2025 INSC 661

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 941 – 945 OF 2004

C.T. KOCHOUSEPH ..... APPELLANT

VERSUS

STATE OF KERALA AND ANOTHER ETC. ..... RESPONDENTS

W I T H

CIVIL APPEAL NO. 4745 OF 2007

CIVIL APPEAL NO. 4746 OF 2007

CIVIL APPEAL NOS. 1937 – 1939 OF 2008

CIVIL APPEAL NO. 6055 OF 2008

CIVIL APPEAL NOS. 938 – 939 OF 2009

CIVIL APPEAL NOS. 3024 – 3025 OF 2012

A N D

CIVIL APPEAL NOS. OF 2025
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NOS. 9420-9422 OF 2012)

J U D G M E N T

SANJIV KHANNA, CJI.

Leave granted in SLP (C) Nos. 9420-9422 of 2012.

2. This judgment decides a batch of matters pertaining to Section 5A of the Kerala General Sales Tax Act, 1963[1] and the *pari materia* provision of Section 7A of the Tamil Nadu General Sales Tax Act, 1959.[2]

3. The following issues arise for our consideration:

   I. Whether the purchase of goods by the appellants from dealers who were exempted from payment of tax by virtue of notifications or exemptions issued under the Kerala Act or the Tamil Nadu Act, is a purchase "which is liable to tax" within the meaning of Section 5A of the Kerala Act or Section 7A of the Tamil Nadu Act?

   II. Whether the appellant-assessee who had purchased goods, that were exempt from payment of sales tax or from the dealers who were exempt from payment of sales tax, are liable to pay purchase tax under Section 5A of the Kerala Act or Section 7A of the Tamil Nadu Act?

   III. Whether the purchase tax, as imposed by Section 5A of the Kerala Act or Section 7A of the Tamil Nadu Act, is a tax in the nature of manufacture or consignment tax or an inter-state levy, and therefore *ultra vires* the Constitution and beyond the legislative powers of the state legislature?

4. At the outset, it is important to note that this is essentially a legacy dispute. Following the enactment and enforcement of the Value Added Tax in 2005 and the Goods and Services Tax Acts in 2017, the legal issue in question no longer arises for consideration under the current legal framework.

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[1] For short, “Kerala Act”.
[2] For short, “Tamil Nadu Act”.

STATUTORY PROVISIONS

5. At this stage, it will be apposite to quote the relevant statutory provisions of both the Kerala and Tamil Nadu Acts.

Tamil Nadu General Sales Tax Act, 1959

> "Section 2(g) "dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes –
> (i) A local authority, company, Hindu undivided family, firm or other association of persons which carries on such business;
> (ii) a causal trader,
> (iii) a factor, a broker, a commission agent or arhati, a del credere agent or an auctioneer, or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore or not, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal, or through whom the goods are bought, sold, supplied or distributed;
> (iv) every local branch of a firm or company situated outside the State;
> (v) a person engaged in the business of transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;
> (vi) a person engaged in the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
> (vii) a person engaged in the business of delivery of goods on hire purchase or any system of payment by instalments;
> (viii) a person engaged in the business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
> (ix) a person engaged in the business of supplying by way of, or as part of, any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;
>
> Explanation (1)- A society (including a co-operative society), club or firm or an association which, whether or not in the course of business, buys, sells, supplies or distributes goods from or to its members for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act .

Explanation (2)- The Central Government or any State Government which, whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act;

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Section 2(j) "goods" means all kinds of movable property (other than newspapers, actionable claims, stocks and shares and securities) and includes all materials, commodities, and articles including the goods(as goods or in some other form) involved in the execution of a works contract or those goods to be used in the fitting out, improvement or repair of movable property; and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale;

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

(i) a transfer, otherwise than in pursuance of a contract, of property in any goods of cash, deferred payment or other valuable consideration;
(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
(iii) a delivery of goods on hire-purchase or any system of payment by installments;
(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
(v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
(vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making (such) the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

Explanation (3)-(a) The sale of purchase of goods shall be deemed for the purpose of this Act, to have taken place in the State, wherever the contract of sale or purchase might have been made, if the goods are within the State-
(i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and
(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior or subsequent to such appropriation.

Explanation (3)-(b) Where there is a single contract of sale or purchase of goods , situated at more places than one, the provisions of clause (a) shall apply as if there were separate contracts in respect of the goods at each of such places.

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Section 2(q) "total turnover" means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax;

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

Explanation (1)- "Agricultural or horticultural produce" shall not include such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting or dying;

Explanation (1-A).- Any amount charged by a dealer by way of tax separately without including the same in the price of the goods bought or sold shall not be included in the turnover.

