

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

-

WRIT PETITION NOs.26129, 26130 OF 2012, 8406, 8416 AND 8440 of 2014

W.P.No.26129 of 2012:

Between:

M/s.A.B.Mauri India Pvt. Ltd, Hyderabad.

.... Petitioner

Vs.

\$ 1) The Deputy Commercial Tax Officer, Ranigunz Circle, Hyderabad & Anr.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 10.12.2015.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may --

be allowed to see the Judgments?

2. Whether the copies of judgment may be marked -Yes-

to Law Reports/Journals

3. Whether Their Ladyship/Lordship wish to see the -Yes-

fair copy of the Judgment?

JUSTICE RAMESH RANGANATHAN

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

AND

*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

-

WRIT PETITION NOs.26129, 26130 OF 2012, 8406, 8416 AND 8440 of 2014

% Dated 10-12-2015

-

Between:

W.P.No.26129 of 2012:

M/s.A.B.Mauri India Pvt. Ltd, Hyderabad.

.... Petitioner

Vs.

\$ 1) The Deputy Commercial Tax Officer, Ranigunz Circle, Hyderabad & Anr.

.... Respondents

-

! Counsel for the petitioner: Dr.S.R.R.Viswanath

^ Counsel for respondents: Sri M.Govind Reddy and
Sri J.Anil Kumar, Learned Special
Standing Counsel for Commercial
Taxes

<GIST:

> HEAD NOTE:

? Citations:

- 1. AIR 1962 SC 1733
- 2. (1985) 60 STC 301 (SC)
- 3. (1976) 38 STC 475 (SC)
- 4. (2007) 8 VST 466 (SC)
- 5. (2007) 10 VST 173 (P&H)
- 6. 2008 (11) VST 303 (All)
- 7. (2014) 1 SCC 603
- 8. AIR 1958 SC 86
- 9. (1983) 142 ITR 663: (AIR 1983 SC 603
- 10. (2003) 2 SCC 107
- 11. (2005) 6 SCC 499
- 12. AIR 1954 SC 207
- 13. AIR 1955 SC 425
- 14. AIR 1957 SC 882
- 15. AIR 1966 SC 1089
- 16. AIR 1959 SC 422
- 17. AIR 1965 SC 1321
- 18. (1984) 2 SCC 436
- 19. (1988)n 1 SCC 572
- 20. (1995) 5 SCC 75
- 21. (2000) 6 SCC 293
- 22. (2000) 7 SCC 695
- 23. (2001) 6 SCC 634
- 24. (2001) 8 SCC 509
- 25. (2002) 7 SCC 484
- 26. (2003) 1 SCC 72
- 27. (2004) 7 SCC 166

28. (1970) 2 SCC 355
29. (1982) 51 STC 1 (APHC)
30. (1993) 88 STC 98
31. (1988) 7 APSTJ 116 (APHC)
32. (1997) 7 SCC 190
33. AIR 1969 SC 147
34. (1980) 45 STC 438 (PH)
35. AIR 1980 SC 1468
36. (1998) 108 STC 337
37. [1964] 15 STC 753

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

-

WRIT PETITION NOs.26129, 26130 OF 2012, 8406, 8416 AND 8440 of 2014

-

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The relief sought for, in this batch of Writ Petitions, is to quash the assessment orders, passed for different assessment periods in respect of the very same assessee, levying purchase tax under Section 4(4)(iii) of the A.P. VAT Act on goods sold in the course of export out of the territory of India.

Counsel on either side are in agreement that the facts in W.P. No.26129 of 2012 can be taken as illustrative of the facts in this batch of Writ Petitions. The petitioner, a company registered under the Companies Act, has branches in different parts of the country including one at the Special Economic zone Kakkanad, Cochin, and another in Secunderabad. They are engaged in the business of trading in yeast, bakery ingredients and chillies. A substantial part of their operations is said to be of direct export of chillies to foreign countries through its branch at Cochin, and its importer and exporter Code Number is stated to be 0288001532.

According to the petitioner, only discoloured chillies or broken chillies, which cannot be exported, are sold either locally or in the course of inter-State trade and commerce; their branch at Cochin, on receipt of orders from intending buyers in

foreign countries, intimates the Secunderabad branch to purchase chillies of the required specifications; the Secunderabad branch purchases chillies, strictly in accordance with the requirements of the Cochin branch, in the market yards at Guntur both from cultivators, who are not registered under the AP VAT Act, and also from registered VAT dealers; the chillies, so purchased, are despatched, by way of stock transfer notes and way bills, to the branch at Cochin for export; the Cochin branch, in turn, exports the chillies, received from the Secunderabad branch, to foreign buyers and sends Form 'F' declaration to the Secunderabad branch acknowledging receipt of the chillies sent on stock transfer basis which, in turn, is exported to foreign countries; and the purchase of chillies by the Secunderabad branch, and stock transfer to the Cochin branch which, in turn, exports them to foreign buyers, constitute purchases in the course of export.

