*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

+ **Writ Petition Nos.17972, 22902, 22907, 28240 of 2008; 6503, 6519, 7877, 7898, 7907, 18756, 18791 of 2009; 10710, 11596 of 2010; 17136, 17151, 21980, 22013, 22035, 22123 of 2012; 15515, 15570, 22425, 22426, 22428, 22446, 22552, 22632, 22717 of 2013; 5855, 5862, 5864, 5868, 11564, 11650, 12442, 13587, 14559, 16361,16363, 16378, 16379, 20265, 20277, 20278, 20354, 20372, 20531, 20581, 20582, 20583, 20590, 20594, 20695, 20703, 21119, 21138, 23349, 23350, 23664, 25661, 25664, 26593, 26600, 26707, 26811, 26904, 27032, 27055, 27278, 27280, 27757, 27885, 27933, 27956, 27967, 28002, 28168, 28175, 28353, 28368, 28514, 28676, 29351, 29429, 29701, 29740, 29742, 29750, 29762, 29806, 29911, 30260, 30371, 30377, 30857, 30860, 30887, 30895, 30902, 30941, 31743, 31871, 31894, 31939, 32032, 33027, 34323, 34452, 34474, 34476 and 34890 of 2014**

% 04.03.2015

M/s. K.G.F. Cottons (P) Ltd. Cotton Dealers, Bhainsa, Adilabad District Rep., by its Managing Director Sri Subhash Chandra Agarwal.

… Petitioner

Vs.

$ The Assistant Commissioner (CT) LTU, O/o The Dy. Commissioner (CT), 1st Floor, Ashok Road, Vinayak Chowk, Municipal Complex, Adilabad and others

… Respondents

! Counsel for the petitioner: S.R.R. Viswanath, Sri V. Bhaskar Reddy, Sri Shaikh Jilani Basha and Sri M.V.J.K. Kumar

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

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> Head Note:

? Citations:

1) (1993) 88 STC 98
2) 1994 Suppl. (2) SCC 59
3) (2004)11 SCC 26
4) (2008) 14 SCC 186
5) (2005) 12 SCC 77
6) (1994) 5 SCC 672
7) (1972) 1 SCC 209
8) AIR 1962 SC 955 (Five Judge Bench)
9) (1980) 4 SCC 697
10) (1949) 2 ALLER 155
11) (1985) 60 STC 1 (SC)
12) AIR 1975 SC 1871 : (1975) 36 STC 191 (SC)
13) (1993) 90 STC 537 (Karnataka HC)
14) (1989) 72 STC 317 (AP) = 7 APSTJ (1988) 43) (AP HC)
15) (1972) 30 STC 537 (Ker)
16) (1968) 21 S.T.C. 1 (S.C)
17) Order of the Tamil Nadu High Court in TRC No.2286 of 2008 dated 12.07.2010)
18) (1982) 51 STC 1 (APHC)
19) (2008) 12 VST 546
20) (1999) 29 APSTJ 1 (APHC)
21) AIR 1979 Andhra Pradesh 173
22) 7 APSTJ (1988) 116) (APHC)
23) AIR 1970 SC 1742
24) AIR 1957 SC 657
25) (2004) 7 SCC 642
26) (2007) 4 SCC 30
27) (1997) 11 SCC 751 = (1997) 105 STC 325(SC)
28) (MANU/KE/0089/1979
29) [1973] 32 STC 623
30) [1981] 47 STC 369
31) AIR 1985 SC 582
32) (1990) 77 STC 282
33) (1988) 68 STC 287 (APHC)
34) [1968] 61 STC 337 (Mad)
35) [1987] 65 STC 16 (Ker)
36) [1983] 53 STC 163 (Pan & H)
37) [1980] 45 STC 1 (Kar)
38) (1988) 2 SCC 264
39) (2010) 35 VST 226 (P&H)
40) (1994) 6 SCC 479
41) 1989 Supp (1) SCC 128
42) (1965) 1 All E.R. 225
43) (1921) K.B. 64
44) AIR 1978 SC 897
45) (1997) 3 All ER 817
46) (1981) 1 ALLER 865 = (1982) AC 300
47) (1992) 85 STC 220 (SC)
48) (2013) 58 VST 281 (Gauhati)
49) [1959] 2 All E.R. 350
50) [1974] 2 All E.R. 97
51) (1972) 3 SCC 717 = ([1973] 1 S.C.R. 172
52) (1990) 77 STC 373 (APHC)
53) (48) STC 466 at 476
54) (1994) 6 SCC 623
55) (16) TC 1 at 19
56) (1927) P.C. 242
57) (1976) 2 SCC 917
58) (37) STC 77 at 111

59) AIR 1969 SC 147
60) (1980) 45 STC 438 (PH)
61) AIR 1985 SC 1041 = (1985) 60 STC 1 (SC)
62) AIR 1968 Madras 90 (Madras High Court)
63) (1995) 97 STC 395 (Kerala HC)
64) (1982) 51 STC 195 (Allahabad HC)
65) 1979 UPTC 1125
66) [1967] 20 STC 290 at 296-297 (SC)
67) (2012) 54 APSTJ 39 (APHC)
68) (1965) 16 STC 310 (SC)
69) AIR 1965 SC 1310
70) (1989) 74 STC 1
71) (1970) 25 STC 52 : AIR 1969 SC 1073
72) (1960) XI STC 149 (P&H HC)
73) 91 STC 409
74) 1998 (6) ALD 443
75) (1962) XIII STC 709 (APHC)
76) (1958) 9 STC 723 (APHC DB)
77) 1976 UPTC 518
78) (1969) 24 STC 320 (A.P)
79) (Order in S.T.R. No. 539 of 1966, dated 02.01.1969 –All HC)
80) (1967) XX STC 89 (Karnataka H.C)
81) (1986) 2 APSTJ 42
82) (Order in WP No.15413 of 2014 dated 25.09.2014)
83) (2013) 9 SCC 753
84) (2006) 6 SCC 482
85) (1995) Suppl. (3) SCC 322
86) (2007) 8 SCC 559
87) AIR 1959 SC 49
88). (2007) 1 SCC 732

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Writ Petition Nos.17972, 22902, 22907, 28240 of 2008; 6503, 6519, 7877, 7898, 7907, 18756, 18791 of 2009; 10710, 11596 of 2010; 17136, 17151, 21980, 22013, 22035, 22123 of 2012; 15515, 15570, 22425, 22426, 22428, 22446, 22552, 22632, 22717 of 2013; 5855, 5862, 5864, 5868, 11564, 11650, 12442, 13587, 14559, 16361,16363, 16378, 16379, 20265, 20277, 20278, 20354, 20372, 20531, 20581, 20582, 20583, 20590, 20594, 20695, 20703, 21119, 21138, 23349, 23350, 23664, 25661, 25664, 26593, 26600, 26707, 26811, 26904, 27032, 27055, 27278, 27280, 27757, 27885, 27933, 27956, 27967, 28002, 28168, 28175, 28353, 28368, 28514, 28676, 29351, 29429, 29701, 29740, 29742, 29750, 29762, 29806, 29911, 30260, 30371, 30377, 30857, 30860, 30887, 30895, 30902, 30941, 31743, 31871, 31894, 31939, 32032, 33027, 34323, 34452, 34474, 34476 and 34890 of 2014

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

In this batch of writ petitions, the validity of the assessment orders are put in issue on the ground that the assessing authority has levied purchase tax contrary to Section 4(4) of the A.P. VAT Act, 2005 (for short "the Act") and Sections 14 and 15 of the Central Sales Tax Act, 1956 ("CST Act" for short). The petitioner-assessees are either (1) rice millers, or (2) dhal millers, or (3) soyabean oil millers, or (4) cotton millers. The first category of petitioners purchase paddy from agriculturists, mill it to produce rice, sell rice either to FCI or in the open market, and pay value added tax (VAT) on the said sales. The husk obtained, after milling rice, is either sold or consumed by the dealer. In such cases, the assessing authorities have levied 5% purchase tax on the purchase price of paddy which was used as input for "husk" which is exempt from tax under the first Schedule to the Act. The second category of petitioners purchased raw dhal from agriculturists, milled it to produce dhal, and paid value added tax (VAT) on the sale of finished (dehusked) dhal. The husk obtained, after milling dhal, is either sold or consumed by them. In these cases the assessing authorities have levied 5% purchase tax on the purchase price of raw dhal which was used as input for "husk". The third category of petitioners purchased soyabean seed, and crushed it to produce soyabean oil. The residue was used to make soyabean deoiled cake which was sold by them as cattle/poultry feed. The assessing authorities have levied 5% purchase tax on the purchase price of soyabean seed which was used as input for "soyabean deoiled cake" which is exempt from tax under the Act. The fourth category of petitioners purchased raw cotton (Kapas) from agriculturists, and ginned it. Cotton seeds were separated in the process. The ginned cotton i.e., cotton lint was sold. The cotton seeds were crushed, and cotton seed oil was extracted and sold. Cotton deoiled cake, obtained after crushing cotton seed, was sent outside the State otherwise than by way of sale. The assessing authorities have levied purchase tax at 4%/5% on the proportionate value of cotton kapas used in the manufacture of cotton deoiled cake which was sent outside the State otherwise than by way of sale. In a few cases cotton seeds were despatched outside the State otherwise than by way of sale. Purchase tax, under Section 4(4) of the Act was levied at 4%/5% on the proportionate purchase price of raw cotton used as input for "cotton seed".

2. Elaborate oral submissions have been put forth by Dr. S.R.R. Viswanath, Sri V. Bhaskar Reddy, Sri Shaikh Jilani Basha and Sri M.V.J.K. Kumar, Learned Counsel for the petitioners and Sri D. Srinivas, Sri M. Govind Reddy and Sri J. Anil Kumar, Learned Special Standing Counsel for Commercial Taxes. Written submissions have also been filed by Dr. S.R.R. Viswanath and Sri M.V.J.K. Kumar, Learned Counsel for the petitioners and Sri D. Srinivas, Sri M. Govind Reddy and Sri J. Anil Kumar, Learned Special Standing Counsel for Commercial Taxes.

I. THE RULE OF PRESUMPTION, IN FAVOUR OF CONSTITUTIONALITY, AS A PRINCIPLE OF STATUTORY CONSTRUCTION:

3. Before considering the rival submissions of Learned Counsel on either side, it is useful to examine the scope of Section 4(4) of the Act and its proviso. In order to arrest tax avoidance, a provision for levy of "contingent purchase tax" was introduced in almost all State enactments. This tax was called "contingent purchase tax" as the levy of tax on "purchases" is contingent upon the happening of certain events subsequent to the purchase viz., (1) consumption in the manufacture/production of other goods for sale; (2) consumption otherwise; (3) disposal of those goods within the State otherwise than by way of sale; and (4) dispatch of goods outside the State. Purchase tax, levied under Section 4(4) of the Act, is similar to Section 6-A of the A.P. General Sales Tax Act, 1957 (for short the "APGST Act"). Section 6-A was inserted in the APGST Act by Act 49 of 1976 w.e.f. 1-9-1976. The Statement of Objects and Reasons, appended to the Andhra Pradesh General Sales Tax (Second Amendment) Bill, 1976, reads as under:

> "Section 5 of the Andhra Pradesh General Sales Tax Act, 1957, provides for the levy of tax on sales or purchases of goods. However, in certain circumstances goods sold or purchased are escaping tax. It is, therefore, proposed to levy tax at the rates specified in section 5 or section 6 on the purchases in the circumstances specified in the proposed new Section 6-A".

4. The constitutional validity of Section 6-A of the APGST Act, and Section 9 of the Haryana Sales Tax Act, was upheld by the Supreme Court in **Hotel Balaji v. State of A.P.**[1]. The constitutional validity of Section 5-A of the Kerala General Sales Tax Act, Section 4-B of the Punjab Sales Tax Act and Section 7-A of the Tamilnadu General Sales Tax Act, all of which were similar to Section 6-A of the APGST Act, was upheld by the Supreme Court in **Devi Dass Gopal Krishan (P) Ltd. v. State of Punjab**[2]. The aforesaid provisions of different State enactments levied tax on the purchase of goods where such goods, either in its original form or as inputs for other goods, were disposed of otherwise than by way of sale within the State or in the course of inter-State trade or commerce or export.

5. The vires of Section 4(4) of the Act and its proviso has not been subjected to challenge in this batch of Writ Petitions. In view of the presumption of constitutionality of statutes, and in the absence of a challenge to its validity, we must proceed on the footing that Section 4(4) and its proviso is constitutionally valid. Our approach must be to uphold the validity of the provision by a process of a fair and broad reading of the constitutional mandate, (**State of Punjab v. Devans Modern Breweries Ltd**[3]), and interpret it in such a manner that its constitutionality is upheld. (**Aslam Mohammad Merchant v. Competent Authority**[4]). The rule of presumption in favour of constitutionality, as a principle of construction, is that if two meanings are possible then the courts will reject the one which renders it unconstitutional and accept the other upholding the validity of the legislation. (**State of Rajasthan v. Basant Nahata**[5]; **Kerala State Housing Board v. Ramapriya Hotels (P) Ltd.,**[6]; **State of M.P. v. Chhotabhai Jethabhai Patel & Co.,**[7]; **Kedar Nath v. State of Bihar**[8]). If the language is not clear and precise as it ought to be, the attempt of the court should to ascertain the intention of the legislature and put that construction which would lean in favour of the constitutionality unless such construction is wholly untenable. (**State of Karnataka v. Hansa Corpn.**[9]; **Seaford Court Estates Ltd. v. Asher**[10]).

II. SECTION 4(4) OF THE ACT – ITS SCOPE:

6. Section 4(4) of the Act provides 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/five percent on the

purchase price of such goods if, after such purchase, the goods are (i) used as inputs for goods which are exempt from tax under the Act; or (ii) used as inputs for goods, which are disposed of otherwise than by way of sale in the State or dispatched outside the State otherwise than by way of sale in the course of inter-State trade and commerce or export out of the territory of India; or (iii) 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. Under the first proviso thereto, wherever a common input is used to produce goods, the turnover, taxable under Section 4(4), shall be the value of the inputs, proportionate to the value of the goods used or disposed of in the manner prescribed under Section 4(4).

7. The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If these components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme, in defining any of these components of the levy, will be fatal to its validity. (**Govind Saran Ganga Saran v. Commissioner of Sales Tax**[11]). The scheme of the Act involves three interrelated but distinct concepts which may conveniently be described as 'taxable person', 'taxable goods' and 'taxable event'. All the three must be satisfied before a person can be saddled with liability under the Act. "Taxable person' is a 'dealer' as defined under the Act. "Taxable event' is the sale or purchase of `goods' effected during the tax period. Section 4(4) brings to tax goods the sale of which would, normally, have been taxed at some point in the State subsequent to their purchase by the dealer, if those goods were not available for taxation owing to the acts of the dealer as specified in clauses (i) to (iii) thereof. (**The State of Tamil Nadu v. M.K. Kandaswami**[12]).

8. The ingredients of Section 4(4) of the Act are (1) a VAT dealer, in the course of his business, purchases taxable goods from (a) any person, or (b) a dealer not registered as a VAT dealer, or (c) from a VAT dealer in circumstances in which no tax is paid by the selling dealer; (2) the VAT dealer, who has purchased the taxable goods from persons mentioned at (a), (b) and (c) above, is liable to pay tax at 4%/5% on the purchase price of such goods which, under Section 2(25) of the Act, is defined to mean the amount of valuable consideration paid or payable by a person for any purchase made by him. The liability to pay such tax, however, arises only when, after such purchase, the goods are (i) used as inputs for goods which are exempt from tax under the Act; or (ii) used as inputs for goods which are (a) disposed of otherwise than by way of sale in the State, or (b) dispatched outside the State otherwise than by way of (1) sale in the course of inter-state trade or commerce or (2) export out of the territory of India; or (iii) disposed of, otherwise than by way of consumption or by way of sale, either (a) within the State or (b) in the course of inter-state trade or commerce or (c) export out of the territory of India. If a common input is used to produce more goods than one and, if any one of the goods so produced attracts clauses (i) to (iii) of Section 4(4), the manner in which the taxable turnover, under Section 4(4), is to be computed is as stipulated in its first proviso.

9. The levy created by Section 4(4) is a levy on the goods purchased within the State which are used as inputs for manufacture/production of other goods within the State. If, however, the manufactured/produced goods are sold within the State, no purchase tax is collected on the inputs as the State gets larger revenue by taxing the sale of such goods. (The value of manufactured/produced goods is bound to be higher than the value of the goods used as inputs). The State legislature does not wish— in the interest of trade and general public — to tax both the input and the output (i.e., the finished/manufactured product). But where the manufactured goods are not sold within the State but are yet disposed of, or where the manufactured goods are sent outside the State (otherwise than by way of inter-state sale or export sale), tax is levied on the purchase value of the input. The reason is simple: if the output (i..e, the manufactured goods) are disposed of otherwise than by way of sale within the State or are sent out of State (i.e., consigned to the dealers own depots or agents), the State does not get any revenue because no sale of the output (i.e., the manufactured goods) has taken place within the State. In such a situation, the State says, it would retain the levy and collect it since there is no reason for waiving the purchase

tax in these situations. In the case of inter-state sale, the State gets tax-revenue – may not be to the full extent. Though Central Sales Tax (CST) is levied and collected by the Government of India, Article 269 of the Constitution provides for making over the tax collected to the States in accordance with certain principles. In the case of export sale, within the meaning of Section 5(1) of the CST Act, the State may not get any revenue but larger national interest is served thereby. It is for these reasons that tax, on the purchase of raw material/input, is waived in the aforesaid two situations. There is a sound and consistent policy underlying the provision. The object is to tax the purchase of goods whose existence as such goods is either put to an end by a dealer, using them in the manufacture or production of different goods which are not taxable in certain circumstances, (**Hotel Balaji**[1]; **Madhur Trading Co. v. State of Karnataka**[13]), or where a VAT dealer purchases goods and disposes it otherwise than by way of consumption or by way of sale. The idea is that the State should have the benefit of one tax atleast from a transaction in such goods involving sale or purchase. (**Madhur Trading Co.**[13]).