Explanation (2)- Subject to such conditions and restrictions, if any, as may be prescribed in this behalf-
(i)[……]

Explanation (2) (ii) the amount for which goods are sold shall include any sums charged for anything done by the dealer in

respect of the goods sold at the time of, or before the delivery thereof;

Explanation (2) (iii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover; and

Explanation (2) (iv) where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same to the said customer, the sale in respect of such goods shall be included in the turnover of the latter dealer but not in that of the former;

Explanation (3)- Any amount realised by a dealer by way of sale of his business as a whole, shall not be included in the turnover.

Explanation (4)-The aggregate amount for which the goods are bought or sold or delivered or supplied through a factor, broker, commission agent or arhati, del credere agent or an auctioneer or any other mercantile agent, by whatever name called, whether for cash or for deferred payment or other valuable consideration, shall be deemed to be the turnover of such factor, broker, commission agent, arhati, del credere agent, auctioneer or any other mercantile agent, by whatever name called.

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Section 3. **Levy of taxes on sales or purchases of goods**.-
(1) Every dealer (other than the dealer, casual trader or agent of a non- resident dealer) whose total turnover for a year [exceeds three lakhs of rupees] and every casual trader or agent of a non-resident dealer, whatever be his turnover for the year, shall pay a tax for each year in accordance with the provisions of this act.

2) Subject to the provisions of sub-section (1), in the case of goods mentioned in the First Schedule, the tax under this Act shall be payable by a dealer at the rate and [only] at the point specified therein on the turnover in each year relating to such goods:
Provided that all spare parts, components and accessories of such goods shall also be taxed at the same rate as that of the goods if such spare parts, components and accessories are not specifically enumerated in the First Schedule and made liable to tax under that Schedule;

[Provided further that in the case of goods mentioned in the First Schedule which are taxable at the point of first sale, the tax under this Act shall be payable by the first or earliest of the successive dealers in the State who is liable to tax under this section.]

Section 3(2-A) Subject to the provisions of sub-section (1), in the case of goods mentioned in the Fifth Schedule, the tax under this Act shall be payable by a dealer at the rate and at the point specified therein on the turnover in each year relating to such goods:

Provided that in respect of sale by the first dealer to another registered dealer, the dealer selling the goods shall furnish to the assessing authority in the prescribed manner within the prescribed period a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in a prescribed form, obtained from the prescribed authority.

Section 3(2-B) Subject to the provisions of sub-section (1), in the case of goods mentioned in the Sixth Schedule, the tax under this Act shall be payable by a dealer at the first point of sale and the second point of sale, and at the rate specified therein on the turnover in each year relating to such goods;

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Section 7-A **. Levy of purchase Tax**. – (1) [Subject to the provisions of sub-section (1) of section 3, every dealer] who in the course of his business purchases from a registered dealer or from any other person, any goods, (the sale or purchase of which is liable to tax under this Act) in circumstances in which [no tax is payable under (sections 3 or 4,) as the case may be, *[not being a circumstance in which goods liable to tax under sub-section (2) of section 3 or section 4, were purchased at a point other than the taxable point specified in the First or the Second Schedule], and either-
(a) *[consumes or uses such goods in or for the manufacture of other goods for sale or otherwise; or]
(b) disposes of such goods in any manner other than by way of sale in the State; or
(c) [despatches or carries them] to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,
shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in [sections 3 or 4], as the case may be.

Section 8. **Exemption from tax.** – Subject to such restrictions and conditions as may be prescribed, a dealer who deals in the goods specified in the Third Schedule shall not be liable to pay any tax under this Act in respect of such goods.

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Section 17. **Power of Government to notify exemptions and reductions of tax.** –
(1) The Government may, by notification, [issued whether prospectively or retrospectively,] make an exemption, or reduction in rate, in respect of any tax payable under this Act –
(i) on the sale or purchase of any specified goods or class of goods, at all points or at a specified point or points in the series of sales by successive dealers; or
(ii) by any specified class of persons, in regard to the whole or any part of their turnover; [or] (iii) on the sale or purchase of any specified classes of goods by specified classes of dealers in regard to the whole or part of their turnover.

Section 17(4) The Government may, in such circumstances and subject to such conditions as may be prescribed, by notification, remit the whole or any part of the tax or penalty or fee payable in respect of any period by any dealer under this Act."