For the assessment year 2009-2010, the petitioner claimed to have purchased chillies worth Rs.6,56,02,241/- from unregistered dealers, and for Rs.3,04,77,218/- from registered dealers. The entire stock of chillies, worth Rs.9,58,40,649/-, were transferred to the Cochin branch in the State of Kerala for export to foreign countries. The petitioner claims that, since purchase of chillies by the Secunderabad branch constitutes purchase in the course of export out of the territory of India, the States of Andhra Pradesh and Telangana lack jurisdiction to levy purchase tax in view of the constitutional prohibition in Article 286(1)(b) of the Constitution of India, and Section 5(b) of the A.P. VAT Act.

The 1st respondent issued a show cause notice, in Form VAT 305-A dated 28.02.2012, proposing to levy purchase tax of Rs.25,66,493/-, calculated at 4% under Section 4(4) of the A.P. VAT Act, on the value of chillies purchased from unregistered dealers i.e., for Rs.6,41,62,345/-. The petitioner was also asked to show cause why penalty, and interest at 1%, should not be imposed on them. In reply thereto the petitioner, vide letter dated 19.03.2012, submitted that, since chillies purchased from unregistered dealers were exported out of the country, Section 4(4) of the A.P. VAT Act was not attracted. The petitioner claims to have produced all the records, at the time of personal hearing, to show that the chillies purchased by them, within the State, constituted purchases in the course of export. It is their case that the stock transfer notes show that the Secunderabad branch, soon after purchase of chillies, had despatched them to its branch at the SEZ Cochin; the way bills show that the branch in Secunderabad transported the chillies to the

Cochin branch; the export invoices show the petitioner as the exporter, and the transactions as falling within the ambit of Section 5(1) of the CST Act; the bill of lading, and the consideration for exports received by way of foreign remittances to the petitioner's bank accounts, show that the petitioner is the direct exporter; the "F-forms" prove inter-branch transfers and the subsequent export by the petitioner; and the purchases made, within the State of Telangana and Andhra Pradesh, constitutes purchase in the course of export immune from State taxation. The 1st respondent rejected the contentions, put forth by the petitioner in reply the show cause notice, and passed an assessment order levying purchase tax under Section 4(4) of the A.P. VAT Act.

In his counter-affidavit, the Deputy Commercial Tax Officer stated that the petitioner has an efficacious alternative remedy of an appeal under the provisions of the A.P. VAT Act; they cannot, therefore, invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India; the respondent visited the petitioner's business premises, and verified the records; examination of the record revealed that the petitioner had not paid tax on the purchase of chillies, and did not claim input-tax credit in accordance with the provisions of the Act; a show cause notice was issued on 28.02.2012, calling upon them to file their objections; the petitioner filed its objections on 19.03.2012; and, thereafter, the assessment order was passed on 03.07.2012. According to the first respondent, the petitioner had purchased chillies from unregistered dealers, and had transferred it to its branch in Cochin; in terms of Section 4(4) of the A.P. VAT Act, a dealer, who purchases taxable goods from a person or a dealer not registered as a VAT dealer in circumstances in which no tax is payable by the selling dealer, shall be liable to pay tax at 4% on the purchase price of such goods if, after such purchase, the goods are disposed of otherwise than by way of consumption or by way of sale either within the State or in the course of interstate trade or commerce or export out of the territory of India; as the goods were transferred, otherwise than by way of consumption or by way of sale, the petitioner was liable to pay tax on the chillies purchased from unregistered dealers; if the goods were, indeed, exported the petitioner ought to have filed "Form-H"; in the present case the petitioner has merely filed "Form-F" which shows that the goods were transferred to its branches otherwise than by way of sale; and, under the circumstances, the respondent had levied tax, on purchase of chillies from unregistered dealers, in terms of Section 4(4) of the VAT Act.

In the affidavit filed in reply thereto, the petitioner stated that the respondent did not dispute the petitioner's assertion that the chillies, purchased by their Secunderabad branch and transferred to the Cochin branch, was exported therefrom to foreign buyers; the petitioner purchased chillies to meet their export obligations; the chillies, so purchased, were despatched from the petitioner's Secunderabad branch to their Cochin branch, and were exported therefrom to foreign buyers; since the petitioner is itself the direct exporter, Form H, as required under Section 5(3) and (4) of the CST Act read with Rule 12(10) of the CST (R&T) Rules, need not be submitted; the chillies purchased by the petitioner at Guntur were stock transferred to its branch in the SEZ at Cochin, and was exported from there to other countries; Form 'F', in terms of Section 6-A, was submitted as proof of the fact that the goods moved to Cochin, in the State of Kerala, otherwise than by way of sale; the impugned order was not passed on the ground of non-submission of 'H' Forms by the petitioner; the petitioner's branch in Secunderabad can neither be described as a dealer selling goods to their own branch in Cochin SEZ, nor can the latter be described as an exporter to whom the goods were sold by the Secunderabad branch within the meaning of Section 5(4); it is not necessary, therefore, to file 'H' Forms; the petitioner has issued Form 'H' declarations, to all registered VAT dealers from whom chillies were purchased, to enable them to claim exemption from tax; and the subject transactions constitute purchases in the course of export.

