramnik Vallabhdas Madhvani and Ors.* v. *Taraben Pravinlal Madhvani,* (2003) 9 SCALE 412 wherein this Court observed in the following terms :

F

"So far as the question of rate of interest is concerned, it may be noticed that the High Court itself found that the rate of interest should have been determined at 6%. The principles of res judicata which according to the High Court would operate in the case, in our opinion, is not applicable. Principles of res-judicata is a procedural provision. G The same has no application where there is inherent lack of jurisdiction.

In *Chief Justice of A.P. and Anr.* v. *L.V.A. Dikshitulu and Ors etc.,* AIR 1979 (SC) 193 : [1979] 2 SCC 34, the law is stated in the following terms:

H "23. As against the above, Shri Vepa Sarathy appearing for the

respective first respondent in C.A. 2826 of 1977, and in C.A. 278 of 1978 submitted that when his client filed a writ petition (No. 58908 of 1976) under Article 226 of the Constitution in the High Court for impugning the order of his compulsory retirement passed by the Chief Justice, he had served, in accordance with Rule 5 of the Andhra Pradesh High Court (Original Side) Rule, notice on the Chief Justice and the Government Pleader, and, in consequence, at the preliminary hearing of the writ petition before the Division Bench, the Government, Pleader appeared on behalf of all the respondents including the Chief Justice, and raised a preliminary objection that the writ petition was not maintainable in view of Cl. 6 of the Andhra Pradesh Administrative Tribunal Order made by the President under Article 371-D which had taken away that jurisdiction of the High Court and vested the same in Administrative Tribunal. This objection was accepted by the High Court, and as a result, the writ petition was dismissed in limine. In these circumstances-proceeds the argument-the appellant is now precluded on principles of res judicata and estoppel from taking up the position, that the Tribunal's order is without jurisdiction. But, when Shri Sarathi's attention was invited to the fact that no notice was actually served on the Chief Justice and that the Government Pleader who had raised this objection, had not been instructed by the Chief Justice or the High Court to put in appearance on their behalf, the counsel did not pursue this contention further. Moreover, this is a pure question of law depending upon the interpretation of Article 371-D. *If the argument holds good, it will make the decision of the Tribunal as having been given by an authority suffering from inherent lack of jurisdiction.* Such a decision cannot be sustained merely by the doctrine of res judicata or estoppel as urged in the case."

In *Dwarka Prasad Agarwal (D) By LRs. and Anr.* v. *B.D. Agarwal and Ors.*, [2003] 6 SCC 230, it is stated:

"It is now well-settled that an order passed by a court without jurisdiction is a nullity. Any order passed or action taken pursuant thereto or in furtherance thereof would also be nullities. In the instant case, as the High Court did not have any jurisdiction to record the compromise for the reasons stated hereinbefore and in particular as no writ was required to be issued having regard to the fact that public

A law remedy could not have been resorted to, the impugned orders must be held to be illegal and without jurisdiction and are liable to be set aside. All orders and actions taken pursuant to or in furtherance thereof must also be declared wholly illegal and without jurisdiction and consequently are liable to be set aside. They are declared as such."

B

In a case where an ordinance promulgated by the President of India which had been rendered invalid by a judgment of the High Court, the question as to whether an enactment of the Parliament would be barred was negatived in a recent decision of this Court in *Dharam Dutt and Ors.* v. *Union of India* C *and Ors.*, (2003) (10) SCALE 141. Pointing out that the High Court did not consider the constitutional questions in the right perspective, this Court observed:

"The doctrine of Separation of Powers and the constitutional convention of the three organs of the State, having regard and respect D for each other, is enough answer to the plea raised on behalf of the petitioners founded on the doctrine of Separation of Powers. We cannot strike down a legislation which we have on an independent scrutiny held to be within the legislative competence of the enacting legislature merely because the legislature has re-enacted the same legal provisions into an Act which, ten years before, were incorporated E in an ordinance and were found to be unconstitutional in an erroneous judgment of the High Court and before the error could be corrected in appeal the Ordinance itself lapsed."

CONCLUSION:

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For the reasons stated hereinbefore, we are of the opinion that the Appellants would be entitled to move the High Court for ventilating their grievances. However, if the Central Government creates a new forum, it would be open to them to approach the same.