Kerala General Sales Tax Act, 1963

" 5. Levy of tax on sale or purchase of goods: - (1) Every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year is not less than [one lakh rupees] and every casual trader or agent of a non-resident dealer, whatever be his total turnover for the year, shall pay tax on his taxable turnover for that year,—

(i) in the case of goods specified in the First or Second Schedule, at the rates and only at the points specified against such goods in the said Schedule;

[x x x]

(iii) in the case of transfer of the right to use any goods for any purpose (whether or not for a specified period) at the rate of [six per cent] at all points of such transfer on an aggregate turnover of [rupees one lakh] and above;

[(iv) (a) in the case of transfer of goods involved in the execution of works contract where transfer is in the form of goods at the rates and at the points specified against such goods in the First, Second or Fifth Schedule [x x x]

(b) In the case of transfer of goods involved in the execution of works contract (where the transfer is not in the form of goods but in some other form) specified in the Fourth Schedule, at the rate specified against such contract in the said Schedule:

Provided that no tax is payable in respect of the turnover of goods the transfer of which was effected without any processing or manufacture on which tax was levied under clause (i) on any earlier sale in the State or which are exempted from tax and for goods coming under the Fifth Schedule, no tax specified for the first sale is payable, on which tax was levied in any earlier sale in the State:

Provided further that tax payable in respect of turnover of goods coming under the second schedule the transfer of which was effected without any processing or manufacture shall not exceed the rate and only at the points specified against such goods in the said Schedule].

(v) in the case of goods specified in the Fifth Schedule at the rates and at the two points specified against such goods in the said Schedule;

[Provided that where there are no two points of sale in the State for any goods coming under the Fifth Schedule and the first sale is to a person other than a registered dealer, the rate specified in column (8) of that Schedule shall apply to such sales]

[(2) Every dealer other than a dealer referred to in sub-section (1) whose total turnover for a year in respect of the goods specified in the First or Second or Fifth Schedule or goods involved in the execution of works contract (whether it is in the form of goods or in some other form) specified in the Fourth Schedule is not less than [rupees one lakh] shall pay tax at the rate and only at the point or points specified against the goods in the First or Second or Fifth Schedule or goods involved in the execution of works contract (whether it is in the form of goods or in some other form) specified in the Fourth Schedule, as the case may be, on his taxable turnover in that year relating to such goods:

Provided that where a tax has been levied under sub-section (1) or sub-section (2) of this section or under section 5A in respect of the sale or purchase or goods specified in the Second Schedule and such goods are sold in the course of interstate trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be prescribed

[(2A) (i) Notwithstanding anything contained in this Act or the rules made thereunder every dealer shall pay turnover tax on the turnover of goods as specified hereunder, namely:-

(a) by an oil company defined in the Explanation under serial number [97] of the First Schedule to this Act whose total turnover in a year exceeds rupees fifty lakhs at the rate of three per cent on the turnover from the Ist day of April, 1991 till 31st day of July, 1991 and thereafter at the rate of four per cent on the turnover:

[(b) by any dealer in Foreign Liquor (Indian made) or Foreign Liquor (Foreign made) as specified in entries against serial numbers 53 and 54 of the First Schedule at the rate of three per cent on the turnover at all points;

(c) by any dealer in jewellery made of gold, silver and platinum group of metals at the rate of three per cent on the turnover;

(d) by any dealer in cooked food including beverages not falling under the entries against serial numbers 53 and 54 of the First Schedule sold or served in hotels and/or restaurants and not covered by the entries against serial number 40 of the First Schedule whose turnover in a year.—

exceeds rupees five lakhs but does not Rupees one thousand exceed rupees ten lakhs exceeds rupees ten lakhs but does not at the rate of one per cent exceeds rupees twenty five lakhs on the turnover exceeds rupees twenty five lakhs at the rate of two per cent on the turnover:

Provided that tax under sub-sections (1) and (2) of section 5 on such turnover and tax under section 5A shall not be levied on such dealer;

(e) by any dealer in medicines and drugs including Allopathic, Ayurvedic, Homoeopathic, Sidha or Unani preparations or Glucose I. P. at the point of first sale in the State at the rate of half per cent on the turnover of such goods:

Provided that dealers other than those who receive the goods on branch transfer or on consignment shall not be liable to pay turnover tax when the total turnover does not exceed rupees fifty lakhs in the year;

(f) by any dealer in tea at the point of second sale in the State at the rate of three fourth per cent on the turnover of such good;

(g) by any dealer not coming under sub-clauses (a) to (f) of goods coming under the First Schedule or the Fifth Schedule whose total turnover in a year exceeds rupees fifty lakhs at the rate of half per cent on the turnover of such goods at all points of sale or purchase as the case may be.]