Dr. S.R.R. Viswanath, Learned Counsel for the petitioner, would submit that the impugned assessment order is without jurisdiction and in violation of Articles 286(1) (b) of the Constitution read with Sections 4(4)(iii) and 5 of the A.P. VAT Act; purchases in the course of export enjoy constitutional immunity from state taxation; levy, under the A.P. VAT Act, is without jurisdiction; the petitioner is, therefore, entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India; Article 286(1)(b) of the Constitution stipulates that no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place in the course of export; Parliament enacted the Central Sales Tax Act, 1956 formulating principles to determine when a sale or purchase takes place in the course of export out of the territory of India; purchases made by the petitioner's branch at Secunderabad to comply with export obligations, and export of the very same goods by the petitioners branch in Cochin,

makes the purchases, by the petitioner's branch at Secunderabad, purchases in the course of export; the branches at Secunderabad and Cochin are not independent legal entities, but form part of the petitioner, a company registered under the Companies Act; levy of purchase tax on purchases made by the Secunderabad branch, isolating it from the export obligations of the Cochin branch, despatch of chillies to the Cochin branch, and export therefrom to foreign buyers, is contrary to law; as purchase of chillies, by the Secunderabad branch, is in the course of export, they cannot be subjected to tax under Section 4(4) of the A.P. VAT Act; the impugned assessment order is, therefore, liable to be set aside; the judgment of the Supreme Court in **East India Tobacco Company v. State of Andhra Pradesh** related to a dispute which arose before the CST Act was enacted by Parliament in the year 1956; Section 5(b) of the CST Act, and its explanation, exclude levy of VAT on export sales; the assessing authority erred in reducing the input tax credit, on other commodities, treating purchases, in the course of export, as stock transfers, and in applying Rule 20(8)(d) of the A.P. VAT Rules; and export transactions cannot be included in the denominator, of the formula prescribed in the said Rule, treating them as stock transfers. Reliance is placed by the Learned Counsel on **Sahney Steel and Press Works Ltd. v. CTO; English Electric Company of India Ltd. v. DCTO; State of Haryana v. Nipha Exports (P) Ltd;** and **H.M. Mehta & C. v. St. of Haryana.**

On the other hand Sri M. Govind Reddy, Learned Special Standing Counsel for Commercial Taxes, would place reliance on the judgment of the Supreme Court in **East India Tobacco Co.**¹, and the judgment of Allahabad High Court in **Commissioner of Trade Tax v. Rajesh Spices Company**, to submit that, as the goods purchased by the Secunderabad branch which is a dealer under the AP VAT Act were transferred outside the State, the ingredients of Section 4(4) are attracted; as the State Legislature has jurisdiction to levy tax, the petitioner cannot avoid liability to pay tax claiming exemption under the Central Sales Tax Act; and, as the assessing authority had levied tax, in accordance with Section 4(4) of the A.P. Vat Act, no interference is called for.

Sri J. Anil Kumar, Learned Special Standing Counsel for Commercial Taxes, would refer to the assessment order to submit that the petitioner had filed their return in Form 200; and, in column 12 thereof, they had claimed that the transactions were stock transfers exempt from tax; they did not state, in their return, that these goods

were sold in the course of export under column 13; as the petitioner had themselves claimed exemption as stock transfer, the assessing authority was justified in levying tax under Section 4(4)(iii) of the A.P. VAT Act; and, even otherwise, since the assessing authority had rejected the petitioner's contention on this short ground, he should be permitted to examine the records, and determine whether or not the goods purchased from unregistered dealers within the State were, in fact, exported to foreign buyers.

Before examining the rival contentions, urged by Learned Counsel on either side, on merits, it is necessary to deal with the preliminary objection raised on behalf of the respondents that the petitioner has an effective statutory remedy of appeal under the A.P. VAT Act and cannot therefore be permitted to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. It is no doubt true that the A.P. VAT Act provides for a remedy of an appeal against an assessment order. Notwithstanding the statutory appellate remedy, it is within the discretion of the High Court to grant relief under Article 226, more so when the assessing authority has not drawn any factual adverse inference after examining various documents, and the evidence to the transaction; there are no disputed questions of fact; the jurisdictional error, committed by the respondent authorities, is on account of misappreciation of the law and the statutory provisions; the levy is without jurisdiction, without authority of law and in flagrant violation of Article 286, and Section 5 of the A.P. VAT Act; and the taxing authorities have assumed jurisdiction to levy tax though none existed. (**CIT v. Chhabil Dass Agarwal**; **State of U.P. v. Mohd. Nooh**; **Titaghur Paper Mills Co. Ltd. v. State of Orissa**; **Harbanslal Sahnia v. Indian Oil Corpn. Ltd.**; **State of H.P. v. Gujarat Ambuja Cement Ltd.**; **K.S. Rashid and Son v. Income Tax Investigation Commission**; **Sangram Singh v. Election Tribunal**; **Union of India v. T.R. Varma**; **K.S. Venkataraman and Co. (P) Ltd. v. State of Madras**; **N.T. Veluswami Thevar v. G.**