10. Section 4(4) of the Act brings to tax goods the sale of which would, normally, have been taxed at some point in the State. Subsequent to their purchase by the dealer if those goods are not available for taxation, owing to the act of the dealer in (1) using them as inputs for goods which are exempt from tax under the Act; (2) using them as inputs for goods which are disposed of otherwise than by way of sale in the State; (3) using them as inputs for goods which are dispatched outside the State otherwise than by way of sale in the course of inter-state trade and commerce or export out of the territory of India; or (4) disposing of such goods otherwise than by consumption or by way of sale either within the State or in the course of inter-state trade or export, tax is levied on the purchase price of such goods. (**Kandaswami**[12]). True it is that the levy materialises only when the purchased goods (raw material/input) is consumed in the manufacture of different goods and those goods are disposed of within the State otherwise than by way of sale or are consigned to the manufacturing-dealer's depots/agents outside the State. Merely because the levy attaches on the happening or non-happening of a subsequent event, the nature and character of the levy does not change. If the goods are not available in the State for subsequent taxation, by reason of one or other of the circumstances mentioned in clauses (i) to (iii) of Section 4(4) of the Act, then the purchaser is sought to be made liable under Section 4(4). (**Hotel Balaji**[1]; **M/s.Andal & Co., Hyderabad v. State of A.P.**[14]; **Malabar Fruit Products Co. v. S.T.O.**[15]; **M.K. Kandaswami**[12]; **State of Madras v. Narayanaswami Naidu**[16]). Section 4(4) creates a liability against the VAT dealer on his purchase turnover with regard to goods which, though taxable, are not taxed due to other factors such as exemption etc. (**The State of Tamil Nadu v. Tvl. Pari Trading Co.**[17]).

11. Section 4(4) is at once a charging as well as a remedial provision. (**M.K. Kandaswami**[12]). Section 4(4) creates a liability against a VAT dealer on his purchase turnover with regard to goods which, though generally liable to tax under the Act, have not been taxed due to the circumstances of such goods, after purchase, having been dealt by him in any of the modes indicated in clauses (i) to (iii). (**M.K. Kandaswami**[12]). The contention that Section 4(4) of the Act attracts goods to tax which are not otherwise exigible to tax, and is otiose, has no substance. (**Hindustan Milkfood Manufacturers Ltd. v. State of A.P**[18]).

12. Each transaction of purchase, used or disposed of in the manner contemplated under clauses (i) to (iii) of Section 4(4), is distinct and is neither capable of being construed as overlapping or as redundant. (**Hindustan Milkfood Manufacturers Ltd.**[18]). The scheme of Section 4(4) is to levy tax on the purchase of raw material/input, and not to forego it, where the goods manufactured out of them are disposed of (or despatched) in a manner not yielding any revenue to the State or serving the interests of nation and its economy. The purchased goods are put an end to by their consumption in the manufacture of other goods, and yet the manufactured goods are dealt with in a manner as to deprive the State of revenue. In such cases, there is no reason why the State should forego its tax revenue on the purchase of raw material/inputs. (**Hotel Balaji**[1]).

13. The principle behind the levy of purchase tax is that, if the goods purchased are not available for taxation inside the State and, by reason of one of the contingencies, the State is likely to lose its revenue, the interest of the State needs to be secured. The policy underlying Section 4(4) is to tax every transaction either at the point of

sale or purchase. Where the seller is not taxed or cannot be taxed, the purchaser is taxed. By the same reasoning, when the seller is taxed, the purchases is not taxed. (**Ruchi Soya Industries Limited v. Commercial Tax Officer, Harbour III Assessment Circle, Chennai**[19]; **Malabar Fruit Products Co.**[15] approved in **M.K. Kandaswami**[12]; and **Hotel Balaji**[1]). The fact that, in a given case, the purchased goods are consigned by the purchaser to his own depots or agents outside the State makes no difference to the nature and character of the tax. By doing so, he cannot escape even the one-time tax levied upon the goods purchased. The legislative policy is directed towards ensuring levy of tax at least on one transaction of sale/purchase of the goods. If the goods are not available in the State for subsequent taxation, by reason of the circumstances mentioned in clauses (i) to (iii) of Section 4(4), then the purchaser is made liable to tax under Section 4(4). (**Ruchi Soya Industries Limited**[19]; **M.K. Kandaswami**[12]).

14. Bearing in mind the scope and purport of Section 4(4) and its first proviso, we shall now examine the submissions, put forth by Learned Counsel on either side, under different heads.

III. TAX, UNDER SECTION 4(4) OF THE ACT, IS LEVIED ON TAXABLE GOODS:

15. It is contended, on behalf of the petitioners, that the petitioners, among others, purchased cotton kapas (raw cotton) from cultivators and other unregistered-dealers and subjected it to ginning; ginning of raw-cotton yields cotton-lint and cotton seed; the entire quantity of "cotton lint" was sold within the State or in the course of inter-State trade and commerce, and the tax due under the Act or the CST Act respectively was completely paid; the "cotton-seed", derived out of ginning (i.e., the cotton seed was not purchased), was crushed and the resultant cotton seed oil or cotton seed oil cake was sent on consignment to agents in other States; in a few cases cotton-seed was sent on consignment to agents in other states; cotton kapas and cotton lint are the same commodity; unginned cotton (that is raw cotton or cotton kapas) cannot be brought under any of clauses (i), (ii) or (iii) of Section 4(4); when cotton as a commodity has fetched full tax on its sales, no purchase tax can be levied; and Section 4(4) of the Act, though similar to Section 6-A of the APGST Act, is narrower in its scope.

16. The submissions urged on behalf of the respondents, on the other hand, is that the purpose and object of Section 4(4) of VAT Act is similar to that of Section 6-A of the APGST Act; the scope of Section 4(4) is wider than Section 6-A; by using the word "input" (instead of raw material), and by deleting the word "manufacture" in clause (i) thereof, the Legislature has expanded the scope of Section 4(4) of the Act; the petitioner(s)-dealer(s) purchase raw cotton, process it and dispatch cotton deoiled cake outside the State, otherwise than by way of sale; purchase tax is levied only when the goods, produced from the inputs, are not subjected to tax; and the petitioners cannot escape the liability to pay purchase tax on raw cotton (proportionately), as no tax is levied on the oil cake, extracted by them from cotton seed, which is dispatched outside the State.

17. In these Writ Petitions, the goods which have been subjected to tax under Section 4(4) of the Act, are raw cotton (kapas), paddy, raw dhal and soyabean seed. Tax, under Section 4(4), has been levied on the proportionate purchase value of raw cotton (kapas) on the ground that cotton seed/cotton deoiled cake/cotton delint husk (hull) have not been subjected to tax under the Act. Likewise tax has been levied on the proportionate purchase value of paddy and raw dhal on the ground that husk has not been subjected to tax under the Act. Tax has also been levied on the proportionate purchase value of soyabean seed on the ground that soyabean deoiled cake has not been subjected to tax under the Act.

18. Raw cotton, paddy, raw dhal and soyabean seed are all "***taxable goods***". The expression "***taxable goods***", as used in Section 4(4), can be defined as goods the sale of which is liable to tax under the Act. The word "***taxable***" qualifies the term "***goods***" and excludes, by necessary implication, goods the sale of which is exempt from tax under the Act. The goods so exempt - not being 'taxable goods' – are not brought to charge under Section 4(4). (**Pardha Saradhi Hotel Enterprises Ltd., Guntur v. Commercial Tax Officer, Eluru Bazar, Guntur**[20]; **M.K. Kandaswami**[12]). The goods which are purchased by a VAT dealer are referred to in Section 4(4) as "***taxable goods***", and such purchases are in circumstances in which no tax is payable by the seller. Both these ingredients are not mutually exclusive and the existence of one does not necessarily negate the other. Both

can co-exist and in harmony. The former ingredient would be satisfied if it is shown that the particular goods were "***taxable goods***". (**M.K. Kandaswami**[12]). In these Writ Petitions the goods, on which purchase tax has been levied, under Section 4(4) of the Act, are all taxable goods ie they are goods the sale of which is generally taxable under the Act. Raw cotton (kapas) is taxable under Entry 79 of the IV Schedule to the Act; paddy is taxable under Entry 84 of the IV Schedule; raw dhal is taxable under Entry 82 of the IV Schedule; and soyabean seed is taxable under Entry 72(ii) of the IV Schedule to the Act. Sale of the aforesaid goods would, ordinarily, be subjected to tax under Section 4(1) of the Act, read with the relevant entries in the IV Schedule.

19. Notwithstanding the goods being "***taxable goods***", there may be circumstances by reason of which the particular sale transaction does not attract tax under the Act. Section 4(4) provides for such a situation and makes the purchase of such goods taxable in the hands of the purchasing VAT dealer, on his purchase turnover, in any of the circumstances referred to clauses (i) to (iii). For instance, branch transfer or stock transfer of goods by a VAT dealer to his consignee/agent is not taxable under the Act. Such transactions attract the ingredients of clause (ii) of Section 4(4). Therefore the input of such goods are subjected to tax under Section 4(4) of the Act. The contention that the expression "***taxable goods***" and the phrase "***purchase in circumstances in which no tax is payable by the selling VAT dealer***" are a contradiction in terms, cannot be accepted as such an interpretation would render Section 4(4) wholly nugatory. (**M.K. Kandaswami**[12]).

20. The table below details the process to which the agricultural produce (on which tax under Section 4(4) has been levied in this batch of Writ Petitions), are subjected to, resulting in production of other goods.

IV. SALE OF AGRICULTURAL PRODUCE TO VAT DEALERS – FARMERS ARE NOT SUBJECTED TO TAX UNDER THE ACT:

21. It is contended, on behalf of the petitioners, that the goods, i.e., paddy, cotton kapas, soyabean seed, and dhal, are purchased from farmers in all these cases, except in the case of cotton mills where kapas are also purchased from registered dealers; the farmer is outside the purview of the Act; Section 2(6), which deals with the definition of 'business', excludes "farmer" in the relevant Explanation-III appended to the definition; so also the definition of 'dealer' in section 2(10) r/w Explanation–II; as the farmer, is outside the purview of the Act, treating him as a person, or a dealer not registered as a VAT dealer, is without jurisdiction; the intention of the legislature is to exempt the farmer from the clutches of the Act; the definition of 'Sale', in Section 2(28), refers to "business" and "trade"; trade and business are synonymous; and, as the farmer is excluded from the definition of "business", he is equally exempt from the definition of "sale" also.

22. On the other hand Learned Special Standing Counsel for Commercial Taxes would submit that, under the APGST Act, various goods were taxable either at the point of sale or at the point of purchase despite which some transactions escaped levy of tax which prompted the legislature to introduce Section 6-A; under the Act all goods are taxable only at the point of sale; hence, in the absence of Section 4(4), many more transactions would have escaped the tax net, and the State would have lost crores of rupees in revenue; for example paddy, dhal, cotton and all other agricultural produce are taxable at the point of sale only; since these goods are sold by agriculturists, who are not dealers under the Act, these sales would escape levy of tax in the absence of Section 4(4); a plain reading of Section 4(4) makes it clear that the dealers are liable to pay purchase tax if the conditions mentioned therein are present; in all these cases, since the petitioners have purchased agricultural produce such as paddy, dhal, kapas, soya etc. from agriculturists and have used them as inputs for other goods which are exempt from tax or have used them as inputs for goods which were sent out of the State otherwise than by way of sale, the dealers are liable to pay purchase tax on the proportionate purchase value of the inputs; and farmers would fall within the ambit of "person" under Section 4(4) of the Act.

23. The State Legislature is empowered, under Entry 54 of List II to 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. The word "purchase", as used in Section 4(4), is not defined under the Act. Purchase is the other side of a sale transaction. Every transfer of the property in goods for consideration results in a sale and a purchase. (**Madhur Trading Co.**[13]). 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.**[18]).

24. Section 2(6) of the Act defines '***business'*** to include (a) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture whether or not such trade, commerce, manufacture, adventure or concern is carried on or undertaken with a motive to make gain or profit and whether or not any gain or profit accrues therefrom; (b) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern; and (c) any transaction in connection with

commencement or incidental or ancillary to the commencement or closure of such trade, commerce, manufacture, adventure or concern. Under Explanation (iii) thereto, for the purpose of Section 2(6), a sale by a person, whether by himself or through an agent of agricultural or horticultural produce grown by himself or grown on any land whether as owner or tenant in a form not different from the one in which it was produced, save mere cleaning, grading or sorting, does not constitute "business".

25. Section 2(10) of the Act defines '***dealer***' to mean any person who carries on the business of buying, selling, supplying or distributing goods or delivering goods on hire purchase or on any system of payment by instalments, or carries on or executes any works contract involving supply or use of material directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration. Under Explanation II thereto, where a grower of agricultural or horticultural produce sells such produce grown by himself on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, in a form different from the one in which it was produced after subjecting it to any physical, chemical or any process other than mere cleaning, grading or sorting, he shall be deemed to be a dealer for the purpose of the Act. Explanation V to Section 2(10) stipulates that, save as otherwise expressly provided for under the Act, the word 'dealer' shall include a VAT dealer.

26. 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. The word "***person***" is not defined under the Act. Section 2(22) of the A.P. General Clauses Act defines "***person***" to include any company or association of individuals whether incorporated or not. The word "***person***", in Section 2(22) of the A.P. General Clauses Act, brings within its ambit not only natural persons but also artificial persons. It is an inclusive definition, and must receive an extended connotation. While the meaning to be given to the word "***person***" must naturally depend on the context, there is nothing in Section 4(4) of the Act which compels us to give a restricted meaning to the expression "***person***" so as to exclude from its ambit farmers or agriculturists. (**Kanyakaparameswari Varthaka Sangham v. Commissioner of Endowments, Andhra Pradesh**[21]). A farmer or an agriculturist would be a "***person***" under Section 2(22) of the AP General Clauses Act and consequently, as the context does not otherwise provide, under Section 4(4) of the Act also.

27. 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. The contention that a farmer or an agriculturist is being subjected to tax is not tenable, as tax is levied not on him but on the VAT dealer who purchases goods from him. 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 attracts levy of tax at the stage of its purchase. The contention that a farmer/agriculturist is indirectly being subjected to tax does not, therefore, merit acceptance.

28. Broadly speaking, the effect of Section 4(4) is: tax payable at sale point becomes the 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. When taxable goods are sold by a farmer/agriculturist he cannot be taxed because he is not a dealer. The purchaser is taxed in such cases provided one of the conditions specified in clauses (*i*) to (*iii*) in Section 4(4) are satisfied. (**Hotel Balaji**[1]). 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.**[22]; **Hindustan Milkfood Manufacturers Ltd.**[18]).

V. CAN GOODS, EXEMPT FROM TAX UNDER THE VAT ACT, BE INDIRECTLY SUBJECTED TO TAX UNDER THE PROVISO TO SECTION 4(4)?

29. It is contended, on behalf of the petitioners, that the executive cannot take advantage of the proviso, appended to Section 4(4), to levy purchase tax on the sale of goods exempt from tax, by virtue of its being placed in the exempt list by the legislature; such a construction would defeat the very object and purpose of the

exemption granted by the legislature; as sale and purchase are but two facets of the same transaction, purchase tax cannot be levied on the ground that sales tax is exempt or vice versa; and tax, under Section 4(4), cannot be levied merely to augment revenue.

30. When taxable goods are sold by a person, who is not a dealer under the Act, then VAT is not payable on the sale of such goods. Where a farmer grows raw cotton, paddy, raw dhal and soyabean seed in his land, and sells these agricultural produce to others, he is not liable to pay tax, on the sale of such goods, as he is not a "dealer" under Section 2(10) of the Act. Purchase of such agricultural produce by a VAT dealer is "***in circumstances in which no tax is payable by the seller***". In such circumstances tax, at 4%/5% of the purchase price of such goods, is liable to be paid by the VAT dealer who purchases the aforesaid goods i.e., agricultural produce. This liability of a VAT dealer to pay purchase tax would, however, arise only if any one of the conditions, mentioned in clauses (i) to (iii) of Section 4(4), are satisfied.

31. The provisions contained in a statute, with respect to exemption of tax on the one hand, must be distinguished from the total non-liability or non-imposition of tax on the other. (**Rattan Lal & Co. v. Assessing Authority, Patiala**[23]; **A. V. Fernandez v. State of Kerala**[24]). The question of exemption arises only when there is a liability. But for the exemption, the dealer would be required to pay tax. In other words, exemption pre-supposes a liability. (**Associated Cement Companies Ltd. v. State of Bihar**[25]; **Peekay Re-Rolling Mills (P) Ltd. v. Asstt. Commr.,**[26]). Exemption does not negate levy of tax altogether. Despite an exemption, the liability to tax remains unaffected, only the subsequent requirement of payment of tax to fulfil the liability is done away with. (**Peekay Re-Rolling Mills (P) Ltd.**[26]). Section 4(4)(i) of the Act is attracted where the purchased goods are used as inputs for goods which are exempt from tax under the Act. Section 7 of the Act stipulates that the goods, listed in Schedule I to the Act, shall be exempt from tax under the Act. The VAT dealer, who purchases paddy from a farmer and mills it, obtains rice and husk. A process of manufacture is involved in the production of rice by milling paddy, and the rice so produced is distinct in nature and character from paddy. When paddy is dehusked and rice is produced there is a change in the identity of the goods, and paddy does not continue to be paddy thereafter. Rice and paddy, in ordinary parlance, are two distinct and different commodities. (**Raja Provision Stores v. Appellate Tribunal (Sales Tax), Trivandrum**[27]; **M. Narayanan Nambiyar v. State of Kerala**[28]; **Ganesh Trading Co., Karnal v. State of Haryana**[29]; **State of Karnataka v. B. Raghurama Shetty**[30]).

32. While rice is taxable under Entry 85 of the IV Schedule, husk is exempt under Entry 41 of the First Schedule to the Act. As VAT is liable to be paid on the sale of rice, tax cannot be levied under Section 4(4), on the purchase price of paddy, to the extent it results in production of rice. However, as husk is exempt from tax under the Act, the proportionate purchase value of paddy, to the extent it has resulted in production of husk, is liable to tax under Section 4(4)(i) of the Act. Soyabean seed is taxable under Entry 72 (ii) of the IV Schedule to the Act. However, when it is sold by agriculturists or farmers, no tax is liable to be paid on its sale. Where soyabean seed is purchased by a VAT dealer, and is crushed to produce soyabean oil, its residue is used to make soyabean deoiled cake. "Soyabean oil" is taxable under Entry 67 of the IV Schedule to the Act. However "soyabean deoiled cake" is exempt under Entry 3 of the First Schedule to the Act. The VAT dealer is, therefore, subjected to tax under Section 4(4)(i) on the proportionate purchase value of soyabean seed which has yielded soyabean deoiled cake. It is only because the goods listed in the first schedule to the Act are exempt from payment of VAT under the Act, is purchase tax levied, under Section 4(4)(i) of the Act, on goods which are used as inputs for goods which are exempt from tax under the Act.