Provided that no tax under this sub-section shall be payable on that part of such turnover–

[(i) x x x]

(ii) which relates to:

(a) sale or purchase of goods in the course of interstate trade or commerce:

(b) sale or purchase of goods in the course of export out of the territory of India or sale or purchase in the course of import into the territory of India;

(c) sale or purchse exempted from tax by notification under section 10;

(d) all amounts falling under the head 'freight', when specified and charged for by the dealer separately without including such amounts in the price of the goods sold;

(e) all amounts falling under the head 'charges for delivery', when specified and charged for by the dealer separately without including such amounts in the price of the goods sold;

(f) all amounts allowed as discount, provided that such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of a contract or agreement entered into in a particular case and provided also that the accounts show that the purchaser has paid only the sum originally charged less discount;

(g) all amounts allowed to purchasers in respect of goods returned by them to the dealer when the goods are taxable on sales provided that the goods were returned within a period of three months from the date of delivery of the goods and the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made; and

(h) all amounts received from the sellers in respect of goods returned to them by the dealer, when the goods are taxable on the purchase value provided that the goods were returned within a period of three months from the date of delivery of the goods and the accounts show the date on which the goods were returned and the date on which and the amount for which refund was received:

Provided further that save as otherwise provided in this sub-section, no other deduction shall be made from the total turnover of a dealer for the purposes of this sub-section.

(ii) The provisions of this Act and the rules made thereunder shall, so far as may be, apply in relation to the assessment, collection or refund of the turnover tax under this sub-section including the provisions relating to appeals and penalties, as they apply in relation to the assessment, collection or refund of tax under the other provisions of this Act.

[(iii) Notwithstanding anything contained in sub-section (1) of section 22, no dealer shall collect from his purchaser the turnover tax payable by him under this sub-section.]

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the tax payable by a dealer in respect of any sale of industrial raw materials, [component parts, containers or packing materials] which is liable to tax at a rate higher than [two and a half per cent] when sold to industrial units for use in the production of finished products inside the State for sale or for packing of such finished products inside the State for sale, as the case may be, shall be at the rate of only [two and a half per cent] on the taxable turnover relating to such industrial raw materials, [component parts, containers or packing materials], as the case may be:

Provided that this sub-section shall not apply where the sale of such finished products is not liable to tax either under this Act or under the Central Sales Tax Act, 1956 (Central Act 74 of 1956) or when such finished products are exported out of the territory of India:

Provided further that the provisions of this sub-section shall not apply to any sale unless the dealer selling the goods furnishes to the assessing authority in the prescribed manner a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in the prescribed form.]

[(3A) x x x x]

(4) Notwithstanding anything contained in sub-section (1), every dealer registered under sub-section (3) of section 7 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), shall, whatever be the quantum of his total turnover, pay tax for each year in respect of the sale of the goods with reference to the purchase of which he has furnished a declaration under sub-section (4) of section 8 of the aforesaid Central Act [on his taxable turnover in respect of such goods:]

Provided that this sub-section shall not apply to any dealer in respect of the sale of the goods the purchase of which is liable to tax under subsection (1).

[(5) Notwithstanding anything contained in sub-section (1) or sub-section (2), but subject to sub-section (6), where goods sold are contained in containers or are packed in any packing materials, the rate of tax and the point of levy applicable to such containers

or packing materials, as the case may be, shall, whether the price of the containers or the packing materials is charged separately or not be the same as those applicable to goods contained or packed, and in determining turnover of the goods, the turnover in respect of the containers or packing materials shall be included therein.

(6) Where the sale or purchases of goods, contained in any containers or packed in any packing materials is exempt from tax, then, the sale or purchase of such containers or packing materials shall also be exempt from tax.

Explanation:– In sub-section (5) and sub-section (6), the word "containers" includes gunny bags, tins, bottles or any other containers.]

5A. Levy of purchase tax:–(1) Every dealer who, in the course of his business, purchases from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under this Act, in circumstances in which no tax is payable under [Sub-Sections (1), (2), (3), (4), or (5) of Section 5] and either:–

(a) consumes such goods in the manufacture of other goods for sale or otherwise: or

(b) [uses or] disposes of such goods in any manner other than by way of sale in the state; or

(c) despatches them to any place outside the State except as a direct result of sale or purchase in the course of inter-state trade or commerce; shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on the taxable turnover relating to such purchase for the year at the rates mentioned in Section 5.