[image]

Raja Nainar; Municipal Council, Khurai v. Kamal Kumar; Siliguri Municipality v. Amalendu Das; S.T. Muthusami v. K. Natarajan; Rajasthan SRTC v. Krishna Kant; Kerala SEB v. Kurien E. Kalathil; A. Venkatasubbiah Naidu v. S. Chellappan; L.L. Sudhakar Reddy v. State of A.P.; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra; Pratap Singh v. State of Haryana; and GKN Driveshafts (India) Ltd. v. ITO).

Even otherwise the rule of exclusion of the writ jurisdiction, in view of the existence of an alternative remedy, is not a rule of compulsion. (**Harbans Lal Sahnia**¹⁰; **Gujarat Ambuja Cement**¹¹). When, on undisputed facts, the taxing authorities are shown to have assumed jurisdiction which they do not possess, a writ petition can be entertained. (**Gujarat Ambuja Cement**¹¹). Some exceptions to the rule of alternative remedy have been recognized i.e. where the statutory authority has not acted in accordance with the provisions of the enactment or in defiance of the fundamental principles of judicial procedure etc. (**Chhabil Dass Agarwal**⁷). The existence of an alternative remedy is merely a factor to be considered, and would not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed. (**S.J.S. Business Enterprises (P) Ltd. v. State of Bihar**). If the High Court has entertained a petition, despite availability of an alternative remedy, and has heard the parties on merits it would, ordinarily, not be justified in dismissing the Writ Petition on the ground of non-exhaustion of the statutory remedies unless it finds that factual disputes are involved, and it would not be desirable to deal with them in a writ petition. (**L. Hirday Narain v. Income Tax Officer, Bareilly; Gujarat Ambuja Cement Ltd**¹¹). As this Court admitted some of the Writ Petitions, forming part of this batch, a few years ago,

it would not be open to the State, at this length of time, to raise the dispute of an alternate remedy to non-suit the petitioners. The preliminary objection, therefore, necessitates rejection.

On the jurisdiction of the respondents, to levy tax on the subject goods under the A.P. VAT Act, it must be borne in mind that the State Legislature is empowered, under Entry 54 of List II of the VII Schedule to the Constitution of India, to make a law levying tax on the sale or purchase of goods other than newspapers. The law, which the State legislature is empowered under Entry 54 to make, includes a law levying tax not only on the sale of goods but also on its purchase. Tax is levied, under Section 4(4) of the Act, on a VAT dealer who, in the course of his business, purchases taxable goods from (1) a person; or (2) a dealer not registered as a VAT dealer; or (3) a VAT dealer in circumstances in which no tax is payable by the selling VAT dealer. Section 4(4) visualises imposition of tax on purchases made by a VAT dealer from a person other than a registered dealer, who could be a non-registered dealer or a person who is not a dealer. (**Hindustan Milkfood Manufacturers Ltd. v. State of A.P.**) A farmer who grows agricultural produce and, except for cleaning, grading and sorting, does not subject the agricultural produce to any other physical, chemical and other process, would neither fall within the definition of a “**dealer**” under Section 2(10) of the Act nor can he be said to be carrying on “**business**” for the purposes of the Act. A farmer or an agriculturist would be a “**person**” under Section 4(4) of the Act. The tax levied under Section 4(4) is not on the sale of goods by a farmer/agriculturist, but on the VAT dealer who purchases “goods” (agricultural produce) from the farmer. It is not every purchase of taxable goods from an agriculturist/farmer, but only such goods which fall within the ambit of clauses (i) to (iii) of Section 4(4) and its proviso, which attract levy of tax at the stage of its purchase.

Broadly speaking, the effect of Section 4(4) is: tax payable at sale point becomes tax payable on the purchase point in certain circumstances. Because the seller is not, or cannot be, taxed for certain reasons, the purchasing dealer is being taxed. The purchaser is taxed provided one of the conditions specified in clauses (i) to (iii) of Section 4(4) are satisfied. (**Hotel Balaji v. State of A.P.**). Where goods, liable to tax under the Act, are purchased by a VAT dealer from other dealers who are not registered under the Act, and the goods have not suffered any sales tax, a liability is imposed on the purchasing dealer to the extent the goods purchased by him are

used as specified in clauses (i) to (iii) of Section 4(4). (**M/s. P. Subbaraju & Co., Kondapalli v. State of A.P.; Hindustan Milkfood Manufacturers Ltd.**²⁹).