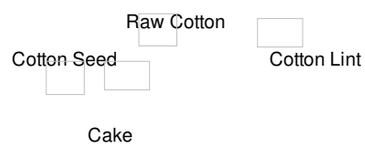
33. Tax under Section 4(4) is not levied on goods which are exempt from tax. For instance purchase tax, under Section 4(4)(i), is not levied on soya bean de-oiled cake which is exempt from tax under the Act, but on soya bean seed which is a commodity distinct and different from soya bean de-oiled cake and is taxable under Entry 72(ii) of the IV Schedule to the Act. The legislative intent is to ensure that the State is not deprived of its revenue and that goods are taxed once either at the time of its sale or at the time of its purchase. It is only because certain

goods are exempt from tax under the Act, is purchase tax levied on other goods which are used as input for such exempted goods. Both Section 4(4) and Section 7 form part of the Act and the submission that the executive is seeking to levy tax on goods, which are exempt from tax under the Act, does not merit acceptance. Having granted exemption in respect of certain goods, under Section 7 read with the entries in the first schedule, the legislature has also chosen to levy purchase tax, under Section 4(4) (i) of the Act, on goods which are used as inputs for goods exempt from tax under the Act.

VI. THE FIRST PROVISO TO SECTION 4(4) – ITS SCOPE:

34. It is contended, on behalf of the petitioners, that the pro-rata principle, incorporated in the 1st proviso to Section 4(4), applies only to the "value of goods, used or disposed of in the manner as prescribed; no purchase tax is leviable as the use of expression "disposed of" in the proviso makes it clear that branch transfers or stock transfers to one's own consignee/agents, which do not involve transfer of ownership, will not attract the charge; the pro-rata principle is not applicable to stock transfers; Section 4(4), as interpreted by the Revenue, tries to reach out to the purchase followed by two taxable events by looking to derivatives of the derivates of the input, even though the main product has fetched full revenue; Section 4(4) cannot reach out to the output's output and hence, when cotton deoiled cake is sent on consignment, tax cannot be levied on the purchase of cotton kapas calculating backwards; similarly cotton oil is also the outputs' output and, when cotton oil is sent on consignment, tax cannot be levied on the purchase of cotton kapas by calculating backwards; in a few cases where cotton-seed is sent on consignment, since the petitioners have paid the full tax due on the sale of cotton lint (i.e ginned cotton), no purchase tax can be levied on cotton kapas relatable to cotton seed; disposal by way of sale, of the entire cotton lint, amounts to disposal of cotton kapas; the condition precedent for the levy of purchase tax, i.e., "disposed otherwise than by way of sale", is not fulfilled; levy of purchase tax under Section 4(4), by subjecting by-products to tax (which are otherwise exempt from tax by the legislature), is impermissible; the goods i.e. husk, soyabean de-oiled cake, cotton hull, hank yarn, cotton delint husk (hull) and cotton de-oiled cake are all by-products obtained while manufacturing the main product i.e. rice , dhal, cotton lint, hank yarn, processed cotton seed and cotton oil; levy of purchase tax on the by- products, treating them as the main product intended to be manufactured, is improper and incorrect; and the corresponding purchase turnover is arrived at by adopting a formula not prescribed under the Act, referring to the purchase turnover of kapas purchased from farmers, for arriving at the corresponding purchase turnover of kapas presumed to have been used for manufacturing hank yarn and cotton delint husk.

35. On the other hand the Learned Special Standing Counsel for Commercial Taxes would submit that the word "input", used in Section 4(4), has a broader meaning than raw material; it includes any goods that are put in; there may be intermediary products, but the goods which first go into the process also become input for the end product;



raw cotton is the input for cotton lint, cotton seed, cotton seed oil and cake; since the dealer is not purchasing cotton seed, but is extracting cotton seed from raw-cotton purchased from farmers (i.e., Kapas), and then the cotton seed is processed into oil and cake, raw cotton becomes the input for all these products; the petitioners herein claim exemption on the turnover relating to dispatches outside the state, otherwise than by way of sale (i.e. consignment) of cotton seed oil, cotton seed cake and, in some instances, cotton seed; since it is an exempt transaction, purchase tax is levied on the proportionate purchase value of the goods i.e., input i.e., raw cotton under clause (ii) of Section 4(4) of the Act; a common input is one which gives rise to an output or outputs; inputs, which are not related to the outputs, are specific inputs; a common input is one which gives rise to both common and specific outputs; raw cotton is a common input for cotton seed, oil and cake; in case the dealer purchases cotton lint and sells it as it is, it would be a specific output as it is not connected with oil and cake; the word "used" in Section 4(4) permits the assessing authority to go back and levy purchase tax on the purchase price of the input which is purchased from farmers/ un-registered dealers, if any of the output /outputs, arising from such input,

are disposed in the manner prescribed under clause (i), (ii) and (iii) of Section 4(4); anything that is put in is "input"; there may be an intermediary product between the first good (input) and the end products (outputs); and the goods which first go into the process becomes the input for the end products.

36. Learned Standing Counsel would seek to explain the scope of Section 4(4) by way of an illustration.

Example: A ----------B---------- C (output)

(Input) D (output)

If the dealer purchases A from VAT dealers and sells C and D within the State, VAT paid on A is allowed as input tax credit while calculating tax payable on C and D, which will be (C+D --A). In this case input tax credit will not be denied stating that C and D are obtained from B but not from A, because A is also an input which is purchased from VAT dealers and C and D are obtained from A. When the input tax credit is allowed to be adjusted going back (any number of steps), purchase tax also can be levied going back (any number of steps) to the actual purchase point. In the instant case Raw Cotton (Kapas) purchased from farmers is used as an input to produce cotton lint and cotton seed; and cotton seed is further processed into cotton seed oil and cotton seed cake. The input purchased is raw cotton and not cotton seed. Purchase tax is levied on the purchase price of raw cotton which is used as an input for cotton lint, cotton seed, cotton seed oil and cotton seed cake, and one or two outputs are dispatched otherwise than by way of sale. Common inputs are taxable on the happening of any of the events specified under Section 4(4) (i), (ii) or (iii). There must be goods produced or manufactured out of such common inputs. In such a process, the identity of the goods change. As long as such goods are produced from out of the common inputs, it is not material when the identity of such goods change, and at what stage such goods are produced. In the present case, the consigned goods (de-oiled cake) have not suffered tax at any point, as the transaction is exempt. The value of the consigned goods is taken from the account books of the dealer and then, through a method of backward calculation, the proportionate purchase value is arrived at, and purchase tax is levied thereon at 4%/5%. This is because, except for raw cotton, the dealer has not purchased any other input to produce cotton seed de-oiled cake consigned by him outside the State.

37. A proviso may serve four different purposes: (1) qualifying or excepting certain provisions from the main enactment; (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable; (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision. (**S. Sundaram v. V.R. Pattabhiraman**[31]). The proviso to Section 4(4) prescribes the manner in which the turnover, taxable under Section 4(4) of the Act, should be determined. It stipulates that, where a common input is used to produce goods, the taxable turnover under Section 4(4) shall be the value of the "***inputs***" proportionate to the value of the goods "***used or disposed of***" in the manner prescribed in clauses (i) to (iii) thereunder.

38. The goods "***used***" in the manufacture of any output or end-product might comprise, amongst others, inputs which may retain their dominant individual identity and character throughout the process and also in the end-product; those which, as a result of interaction with other ingredients, might themselves undergo qualitative changes and in such altered form find themselves in the end-product; those which, while influencing reactions, may themselves remain uninfluenced and unaltered and remain independent of and outside the end-products and those which might be burnt-up or consumed in the process. (**Collector of C.E. v. Ballarpur Industries Ltd.**[32]). "***Disposing of***" means parting with the goods in some or the other manner. It means transfer of goods from one to another. (**Venkata Krishna Constructions v. Commercial Tax Officer, No.I, Vijayawada**[33]; **State of Tamil Nadu v. E.C. Constructions and Industries**[34], **State of Kerala v. Ocean Wealth**[35], **Goodyear India Ltd. v. State of Haryana**[36] and **K. Cheyyabba v. State of Karnataka**[37]). Disposal means transfer of title in the goods to any other person. The expression "***dispose***" means to transfer or alienate. It was formerly an essential word in any conveyance of land. Section 4(4)(i) & (ii) require that the goods in question should be transferred to some person otherwise than by way of sale. (**CST v. Thomas Stephen & Co. Ltd.,**[38]; **Jowitt *"The Dictionary of English Law"*** and **Webster Comprehensive Dictionary, International Edition, Vol. 1. p. 368**). If the manufactured goods are not sold within the State, but are yet disposed of within the State then no tax is payable on such disposition. Again where such manufactured goods are taken out of State to the manufacturers own depots or to the depots of his agents then no such tax is payable on such removal. (**Shri Krishna Oil and General Mills v. State of Punjab**[39]).

39. The dictionary meaning of "***inputs***" is 'what is put in', 'enter', 'enter the system'. The use of the word "***input***"

is indicative that the benefit is intended for every item which is a raw material in the widest sense made wider by using the expression 'input'. The purpose is to broaden the meaning of raw material by including in it even those items which could be placed in the goods to make it marketable as such. (**TELCO v. State of Bihar**[40]; **CCE v. Jay Engineering Works Ltd.,**[41]). The word "***common***", as used in the proviso to Section 4(4), is significant. The Concise Oxford Dictionary of Current English (Eighth Edition) defines "***common***", among others, to mean belonging to two or more quantities (common factor). The "***input***" must be "***common***" to one or more outputs. Paddy, as an input, is common both to rice and husk and soyabean seed, as an input, is common both to soyabean oil and soyabean deoiled cake.

40. The proviso to Section 4(4) is attracted where a common input is used to produce goods more than one, and where the output or one of the outputs cannot be subjected to tax as it attracts the ingredients of clauses (i) to (iii) of Section 4(4) of the Act. In such cases tax is levied on the value of the input proportionate to the value of such output/outputs. Application of the principle, "***words in the singular include the plural and vice versa***", depends on whether "***the contrary intention appears from the context***" of the provision. (**Sin Poh Amalgamated (H.K.) v. Attorney General**[42]). As the word "***inputs***", referred to in the second limb of the proviso, refers only to the "***common input***" in the first limb, it matters little that the word "***inputs***" is used in the plural in the second limb, and the word "***input***" in the singular in the first limb of the proviso to Section 4(4) of the Act. The submission that it is only where multiple inputs are used would the proviso be attracted does not merit acceptance, for then the word 'common input' in the first limb must be read in the plural as common inputs. The proviso to Section 4(4) only prescribes the manner of computation of tax under Section 4(4) of the Act. As Section 4(4) is the charging section the proviso, which prescribes the manner of computation of tax on goods which are charged to tax under Section 4(4) of the Act, cannot be so construed as to render Section 4(4) itself redundant. Too wide and fanciful a construction is often sought to be given to the maxim that, in a taxing Act, clear words are necessary in order to tax the subject, which does not mean that words are to be unduly restricted against the State, or that there is to be any discrimination against the State in those Acts. It simply means that, in a taxing Act, one has to look merely at what is clearly said. (**Cape Brandy Syndicate v. Inland Revenue Commissioner**[43]). The rule of literal construction is that a statutory enactment must, ordinarily, be construed according to the plain natural meaning of its language. No words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. (**Polestar Electronics (P) Ltd v. Addl. S.T. Commissioner, New Delhi**[44]).

41. The accepted principle of statutory construction is that a subject is only to be taxed upon clear words. On the question "what are clear words?", the answer is that the court is not confined to a literal interpretation. There may, indeed should, be considered the context and scheme of the relevant Act as a whole, and its purpose may, indeed should, be regarded. This new principle was not invented on a juristic basis independent of statute. That would be indefensible since a court has no power to amend a tax statute. The principle is developed as a matter of statutory construction. The new development is not based on a linguistic analysis of the meaning of particular words in a statute. It is founded on a broad purposive interpretation, giving effect to the intention of the legislature. This principle is based on an orthodox form of statutory interpretation. And in asserting the power to examine the substance of a composite transaction, formalism in fiscal matters is rejected and a more realistic legal analysis has been chosen. (**Inland Revenue Commissioners v. Mc Guckian**[45]; **Ramsay (WT) Ltd. v. IRC**[46]). The main object of Section 4(4) is to plug leakage of revenue and prevent evasion of tax. In interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book should be eschewed. If more than one construction is possible, that which preserves its workability, and efficacy is to be preferred to the one which would render it otiose or sterile. (**Hotel Balaji**[1]; **M.K. Kandaswami**[12]).

42. The proviso to Section 4(4) of the Act is attracted where a common input is used to produce one or more outputs. By the use of the word '***common'***, the legislative intent is to tax the proportionate value of the common input to the extent one or more of the outputs attract the ingredients of clauses (i) to (iii) of Section 4(4) of the Act.

Cotton seed is the common input for cotton seed oil and cotton seed cake. Cotton seed purchased by a dealer, on being subjected to a manufacturing process, results in the extraction of oil which is the primary product. However, it also brings into existence oil –cakes which are sold outside the State and are, therefore, not subject to tax under the provisions of the Act. Therefore, the taxable event is the purchase of cotton seed to the extent the by -product oil -cakes have been sold outside the State. (**Shri Krishna Oil and General Mills**[39]). If the purchased goods are utilised partly for manufacture of goods that are taxable, and another part for the manufacture of goods that are not taxable, and only a portion of the purchased goods are utilised for the first purpose and some other for the second purpose, purchase tax is not levied in respect of the quantity utilised for the first purpose. (**State of Maharashtra, Commissioner of Sales Tax, Bombay v. Bharat Petroleum Corporation Ltd**[47]).

43. In **Pawan Industries v. State of Assam**[48], the validity of the levy of purchase tax, on the turnover relating to purchase of oil –seeds, referable to oil -cake disposed of by way of stock transfer on consignment basis outside the State, was under challenge. The petitioner therein contended, like in the present batch of Writ Petitions, that, as oilcakes were merely a by -product in the course of production of oil, such goods could not be subjected to levy of tax. The Division bench of the Gauhati High Court negatived the contention and upheld the validity of the levy.

44. The goods used as input/inputs are distinct and different from the goods which constitute the output/outputs. Cotton seed is a commodity distinct and different from both cotton seed oil and cotton seed cake. Cotton seed is used to produce cotton seed hull, cotton seed oil and cotton seed de-oiled cake. If cotton seed hull or cotton seed oil or cotton seed de-oiled cake attract the ingredients of clauses (i) to (iii) of Section 4(4) of the Act, and if cotton seed is purchased by a VAT dealer 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 person who sold the goods, then the proportionate purchase value of cotton seed can be subjected to tax under Section 4(4) of the Act. That would, however, not justify raw-cotton, which is a commodity distinct from cotton seed, being subjected to tax in terms of the proviso to Section 4(4), as raw-cotton is not the common input for cotton seed hull, cotton seed oil and cotton seed de-oiled cake. The use of the words '***used or disposed of in the manner as prescribed under this section***' in the proviso, makes it clear that the common input, of the outputs which are used or disposed of in the manner prescribed in clauses (i) to (iii) of Section 4(4) of the Act, can alone be subjected to tax in terms of the proviso. Cotton seed is derived from raw-cotton. Even if cotton seed de-oiled cake were to attract the ingredients of Section 4(4)(ii), the proportionate value of raw-cotton cannot be subjected to tax as it is not raw-cotton, but cotton seed which is the common input for cotton seed oil or cotton seed hull or cotton seed de-oiled cake. The proviso to Section 4(4) cannot be so extended as to bring within its ambit goods whose derivatives are common inputs for other goods (outputs) which attract the ingredients of clauses (i) to (iii) of Section 4(4) of the Act.

45. The theory, of common input/specified input, put forth on behalf of the respondents does not derive support from a plain and literal reading of the proviso to Section 4(4) of the Act, and such a construction would require the word '***common'*** in the proviso to Section 4(4) to be ignored, and the word '***specific'*** to be added thereto. Where the meaning of the statutory provision is clear and explicit, words cannot be interpolated as, in the first place, they are not needed. If they should be interpolated, the statute would more than likely fail to express the legislative intent as the thought intended to be conveyed might be altered by the addition of new words. They should not be interpolated even if the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear, and sensible, either with or without the omitted word, interpolation is improper since the primary source of the legislative intent is in the language of the statute. (**Crawford in his book on "Construction of Statutes": 1940 Edn 269; Polester Electronic (P) Ltd**[44]).

46. Where the literal reading of a statute produces an intelligible result, there is no ground for reading in words or changing words according to what may be the supposed intention of Parliament. Cases where it has been held that a word can be struck out of a statute and another substituted can be grouped under different heads i.e., (1) where, without such substitution, the provision is unintelligible or absurd or totally unreasonable; or (ii) where it is unworkable; or (iii) where it is totally irreconcilable with the plain intention shown by the rest of the statute. (**R.**

v. Dakes[49]; **Federal Steam Navigation Co. Ltd. v. Department of Trade and Industry**[50]; **Polester Electronic (P) Ltd**[44]). Addition or modification of words, used in a statutory provision, is generally not permissible but courts may depart from this rule to avoid a patent absurdity. (**Narayanaswami v. Pannerselvam**[51]; **Polester Electronic (P) Ltd**[44]).

47. The proviso to Section 4(4) is not independent of the main Section. The proviso is attracted where the input referred to in Section 4(4), is used to produce more goods than one (for convenience sake referred to as "outputs"). In such a situation, where one of the outputs is dealt with in the manner specified in clauses (i) to (iii) of Section 4(4) and the other output is not, it is only the output which is dealt with in the manner specified in clauses (i) to (iii) of Section 4(4) which falls within the ambit of Section 4(4) of the Act. For instance, cotton seed is an input both for cotton seed oil and cotton seed cake. If cotton seed oil were to constitute 70% of cotton seed and the remaining 30% cotton seed deoiled cake, and if cotton seed oil is sold and the cotton seed deoiled cake is used or disposed of in the manner specified in clauses (i) to (iii) of Section 4(4), it is only the proportionate value of cotton seed, representing cotton seed deoiled cake, which can be subjected to purchase tax under Section 4(4) of the Act. In the aforesaid illustration as cotton seed deoiled cake is taken as constituting 30% of cotton seed, the proportionate value, liable to tax under Section 4(4) of the Act, would be 30% of the purchase price of cotton seed. In order to attract levy of tax under Section 4(4) of the Act cotton seed, in the aforesaid illustration, should have been purchased by a VAT dealer from persons who are not dealers under the Act and, consequently, VAT should not have been levied when cotton seed was so purchased. Where Raw cotton is purchased, tax under Section 4(4) can only be levied on cotton seed, provided the ingredients of clauses (i) to (iii) are satisfied, as the former is the input and the latter is the output. However Section 4(4) is not attracted where cotton seed oil and cotton seed deoiled cake satisfy the ingredients of clauses (i) to (iii) as cotton seed, which is their input, has not been purchased by the VAT dealer and, instead, the goods purchased are raw cotton.