(2) Notwithstanding anything contained in sub-section (1), a dealer (other than a casual trader or agent of a non-resident dealer purchasing goods, the sale of which is liable to tax under section 5, shall not be liable to pay tax under sub-section (1) if his total turnover for a year less than [one lakh rupees]:

Provided that where the total turnover of such dealer for the year in respect of the goods mentioned in clause (i) of sub-section (1) of section 5 is not less than [fifty thousand rupees], he shall be liable to pay tax on the taxable turnover in respect of those goods.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a dealer referred to in sub-section (1),

who purchases goods, the sale of which is liable to tax under clause (ii) of sub-section (1) of Section 5, and whose total turnover for a year is not less than [one lakh rupees] but not more than [one lakh ten thousand rupees] may, at his option instead of paying the tax in accordance with the provisions of subsection (1), pay tax
[at the rate] mentioned in [x x x x] sub-section (1) of Section 7 in accordance with the provisions of that section."

SUMMARY OF THE STATUTORY POSITION

6. A brief overview of the relevant statutory provisions is set out below:

- Section 3 of the Tamil Nadu Act is the charging provision. It imposes a liability to pay tax on every dealer whose annual turnover exceeds the prescribed threshold, as well as on every casual dealer and agent of a non-resident dealer. The tax is payable on the dealer's taxable turnover at the rates specified under the Act. Section 3 does not differentiate between sale and purchase. The heading refers to 'sales or purchase'.
- The term 'turnover' is defined in section 2(r) of the Tamil Nadu Act to include the total value of goods bought, sold, supplied or distributed by a dealer, whether directly or through others, and whether on the dealer's own account or on behalf of another. However, the definition excludes the sale proceeds of agricultural or horticultural produce, except where the produce is tea grown in Tamil Nadu either by the dealer or on land in which the dealer holds an interest. The Explanation to this provision clarifies that produce which has undergone physical, chemical or other processing for the purpose of making it fit for consumption ceases to be treated as agricultural produce. This exclusion does not apply where the processing is limited to cleaning, grading, sorting or drying.

- Section 3(2) of the Tamil Nadu Act further provides that, in the case of goods enumerated in the First Schedule, tax is payable at the rate and point of levy specified therein, irrespective of the dealer's aggregate turnover.
- Section 8 of the Tamil Nadu Act deals with exemptions and states that no tax shall be payable on the sale of goods specified in the Third Schedule, subject to such conditions and restrictions as may be prescribed.
- Section 17 of the Tamil Nadu Act empowers the State Government to grant, by notification, either full or partial exemptions from tax or reductions in the rate of tax. Such notifications may apply to particular goods or classes of goods, at all or specific points of sale, or to particular dealers or classes of dealers in respect of the whole or any part of their turnover. These exemptions may apply generally throughout the State or be confined to specified local areas and may be subject to conditions or restrictions. The Government is also empowered to vary or cancel such notifications.
- Section 18 of the Tamil Nadu Act provides that where a dealer contravenes any condition or restriction specified in a notification issued under section 17, the exemption shall be deemed not to have been granted, and the dealer shall be liable to pay tax accordingly.
- Section 7A of the Tamil Nadu Act, introduced by Act 1 of 1959, imposes a purchase tax in circumstances where no tax is payable under sections 3, 4, or 5. It applies where a dealer purchases goods liable to tax and the goods are (i) used in the manufacture of other goods, (ii) disposed of otherwise than by sale within the State, or (iii) sent outside Tamil

Nadu otherwise than by way of inter-State sale. In such cases, the purchasing dealer is liable to pay tax on the purchase aforesaid at the applicable rate mentioned in Section 3 or 4.

- The provisions of the Kerala Act reflect a framework broadly similar to that of the Tamil Nadu Act, particularly in relation to charging, exemptions, and the imposition of purchase tax.
- Section 5 of the Kerala Act is the charging section. It provides that every dealer whose turnover exceeds the prescribed threshold, as well as every casual dealer and agent of a non-resident dealer, is liable to pay tax on the turnover for that year. In the case of goods specified in the First or Second Schedule, the tax is payable at the rate and at the point of levy specified therein. The heading reads — "levy of tax on sale or purchase of goods".
- Section 5A of the Kerala Act[3] is in *pari materia* to section 7A of the Tamil Nadu Act. It provides for the levy of purchase tax in specified circumstances. The section applies where a dealer, in the course of business, purchases goods that are liable to tax, from either a registered dealer or any other person, but no tax is payable under section 5 in respect of such transaction. If such goods are (i) consumed in the manufacture of other goods, whether for sale or otherwise, (ii) used or disposed of in a manner other than by sale within the State, or (iii) dispatched to a place outside the State, except where such dispatch is in the course of inter-State trade or commerce, the dealer becomes

[3] Inserted by Act 14 of 1970.

liable to pay tax on the purchase turnover relating to such goods. The rate applicable shall be as specified in section 5.