Section 4(4)(iii) of the A.P. VAT Act stipulates that every VAT dealer, who in the course of his business purchases any taxable goods from a person or a dealer not registered as a VAT dealer or from a VAT dealer in circumstances in which no tax is payable by the selling VAT dealer, shall be liable to pay tax at the rate of four percent (4%) on the purchase price of such goods, if after such purchase, the goods are disposed of otherwise than by way of consumption or by way of sale either within the State or in the course of inter-state trade or commerce or export out of the territory of India. For purchase tax to be levied under Section 4(4)(iii) of the VAT Act, the following conditions must be satisfied. (1) a VAT dealer must, during the course of his business, purchase taxable goods from a person or a dealer not registered as a VAT dealer; (2) the purchase of goods must be in circumstances in which no tax is payable by the selling VAT dealer; (3) in such an event the purchasing VAT dealer is liable to pay tax at the rate of 4/5% on the purchase price of such goods; (4) the liability to pay purchase tax, on the purchase price of such goods, is if, after such purchase, the goods are disposed of (a) otherwise than by way of consumption; (b) otherwise than by way of sale either within the State or in the course of interstate trade or commerce; or (c) otherwise than by way of export out of the territory of India.

In the present case chillies are taxable goods and as the petitioner - a VAT dealer – has, in the course of its business, purchased chillies from farmers (who are not registered VAT dealers) the ingredients of Section 4(4) are, to this extent, attracted. If, after such purchase, the VAT dealer had merely transferred the stock of chillies outside the State then, as the goods would have been disposed of otherwise than by way of consumption or by way of sale within the State or in the course of interstate trade or commerce or export out of the territory of India, it would fall within the ambit of Section 4(4)(iii) of the A.P. VAT Act. In the present case, however, while the goods were no doubt transferred from the Secunderabad branch of the petitioner-company to another of its branches at Cochin in the State of Kerala, the very same goods are said to have been exported from the Cochin branch to foreign buyers outside the country. If the goods (chillies in the present case) have been exported, and have not been disposed of otherwise than by way of export out of the

territory of India, the ingredients of Section 4(4)(iii) would not be satisfied and, consequently, such export of chillies outside the territory of India would not fall within the ambit of Section 4(4)(iii) of the Act.

There is a bar, under Article 286(1)(b) of the Constitution, for the State to impose tax on the sale or purchase of goods, where such sale or purchase takes place in the course of export of goods out of the territory of India. Article 286 of the Constitution places restrictions as to the imposition of tax on the sale or purchase of goods and, under clause (1)(b) thereof, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place in the course of the import of the goods into, or export of the goods out of, the territory of India.

Article 286(1)(b) of the Constitution forbids a State from imposing or authorising the imposition of a tax on the sale or purchase of goods when such sale or purchase takes place in the course of the export of goods outside the territory of India. (**State of Maharashtra v. Embee Corporation**). In view of the bar imposed by Article 286(1)(b) of the Constitution of India, Section 5(b) of the A.P. VAT Act also stipulates that nothing contained in the A.P. VAT Act shall be deemed to impose or authorize the imposition of a tax on the sale or purchase of any goods, where such sale or purchase takes place in the course of export of the goods out of the territory of India. Under the Explanation thereto, the provisions of Chapter II of the Central Sales Tax Act, 1956 shall apply for the purpose of determining when a sale or purchase takes place in the course of export. The A.P. VAT Act, in view of Section 5(b) thereof, prohibits imposition of tax on the sale or purchase of goods where such sale or purchase is in the course of export of the goods out of the territory of India. The test to be applied, for determining when a sale or purchase takes place in the course of export, in view of the Explanation to Section 5 of the A.P. VAT Act, are those prescribed under the provisions of Chapter II of the CST Act i.e., Sections 3, 4 and 5 thereof.

Article 286(2) enables Parliament, by law, to formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1). Under the Constitution, as it originally stood, revenue from sales-tax was reserved to the States. Since the power of taxation could be exercised by the States, in a manner prejudicial to the larger public interest, it was considered necessary to restrict the power of taxation. In the exercise of this constituent power

under Article 286 of the Constitution, the Parliament enacted the CST Act. (**The State of Madras v. N.K. Nataraja Mudaliar; Sterling Steels & Wires Ltd. v. State of Punjab**). With a view to formulate principles for determining as to when a sale or purchase of goods takes place in the course of import into or export from India (**Embee Corporation**³²), Chapter II of the Central Sales Tax Act has the heading "Formulations of Principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of export or import". The heading of Chapter II suggests that what is done, under Sections 3, 4 and 5 is the formulation of principles. (**Consolidated Coffee Ltd. v. Coffee Board, Bangalore**).