48. The question concerning the application of the principles of proportionality, in calculating purchase tax on the oil -cakes disposed of by the dealer otherwise than in inter -State sale or for purposes of export, must, on first principles, be answered holding that, if cotton seed results in the manufacture of oil -cakes in addition to oil, then the cotton seed, to the extent it produced oil-cakes, would be liable to purchase tax. The percentage of oil-cakes, which are sent outside the State otherwise than by inter -State sale, would be liable to tax and calculated accordingly. The tax is imposed on the raw material purchased by the dealer (ie cotton seed) for, if purchase tax is calculated on the value of the end –product (ie oil cake), it would then be a tax imposed on the manufacture of goods which would be beyond the competence of the State Legislature. Purchase tax is, therefore, levied on the purchase of raw material/input. (**Shri Krishna Oil and General Mills**[39]).

49. The contention that purchase tax under Section 4(4) cannot be levied on by-products is not tenable. The proviso to Section 4(4) enables tax to be levied on the proportionate value of purchased goods which are used as inputs for producing goods more than one, where one of the goods so produced attracts the ingredients of clauses (i) to (iii) of Section 4(4) of the Act. Husk, soyabean deoiled cake, etc. are all "***goods***" which are exempt from tax under Section 7 read with the first schedule to the Act. The tax levied, under Section 4(4) of the Act, is not on the goods which constitute the output, but on the proportionate value of the purchased goods which constitute the input, to the extent it has resulted in production of goods which constitute the output. Tax under Section 4(4) is not levied on soyabean deoiled cake, husk etc but on paddy and soyabean seed which have yielded the aforesaid goods.

VII. IS THE METHOD PRESCRIBED IN THE FIRST PROVISO TO SECTION 4(4), FOR COMPUTING THE CORRESPONDING VALUE, IRRATIONAL?

50. It is contended, on behalf of the petitioners, that the assessing authorities, in this batch of writ petitions, have not specifically adopted a rational method for the purpose of computing the corresponding purchase value; neither the legislature in the Act, nor the rule making authority under the relevant rules, have prescribed any method for computing the corresponding purchase turnover of the input alleged to have been used for obtaining the resultant by-product exempt from tax; it is the value of the inputs which is relevant; and the proviso should be

understood to be applicable in cases where multiple inputs are used for obtaining an output or different outputs exempt from payment of tax, in which case only the proportionate purchase value of the specific input, used for obtaining the output, has to be calculated as the second limb refers to the value of inputs which is plural in nature. Reliance is placed on **Delux Wires v. State of A.P.**[52] in this regard.

51. On the other hand Learned Special Standing Counsel for Commercial Taxes would submit that "Kapas" is the input for Lint and Cotton seed; Cotton seed is the input for cotton cake; since the purchase price of cotton seed is embedded in the purchase price of Kapas, and is not separately shown, the assessing authority has taken the proportionate purchase price of Kapas to levy purchase tax on the cotton cake sent out of the State; such levy is legal and is within the scope of Section 4(4); the first proviso to Section 4(4) of the Act deals with the method of calculation of purchase tax on a proportionate basis; the proportionate basis or method was introduced to bring uniformity in the calculation of purchase tax in respect of different commodities, and among different assessing authorities in the State; there is no ambiguity in the proviso; it prescribes the method to be adopted to calculate the purchase price of the input liable to tax under Section 4(4); and, to arrive at the purchase price of raw Cotton (Kapas) proportionate to the value of the Cotton Seed Cake/oil/seed dispatched on consignment basis, the proportionate (prorata) method is to be followed which is as under:

Purchase tax Liability on Raw Cotton (Kapas) = (Purchase price of Kapas from farmers within the State X (Value of Consignment or exempt transactions)

=Purchase price of input Total Sales (Taxable + Exempt Sales) (Kapas) liable to tax @ 4%

52. According to the Learned Special Standing Counsel, since in the numerator exempt transactions are taken and in the denominator total sales are taken, the purchase price of Kapas, liable to tax under Section 4(4), will generally be less than the consignment value; this proportionate method adopted cannot, therefore, be said to be irrational or irregular; the measure or value is clearly ascertainable because the value of the portion of cotton kappas, out of which the proportionate value of the goods (oil cake) is produced, is derived from the yield statement supplied by the petitioners; alternatively the information can be obtained from the records maintained mandatorily, as per Rule 34(4) in Form 524 and 525, in respect of cotton Kappas and seeds comparing it with the records in respect of oil cake dispatched to other branches; and it is not difficult to arrive at the value applying ordinary principles of accountancy.

53. In **Delux Wines**[52], a Division Bench of this Court declared that Section 2(1)(s)(ii) and Section 14-B of the APGST Act, as incorporated by the Amendment Act 18 of 1985, must be read down by not giving effect to the said provisions until and unless the legislature prescribes guidelines for exercising the power conferred thereunder; and the expressions "prevailing market prices" and "abnormally low" occurring in Section 14-B of the Act, are defined. The Division bench, however, made it clear that, as and when the legislature chooses to define the said two expressions and indicates the method and manner of determination of the turnover with reference to the prevailing market prices, Section 14-B of the Act can be enforced from such date.

54. No uniform formula can be prescribed in applying the proviso to Section 4(4) of the Act, as the proviso would apply to different goods, the proportionate value of which may vary from one to another. For instance, in the present batch of Writ Petitions itself, the proportionate value of paddy, soya bean seed etc are subjected to tax under Section 4(4) of the Act. While paddy is the common input for rice and husk, soya bean seed is the common input for soya bean oil and soya bean de-oiled cake. The proportionate quantity of husk obtained from paddy would differ from the proportionate quantity of soya bean de-oiled cake obtained from soya bean seed. It is neither possible, nor is it required for the application of the proviso to Section 4(4), that a specific formula be uniformly prescribed for arriving at the proportionate value of different goods under Section 4(4) of the Act.

55. It is not even contended before us that the proportionate value determined by the assessing authority, in subjecting paddy, soya bean seed etc to purchase tax under Section 4(4) of the Act, is not on its proportionate value. The proportionate value can only be determined by the assessing authority after verification of the books of accounts and cost records of the VAT dealer. The question whether the assessing authority has properly

determined the proportionate value is a question of fact to be determined on the facts and circumstances of each case. Suffice it to hold that the mere fact that no uniform formula is prescribed does not disable the assessing authority from giving effect to the proviso to Section 4(4) of the Act, and in subjecting the proportionate value of the purchase price of taxable goods to tax under Section 4(4) of the Act.

VIII. IS THE 1ST PROVISO TO SECTION 4 (4) PROSPECTIVE IN ITS APPLICATION?

56. It is contended, on behalf of the petitioners, that the first proviso to Section 4 (4), which incorporates the pro-rata principle, was introduced only with effect from 24-9-2008; the proviso has no application to the period prior to its introduction; hence levy of purchase tax applying the pro-rata principle, during the period 1-4-2005 to 23-9-2008, is not sustainable.

57. A distinction must be drawn by Courts, while interpreting the provisions of a taxing statute, between charging provisions which impose the charge to tax and machinery provisions which provide the machinery for the quantification of the tax and the levying and collection of the tax so imposed. While charging provisions are construed strictly, machinery sections are not generally subject to a rigorous construction. Courts construe the machinery sections in such a manner that a charge to tax is not defeated. (**Associated Cement Company Ltd. v. Commercial Tax Officer, Kota**[53]; **Commissioner of Wealth Tax, Meerut v. Sharvan Kumar Swarup & Sons**[54]). Procedural law, generally speaking, is applicable to pending cases. No suitor can be said to have a vested right in procedure. (**Sharvan Kumar Swarup & Sons**[54]).

58. The liability is imposed by the charging section ie Section 4(4) of the Act. Its proviso enables the liability to be quantified and, when quantified, to be enforced against the subject, but the liability is definitely and finally created by the charging section i.e., Section 4(4) of the Act. (**Sharvan Kumar Swarup & Sons**[54]; **W.H. Cockerline & Co. v. The Commissioner of Inland Revenue**[55]). It is important to distinguish between charging provisions, which impose the charge to tax, and machinery provisions which provide the machinery for the quantification of the charge and the levying and collection of the tax in respect of the charge so imposed. Machinery provisions do not impose a charge or extend or restrict a charge elsewhere clearly imposed. (**Halsbury's Law of England (Fourth Edn.) Vol. 23, Para 29; Sharvan Kumar Swarup & Sons**[54]). While provisions of a statute, dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch upon a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment (**Delhi Cloth and General Mills Co. Ltd. v. Income Tax Commissioner**[56]; **Jose Da Costa. v. Bascora Sadasiva Sinai Narpomim**[57]; **Sharvan Kumar Swarup & Sons**[54]).

59. We are concerned, while applying the proviso to Section 4(4), with the determination not whether a particular turnover can be brought to tax under the Act but whether, if the turnover is liable to be charged to sales tax, the manner in which the turnover must be determined. In other words, we are concerned with a provision which prescribes the machinery for the computation of tax and not with a charging provision of the Act. (**Murari Lal Mahabir Prasad v. B.R. Vad.**[58]; **Sharvan Kumar Swarup & Sons**[54]). The proviso to Section 4(4) is a machinery provision as it relates to the mode and manner in which the taxable turnover under Section 4(4) of the Act, should be determined where a common input is used to produce goods. When a provision sets out the method or formula for determining the taxable turnover, it can only be considered to be procedural and not substantive. It has not the effect of impairing any vested right or creating any new obligation. (**Sharvan Kumar Swarup & Sons**[54]). As the proviso to Section 4(4) is a machinery provision, the contention that it has no application to the assessment period prior to 24.09.2008, when it was inserted by Act 28 of 2008, does not merit acceptance.

IX. IS TAX, LEVIED UNDER SECTION 4(4), IN THE NATURE OF CONSIGNMENT TAX?

60. It is contended, on behalf of the petitioners, that in the context of declared goods, as described in Section

14 of the CST Act, levy of purchase tax on cotton kapas, relatable to the value of seed/cake/oil sent on consignment, even though there is no sale or purchase of seed/cake/oil in the State, makes the levy, in pith and substance, a "consignment tax" which can be levied only by Parliament; and such an unconstitutional outreach is not permissible.

61. A similar contention was considered and negatived in **Hotel Balaji**[1], wherein the Supreme Court held:-

> "….The section applies only in those cases where (*a*) the goods are purchased (for convenience sake, I may refer to them as raw material) by a dealer liable to pay tax under the Act in the State, (*b*) the goods so purchased cease to exist as such goods for the reason they are consumed in the manufacture of different commodities and (*c*) such manufactured commodities are either disposed of within the State otherwise than by way of sale or despatched to a place outside the State otherwise than by way of an inter-State sale or export sale. It is evident that if such manufactured goods are not sold within the State of Haryana, but yet disposed of within the State, no tax is payable on such disposition; similarly, where manufactured goods are despatched out of State as a result of an inter-State sale or export sale, no tax is payable on such sale. Similarly again where such manufactured goods are taken out of State to manufacturers' own depots or to the depots of his agents, no tax is payable on such removal. *Goodyear*[1] takes only the last eventuality and holds that the taxable event is the removal of goods from the State and since such removal is to dealers' own depots/agents outside the State, it is consignment, which cannot be taxed by the State legislature. With the greatest respect at our command, we beg to disagree. The levy created by the said provision is a levy on the purchase of raw material purchased within the State which is consumed in the manufacture of other goods within the State. If, however, the manufactured goods are sold within the State, no purchase tax is collected on the raw material, evidently because the State gets larger revenue by taxing the sale of such goods. (The value of manufactured goods is bound to be higher than the value of the raw material.) The State legislature does not wish to — in the interest of trade and general public — tax both the raw material and the finished (manufactured) product. …..
>
> …..The object is to tax the purchase of goods by a manufacturer whose existence as such goods is put an end to by him by using them in the manufacture of different goods in certain circumstances. **The tax is levied upon the purchase price of raw material, not upon the sale price — or consignment value — of manufactured goods. Would it be right to say that the levy is upon consignment of manufactured goods in such a case? True it is that the levy materialises only when the purchased goods (raw material) is consumed in the manufacture of different goods and those goods are disposed of within the State otherwise than by way of sale or are consigned to the manufacturing-dealer's depots/agents outside the State of Haryana. But does that change the nature and character of the levy? Does such postponement — if one can call it as such — convert what is avowedly a purchase tax on raw material (levied on the purchase price of such raw material) to a consignment tax on the manufactured goods? We think not. Saying otherwise would defeat the very object and purpose of Section 9 and amount to its nullification in effect.** ….."
>
> **In the light of the above scheme of Section 9, it would not be right, in our respectful opinion, to say that the tax is not upon the purchase of raw material but on the consignment of the manufactured goods. It is well settled that taxing power can be utilised to encourage commerce and industry. It can also be used to serve the interests of economy and promote social and economic planning. Section 9 of Haryana Act and Section 13-AA of Bombay Act are intended to encourage the industry and at the same time derive revenue. It is also not right to concentrate only on one situation viz., consignment of goods to manufacturer's own depots (or to the depots of his agents) outside the State. Disposal of goods within the State without effecting a sale also stands on the same footing, an instance of which may be captive consumption of manufactured products in the manufacture of yet other products. Once the scheme and policy of the provision is appreciated, there is no room, in our respectful opinion, for saying that the tax is on the consignment of manufactured goods.** ……" (emphasis supplied).

62. The judgment in **Hotel Balaji**[1] was followed in **Devi Dass Gopal Krishan (P) Ltd.**[2]. The contention urged on behalf of the petitioners, that tax levied under Section 4(4) of the Act is in the nature of consignment tax, does not, therefore, merit acceptance.

X. SECTION 15 (a) OF THE CST ACT: ITS SCOPE:

63. It is contended, on behalf of the petitioners, that unginned cotton, and ginned cotton, are treated as one and the same commodity under Section 14(ii) of the CST Act; Entry 79 of the IV Schedule to the Act also treats cotton, whether unginned or ginned, as one and the same commodity; when raw cotton is ginned, the ginning process yields ginned cotton (also called cotton lint) and cotton seed; it cannot be said that unginned cotton is the input and ginned cotton is the output; the petitioners herein have sold cotton lint either within the State or in the course of inter-state trade and commerce; the State has collected the maximum tax permitted by Section 15(a) and 15(b) r/w Section 8(1) of the CST Act; the petitioners have not disposed of ginned cotton in any other manner; no purchase tax under Section 4(4) can be levied on the supposed value of cotton kapas relatable to the value of cotton seed; even after the amendment of clause (a) of Section 15, by Act No.20 of 2002 (intended to facilitate introduction of the VAT system of taxation in States), tax cannot be levied both on sale and purchase; levy of purchase tax again on cotton kapas, relatable to the value of cotton seed deoiled cake sent outside the State on consignment, would result in contravention of clauses (a) & (b) of Section 15 r/w Section 8(1) of the CST Act; Section 4(4) of the Act must be interpreted to conform to Sections 14 & 15 of the CST Act; levy of tax on the sale of cotton lint, and again purchase tax on the supposed value of cotton kapas, is in violation of Article 286(3) of the Constitution, Sections 14 and 15 of the CST Act, and Section 4(4) of the Act; the petitioners have paid tax at the rate of 4% on the sale of cotton lint within the State; levy of purchase tax, under Section 4(4), on cotton kapas (i.e., raw cotton) in proportion to the cotton seed/cotton seed oil/cotton seed oil cake sent on consignment basis would result in a levy in excess of the ceiling of 4%/5% fixed under Section 15(a) of the CST Act; it would also amount to levy of tax, on purchase as well as sale, contrary to the parliamentary mandate contained in Section 15(a); and, as tax is paid on the sale of cotton lint, levy of purchase tax under Section 4(4) at 4% again, will result in a levy in excess of 4%.

64. On the other hand, Learned Special standing counsel for commercial taxes would submit that in no case has the total tax, levied on any declared goods, exceeded four percent; paddy and rice are two different commercial commodities taxable under two different entries; therefore purchase tax on paddy, and sales tax on rice, can be levied; husk is also a different commercial commodity under the Act; Kapas and cotton seed are two different commercial commodities taxable under two different entries; it is established from the returns, filed by the petitioners, that 100 kgs. of Kapas yields only 32 or 33 kgs of lint, and the rest is either seed or waste; as per this calculation also, the total tax levied on kapas do not exceed 4% as restricted under Section 15(a) of the CST Act; while the petitioners have raised this issue in some of the Writ Petitions, they did not produce any material evidence to prove that the tax levied on declared goods exceeded 4% in any given case; the tax payable under Section 15(a) of the CST Act is output tax – input tax; even after levy of purchase tax, if the total tax paid or payable by the dealer does not exceed 4% on the total purchase or sale of cotton, Section 14 & 15 of the CST Act will not be violated; in the instant case (cases), since the total tax paid or payable by the dealer does not exceed 4% on the total purchase or sale of cotton, it cannot be said that levy of purchase tax is in violation of Section 14 & 15 of the CST Act, as is evident from the illustration given below (i.e., the tax payable on Cotton in W.P.No.22428 of 2013) -

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Purchase of Kapas from farmers 2,90,764.43 Quintals Value Rs. 86,35,68,153 Tax @ 4% = Rs. 3,45,42,726(if levied)

Output Tax under VAT as per the assessment order Rs. 1,01,55,539 (Including levy of purchase tax of Rs. 3,51,120)

Output Tax under CST as per the turnover reported in Trading Account (Tax @2% on Rs. 31,73,21,530) Rs. 63,46,431

Total Output tax under VAT+ CST Rs. 1,65,01,970

Less: Total Input Tax Credit eligible as per the assessment order after restriction of ITC Rs. 19,00,957

Tax payable by the dealer under VAT and CST including levy of purchase tax & Restriction of ITC Rs. 1,46,01,013

Total tax @4% if levied on purchase of Kapas Rs. 86,35,68,153 Rs. 3,45,42,726

Difference Rs. 1,99,41,713

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65. Learned Special Standing Counsel would contend that, in terms of percentage, it is only 1.69% (not exceeding 4%); even after levy of purchase tax, on the proportionate value of the goods consigned, the total tax does not exceed 4% if levied on raw cotton and, therefore, Section 14 and 15 of the CST Act are not violated; and each item is a separately taxable commodity, under Section 14(ii) of the CST Act, as they possess a separate commercial identity.