DECISIONS OF THIS COURT INTERPRETING SIMILAR OR IDENTICAL PROVISIONS

7. A three-Judges Bench of this Court in ***State of Tamil Nadu*** v. ***M.K.Kandaswami and Others***,[4] way back in the year 1975, had interpreted Section 7A of the Madras General Sales Tax Act, 1959.[5] On analysis of sub-section (1) to Section 7A, this Court delineated the following ingredients that must be cumulatively satisfied for the purpose of levy :

   i. The person who purchases the goods is a dealer;

   ii. The purchase is made by him in the course of his business;

   iii. Such purchase is either from a registered dealer or from any other person;

   iv. The goods purchased are goods, the sale or purchase of which is liable to tax under the Madras Act;

   v. Such purchase is in the circumstances in which no tax is payable under Sections 3, 4 or 5 of the Madras Act; and

   vi. The dealer either consumes such goods in the manufacture of other goods for sale or otherwise, or despatches such goods in any manner other than by way of sale in the State, or despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce.

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[4] (1975) 4 SCC 745.

[5] For short, "Madras Act".

8. To effectuate the object and purpose of the enactment of Section 7A of the Madras Act, or for that matter Section 5A of the Kerala Act, this Court outright rejected the contention, reversing the decision of the High Court, inter alia, holding that when the sale is exempt and therefore not to be included in the turnover of the dealer selling the goods, the exemption would equally enure to the benefit of the purchaser who is liable to pay tax in terms of Section 7A(1) of the Madras Act. This is unacceptable as it would render Section 7A(1) wholly nugatory. Clarifying the distinction between three inter-related but distinct concepts, namely, 'taxable person', 'taxable goods' and 'taxable event', which must be satisfied before a person can be saddled with tax liability, it is observed that conflating the three could result in a serious error in the interpretation and application of the Madras Act. Referring to Section 7A as the charging provision read with Section 3(2) and the definition clauses of the term 'goods' in Section 2(j), 'dealer' in Section 2(g) and 'sale' in Section 2(n) in the context of 'taxable person', 'taxable goods' and 'taxable event', it is held, that the expression – "goods, the sale or purchase of which is liable to tax under the Act", refers to the character and class of goods in relation to their exigibility. Essentially, this expression is held to define "taxable goods", that is, goods listed in the First Schedule of the Act, the sale or purchase of which is subject to tax at the specified rate and point of levy. The words "the sale or purchase of which is liable to tax under the Act" qualify the term "goods" and, by necessary implication, exclude goods that are totally exempt from tax "at all

points"[6] under Section 8 or Section 17(1). Such "exempt goods",[7] not being "taxable goods", cannot be brought to charge under Section 7-A.

9. Elaborating further on the contours of Section 7A, *viz*. the expression "under the Act", ***M.K.Kandaswami*** (supra), elucidates that Section 7A creates a separate and independent charge which is distinct and not subject to Section 3. In effect, Section 7A is a charging provision itself, intended to bring to tax goods which, under normal circumstances, would have been taxed at some point in the State, but in the circumstances, no tax was payable under Sections 3, 4 or 5 of the Madras Act. Section 7A brings such goods to tax at the hands of the purchaser, provided the purchaser is a dealer, in the following three alternative circumstances:

a) when he consumes the goods in the manufacture of other goods for sale or otherwise, or

b) despatches them in any manner other than by way of sale in the State, or

c) despatches them to a place outside the State, except as a direct result of sale or purchase in the course of inter-State trade or commerce.

Referring to ingredient (iv) and (v)[8], it is observed that these are not mutually exclusive; the existence of one does not necessarily negate or preclude the other. In fact, ingredients (iv) and (v) can co-exist harmoniously. Ingredient (iv)

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[6] Both — sale or purchase.

[7] 'Exempt goods' here, as explained hereinafter, refers to goods on which no sales or purchase tax can be levied.

[8] **Ingredient (iv).** The goods purchased are goods, the sale or purchase of which is liable to tax under the Madras Act.
Ingredient (v). Such purchase is in the circumstances in which no tax is payable under Sections 3, 4 or 5 of the Madras Act.

is satisfied if the particular goods in question are shown to qualify as 'taxable goods'. However, there may be a particular circumstance in a given case, because of which the sale or purchase does not attract tax under Sections 3, 4 or 5 of the Madras Act. Section 7A addresses such situations by imposing a tax on the purchasing dealers' purchase turnover, provided that one of the alternative conditions — (a), (b) or (c) to Section 7A(1) — is fulfilled.