Section 5(1) of the CST Act defines what Article 286(1)(b) of the Constitution forbids and, by virtue of Clause (2) of Art. 286 the Parliament, by enacting Section 5 of the CST Act, has laid down the principles when a sale or purchase of goods takes place in the course of the import into, or export outside of, the territory of India. (**Embee Corporation, Bombay**³²). Section 5, in Chapter II of the CST Act, stipulates when a sale or purchase of goods is said to take place in the course of import or export and, under sub-section (1) thereof, a sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India. Section 5(3) stipulates that, notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods, preceding the sale or purchase occasioning the export of those goods out of the territory of India, shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export. Section 5(4) stipulates that the provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority, in the prescribed manner, a declaration duly filed and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

The word "deemed" in Section 5 (1) & (3) of the CST Act lay down general principles. A "principle" has been explained in **Butterworths' Words and Phrases, (Second Edition, Vol. 4 at page 177)** to mean a general guiding rule, and does not

include specific directions, which vary according to the subject matter. (**Per Shearman, J., in M'Creach v. Frearson, 1922 WN 37**). Similarly in **Words and Phrases, Permanent Edition, Vol. 33A 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. (**Consolidated Coffee Ltd.**³⁵). If export of chillies by the petitioner, from its Cochin branch to foreign buyers outside the country, satisfies the requirements of Section 5(1) of the CST Act, the respondents would then lack jurisdiction to levy VAT, as such a levy is prohibited under Article 286(1)(b) of the Constitution of India read with Section 5(b) and Section 4(4)(iii) of the A.P. VAT Act.

It is no doubt true that the Secunderabad branch of the petitioner company only purchased chillies, among others, from farmers and transferred the stock of chillies to the Cochin branch. It is also true that the goods (chillies) were not exported by the Secunderabad branch of the petitioner company to foreign buyers. The question which necessitates examination is whether the stock transfer of goods from one branch of a company, and export of the very same goods, from the other branch, outside the country would fall outside the ambit of Section 4(4)(iii) of the A.P. VAT Act.

The petitioner is a company registered under the Companies Act, 1956 and, as noted hereinbefore, has branches in different parts of the country. Transfer of goods from one branch of the company to another does not result in the sale of goods as a company cannot sell goods to itself. A company is one legal entity even if it carries on business at different branches. (**English Electric Company of India Ltd.**³). The registered office and the branch offices are part of the same Company, and do not possess separate juridical personalities. The branches have no independent and separate entity and, where a branch office sells the goods to the buyer, it is a sale between the Company and the buyer. (**Sahney Steel & Press Works Ltd.**²; **English Electric Company of India Ltd.**³).

Where the movement of the goods from the registered office in one State is occasioned by the order placed by a foreign buyer, or is an incident of such a

contract, its movement from the very beginning, from the State of A.P/Telangana all the way until delivery is received by the foreign buyer, is movement of goods for the purpose of export. The purchase of goods in the State of Andhra Pradesh/Telangana, and its movement thereafter to the branch office outside these States, is an incident of the contract entered into with the foreign buyer, if it was intended that the same goods should be delivered by the branch office outside these States to the foreign buyer as there would be no break in the movement of the goods. (**Sahney Steel & Press Works Ltd.**²).

In [Nipha Export Pvt. Limited v. State of Haryana](#), the petitioner-company had its registered office at Calcutta, and a branch office at Faridabad; and the goods purchased by the branch office were sent to the head office at Calcutta for the purpose of export, and the same were exported. The orders were received directly by the head office from foreign countries, and the goods were not exported directly by the Faridabad branch. The Punjab & Haryana High Court held that it was not the case of the State that the goods were sold by the branch office at Faridabad to the head office at Calcutta; in fact, the movement of the goods from Faridabad to Calcutta was made in the course of export of goods outside the territory of India within the meaning of [Section 5\(1\)](#) of the Central Sales Tax Act; and the adjudicating authorities had erred in holding that the movement of the goods from Faridabad to Calcutta was not occasioned in the course of export out of the territory of India.

On the judgment of the Punjab & Haryana High Court, in **Nipha Exports Pvt. Ltd**³⁶, being subjected to challenge in appeal, the Supreme Court, in **Nipha Exports Pvt. Ltd**⁴, agreed with the view expressed by the Punjab & Haryana High Court that the movement of goods from Faridabad to Calcutta was occasioned in the course of export out of India, and there could be no sale between the branch office and the head office.

In **H.M. Mehta & Co.**⁵ the petitioner approached the Punjab & Haryana High Court challenging the assessment order whereby purchase tax was levied under Section 9 of the Haryana General Sales Tax Act, 1973 on the purchase value of cotton which was transferred by the assessee to its head office at Bombay, and from there the same goods were exported out of the Country. Purchase tax was levied as the assessee had transferred the goods out of the State, otherwise than by way of sale, to its head office at Bombay, which were ultimately exported out of the country.

Following its earlier judgment in **Nipha Exports**³⁶, the Punjab & Haryana High Court set aside the levy of purchase tax on the purchase value of goods which were transferred by the petitioner to its head office outside the State, and were exported from there out of the Country.

If chillies, transferred from the Secunderabad branch of the petitioner to its Cochin branch, have been exported to foreign buyers outside the country, and such exports satisfy the ingredients of Section 5(1) of the CST Act, no tax can be levied on the stock transfer of chillies from Secunderabad branch to Cochin branch as it is not a case of a mere stock transfer, and the entire process appear to be in the course of export of the goods outside the territory of India, in terms of Section 5(1) of the CST Act.