66. 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 respect of transactions which had an inter-State content. The Constitution-makers intended that there should be free flow of trade in India and certain goods, which were of special importance in inter-state trade and commerce, should not be taxed over and over again. In order to achieve this object, it was left open to Parliament to make a law on the subject. In the exercise of this constituent power under Article 286 of the Constitution, the Parliament enacted the CST Act. The amendment of Article 286 by the Constitution (6th Amendment) Act, 1956, and the enactment of the Sales Tax Validation Act 1956, and the CST Act, were all intended to serve a dual purpose: to maintain the source of revenue from sales-tax to the States and, at the same time, to prevent the States from subjecting transactions, in the course of inter-State trade, to tax and thereby obstruct the free flow of trade by making commodities unduly expensive. The CST Act was enacted under the authority of Parliament, but the tax is collected through the agency of the State. It is levied ultimately for the benefit of the States and is, statutorily, assigned to them. It is clear from the amendments made by the Constitution (Sixth Amendment) Act, 1956, in Article 269, and the enactment of the CST Act that CST, though levied for and collected in the name of the Central Government, is a part of the sales-tax levy imposed for the benefit of the States. (**The State of Madras v. N.K. Nataraja Mudaliar**[59]; **Sterling Steels & Wires Ltd. v.**

State of Punjab[60]). Article 286(3)(a) of the Constitution of India, after its substitution by the Constitution (46th Amendment) Act, 1982, stipulates that any law of a State shall, in so far as it imposes or authorises the imposition of 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, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of tax as parliament may, by law, specify.

67. The CST Act firstly specifies the declared goods and, secondly, imposes conditions and restrictions subject to which the State Governments can impose tax on the internal trade in these goods. Section 14 of the CST Act declares certain goods to be of special importance in inter-State trade or commerce. Such goods are commonly known as "declared goods". (**Sterling Steels & Wires Ltd.**[60]). Section 14 of the CST Act declares, among others, the following goods to be of special importance in inter-State trade or commerce i.e., (i) paddy, (ii) rice, (iii) cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured State, whether ginned or unginned, baled, pressed or otherwise, but does not include cotton waste; (iv) oilseeds, that is to say, cotton seed, soya bean etc; (vi-a) pulses.

68. Section 15 of the CST Act, as it originally stood, prescribed restrictions and conditions in regard to tax on the sale or purchase of declared goods within a State and, thereunder, every sales-tax law of a State was required, in so far as it imposed or authorised the imposition of a tax on the sale or purchase of declared goods, to be subject to the following restrictions and conditions, namely :-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed three per cent of the sale or purchase price thereof, and such tax shall not be leviable at more than one stage;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter- State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State."

69. Section 15, as it originally stood, stipulated that, in respect of declared goods, the tax (on sale or purchase) should not exceed the prescribed rate; it should not be levied at more than one stage; and it should be refunded to persons from whom it is collected if the goods are sold in the course of inter-state trade or commerce.

70. Section 15(a) of the CST Act was amended by Act 20 of 2002 with effect from 13.05.2002 and the words "***and such tax shall not be levied at more than one stage***", in the pre-amended provision, was omitted. Clause 146 of the notes and clauses to the Finance Bill 2002, as introduced in Parliament on 28.02.2002, noted that Section 15(a) of the CST Act was sought to be amended with a view to allowing the State Governments to impose tax on declared goods at more than one stage in respect of the sale of declared goods. After its amendment, by Act 20 of 2002 with effect from 13.05.2002, Section 15 of the CST Act reads as under:

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State;

(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in Sub-clause (i) of clause (i) of Section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy;

(d) each of the pulses referred to in Clause (via) of Section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law.

71. By Section 77 of the Finance Act, 2011 the words "four percent" in Section 15(a) was substituted by the words "five percent" with effect from 08.04.2011.

72. Where the turnover of goods which, under Section 14 of the CST Act, have been declared to be of special importance in inter-State trade or commerce, are subjected to tax under the sales tax law of a State, Section 15(a) of the CST Act prescribes the maximum rate at which such tax may be imposed. This condition has been imposed to ensure that inter-State trade or commerce in such goods is not hampered by heavy taxation within the

State occasioned by an excessive rate of tax. Section 15 enacts restrictions and conditions which are essential to the validity of an impost by the State on such goods. If the condition is not satisfied, the impost will be invalid. (**Govind Saran Ganga Saran v. Commissioner of Sales Tax**[61]). The whole idea, underlying Section 15(a) of the CST Act, is that the declared goods should not, in the aggregate, suffer tax at the rate of more than four/five per cent both in intra-State and inter-State trade. (**Mahendrakumari Iswarlal and Co., Tirupattur v. Commercial Tax Officer, North Arcot**[62]). The restriction placed by Section 15 (a) of the CST Act, on the taxing power of a State, is to ensure minimum tax burden on the declared goods because of their special importance in the economy. (**Premier Steels v. Assistant Commissioner (Assessment)**[63]). Section 15 of the CST Act is not restricted only to registered dealers. (**Rattan Lal & Co.**[23]).

73. The provisions of a State Act cannot override the provisions of Section 15(a) of the CST Act. The pre-amended Section 15(a) required that, if sales or purchase tax had been levied on declared goods at one point, it could not be levied at any other subsequent stage and consequently, if declared goods had suffered purchase tax, they could not be subjected to tax again at the point of sale to the consumer. (**Commissioner, Sales Tax, U.P., Lucknow v. Chokhani Co.**[64]; **Commissioner of Sales Tax v. Nirankari Engineering, Kanpur**[65]; **Bhawani Cotton Mills Ltd. v. State of Punjab**[66]). Hitherto, when the purchaser of the goods was exempt from levy of tax, sales tax could not be collected from the selling dealer as it would then have violated the condition of single -stage tax under the pre-amended Section 15(a) of the CST Act. (**Vijaya Lakshmi Enterprises v. State of A.P**[67]; **Peekay Re -Rolling Mills (P) Ltd.**[26]). Even before its amendment Section 15(a) itself, beyond saying that the levy could only be at one stage, did not prescribe any particular point in the series of sales or purchases. The fixation of the point, in conformity with Section 15(a) of the CST Act, was left to the particular State legislature. The automatic modification of the provision in the State enactment, brought about by Article 286 (3) and Section 15, did not extend to defining the single point in the series of transactions at which the levy of tax was to be made under the State law. (**Mahendrakumari Iswarlal and Co., Tirupattur**[62]).

74. The intention of Article 286(3) of the Constitution is not to destroy all charging sections in the Sales Tax Acts of the States, which are discrepant with Section 15(a) of the CST Act, but to modify them in accordance therewith. The law of the State is declared to be subject to the restrictions and conditions contained in the law made by Parliament, and the rate in the State Act would pro-tanto stand modified. (**Modi Spinning and Weaving Mills Co. Ltd. v. Commissioner of Sales Tax, Punjab**[68]). As a result of Article 286 (3) and Section 15(a) of the CST Act, the rate of tax under Section 4(4) of the AP Act, as in the case of sale or purchase of declared goods, is limited to the rate of four/five per cent.

75. Raw cotton undergoes various processes before cloth is finally turned out. Cotton is cleaned, carded, spun into yarn, then cloth is woven, put on rolls, dyed, calendered and pressed. (**J.K. Cotton Spg. & Wvg. Mills v. Sales Tax Officer**[69]). "Declared goods", in Section 14 of the CST Act, are individually specified under separate items. All kinds of cotton, whether ginned or unginned, baled, pressed or otherwise, fall under a single species of "declared goods" under Section 14(ii) of the CST Act. In terms of Section 15(a) of the CST Act, the tax payable under the Act, in respect of the sale or purchase of declared goods inside the State, shall not exceed 4%/5% of the sale or purchase price thereof. Cotton, whether ginned or unginned, is treated as a single commodity or a single species of declared goods and cannot, therefore, be subjected to tax exceeding the rate prescribed in Section 15(a) of the CST Act on both the sale and purchase price and, prior to its amendment, at not more than one stage. (**State of Punjab v. S.G.R. Cotton G. & P. Factory (SC)**[70]; **State of Punjab v. Chandulal Kishorilal**[71]).

76. Section 15(a) of the CST Act, before its amendment by Act 20 of 2002 with effect from 13.05.2002, disabled tax from being levied on declared goods at more than one stage. For instance, if ginned cotton (cotton lint) was hitherto subjected to tax on its sale, no purchase tax could have been levied on raw cotton as Section 15(a),

before its amendment, restricted imposition of tax on declared goods only to one stage i.e., either at the stage of its sale or its purchase. However, after the amendment of Section 15(a) by Act 20 of 2002 with effect from 13.05.2002, tax under the Act can be imposed at more than one stage. In effect tax can now be levied both on the sale or purchase of cotton i.e., tax can be imposed both on the purchase of raw cotton (kapas) and again on the sale of ginned cotton i.e., cotton lint. The restriction under Section 15(a) of the CST Act is now limited only to the rate of tax which before 08.04.2011 was 4%, and is 5% thereafter. In view of Section 15(a) of the CST Act the rate of tax, both on the purchase and sale of cotton together, cannot exceed 4%/5%.

77. The fact that ginned and unginned cotton are consistently treated under the same head, in the statutes dealing with the matter, indicates that the legislature looked upon ginned and unginned cotton as one and the same commodity. It seems to have been felt that ginning does not alter the character of raw cotton. When cotton is turned into yarn or cloth, it no longer remains raw cotton and the change of identity is easily discernible. A person, who buys raw cotton and turns it into yarn or cloth, is liable to pay tax first in respect of the transactions relating to cotton, and then in respect of the transactions relating to yarn or cloth. In the same way a man, who buys yarn and weaves it into cloth which he sells, is not selling the commodity which he bought; he is dealing in two different types of commodities one of which he buys and other of which he sells. The person, who conducts the process of ginning, obtains cotton seed which is a separate commodity, but ginned cotton is the same as unginned cotton except that it is more ready for use by the manufacturer. To put a commodity in such a state, that it can be more readily used for manufacture, is almost the same thing as making a commodity marketable; the commodity remains the same and does not alter its character in any respect. Selling unginned cotton and ginned cotton are two transactions dealing with the same commodity. (**Raghubir Chand Som Chand v. Excise and Taxation Officer, Bhatinda**[72]).

78. If VAT is levied on cotton lint at 4%/5%, then purchase tax under Section 4(4) cannot be imposed on raw cotton (which, after the process of ginning, has been sold as cotton lint), for it would then result in tax, exceeding 4%/5%, being levied on the sale and purchase of the very same goods. The restriction imposed by Section 15(a) of the CST Act can be better explained by way of an illustration. If, for instance, a VAT dealer purchases 1000 kgs of raw cotton at Rs.100/- per kg, the purchase value of raw cotton would be Rs.1,00,000/-, and 4% tax thereon would be Rs.4,000/-. If, after raw cotton is ginned, 70% thereof constitutes cotton seed, and 30% ginned cotton, then, from the 1000 kgs of raw cotton purchased by him, the VAT dealer would have obtained 300 kgs of ginned cotton (cotton lint). If ginned cotton is sold at say Rs.400/- per kg, then the sale price of 300 kgs of ginned cotton would be Rs.1,20,000 and sales tax thereon at 4% would be Rs.4,800/-. As raw cotton and ginned cotton are to be treated as the very same commodity both under Section 14(ii) of the CST Act and Entry 79 of the IV Schedule to the VAT Act, tax, both on raw cotton and ginned cotton together, cannot exceed 4%. In the illustration above mentioned, as tax on the sale of ginned cotton of Rs.4,800/- exceeds the tax payable on the entire purchase value of raw cotton of Rs.4,000/-, no purchase tax can be levied on the purchase of raw cotton by the VAT dealer.

79. Section 14(vi-a) of the CST Act relates to pulses (dhal). Section 15(d) of the CST Act stipulates that each of the pulses referred to in Section 14(vi-a), whether whole or separated and with or without husk, shall be treated as a single commodity for the purpose of levy of tax under the Act. Consequently the Act has, in its fourth Schedule, listed under a common entry i.e., Entry 82 all kinds of pulses and dhals. “Raw dhal” and “finished dhal” both fall under Entry 82 of the IV Schedule to the Act. In view of both Section 15(d) of the CST Act, and Entry 82 of the IV Schedule to the VAT Act, raw dhal (whole dhal) must be held to be the same commodity as finished dhal even after it is dehusked. As a result the restriction placed by Section 15(a) of the CST Act, of the tax payable under the VAT Act in respect of the sale or purchase of such goods not exceeding 4%/5% of the sale or purchase price thereof, would be attracted. Consequently purchase tax on the purchase of raw dhal (to the extent it has yielded husk) and tax of the sale of finished dhal together cannot exceed 4%/5%.

80. The restriction, under Section 15(a) of the CST Act, would apply only to goods falling under one item or entry either under Section 14 of the CST Act or the IV Schedule to the Act. Commodities, other than those specified, cannot be introduced into the relevant provisions/schedules on the ground that they are derived from

the primary commodities. (**Rajasthan Roller Flour Mills Association v. State of Rajasthan**[73]; **ITC Bhadrachalam Paperboards Ltd. v. State of A.P. (APHC)**[74]). Cotton or kapas, in its unginned or unmanufactured state, contain cotton-seeds. But it is by a manufacturing process that cotton and seed are separated, and the seeds so separated is neither cotton nor part of cotton. They are two distinct commercial goods though, before the manufacturing process, the seeds might have been a part of the cotton itself. (**S.G.R. Cotton G. & P. Factory**[70]; **Chandulal Kishorilal**[71]; **Kotak & Co. v. State of Andhra Pradesh**[75]). The policy of taxation is more appropriately the province of the statesmen and of the legislature rather than of the lawyer or the courts. It is a public policy dependent not only upon the necessities of administration but also implementation of the scheme to serve the public needs. If, in the exercise of the general policy of taxation, the legislature describes cotton and cotton seed as two different commodities or goods for the purpose of the Act, it is not open to canvass the reasonableness or the justification of such a classification. (**Kotak & Co.**[75]; **Pithapuram Taluk Tobacco, Cigars and Soda Merchants' Union v. The State of Andhra Pradesh**[76]). While raw cotton is "declared goods" under Section 14(ii), cotton seed is treated separately as "declared goods" under Section 14(vi)(iii) of the CST Act. Likewise, while raw cotton is listed under Entry 79 of the IV Schedule to the Act, cotton seed is listed separately under Entry 77 of the IV Schedule to the Act. Raw cotton and cotton seed are treated as two different commodities both under the CST Act and the VAT Act. The restriction under Section 15(a), of the maximum rate of 4% tax being imposed, would not disable tax at 4% being levied on purchase of raw cotton and tax again being levied at 4% on the sale of cotton seed as both Parliament and the State Legislature have treated them as two different and distinct goods.

81. The ingredients of Section 15[c] of the CST Act are: (i) tax has been levied under the VAT Act on the sale or purchase of paddy which is "declared goods" under Section 14(1)[c] of the CST Act; (2) rice is procured from such paddy; and (3) tax is levied on the rice so procured. In such circumstances tax leviable on the procured rice must be reduced by the amount of tax levied on such paddy. Purchase tax under Section 4(4) is levied on the value of paddy to the extent it yields husk which is exempt from tax under the first schedule to the VAT Act. In view of Section 15(c) of the CST Act, the tax levied on the sale of rice would be required to be reduced by the amount of purchase tax levied, under Section 4(4) of the Act, on paddy.

82. Reliance placed by the petitioners on **Commissioner, Sales Tax v. Mathura Das Ram Saran Das**[77]; **Radhakrishna & Co. v. State of A.P.**[78]; and **Rattan Lal & Co.**[23], is misplaced. In **Mathura Das Ram Saran Das**[77], the question which arose for consideration was whether cotton yarn could be subjected to tax at multiple-points, notwithstanding that it had already suffered tax once. In that case yarn, which was subjected to tax, was held in stock on 1st August, 1958, and was subjected to multiple point tax. As the yarn in question had already suffered tax in the hands of the manufacturer, the question arose whether they could be subjected to tax again, as a result of the notification issued by the State Government on 1st August, 1958 notifying cotton yarn to be a declared commodity. A Division Bench of the Allahabad High Court, following an earlier decision of another Division Bench in **Commissioner of Sales Tax v. Har Saran Das and Sons**[79], held that they could be subject to tax at multiple points. In **Chokhani Co**[64], the Allahabad High Court held that the decision in **Mathura Das Ram Saran Das**[77] could not have been otherwise, for cotton yarn was not a declared commodity till it came to be included in Section 14(ii-b) from 1st October, 1958; the restriction, imposed by Section 15(a) of the CST Act, did not operate so as to fetter the power of the State Government to impose multiple point tax in respect of the cotton yarn upto 1st October, 1958; and, as such, there arose no occasion to consider either Section 14 or Section 15 of the CST Act in that case.

83. In **Rattan Lal & Co.**[23], the argument was that no machinery was provided to enable the dealer to discover that the goods had been taxed before, and the single stage at which the tax is to be levied was still not clearly discernible. The Supreme Court held:-

> ".....In the case of sales-tax, the stage of tax is the sale of such goods by the last dealer liable to pay the tax and in the case of purchase tax the stage is purchase by the last dealer liable to pay the tax. It is also provided that the turnover of any dealer for any

period shall not include his turnover during that period of any sale or purchase of declared goods at any other stage than the stage so mentioned.

It will be seen that the matter is now in the hands of the dealer. He has to find out for himself whether he is liable to pay the tax or not. A dealer knows what he has done with his goods or is going to do with them. If he knows that he is not the last dealer having parted with the goods to another dealer or he knows that he is going to use the goods or sell them to consumers, he knows when' he is not liable to tax and when he is. Therefore, he will not include the transaction in his taxable turnover in the first case but include it in the second. Goods in the hands of a dealer are not taxed. They are only taxed on the last purchase or sales. This information is always possessed by a dealer and by providing that he need not include in his turnover any transaction except when he is the last dealer, the position is now clear.

It is contended that even so the dealer may not know that he is the last dealer and may make some mistake. The law does not take into account the actions of persons who are negligent or mistaken but only of persons who act correctly, according to law. If the dealer is clear 'about his own position he is now quite able see whether he is the last purchaser liable to pay the tax or the last seller liable to pay the tax. The Act by Specifying the stage as the last purchase or sale by a dealer liable to pay the tax makes the stage quite clear and by giving an option to him not to include such transactions in his return saves him from the liability to pay the tax till he is the dealer liable to pay the tax. In our opinion, therefore, the present provisions of the Act are quite clear and are quite sufficient to make the amended Act accord with the Central Act...." (emphasis supplied).