G We may now consider the fact of the connected matters:

In W.P. (C) No. 195 of 1999 merely a show cause notice has been issued in relation to three assessment years beginning from 1989-1990. This writ petition covers the period 1989-1990 to 1995-1996. In relation to period 1990-1991, 1991-1992 and 1992-1993 reopening proceedings had been H initiated. A fresh cause of action has arisen in relation to the other assessment

years.

Having regard to the fact that the question as to whether the finding arrived at by the STAT would attract the exceptions carved out hereinbefore mainly would revolve round the question as to whether determination in terms of Sub-Section (2) of Section 6A of the Act has been obtained by playing fraud or suppression of record or not requires a detailed examination. Indisputably, the appellant/ writ petitioner would be entitled to move the High Court in accordance with law.

CIVIL APPEAL @ SLP (C) No. 5579 of 2001

The appellant herein had filed his application praying *inter alia* for the following reliefs:

> "(a)Grant Special Leave to Appeal against the final Judgment and Order dated 13.11.2000 passed in STA No. 459 of 1999 by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.
>
> (b) Pass such other or further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice."

In the said case, no order of reopening has been issued and as such it is not a case where we were required to determine a forum in the light of the order passed in Ashok Leyland (supra).

C.A. No. 944 of 2001

The question as to whether the transaction in question constitute inter-state sale or intra-state sale has been decided upto Tribunal. They have approached this Court without availing the statutory remedies provided for under the statutes. We, therefore, decline to exercise our discretion and direct that the parties may avail the remedies under the statute.

In view of our aforementioned findings, the parties may approach the High Court. If necessary, the other States wherein the local sales tax had been deposited, may be impleaded as parties so that the lis may be determined in their presence. However, in the event, in the meanwhile, any forum is created by any Parliamentary Act in terms whereof the *inter se* disputes between the parties *vis-à-vis* the claim of the assessee may be determined,

A they may approach the said forum.

CA No. 943 of 2001 :

The appellant herein manufactures explosives. It has its factory situated at Onnalwadi, Hosur, Dharmapuri District. It is registered under the Central B Sales Tax Act. It filed return for the assessment year 1986-87 under the Central Sales Tax Act, 1956 claiming exemption in respect of a sum of Rs. 34,30,302.73 representing transfer of goods to its branch at Dhanbad in the State of Bihar and a sum of Rs.13,91,547.18 relating to its branch at Nagpur in the State of Maharahstra. An inspection held by the Enforcement Wing of C the respondent; certain documents were recovered from a perusal whereof it transpired that the goods were moved against the prior orders and as such they are not entitled to exemption. The Department contended that it a Coal India Limited which had placed orders for supply of explosives to its various subsidiary companies in North India and its projects at Asansol, Dhanbad, Ranchi, Nagpur and Bilaspur at specified rates and in that view of the matter D the transactions constituted inter-State sales. According to the appellant, however, order placed by M/s Coal India Limited is not an order intending to purchase but merely a standing offer. The objection of the appellant was overruled upto the appellate authority. The matter went up to the Tamil Nadu Sales Tax Tribunal, Coimbatore wherein it was held that the goods being E unascertainable ones must be held to be general and standard goods and tailormade to the special requirements of any customers. It came to the conclusion that the transactions were only branch transfers and were not liable to sales tax. It further held that the transactions having taken place outside the State of Tamil Nadu and the transactions having been treated as F local sales in other States, the State of Tamil Nadu had no jurisdiction to impose tax in respect thereof. The Tribunal also accepted the declaration made in terms of Section 6A. The State of Tamil Nadu being aggrieved and dissatisfied therewith filed Tax Revision Case and by reason of the impugned judgment dated 2.12.1997 the judgment of the Tribunal was reversed. It, however, did not interfere with the order of the Tribunal as regard penalty. G Questioning the said order, the appeal has been filed before us. Keeping in view the fact that although more than one State is involved, having regard to the facts and circumstances of the case, it is necessary that the question may be examined afresh by the High Court in the light of the decision of this Court. In the writ petition, it will be open to the parties to implead the other H States so that, if necessary, the matter may be heard out and disposed of in

their presence. However, in the event another forum is created by a Parliamentary Act, it will be open to the parties to approach the said forum. These appeals and writ petitions are disposed of with the aforementioned directions and observations. No costs. A

B.K.M. Appeals/Petitions disposed of. B