In **East India Tobacco Co.**¹, the appeals filed before the Supreme Court were against the judgment of the Andhra Pradesh High Court. Prior to 1/10/1953, the area wherein the appellants carried on business formed part of the State of Madras, and on that date the State of Andhra was constituted, and the area in question fell within Andhra State. The law relating to the sales tax in force in that area was the Madras General Sales Tax Act, 1939. After the Andhra State came into existence the Legislature of that State enacted Act XIV of 1955 amending Section 5 of the Madras General Sales Tax Act. Pursuant to the Amendment Act, the Andhra Government issued a notification on 04.11.1955 cancelling the earlier notification No. 144 dated 31/03/1953 issued by the Madras Government. The validity of Andhra Act XIV of 1955, in so far as it imposed a tax on the sale of Virginia tobacco, was under challenge before the Andhra Pradesh High Court. On the challenge being negatived, the petitioners before the Andhra Pradesh High Court invoked the jurisdiction of the Supreme Court. Reliance placed by Sri M. Govind Reddy, Learned Special Standing Counsel, on the judgment of the Supreme Court, in **East India Tobacco Co.**¹, is misplaced as it related to a tax regime prior to the Central Sales Act, being enacted by Parliament, in the year 1956.

The petitioner's contention, that Section 4(4)(iii) of the Act is not attracted as the stock of chillies transferred from the Secunderabad branch to the Cochin branch was exported from there outside the country, was negatived by the assessing authority on the ground that the assessee had failed to produce Form-H. Dr. S.R.R. Viswanath, Learned Counsel for the petitioner, would submit that, wherever chillies

were purchased from registered VAT dealers, the petitioner-company has furnished them with Form H to enable such registered VAT dealers to claim the benefit of Section 5(3) of the CST Act; and the question of furnishing Form-H, when goods are purchased from farmers (who are not registered VAT dealers), does not arise. Learned Counsel would submit that Form-F was produced by the Secunderabad branch, to the assessing authority, as proof of stock of chillies having been transferred from the Secunderabad branch to the Cochin branch of the petitioner company.

Rule 12(1)(a) of the CST (R&T) Rules requires the declaration, referred to in Section 5(4) of the CST Act, to be in Form-H, and to be furnished to the prescribed authority upto the time of assessment by the first assessing authority. Form-H is the certificate furnished by the exporter, to the dealer from whom he purchased the goods, that the goods supplied by the selling dealer have been sold, by the exporter, in the course of export out of the territory of India. Form-H is required to be supplied only to registered dealers from whom the petitioner purchased goods for the purpose of export. Furnishing of the certificate, in Form-H, would enable such registered dealers to claim the benefit of a sale preceding export under Section 5(3) of the CST Act.

In the present case, the chillies procured by the Secunderabad branch of the petitioner company has been stock transferred to the Cochin branch from where they are said to have been exported outside India. As neither the Secunderabad branch nor the Cochin branch have a distinct and separate legal entity, and only form part of the petitioner company, transfer of stock can neither be treated as a sale of goods by the Secunderabad branch to the Cochin branch nor can the Secunderabad branch of the petitioner company claim the benefit of Section 5(3) of the CST Act whereunder sale of goods, preceding the sale occasioning export, is also deemed to be in the course of export if the conditions stipulated therein are satisfied.

Section 6(A)(1) of the CST Act stipulates that, where any dealer claims that he is not liable to pay tax under the CST Act in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of the transfer of such goods by him to any other place of business, and not by reason of sale, the burden of proving, that the movement of those goods was so occasioned, shall be on that dealer and, for this purpose, he may furnish, to the assessing authority, a declaration duly filled and signed by the principal officer of the

other place of business containing the prescribed particulars in the prescribed Form obtained from the prescribed authority, along with evidence of despatch of such goods and, if the dealer fails to furnish such declaration, then the movement of such goods, shall be deemed, for all the purposes of the CST Act, to have been occasioned as a result of the sale.

Rule 12(5) of the CST (R&T) Rules stipulates that the declaration, referred to in Section 6A(1) of the CST Act, shall be in Form-F which is a declaration to be issued by the transferee certifying that the goods transferred to them had been received and duly accounted for. Form-F is required to be furnished by the branch, which receives the goods, to the branch which transferred the goods. In the present case as the stock of chillies was transferred from Secunderabad branch to the Cochin branch of the petitioner company, the Cochin branch was required to furnish Form-F to the Secunderabad branch to enable the latter to establish, as stipulated in Section 6A (1) of the CST Act, that the transfer of the goods, outside the State, was not by way of sale.

Sri J.Anil Kumar, Learned Special Standing Counsel for Commercial Taxes, would submit that the petitioner had, in its monthly returns, disclosed this turnover only under column 12 and not column 13, and they cannot, therefore, claim that these goods are exempt from tax under Section 4(4)(iii) of the A.P. VAT Act on the specious plea that the transfer of stock of chillies from the Secunderabad branch to the Cochin branch was in the course of export.