10. ***M.K.Kandaswami*** (supra) also considers Section 5A of the Kerala Act and interprets it in the same manner. Specific reference was made to a decision of the Single Judge of the High Court of Kerala in ***Malabar Fruit Products Company, Bharananganam Kottayam and Others*** v. ***Sales Tax Officer, Palai and Others*** [9] wherein the constitutional validity of Section 5A was challenged. The Single Judge upheld the validity of Section 5A and elucidated the legislative scheme by giving examples. For instance, in a case where a sale is made by the seller whose turnover is below the specified minimum, the purchaser may be liable to pay tax on the purchase in the circumstances mentioned in clauses (a), (b) and (c) of Section 5A(1). Another example considers the sale of agricultural or horticultural produce, which is excluded from the turnover of the seller. In this scenario, although the person selling such produce is treated as a 'dealer', such sale is not part of his turnover; the purchaser may nonetheless be taxed under Section 5A, when agricultural or horticultural produce are "goods liable to tax" and the conditions thereof are satisfied. This judgment was upheld by the Division Bench of the High Court of

[9] (1972) 30 STC 537 (Ker).

Kerala in ***Yusuf Shabeer and Others*** v. ***State of Kerala and Others***.[10]

Approving the view taken in ***Yusuf Shabeer*** (supra), this Court observed:

> "34. In our opinion, the Kerala High Court has correctly construed Section 5-A of the Kerala Act which is in *pari materia* with the impugned Section 7-A of the Madras Act. "Goods the sale or purchase of which is liable to tax under this Act in Section 7-A(1)" means "taxable goods", that is, the kind of goods, the sale of which by a particular person or dealer may not be taxable in the hands of seller but the purchase of the same by a dealer in the course of his business may subsequently become taxable. We have pointed out and it needs to be emphasised again that Section 7-A itself is a charging section. It creates a liability against a dealer on his purchase turnover with regard to goods, the sale or purchase of which though generally liable to tax under the Act, have not due to the circumstances of particular sales, suffered tax under Sections 3, 4 or 5, and which after the purchase, have been dealt by him in any of the modes indicated in clauses (*a*), (*b*) and (*c*) of Section 7-A(1)."

In view of the reasoning given, the appeals preferred by the State of Tamil Nadu were allowed and the judgment of the High Court was reversed. The decisions of the High Court of Kerala in ***Malabar Fruit Products*** (supra) and ***Yusuf Shabeer*** (supra), as observed above, were approved.

11. We have examined the judgment of this Court in ***State of Kerala*** v. ***T.S.Govindarajulu Naidu***,[11] which upheld the judgment of the High Court of Kerala in ***T.S. Govindarajalu Naidu*** v. ***State of Kerala***.[12] In our view, the Division Bench of the High Court of Kerala misapplied the ratio laid down in ***M.K. Kandaswami*** (supra) in accepting the assessee's contention. ***M.K. Kandaswami*** (supra) involved an exemption granted under Section 17(1) of the Tamil Nadu Act on the sale of goods. Misinterpreting the ratio in ***M.K. Kandaswami*** (supra), the High Court held that the exemption extended to both

[10] (1973) 32 STC 359 (Ker).
[11] 1993 Supp 3 SCC 656.
[12] (1979) 43 STC 233 (Kerala).

sales tax and purchase tax, thereby excluding the applicability of purchase tax under Section 7A of the Tamil Nadu Act or the *pari materia* provision of Section 5A of the Kerala Act. Unfortunately, this aspect was not addressed in the brief judgment delivered by this Court in ***T.S.Govindarajulu Naidu*** (supra) which dismissed the State's appeal against the High Court's decision. This Court recorded that an exemption had been granted under Section 10 of the Kerala Act and observed that the exemption applied to the payment of tax under the Act, encompassing both sales and purchase tax.

12. A two-Judge Bench of this Court in ***Goodyear India Ltd. and Others*** v. ***State of Haryana and Another***[13] examined the relevant provisions of the Haryana General Sales Tax Act, 1973[14] as well as the scope, effect, and validity of Section 13-AA of the Bombay Sales Tax Act, 1959.[15] The Court referred to its earlier judgment in ***M.K.Kandaswami*** (supra) which was relied upon by the Revenue but was sought to be distinguished on the ground that the legal question involved was different. The contention of the assessee was accepted. The Court observed that Section 9 of the Haryana Act begins with the words, "where a dealer liable to pay tax under the Act," rather than "whether a dealer has paid tax or has not paid tax." The phrase "liable to pay tax under the Act" refers to the obligation to pay sales tax on certain purchases. The Court clarified that the liability to pay tax arises upon the occurrence of a taxable event, that is, the event that gives rise to the charge. Although the assessment and actual recovery of tax may happen later, the liability is triggered by this taxable event. The imposition of tax involves three stages. First, the declaration