84. As noted hereinabove, after its amendment by Act 20 of 2002 with effect from 13.05.2002, Section 15(a) of the CST Act no longer disables imposition of VAT at more than one stage and, consequently, tax can be imposed both at the stage of purchase of goods, and its sale.

85. In **Radhakrishna & Co.**[78], a Division bench of this Court held that the Legislature had intended to fix only a single point levy in respect of groundnuts having regard to the class of dealers which were likely to deal with these goods; the point of last purchase was before the goods either lost their identity or were sold outside the State; in both cases, tax becomes exigible only once; in cases where groundnuts were purchased by a miller, the Legislature assumed that he was also the last dealer because a miller purchases it only for crushing; if the Legislature had contemplated that millers, who own or lease a mill for the purposes of crushing oil-seeds into oil, not only crush them into oil but also deal in the goods like ordinary dealers, who buy and sell them in order to make profit, there was nothing to stop them from treating such millers like ordinary dealers stating that the point of levy would be the purchase by the last miller.

XI. SECTION 15 (b) OF CST ACT: ITS SCOPE:

86. It is contended, on behalf of the petitioners, that Section 15 (b) of the CST Act provides for the reimbursement in full of the State tax paid on purchase or sale of cotton (or any other declared commodity) where such goods are sold in the course of inter-state trade or commerce, and tax under the CST Act is paid; where tax has been levied under the state law on declared goods and, subsequently, such goods are sold in the course of inter-state trade and commerce and tax has been paid under the CST Act, Section 15(b) of the CST Act requires the tax levied, under the state law, to be reimbursed to the person making sale in the course of inter-state trade and commerce; where cotton lint, derived out of raw cotton, is completely sold in the course of inter-state trade, and the tax due under the CST Act is completely paid, purchase tax under Section 4(4) cannot be levied on the supposed value of cotton kapas relatable to the value of cotton seed/cotton seed oil/cotton seed oil cake sent on consignment; the petitioners, at times, purchased cotton kapas (raw cotton) or cotton lint from other registered VAT dealers under tax invoices; on such purchases, the other registered VAT dealers charged VAT; the petitioners, after purchasing from other registered VAT dealers, ginned raw cotton and derived cotton lint; the purchased cotton lint was sold locally within the State or in the course of inter-state trade and commerce and the tax due under the Act, or the CST Act, was completely paid; since they paid tax on the sales of cotton lint – either derived out of ginning raw cotton or purchased from other registered VAT dealers, the petitioners are entitled to reimbursement of the entire tax paid on their purchase of raw cotton or lint by the operation of Section 15(b) of the CST Act; this reimbursement, which petitioners are entitled to, cannot be confused with the input-tax credit due under Section 13 of the Act; the petitioners sold a part of the cotton lint in the course of inter-state trade and commerce to registered dealers, and paid the tax due u/s 8(1) of the CST Act; under Section 15 (b) once CST is paid, the tax paid under the State Act (even if it is more) must be reimbursed to the petitioner making inter-state sale; by the operation of Section 15 (b) of the CST Act, even assuming purchase tax is payable, it should be refunded; where cotton-kapas are purchased from other registered VAT dealers and, after ginning, the entire cotton lint is sold locally within the State or in the course of inter-state trade and commerce, or where cotton lint is purchased from another registered VAT dealer, and is either re-sold within the State or in the course of inter-state

trade and commerce, the tax due on such sales is completely paid under the Act/CST Act; the petitioners have effected inter-state sales of cotton lint, and have paid the tax due under the CST Act; the tax paid under the State enactment must, therefore, be reimbursed to the petitioners; when cotton lint is sold in the course of inter-state trade and commerce, Section 4(4) has no application; and retention of cotton seed, or the disposal of cotton seed, cannot be treated as retention/disposal of raw cotton.

87. Section 15(b) of the CST Act confers the right to receive refund of State tax, if any, paid in respect of declared goods. The object is that, in respect of goods which are of importance to inter-state trade, any State law imposing tax on the transactions of sale or purchase, must be subject to such restrictions as the Parliament may prescribe and these restrictions are found in Section 15 of the CST Act. (**Munshi Abdul Rahiman & Bros v. Commercial Tax Officer**[80]). Under Section 3 of the CST Act, a sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase (a) occasions the movement of goods from one State to another; or (b) is effected by a transfer of documents of title to the goods during their movement from one State to another. Under Section 5(1) a sale or purchase of goods shall be deemed to take place in the course of 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. Under Section 5(3), 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.

88. Section 8 of the CST Act prescribes the rates of tax on sales in the course of inter-state trade or commerce. Under Section 8(1) every dealer who, in the course of inter-state trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under the Act which shall be 2% of his turnover, or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower. Under the proviso thereto, the central government may, by notification in the official gazette, reduce the rate of tax under Section 8(1). Under Section 8(2) the tax payable by any dealer on his turnover, in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-state trade or commerce not falling within sub-section (1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate state under the sales tax law of that State. Under the explanation thereto, for the purpose of Section 8(2), a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate state, notwithstanding that he, in fact, may not be so liable under that law. Section 8(3)(b) stipulates that the goods, referred to in Section 8(1), shall be goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or, subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale. Section 8(4) stipulates that the provisions of Section 8(1) shall not apply to any sale, in the course of inter-state trade or commerce, unless the dealer selling the goods furnishes to the prescribed authority, in the prescribed manner, a declaration duly filled and signed by the registered dealer, to whom the goods were sold, containing the prescribed particulars in a prescribed form obtained from the prescribed authority.

89. Section 8 of the Act relates to zero-rated sales and thereunder, subject to the conditions in Sections 9 and Section 13 of the Act, the following shall be zero rated sales for the purposes of the Act, and shall be eligible for input tax credit (a) sale of taxable goods in the course of inter-state trade and commerce falling within the scope of Section 3 of the CST Act; and (b) sale of goods falling within the scope of Sections 5(1) and (3) of the CST Act. Taxable goods, sold in the course of inter-state trade or commerce under Section 3 of the CST Act, are zero rated sales under Section 8 of the Act and, consequently, no tax is levied under the Act on taxable goods sold in the course of inter-state trade or commerce. In addition, such inter-state sales are also eligible for input tax credit. The tax paid by a VAT dealer, on the purchase of goods from another VAT dealer, can be claimed as input tax credit by him when the said taxable goods are sold by him in the course of inter-state trade or commerce.

90. The ingredients of Section 15(b) of the CST Act are (1) tax must have been levied under the VAT Act, in respect of the sale or purchase of declared goods, inside the State; (2) such declared goods must, thereafter, have been sold in the course of inter-state trade or commerce; (3) tax must be paid under the CST Act in respect of the sale of such goods in the course of inter-state trade or commerce; (4) in such an event, the tax levied under the VAT Act is required to be reimbursed to the person making such sale in the course of inter-state trade or commerce; (5) reimbursement, of the tax levied under the VAT Act, shall be in such manner, and shall be subject to such conditions, as may be provided under the VAT Act. As goods sold in the course of inter-state trade or commerce are zero-rated sales under Section 8 of the VAT Act, and input tax credit can also be claimed by the VAT dealer, who sells taxable goods in the course of inter-State trade or commerce, to the extent tax was paid by him on the purchase of such goods, the requirement of Section 15(b) would, ordinarily, be satisfied.

91. While Section 15(b) is applicable only where declared goods are sold in the course of inter-state trade or commerce, Section 4(4) of the VAT Act is attracted on the purchase of taxable goods used or disposed of otherwise than by way of sale in the course of inter-State trade or commerce. The submission that Section 4(4) of the VAT Act, and Section 15(b) of the CST Act, operate in different fields is no doubt attractive. Difficulty, however, arises when cotton lint is sold in the course of inter-state trade and commerce, and purchase tax is levied on the value of raw cotton proportionate to the value of cotton seed sent outside the State on consignment. If, for example, 1000 KGs of raw-cotton yields 700 KGs of cotton seed and 300 KGs of cotton lint. Raw-cotton and cotton lint are treated, both under the CST Act and the VAT Act, as one and the same commodity. Tax, under Section 4(4)(i) and (ii) and its proviso, can be imposed only where the goods which constitutes the input is different from the goods which constitute the output. While raw cotton can be treated as the input for cotton seed and cotton yarn, it cannot be treated as the input for cotton lint as both raw cotton and cotton lint are treated as the same commodity both under the CST Act and the VAT Act. Cotton seed, however, is treated as a commodity distinct and different from raw-cotton/cotton lint. If raw cotton is treated as the input for cotton seed, and the entire 700 KGs cotton seed were to be despatched outside the State on consignment, then, under Section 4(4), purchase tax would be levied on the purchase price of raw-cotton representing cotton seed i.e., 700 KGs of raw-cotton, representing 700 KGs of cotton seed would be liable to tax under Section 4(4) of the VAT Act at the stage of its purchase. However, if the entire cotton (300 KGs of cotton lint) is sold in the course of inter-state trade, then no cotton would be available for being subjected to purchase tax under Section 4(4) of the VAT Act. If, in such circumstances, purchase tax were to be levied under Section 4(4) on raw cotton, it would then amount to levy of purchase tax on the very same goods which have been sold in the course of inter-state trade and commerce. In such an event, Section 15(b) of the CST Act would require the entire purchase tax, levied under Section 4(4) of the VAT Act, to be reimbursed.

92. Raw dhal (wholesome dhal) and furnished dhal (wholesome dhal after it is dehusked) is treated as the same commodity, both under Section 15(d) of the CST Act and Entry 82 of the IV Schedule to the Act. Likewise if finished dhal is sold in the course of inter-state trade or commerce, then Section 15(b) would require purchase tax levied under Section 4(4) on raw dhal to be reimbursed to the person selling finished dhal in the course of inter-state trade and commerce. Unlike raw cotton, this difficulty does not arise when cotton seed is purchased from persons who are not dealers under the VAT Act. Cotton seed is the common input for both cotton seed oil and cotton seed de-oiled cake. Where cotton seed de-oiled cake is despatched outside the State on consignment, the proportionate purchase value of cotton seed, representing the cotton seed de-oiled cake which has been sent outside the State on consignment, can be subjected to tax under Section 4(4) of the VAT Act.

XII. CAN THE ADVANCE RULING, UNDER SECTION 67 OF THE A.P. VAT ACT, BE REVISED UNDER SECTION 32 THEREOF?

93. It is contended, on behalf of the petitioners, that, on an application being made for advance ruling under Section 67 of the Act, the Advance Ruling Authority, vide CCT's Ref. No.A.R.Com/517/2005 dated 12.03.2007, had clarified that where cotton kapas (raw cotton) purchased from unregistered dealers is ginned, no purchase tax can be levied under Section 4(4) on the supposed value of raw cotton depending upon the manner of disposal of the cotton seed; the advance ruling was revised by the Commissioner of Commercial Taxes under Section 32(1) vide revision order in CCT's Ref. No.AIII/226/07 dated 29.02.2008; the revision order of the

Commissioner of Commercial Taxes, setting aside the advance ruling, has been questioned in Spl. Appeal S.R. Nos.7855/2008 & 7859/2008 which are still pending before this Court; the Advance Ruling Authority is not subordinate to the Commissioner of Commercial Taxes, within the meaning of Rule 51 of the Rules; the advance ruling is not amenable to revision under Section 32(1) as the Commissioner of Commercial Taxs has no power to revise it; the Sales Tax Appellate Tribunal (STAT) had decided, in **M/s. C.H. Ranchodlal Jethalal v. State of A.P**[81], that purchases tax is not leviable; the Advance Ruling is based on the STAT judgment in **M/s. C.H. Randholal Jethalal**[81]; levy of purchase tax is contrary to the said ruling; as "identical issues" were pending before this Court, the respondents ought to have deferred assessment under Sections 21(7) read with 32(5) of the Act; and non-deferment of the assessment, under Section 21(7) read with 32(5), is arbitrary and illegal.

94. As the petitioners herein have sought adjudication on the scope and extent of Section 4(4) of the Act, on the purchase of raw cotton, cotton seed, paddy, raw dhal and soyabean seed by them, we have elaborately considered all the contentions urged before us in this regard. It is this judgment, as long as it remains in force, which would bind the authorities under the Act, and neither the decision of the advance ruling authority nor the STAT. It is wholly unnecessary for us, therefore, to examine whether the ruling of the advance ruling authority, under Section 67 of the Act, could or should have been revised by the Commissioner of Commercial Taxes under Section 32(1) of the Act. Even otherwise, as the validity of the said order of revision is stated to be under challenge in the Special Appeals before this Court, it would be wholly inappropriate for us to examine this contention in the present writ proceedings. As the assessment orders are, itself, under challenge in these Writ Petitions it is wholly unnecessary for us to express any opinion on whether or not the assessing authority could or should have deferred assessment proceedings on the ground that a similar issue was pending adjudication before this Court.

XIII. LIMITATION FOR PASSING AN ORDER UNDER SECTION 21(3) AND 21(5) OF THE ACT:

95. It is contended, on behalf of the petitioners, that a part of the period, in the relevant assessment orders, is barred by limitation; the Act does not prescribe a separate assessment year, and assessment can be made for any part of a tax period; a part of the assessment period is, therefore, barred by limitation as the assessment order is passed beyond 4 years; nothing has been stated in the show cause notices or the assessment orders with regards the extended period of limitation nor has anything been averred in the counter affidavits; and the extended period of limitation, under Section 21(5) of the Act, would not be applicable in these cases as there is no willful evasion or any best judgement assessment referred to in the assessment orders. On the other hand, Learned Special Standing Counsel for Commercial Taxes would submit that in some cases, since there is willful evasion of tax by some of the dealers, the assessing authority has invoked his jurisdiction under Section 21(5) of the Act, and has passed assessment orders within 6 years which is legal and valid.

96. Section 2(24) of the Act defines "prescribed" to mean prescribed by the Rules made under the Act. Section 2(36) defines "tax period" to mean a calendar month or any other period as may be prescribed. As the rule making authority has not chosen to prescribe any other period as the "tax period", the "tax period" continues to remain only a "calendar month". Section 20 of the Act relates to returns and self-assessments. Under sub-section (1) thereof every dealer, registered under Section 17 of the Act, is required to submit such return or returns, along with proof of payment of tax, in such manner, within such time, and to such authority as may be prescribed. Section 20(2) stipulates that, if a return has been filed within the prescribed time and the return so filed is found to be in order, it shall be accepted as self-assessment subject to adjustment of any arithmetical error apparent on the face of the said return. Section 20(4) stipulates that every dealer shall be deemed to have been assessed to tax, based on the return filed by him, if no assessment is made within a period of four years from the date of filing of the return.

97. Section 21 relates to assessment and, under sub-section (1) thereof, where a VAT dealer fails to file a return, in respect of any tax period, within the prescribed time, the authority prescribed shall assess the dealer for the said period for such default in the manner prescribed. Under Section 21(3) where the authority is not satisfied with a return filed by the VAT dealer, or the return appears to be incorrect or incomplete, he shall assess, to the

best of his judgment, within four years of the due date of the return or within four years of the date of filing of the return whichever is later. Section 21(4) empowers the prescribed authority, based on any information available or on any other basis, to conduct a detailed scrutiny of the accounts of any VAT dealer and, where any assessment as a result of such scrutiny becomes necessary, to make such assessment within a period of four years from the end of the period for which the assessment is to be made. Section 21(5) stipulates that, where any wilful evasion of tax has been committed by a dealer, an assessment shall be made, to the best of his judgment, by the prescribed authority within a period of six years from date of filing of the return or the first return relating to such offence.

98. Rule 23 of the Rules relates to tax returns and, under sub-rule (1) thereof, the return to be filed by a VAT dealer, under Section 20, shall be in Form VAT 200, and shall be filed within 20 days after the end of the tax period. Under Rule 23(6)(a) if any VAT dealer, having furnished a return in Form VAT 200, finds any omission or incorrect information therein, other than as a result of an inspection or receipt of any other information or evidence by the authority prescribed, he shall submit an application in Form VAT 213 within a period of six months from the end of the relevant tax period. Rule 24 relates to payment of tax and Rule 25 to assessment. Rule 25(1) stipulates that, where a VAT dealer fails to file a VAT return as prescribed under Section 20, the prescribed authority shall unilaterally assess the tax payable. Rule 25(1) requires the prescribed authority to serve upon the VAT dealer a notice of the tax assessed and the penalty due. Under Rule 25(5), where any VAT return filed by the VAT dealer appears to the prescribed authority to be incorrect or incomplete, the prescribed authority shall assess the tax payable, to be best of his judgment, in Form VAT 305 after affording a reasonable opportunity to the dealer in Form VAT 305A. The prescribed authority is required to serve upon the VAT dealer, the order of penalty, and the interest due, in Form VAT 305 and the VAT dealer is required to pay the sum within the time and manner specified in the notice.

99. The return is required to be filed, under Section 20 of the Act read with Rule 23(1) of the Rules, within 20 days of the end of the tax period i.e., the return, for a particular month, must be filed on or before the 20th of the succeeding month. The limitation, prescribed under Section 21(3) for making assessment, is four years from the due date of the return or within four years of the date of filing of the return whichever is later. As the tax period is one month, and the return is required to be filed on or before the 20th of the succeeding month, the four year period, stipulated under Section 21(3), would commence from the last date of filing the return for a particular month, and would end four years thereafter. As Rule 23(6)(a) enables a VAT dealer to submit an application in Form VAT 213 within a period of six months from the end of the relevant tax period, the limitation for making assessment under Section 21(3), in such cases, would be four years from the date of filing of such a return. The period of limitation of four years must be computed for each tax period i.e., for each month and, unlike the APGST Act, not for an assessment year. For instance the period of limitation of four years, under Section 21(3) of the Act, for a return to be filed for the month of March, 2014 would be 20.04.2018, as the last date of filing of the return filed for the month of March, 2014 would be the 20th of April, 2014. Except in cases where a revised return is filed, in terms of Rule 23(6)(a), the limitation period, for making assessment, would expire four years from the due date of the return.