Form VAT 200 is the monthly return, for Value Added Tax, to be submitted by a registered dealer. In the present case, column 12 of the monthly return filed by the Secunderabad branch of the petitioner company relates to exempt sales, and column 13 is the zero rated sale – international exports. As the Secunderabad branch of the petitioner company had merely transferred stock of chillies to the Cochin branch, and it was the Cochin branch which had exported goods outside the territory of India, the Secunderabad branch could only have claimed exemption, under column 12, furnishing Form-F as proof that there was only a stock transfer of goods, and the goods had not been sold in the course of inter-state trade or commerce. As long as the goods (chillies), transferred by the Secunderabad branch to the Cochin branch, have been exported, and the ingredients of Section 5(1) of the CST Act are satisfied, the stock transfer from one branch of a company to another for

its eventual export cannot, in view of Section 5(b) of the A.P. VAT Act, be subjected to tax under the A.P. VAT Act as it is a sale in the course of export. In any event Section 4(4)(iii) of the A.P. VAT Act is not attracted where the goods, after its purchase, are disposed of in the course of export out of the territory of India. The assessment orders, under challenge in these Writ Petitions, are, accordingly, set aside.

As noted hereinabove, Sri J. Anil Kumar, Learned Special Standing Counsel for Commercial Taxes, contended that the assessing authority had rejected the petitioners claim, on the ground that Form-H had not been produced; and he does not appear to have examined whether or not the stock of chillies, purchased by the Secunderabad branch of the petitioner-Company from farmers and then transferred to the Cochin branch, were in fact exported out of the territory of India. Dr. S.R.R. Viswanth, Learned Counsel for the petitioner, would fairly state that the petitioners have no reason to avoid being subjected to scrutiny by the assessing authority in this regard.

In **Rajesh Spices Co**⁶, on which reliance is placed by Sri M. Govind Reddy, Learned Special Standing Counsel for Commercial Taxes, the Allahabad High Court, following the judgment of the Supreme Court, in **Ben Gorm Nilgiri Plantations Co. v. Sales Tax Officer**, held that the phrase “*in the course of export*” in Article 286 of the Constitution is a sale which predicates a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted without a breach of the contract, or the compulsion arising from the nature of the transaction; in this sense, to constitute a sale in the course of export, it may be said that there must be an intention on the part of both the buyer and the seller to export, there must be an obligation to export, and there must be an actual export; the obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export; and to occasion export there must exist such a bond, between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it. It is wholly unnecessary for us to examine whether the chillies purchased by the Secunderabad branch of the petitioner, and

then transferred to its Cochin branch in the State of Kerala, were exported to foreign buyers; and whether such exports satisfy the requirements of Section 5(1) of the CST Act; as these are all matters to be examined by the assessing authority.

We consider it appropriate, in these circumstances, to remand all these matters to the assessing authority who shall, after giving the petitioner an opportunity of being heard, examine whether or not the stock of chillies, transferred from the Secunderabad branch to the Cochin branch of the petitioner company, were sold by the Cochin branch to foreign buyers outside the territory of India in terms of Section 5(1) of the CST Act.

On the question of partial denial of input tax credit to the petitioner, it is necessary to note that Section 13 of the A.P. VAT Act relates to Credit for input tax and provides that, subject to the conditions, if any, prescribed, an input tax credit shall be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods, made by that dealer during the tax period, if such goods are for use in the business of the VAT dealer. No input tax credit shall be allowed in respect of the tax paid on the purchase of goods specified in Schedule VI. Rule 20(8) of the A.P. VAT Rules stipulates that (a) where a VAT dealer is making sales of taxable goods and also exempt transactions of taxable goods in a tax period, for the purchases of goods taxed at 14.5%, input tax to the extent of the 9.5% portion can be fully claimed in the same tax period; (b) in respect of purchases of goods taxable at 1%, (5%) and for the 5% tax portion in respect of goods taxable at 14.5%, the VAT dealer shall apply the formula $A \times B/C$ for each tax period.

The assessing authority has, in terms of Rule 20(8) of the A.P. VAT Rules, applied the formula $A \times B/C$, and has included the value of the stock, transferred by the Secunderabad branch to the Cochin branch, in the denominator. As the application of Rule 20(8) would depend on whether the goods, transferred from Secunderabad branch to the Cochin branch, were exported out of the territory of India, the assessing authority shall, after examining whether these goods were exported out of the country and whether the conditions stipulated in Section 5(1) of the CST Act have been fulfilled, also consider whether or not the petitioner should be extended input tax credit under Section 13 of the A.P. VAT Act read with Rule 20(8) of the A.P. VAT Rules, treating these stock transfers as sale in the course of export out of the territory of India.

All the Writ Petitions are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date:10.12.2015.

Note: L.R. Copy to be marked.

B/o

MRKR/CS