100. The extended period of six years, prescribed under Section 21(5) of the Act, would apply only where the dealer has committed wilful evasion of tax. As the assessment order is required under Rule 25(5), to be preceded by a notice in Form VAT 305-A, it is only if the contents of the show cause notice contain factual allegations of wilful evasion of tax, would the extended period of limitation of six years under Section 21(5) of the Act apply. It would not suffice for the assessing authority to state, for the first time in the assessment order, that the assessee has committed wilful evasion of tax. The show cause notice should contain factual details to show the basis on which the assessing authority has arrived at the tentative conclusion that the VAT dealer has committed wilful evasion of tax, for it is only then would the VAT dealer have the opportunity to submit his reply and satisfy the assessing authority that he has not committed wilful evasion of tax; and the extended period of limitation of six years under Section 21(5) of the Act would not apply.

101. Since the burden of proving malafide conduct lies with the Revenue, Section 21(5) of the Act finds

application only when specific and explicit averments challenging the fides of the conduct of the assessee are made in the show cause notice. In order to attract Section 21(5), it must be shown that VAT has escaped assessment by reason of wilful evasion by a VAT dealer. In order to extend the period of limitation from four years to six years, the show cause notice must put the assessee on notice of the omissions and commissions which amount to committing wilful evasion of tax. Unless the assessee is put to notice, he would have no opportunity to meet the case of the Department. If the commercial taxes department places reliance on Section 21(5) of the Act, the show-cause notice must contain allegations against the assessee falling within the four corners of the said provision. Specific averments, finding mention in the show cause notice, is a mandatory requirement for commencement of action under Section 21(5) of the Act. In the absence of any such averments in the show-cause notice, the Revenue cannot sustain the notice or the order passed under Section 21(5) of the Act. (**M/s. Vijaya Venkata Durga Oil Traders v. The Commercial Tax Officer, Sivalayam Street, Circle, Vijayawada I Division, Gunadala, Vijayawada, Krishna District**[82]; **Uniworth Textiles Ltd. v. CCE**[83]; **Aban Loyd Chiles Offshore Ltd. v. Commissioner of Customs**[84]; **Collector of Central Exise v. H.M.M. Ltd.**[85]). If the allegations in the show-cause notice, accepted as true, show that the dealer had committed wilful evasion of tax, and the findings recorded in the assessment order establish that the assessee had wilfully evaded tax, it would suffice to extend the period of limitation in terms of Section 21(5) of the Act notwithstanding that the show-cause notice does not explicitly refer to Section 21(5) and does not specifically use the words "wilful evasion of tax". (**M/s. Vijaya Venkata Durga Oil Traders**[82]; **Uniworth Textiles Ltd.**[83]).

102. This issue can be examined from another angle. The fact or facts upon which the jurisdiction of an authority depends is a "jurisdictional fact" the existence of which is the *sine qua non*, or the condition precedent, to the assumption of jurisdiction by the authority. Once such a jurisdictional fact is found to exist, the authority has the power to decide adjudicatory facts or facts in issue. (**Carona Ltd. v. Parvathy Swaminathan & Sons**[86]; **Halsbury's Laws of England (4th Edn.), Vol.1, Para 55, p.61; Reissue, Vol.1(1), Para 68, pp.114-15; Chaube Jagdish Prasad v. Ganga Prasad Chaturvedi**[87]; **Arun Kumar v. Union of India**[88]). The prescribed authority gets jurisdiction to assess the VAT dealer to tax, within the extended period of limitation of six years under Section 21(5) of the Act, only if the said dealer has committed wilful evasion of tax. As the fact, of commission of wilful evasion, is a jurisdictional fact the dealer is entitled to satisfy the prescribed authority, on being given the opportunity to show cause, that such jurisdictional facts are non-existent; and jurisdiction under Section 21(5) of the Act cannot be exercised. It is necessary, therefore, for the prescribed authority to detail these jurisdictional facts in the show-cause notice proposing to assess the dealer to tax under Section 21(5) of the Act. The contents of the show cause notice and the assessment order must clearly show the commission of wilful evasion, in the absence of which the extended period of limitation, under Section 21(5) of the VAT Act, would not apply. The requirement of stating these jurisdictional facts in the show cause notice is to ensure that the assessee-dealer has the opportunity to satisfy the assessing authority that he lacks jurisdiction, to assess the dealer to tax, applying the extended period of limitation.

103. We do not propose to examine whether, in each of the Writ Petitions, the assessment order or a part thereof is barred by limitation. As the assessment orders are being set aside, and remanded to the concerned authorities to pass orders afresh in accordance with law, the concerned authorities shall, in the light of what has been held hereinabove, examine each case to decide whether or not it is barred by limitation.

XIV. IS COMPUTATION OF INPUT TAX CREDIT IN TERMS OF RULE 20 IN VIOLATION OF SECTIONS 14 AND 15 OF THE CST ACT?

104. It is contended, on behalf of the petitioners, that the respondent authorities cannot restrict the reimbursement, due under Section 15(b) of the CST Act, applying the formula axb/c prescribed for input-tax credit under Rule 20(8) of the Rules; the effect of levy of purchase tax under Section 4(4), and the restriction of reimbursement due under Section 15(b) of the CST Act by applying the formula axb/c prescribed by the State Act in the context of input-tax credit, will lead to imposition of both purchase and sales tax on cotton which is a declared commodity; it will also result in reimbursement of an amount less than what is provided for under

Section 15(b) of the CST Act; apart from soyabean seed purchased from farmers, which is the subject matter of levy of purchase tax under Section 4(4), some of the petitioners have purchased soyabean seed from registered dealers, and have used them for obtaining soyabean oil, during the course of which soyabean deoiled cake is obtained which is exempt from payment of tax; the petitioner claimed input tax credit on the entire soyabean seed purchased from registered dealers; however, input-tax credit was rejected with regard to sale of soyabean deoiled cake on the ground that the same is exempt from payment of tax and, hence, would not be eligible for input-tax credit; reliance is placed by the respondents on Rule 20(7) of the Rules which prescribes the formula i.e. a x b/c, where 'a' is said to be the total amount of input tax for common inputs for each tax rate excluding the tax paid on goods mentioned in sub-rule (2) of Rule 20 which deals with the ineligible list; soyabean deoiled cake does not find place in the ineligible list; it, being a by-product obtained while manufacturing soyabean oil, cannot be denied the benefit of input-tax credit as the purchased soyabean seed is used for obtaining soyabean oil which is the main manufacturing activity of the petitioner; rejection of input-tax credit on the by-product i.e., soyabean deoiled cake, which is exempt from payment of tax, is without jurisdiction; restriction of input-tax, under Rule 20(6) of the Rules, is illegal; the petitioners claimed input-tax credit ITC as per Rule 20(9)(a) of the Rules, applied the formula as prescribed, and filed VAT 200A return and VAT 200B consolidated return; column 3 of the Form VAT 200A specifically refers to the sum of the boxes 13A, 14A, 16A, 17A and 19A of VAT 200 return; therefore the total of all the turnovers, taxable at different rates, is to be summed up for the purpose of restricting input-tax credit; the assessing authority has not taken the turnover specified in column 16A of VAT 200 return; the authority proceeded on the wrong premise that Rule 20(6) is applicable on the ground that the petitioner has used specific inputs for specific outputs which is incorrect; the cotton kapas, purchased from registered dealers, are the original input used for obtaining the end product; the relevant rule would, therefore, be Rules 20(9) & 20(10) as the assessees have not maintained separate accounts with regards specific inputs used for specific outputs; the entire turnover has to be taken for the purpose of arriving at the turnover in column 3 of VAT 200B return; and, accordingly, Form 200A and Form 200B returns i.e., the revised input tax claim returns were filed, and the correct claim of input tax was made.

105. On the other hand, Learned Special Standing Counsel for commercial taxes would submit that Section 13 (6) of the Act provides that input tax credit, for transfer of taxable goods outside the State by any VAT dealer otherwise than by way of sale, shall be allowed for the amount of tax in excess of 4%; Rule 20 (8) of the Rules prescribes the procedure for claiming input-tax credit where a VAT dealer is making sales of taxable goods, and also exempt transactions of taxable goods in a tax period; wherever a common input is processed into two outputs, one being taxable and the other being non-taxable by virtue of the nature of the transaction, input-tax credit is to be calculated on the relevant portion of the input by applying the formula a x b /c; in the instant case, the petitioner-dealers purchased raw cotton (Kapas) from registered VAT dealers, and used them as an input for obtaining cotton lint and cotton seed; the cotton lint so obtained is sold within the state or in inter-state trade and commerce; a part of cotton seed so obtained, along with cotton seed purchased from VAT dealers, is further processed into cotton seed oil and cotton seed cake; a portion of the cotton seed, cotton seed oil and cotton seed cake were despatched outside the State on consignment; raw cotton (Kapas) and cotton seed purchased are inputs; cotton seed, cotton seed oil and cotton seed cake, derived in the process, are outputs; cotton lint, obtained in the process, was sold and was taxable whereas cotton seed, cotton seed oil and cotton seed cake, derived in the process, were used for both taxable sales and for exempt transactions; since some of the outputs are non-taxable by virtue of the nature of the transactions, VAT paid on the relevant portion of the inputs is restricted by rightly applying the formula a x b /c as per Rule 20 (8) of the Rules; levy of purchase tax under Section 4(4) of the Act, and the restriction of input-tax credit under Section 13 (6) and Rule 20 (8), are two different and independent acts which do not overlap; levy of purchase tax is limited to un-registered dealers (farmer) purchases, whereas the restriction of input tax credit is on VAT registered dealer purchases; and they are mutually exclusive and independent exercises covering different spheres of purchases by a VAT dealer.

106. Section 2(13) of the Act defines "exempt sale" to mean a sale of goods on which no tax is chargeable, and consequently no credit for input-tax related to that sale is allowable. Section 2(14) defines "exempted turnover" to mean the aggregate of sale prices of all goods exempt under the Act and full or part of the actual value or fair

market value of all transactions not taxable under the provisions of the Act, including transactions falling under Section 6-A of the CST Act. Section 2(19) of the Act defines "input-tax" to mean the tax paid or payable under the Act by a VAT dealer to another, whether directly by himself or through his agent on his behalf, on the purchase of goods in the course of business. Section 2(22) defines "output tax" to mean the tax paid or payable by a VAT dealer, on the sale of goods to another VAT dealer, whether by himself or through his agent or any other person. Section 2(35) defines "tax invoice" to mean a sale invoice containing such details as may be prescribed and issued by a VAT dealer to another VAT dealer.

107. Section 4 of the Act relates to charge to tax and, under sub-section (1) thereof, save as otherwise provided in the Act, every dealer registered, or liable to be registered, as a VAT dealer shall be liable to pay tax, on every sale of goods in the state, at the rates specified in the Schedules. Section 7 relates to exemptions and, thereunder, the goods listed in Schedule-I to the Act shall be exempted from tax under the Act. Section 13 provides credit for input-tax and, under sub-section (1) thereof, 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. Under Section 13(3), a VAT dealer is entitled to claim (a) input-tax credit under sub-section (1), on the date the goods are received by him, provided he is in possession of a tax invoice. Under clause (c) of Section 13(5) no input tax credit shall be allowed on the sale of exempted goods except when such goods are sold in the course of export, or exported outside the territory of India; under clause (d) on exempt sale; and under clause (e) on transfer of exempted goods on consignment basis or to branches of the VAT dealer outside the State otherwise than by way of sale. Section 13(6) stipulates that the input-tax credit, for transfer of taxable goods outside the State by any VAT dealer otherwise than by way of sale, shall be allowed for the amount of tax in excess of 5%. Section 14 relates to tax- invoices and requires a VAT dealer, making a sale liable to tax to another VAT dealer, to issue, at the time of sale, a tax invoice in such form as may be prescribed.

108. Rule 20 of the Rules relates to input-tax credit and, under sub-rule (6) thereof, where any VAT dealer is able to establish that specific inputs are meant for specific output, the input-tax credit can be claimed separately for taxable goods; and, for the common inputs, such VAT dealer can claim input-tax credit by applying the formula a x b/c for the common inputs used for taxable goods, exempt goods (goods in Schedule I) and exempt transactions; under the proviso thereto, the VAT dealer is required to furnish an additional return, in Form VAT 200A, for each tax period for adjustment of input-tax credit; and also to make an adjustment for a period of 12 months, ending March every year by filing a return in Form VAT 200B. Rule 20(7) stipulates that, where a VAT dealer makes taxable sales and sales of exempt goods (goods in Schedule I) for a tax period, and inputs are common for both, the amount which can be claimed as input tax credit, for the purchases of the goods at each tax rate shall be calculated by the formula a x b/c. The proviso thereto requires the VAT dealer to furnish an additional return in Form VAT 200A for each tax period for adjustment of input-tax credit; and also to make an adjustment for a period of 12 months ending March every year by filing a return in Form VAT 200B.

109. Under Rule 20(8)(a), where a VAT dealer makes sales of taxable goods and also exempt transactions of taxable goods in a tax period, for the purchases of goods taxed at 12.5%, input-tax to the extent of the 8.5% portion can be fully claimed in the same tax period. Rule 20(8)(b) provides that, in respect of purchases of goods taxable at 1%, 4% and for the 4% tax portion in respect of goods taxable at 12.5%, the VAT dealer shall apply the formula axb/c for each tax period. Under the proviso thereto, the VAT dealer is required to furnish an additional return in Form VAT 200A for each tax period for adjustment of input-tax credit, and also to make an adjustment for a period of 12 months ending March every year, by filing a return in Form VAT 200B. Under Rule 20(9)(a), where a VAT dealer makes sales of taxable goods, exempt sales (goods in Schedule I) and also exempt transaction 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.

110. Section 13(5) of the Act stipulates that no input tax credit shall be allowed on sale of exempted goods (except in the case of export), exempt sales, and transfer of exempted goods on consignment or to branches

outside the state. Input-tax credit is eligible on the sale of taxable goods under Section 8(a) of the Act i.e., the sale of taxable goods in the course of inter-state trade or commerce. In the present case, purchase tax is levied on goods which are used as inputs for other goods which are exempt from tax, or for goods which have been transferred on consignment or to branches of the VAT dealer outside the State otherwise than by way of sale. While the provisions of the Act must, in view of Article 286(3) of the Constitution of India, be complaint with Sections 14 and 15 of the CST Act, it is not clear as to how denial of input-tax credit, or computation of input-tax credit in accordance with Rule 20 of the Rules, in the present cases is contrary to the mandate of Sections 14 and 15 of the CST Act. The submission of the Learned Special Standing Counsel of Commercial Taxes, that levy of purchase tax under Section 4(4) of the Act, and the restriction of input-tax credit under Section 13 and Rule 20, are two different and independent acts which do not overlap, has considerable force. In any event the question, whether computation of input-tax credit in terms of Rule 20 is in violation of Sections 14 and 15 of the CST Act, must be answered on the facts and circumstances of each case. It is for the assessee to satisfy the assessing authority that computation of the eligible input-tax credit, in terms of Rule 20, is in violation of Sections 14 and 15 of the CST Act.

XV: SUMMARY:

111. The conclusions afore-stated are summarised, briefly, as under:

(i). Section 4(4) of the VAT Act is the charging section and its main object is to plug leakage of revenue, and prevent evasion of tax. In interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book should be eschewed. If more than one construction is possible, that which preserves its workability and efficacy is to be preferred to the one which would render it otiose or sterile.

(ii). The policy underlying Section 4(4) is to tax every transaction either at the point of sale or purchase. Where the seller is not taxed or cannot be taxed, the purchaser is taxed. By the same reasoning, when the seller is taxed, the purchases is not taxed. If the goods are not available in the State for subsequent taxation, by reason of the circumstances mentioned in clauses (i) to (iii) of Section 4(4), then the purchaser is made liable to tax under Section 4(4).

(iii). The goods purchased are referred to in Section 4(4) as “taxable goods”, and such purchases are in circumstances in which no tax is payable by the seller. The expression 'taxable goods', as used in Section 4(4), can be defined as goods, the sale of which is, liable to tax under the Act. The word "taxable” qualifies the term 'goods' and excludes, by necessary implication, goods the sale of which is exempt from tax under the Act. The goods so exempt - not being 'taxable goods' – are not brought to charge under Section 4(4) of the Act.

(iv). It is only because the goods listed in the first schedule to the Act are exempt from tax, the branch transfer or stock transfer of goods by a VAT dealer to his consignee/agent is not taxable under the Act, and such transactions attract the ingredients of clauses (i) to (iii) of Section 4(4), is the input of such goods subjected to tax under Section 4(4) of the VAT Act.

(v). A farmer or an agriculturist would be a “person” as defined under Section 2(22) of the AP General Clauses Act and consequently, as the context does not otherwise provide, under Section 4(4) of the VAT Act also.

(vi). 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.

(vii). It is not every purchase of “taxable goods” but only such goods, which fall within the ambit of clauses (i) to (iii) of Section 4(4) and its proviso, which attracts levy of tax at the stage of its purchase. The farmer/agriculturist is not even, indirectly, subjected to tax under section 4(4) of the Act.

(viii). Where a farmer grows raw cotton, paddy, raw dhal and soyabean seed in his land, and sells these agricultural produce to others, he is not liable to pay tax on the sale of such goods, as he is not a “dealer” under Section 2(10) of the Act. Purchase of such agricultural produce by a VAT dealer is “in circumstances in which no tax is payable by the seller”. In such circumstances tax, at 4%/5% of the purchase value of such goods, is liable to be paid by the VAT dealer who purchases the aforesaid goods i.e., agricultural produce.

(ix). Where goods, liable to tax under the VAT Act, are purchased by a VAT dealer from other dealers who are not registered under the Act, and the goods have not suffered value added tax, a liability is imposed on the purchasing VAT dealer to the extent the goods purchased by him are used/disposed of as specified in clauses (i) to (iii) of Section 4(4) of the Act.

(x). Tax, under Section 4(4), is not levied on goods which are exempt from tax. It is only because the goods listed in the first schedule to the VAT Act are exempt from payment of VAT under the Act is purchase tax levied, under Section 4(4)(i) of the VAT Act, on goods which are used as inputs for those goods which are exempt from tax under the Act.

(xi). Section 4(4)(i) & (ii) require that the manufactured/produced goods should have been transferred to some person otherwise than by way of sale. If the manufactured goods are not sold within the State, but are yet disposed of within the State, then no tax is payable on such disposition. Again where such manufactured goods are taken out of the State, to the manufacturers own depots or to the depots of his agents, then no such tax is payable on such removal.

(xii). Each transaction of purchase of goods, which is used or disposed of in the manner contemplated under clauses (i) to (iii) of Section 4(4), is distinct and is neither capable of being construed as overlapping or as redundant.

(xiii). The use of the word "***input***", in clauses (i) and (ii) of Section 4(4), brings within its ambit every item which is a raw material in the widest sense, made wider by using the expression 'input'. The purpose is to broaden the meaning of raw material by including in it even those items which could be placed in the goods to make it marketable as such.

(xiv). The first proviso to Section 4(4) is not independent of the main Section, and is attracted where a common input is used to produce one or more outputs. By the use of the word 'common', the legislative intent is to tax the proportionate value of the common input to the extent one or more of the outputs attract the ingredients of clauses (i) to (iii) of Section 4(4).

(xv). The first proviso to Section 4(4) requires the "***input***" to be "common" to one or more outputs. Paddy, as an input, is common both to rice and husk; soyabean seed, as an input, is common both to soyabean oil and soyabean deoiled cake; and cotton seed, as an input, is common both to cotton seed oil and cotton seed deoiled cake.

(xvi). The first proviso to Section 4(4) is attracted when a common input is used to produce more than one goods, and when the output, or one of the outputs, cannot be subjected to tax as they attract the ingredients of clauses (i) to (iii) of Section 4(4). In such cases tax is levied on the value of the input proportionate to the value of such output/outputs.

(xvii). The first proviso to Section 4(4) prescribes the manner of computation of tax on goods which are charged to tax under Section 4(4), and cannot be so construed as to render Section 4(4) itself redundant.

(xviii). The goods used as input/inputs are distinct and different from the goods which constitute the output/outputs. If cotton seed hull or cotton seed oil or cotton seed de-oiled cake attract the ingredients of clauses (i) to (iii) of Section 4(4) of the Act, and if cotton seed is purchased by a VAT dealer from a person who is not a dealer, then the proportionate purchase value of cotton seed can be subjected to tax under Section 4(4).

(xix). The tax is imposed on the raw material purchased by the dealer (ie cotton seed) for, if purchase tax is levied on the value of the end –product (ie oil cake), it would then be a tax imposed on the manufacture of goods which would be beyond the competence of the State Legislature.

(xx). That would, however, not justify raw-cotton, which is a commodity distinct from cotton seed, being subjected to tax under the proviso to Section 4(4), as raw-cotton is not the common input for cotton seed hull, cotton seed oil and cotton seed de-oiled cake.

(xxi). The use of the words 'used or disposed of in the manner as prescribed under this section', in the proviso to Section 4(4), make it clear that the common input, of the outputs which are used or disposed of in the manner prescribed in clauses (i) to (iii) of Section 4(4), can alone be subjected to tax.

(xxii). The proviso to Section 4(4) cannot be so extended as to bring within its ambit goods whose derivatives are common inputs for other goods (outputs) which attract the ingredients of clauses (i) to (iii) of Section 4(4) of the Act.

(xxiii). Where one of the outputs is dealt with in the manner specified in clauses (i) to (iii) of Section 4(4), and the other output is not, it is only the output which is dealt with in the manner specified in clauses (i) to (iii) of Section 4(4) which falls within the ambit of Section 4(4) of the Act.

(xxiv). The proviso to Section 4(4) enables tax to be levied not on the goods which constitute the output, but on the proportionate value of the purchased goods which are used as inputs for producing other goods (outputs) where one of the goods so produced attracts the ingredients of clauses (i) to (iii) of Section 4(4) of the Act.

(xxv). It is neither possible nor is it required, for the application of the proviso to Section 4(4), that a specific formula be uniformly prescribed for arriving at the proportionate value of goods under Section 4(4) of the Act. As the first proviso would apply to different goods, the proportionate value of which may vary from one to another, no uniform formula can or need be prescribed.

(xxvi). The mere fact that no uniform formula is prescribed does not disable the assessing authority from giving effect to the first proviso to Section 4(4) of the Act, and in subjecting the proportionate value of the purchase price of taxable goods to tax.

(xxvii). The proviso, which enables the liability under Section 4(4) to be quantified and, when quantified, to be enforced against the subject, is a machinery provision as it relates to the mode and manner in which the taxable turnover, under Section 4(4) of the Act, should be determined where a common input is used to produce goods. Courts construe machinery provisions in such a manner that a charge to tax is not defeated.

(xxviii). When a provision sets out the method or formula for determining the taxable turnover, it can only be considered to be procedural and not substantive. Procedural law is applicable to pending cases as no suitor can be said to have a vested right in procedure.

(xxix). The CST Act firstly specifies the declared goods and, secondly, imposes conditions and restrictions subject to which the State government can impose tax on the internal trade in these goods.

(xxx). Section 14 of the CST Act declares certain goods to be of special importance in inter-state trade or commerce. Such goods are commonly known as "declared goods".

(xxxi). The goods in this batch of Writ Petitions on which purchase tax under Section 4(4) of the Act has been levied, i.e., paddy, dhal, raw cotton and soyabean seed, are all declared goods under Section 14 of the CST Act.

(xxxii). Section 15 of the CST Act places restrictions and imposes conditions which are essential to the validity of an impost by the State on such goods. If the conditions prescribed therein are not satisfied, the impost will be invalid.

(xxxiii). The intention of Article 286(3) of the Constitution is not to destroy all charging sections in the sales tax acts of the States, which are discrepant with Section 15 of the CST Act, but to modify them in accordance with Section 15. The law of the State is declared to be subject to the restrictions and conditions contained in the law made by Parliament, and the provisions of the State Act would pro-tanto stand modified.

(xxxiv). Where the turnover, of declared goods under Section 14 of the CST Act, are subjected to tax under the sales tax law of a State, Section 15(a) of the CST Act prescribes the maximum rate at which such tax may be imposed so as to ensure that inter-state trade or commerce in such goods is not hampered by heavy taxation within the State occasioned by an excessive rate of tax.

(xxxv). As a result of Article 286 (3) of the Constitution, and Section 15(a) of the CST Act, the rate of tax under Section 4(4) of the VAT Act, as in the case of sale or purchase of declared goods, is limited to the rate of four/five per cent.

(xxxvi). The whole idea, underlying Section 15(a) of the CST Act, is that declared goods should not, in the aggregate, suffer tax at more than four/five per cent both in intra-state and inter-state trade.

(xxxvii). Cotton, whether ginned or unginned, is treated as a single commodity or a single species of declared goods for the purpose of Section 15(a) of the CST Act. To put a commodity in such a state, that it can be more readily used for manufacture, is almost the same thing as making a commodity marketable; the commodity remains the same and does not alter its character in any respect. Selling unginned cotton and ginned cotton are two transactions dealing with the same commodity.

(xxxviii). After the amendment of Section 15(a), by Act 20 of 2002 with effect from 13.05.2002, tax under the State sales tax law can be imposed at more than one stage. Consequently, tax can be levied both on the sale or purchase of cotton i.e., tax can be imposed both on the purchase of raw cotton (kapas) and again on the sale of ginned cotton i.e., cotton lint.

(xxxix). The restriction under Section 15(a) of the CST Act is now limited only to the rate of tax which before 08.04.2011 was 4%, and is 5% thereafter. In view of Section 15(a) of the CST Act the rate of tax, both on the purchase and sale of cotton, cannot together exceed 4%/5%.

(xl). If VAT is levied on cotton lint at 4%/5%, then purchase tax under Section 4(4) cannot be imposed on that quantity of raw cotton which, after being ginned, is sold as cotton lint, for it would then result in tax, exceeding 4%/5%, being levied on the sale and purchase of the very same goods.

(xli). Section 14(vi-a) of the CST Act relates to pulses (dhal). Section 15(d) of the CST Act stipulates that each of the pulses referred to in Section 14(vi-a), whether whole or separated and with or without husk, shall be treated as a single commodity for the purpose of levy of tax under the VAT Act. Consequently the VAT Act has, in its IV Schedule, listed under a common entry i.e., Entry 82 all kinds of pulses and dhals.

(xlii). In view of both Section 15(d) of the CST Act, and Entry 82 of the IV Schedule to the Act, raw dhal (whole dhal) must be held to be the same commodity as finished dhal even after it is dehusked. Section 15(a) of the CST Act is attracted and, consequently, purchase tax on the purchase of raw dhal and tax of the sale of the resultant quantity of finished dhal together cannot exceed 4%/5%.

(xliii). The restriction under Section 15(a) of the CST Act would apply only to goods falling under one item or entry under Section 14 of the CST Act, and the IV Schedule to the Act. Commodities, other than those specified, cannot be introduced into the relevant provisions/schedules on the ground that they are derived from the primary commodities.

(xliv). Cotton kapas, in its unginned or unmanufactured state, contain cotton-seed. But it is by a manufacturing process that cotton and seed are separated, and the seed so separated is neither cotton nor part of cotton. They are two distinct commercial goods though, before the manufacturing process, the seed might have been a part of cotton itself.

(xlv). The restriction under Section 15(a), of the maximum rate of 4%/5% tax being imposed, would not disable tax at 4%/5% being levied on purchase of raw cotton and tax again being levied at 4%/5% on the sale of cotton seed as both Parliament and the State Legislature have treated them as two different and distinct goods.

(xlvi). When paddy is dehusked, and rice is produced, there is a change in the identity of the goods, and paddy does not continue to be paddy thereafter. Rice and paddy, in ordinary parlance, are two distinct and different commodities. However, in view of Section 15(c) of the CST Act, the tax levied on the sale of rice must be reduced by the amount of purchase tax levied, under Section 4(4) of the Act, on paddy.

(xlvii). Taxable goods, sold in the course of inter-state trade or commerce under Section 3 of the CST Act, are zero rated sales under Section 8 of the VAT Act and, consequently, no tax is levied under the VAT Act on taxable goods sold in the course of inter-state trade or commerce.

(xlviii). In addition, such inter-state sales are also eligible for input tax credit under the VAT Act. The tax paid by a VAT dealer, on the purchase of goods from another VAT dealer, can be claimed as input-tax credit when the said taxable goods are sold by him in the course of inter-state trade or commerce.

(xlix). While Section 15(b) of the CST Act is applicable only where declared goods are sold in the course of inter-state trade or commerce, Section 4(4) of the VAT Act is attracted on the purchase of taxable goods used or disposed of otherwise than by way of sale in the course of inter-State trade or commerce.

(l). Tax, under Section 4(4)(i) and (ii) of the Act and its proviso, can be imposed only where the goods, which constitute the input, is different from the goods which constitute the output. While raw cotton can be treated as the input for cotton seed and cotton yarn, it cannot be treated as the input for cotton lint as both raw cotton and cotton lint are treated as the same commodity both under the CST Act and the VAT Act.

(li). Likewise if finished dhal is sold in the course of inter-State trade or commerce, then Section 15(b) of the CST Act

would require purchase tax, levied under Section 4(4) of the Act on raw dhal, to be reimbursed to the person selling finished dhal in the course of inter-state trade and commerce.

(lii). As a tax period is one month, and the return is required to be filed on or before the 20th of the succeeding month, the four year period of limitation, stipulated under Section 21(3), would commence from the last date of filing the return for a particular month, and would end four years thereafter.

(liii). As Rule 23(6)(a) of the Rules enables a VAT dealer to submit an application in Form VAT 213, within a period of six months from the end of the relevant tax period, the limitation for making assessment under Section 21(3), in such cases, would be four years from the date of filing the said return.

(liv). The period of limitation of four years must be computed for each tax period i.e., for each month and, unlike the APGST Act, not for an assessment year.

(lv). The prescribed authority gets jurisdiction to assess the VAT dealer to tax, within the extended period of limitation of six years under Section 21(5) of the VAT Act, only if the said dealer has committed wilful evasion of tax.

(lvi). As the assessment order is required, under Rule 25(5) of the Rules, to be preceded by a notice in Form VAT 305-A, it would not suffice for the assessing authority to state, for the first time in the assessment order, that the assessee has committed wilful evasion of tax. The show cause notice should contain factual details to show the basis on which the assessing authority has arrived at the tentative conclusion that the VAT dealer has committed wilful evasion of tax.

(lvii). It is mandatory that the show-cause notice must contain allegations against the assessee falling within the four corners of Section 21(5). Unless the assessee is put to notice, he would have no opportunity to meet the case of the department. In the absence of any such allegations in the show-cause notice, the Revenue cannot sustain the notice or the order passed under Section 21(5) of the Act.

(lviii). If the allegations in the show-cause notice, accepted as true, show that the dealer had committed wilful evasion of tax, and the findings recorded in the assessment order establish that the assessee had wilfully evaded tax, it would suffice to extend the period of limitation in terms of Section 21(5) of the Act notwithstanding that the show-cause notice does not explicitly refer to Section 21(5) and does not specifically use the words “wilful evasion of tax”.

(lix). As the fact of commission of wilful evasion is a jurisdictional fact, the dealer is entitled to satisfy the prescribed authority, on being given the opportunity to show cause, that such jurisdictional facts are non-existent, and jurisdiction under Section 21(5) of the Act should not be exercised. It is necessary, therefore, for the prescribed authority to detail these jurisdictional facts in the show-cause notice proposing to assess the dealer to tax under Section 21(5) of the Act.

(lx). Levy of purchase tax under Section 4(4) of the Vat Act, and the restriction of input-tax credit under Section 13 thereof and Rule 20 of the Rules, are two different and independent acts.

(lxi). The question, whether computation of input-tax credit in terms of Rule 20 is in violation of Sections 14 and 15 of the CST Act, must be answered on the facts and circumstances of each case. It is for the assessee to satisfy the assessing authority that computation of the eligible input-tax credit, in terms of Rule 20, is in violation of Sections 14 and 15 of the CST Act.

XVI. CONCLUSION:

112. We have, in the aforesaid paragraphs, elaborately considered the contentions urged by Learned Counsel on either side on the scope, purport and application of Section 4(4) of the Act, and its first proviso, to declared goods falling within the ambit of Sections 14 and 15 of the CST Act. It would be wholly inappropriate for us to examine the validity of each of the orders, impugned in this batch of Writ Petitions, in proceedings under Article 226 of the Constitution of India, as these are matters for examination by the concerned authorities exercising powers under the Act. The impugned orders are set aside. The concerned authorities shall, in the light of this judgment, pass orders afresh and in accordance with law, after giving the petitioners an opportunity of being heard. The Writ Petitions are, accordingly, disposed of. No costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY,J

Date: 04.03.2015

Note: L.R. copy to be marked
B/o
MRKR/CS

[1] (1993) 88 STC 98

[2] 1994 Suppl. (2) SCC 59

[3] (2004)11 SCC 26

[4] (2008) 14 SCC 186

[5] (2005) 12 SCC 77

[6] (1994) 5 SCC 672

[7] (1972) 1 SCC 209

[8] AIR 1962 SC 955 (Five Judge Bench)

[9] (1980) 4 SCC 697

[10] (1949) 2 ALLER 155

[11] (1985) 60 STC 1 (SC)

[12] AIR 1975 SC 1871 : (1975) 36 STC 191 (SC)

[13] (1993) 90 STC 537 (Karnataka HC)

[14] (1989) 72 STC 317 (AP) = 7 APSTJ (1988) 43) (AP HC)

[15] (1972) 30 STC 537 (Ker)

[16] (1968) 21 S.T.C. 1 (S.C)

[17] Order of the Tamil Nadu High Court in TRC No.2286 of 2008 dated 12.07.2010)

[18] (1982) 51 STC 1 (APHC)

[19] (2008) 12 VST 546

[20] (1999) 29 APSTJ 1 (APHC)

[21] AIR 1979 Andhra Pradesh 173

[22] 7 APSTJ (1988) 116) (APHC)

[23] AIR 1970 SC 1742

[24] AIR 1957 SC 657

[25] (2004) 7 SCC 642

[26] (2007) 4 SCC 30

[27] (1997) 11 SCC 751 = (1997) 105 STC 325(SC)

[28] (MANU/KE/0089/1979

[29] [1973] 32 STC 623

[30] [1981] 47 STC 369

[31] AIR 1985 SC 582

[32] (1990) 77 STC 282

[33] (1988) 68 STC 287 (APHC)

[34] [1968] 61 STC 337 (Mad)

[35] [1987] 65 STC 16 (Ker)

[36] [1983] 53 STC 163 (Pan & H)

[37] [1980] 45 STC 1 (Kar)

[38] (1988) 2 SCC 264

[39] (2010) 35 VST 226 (P&H)

[40] (1994) 6 SCC 479

[41] 1989 Supp (1) SCC 128

[42] (1965) 1 All E.R. 225

[43] (1921) K.B. 64

[44] AIR 1978 SC 897

[45] (1997) 3 All ER 817

[46] (1981) 1 ALLER 865 = (1982) AC 300

[47] (1992) 85 STC 220 (SC)

[48] (2013) 58 VST 281 (Gauhati)

[49] [1959] 2 All E.R. 350

[50] [1974] 2 All E.R. 97

[51] (1972) 3 SCC 717 = ([1973] 1 S.C.R. 172

[52] (1990) 77 STC 373 (APHC)

[53] (48) STC 466 at 476

[54] (1994) 6 SCC 623

[55] (16) TC 1 at 19

[56] (1927) P.C. 242

[57] (1976) 2 SCC 917

[58] (37) STC 77 at 111

[59] AIR 1969 SC 147

[60] (1980) 45 STC 438 (PH)

[61] AIR 1985 SC 1041 = (1985) 60 STC 1 (SC)

[62] AIR 1968 Madras 90 (Madras High Court)

[63] (1995) 97 STC 395 (Kerala HC)

[64] (1982) 51 STC 195 (Allahabad HC)

[65] 1979 UPTC 1125

[66] [1967] 20 STC 290 at 296-297 (SC)
[67] (2012) 54 APSTJ 39 (APHC)
[68] (1965) 16 STC 310 (SC)
[69] AIR 1965 SC 1310
[70] (1989) 74 STC 1
[71] (1970) 25 STC 52 : AIR 1969 SC 1073
[72] (1960) XI STC 149 (P&H HC)
[73] 91 STC 409
[74] 1998 (6) ALD 443
[75] (1962) XIII STC 709 (APHC)
[76] (1958) 9 STC 723 (APHC DB)
[77] 1976 UPTC 518
[78] (1969) 24 STC 320 (A.P)
[79] (Order in S.T.R. No. 539 of 1966, dated 02.01.1969 –All HC)
[80] (1967) XX STC 89 (Karnataka H.C)
[81] (1986) 2 APSTJ 42
[82] (Order in WP No.15413 of 2014 dated 25.09.2014)
[83] (2013) 9 SCC 753
[84] (2006) 6 SCC 482
[85] (1995) Suppl. (3) SCC 322
[86] (2007) 8 SCC 559
[87] AIR 1959 SC 492
[88] (2007) 1 SCC 732