[13] (1990) 2 SCC 71.
[14] For short, "Haryana Act".
[15] For short, "Bombay Act".

of liability. This is established by the statute and defines who is legally bound to pay tax. Second, assessment, which quantifies the liability, but does not create it; the liability already exists under the law. Lastly, recovery, this is initiated when the taxpayer fails to pay voluntarily. Crucially, the liability to pay tax arises on the occurrence of the taxable event, it does not exist or accrue prior to that event, nor can it arise at a later point in time. Referring to the clauses of Section 9, the Court held that the key phrase attracting taxation is: *"goods, the sale and purchase of which is liable to tax under the Act."* This phrase relates to the nature and category of goods in terms of their taxability.

13. Contrary to the interpretation in ***M.K.Kandaswami*** (supra), the decision in ***Goodyear*** (supra) observes that Section 9 of the Haryana Act does not itself impose purchase tax merely on the act of purchasing taxable goods. Instead, the tax is imposed when these goods are used in such a way that they lose their original identity and are transformed into new taxable goods or goods which are then dispatched outside the State. Only at that stage is the tax levied, and the liability to pay arises. While referring again to ***M.K.Kandaswami*** (supra) and specifically to ingredients (iv) and (v) mentioned therein, the Court noted that ingredient (vi)[16] was neither argued nor properly considered in that case. Instead, only a brief mention was made regarding the wording of the section. The Court then referred to constitutional provisions, including the Constitution (Forty-Sixth Amendment) Act, 1982 and Entry 54 of List II in the Seventh Schedule of the Constitution of India, to hold that no tax is payable

[16] **Ingredient (vi).** The dealer either consumes such goods in the manufacture of other goods for sale or otherwise, or despatches such goods in any manner other than by way of sale in the State, or despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce.

under the Haryana Act when goods are exported outside the State in the course of an inter-State sale.

14. In his concurring opinion, Ranganathan J. observed that Section 9 of the Haryana Act and Section 13-AA of the Bombay Act both aim to levy purchase tax, but the tax does not become payable at the moment of purchase. Instead, liability arises later, if the purchaser either uses the goods to manufacture other taxable goods, or dispatches the manufactured goods to a place of business outside the State, other than by way of inter-State sale or export.

15. At this point, it is important to note the distinction in the wording of Section 9 of the Haryana Act. As stated in paragraph 8 of ***Goodyear*** (supra), the amended Section brought within its scope the purchase of goods (other than those listed in Schedule B) from within the State, when such goods are used to manufacture other goods, or when the manufactured goods are disposed of outside the State other than by way of inter-State sale or export.

16. A similar issue with reference to the Gujarat Sales Tax Act, 1969,[17] Uttar Pradesh Sales Tax Act, 1948[18] as well as the Andhra Pradesh General Sales Tax Act, 1957[19] was examined by a three-Judge Bench of this Court, which included Ranganathan, J., in ***Hotel Balaji and Others*** v. ***State of A.P. and Others***.[20] Jeevan Reddy, J., writing for himself and Ramaswami, J., referred to some earlier judgments and concurred with the opinion expressed in ***M.K.Kandaswami*** (supra), while disagreeing with the ratio in ***Goodyear*** (supra). The ratio in ***Goodyear*** (supra), it was stated, cannot be accepted for

[17] For short, "Gujarat Act."
[18] For short, "Uttar Pradesh Act".
[19] For short, "Andhra Pradesh Act".
[20] 1993 Supp (4) SCC 536.

detailed reasons being set out in Part-V of the judgment. Referring to the relevant State enactments, it was stated that where a purchaser uses goods as raw material, processing material, or consumable stores in the manufacture of taxable goods, purchase tax becomes leviable upon the occurrence of such events. In such a situation, it is immaterial whether the manufactured goods are sold within the State or dealt with in some other manner, including consigning to the manufacturer's own depots or to the depots of his agents outside the State. The contention that such a levy amounts to excise duty or use tax—since it attaches on the use of goods in manufacturing of other goods and not on the purchase of goods—was rejected as missing the true nature of the tax. This Court clarified that such a tax is on the purchase price of raw materials used in the manufacture of goods, not on the value of manufactured products. A concession granted to the manufacturers in the purchase of certain types of raw material etc. does not preclude the imposition of purchase tax when the statutory conditions *viz*. happening of certain events are met. On the question whether the decision in ***Goodyear*** (supra) requires reconsideration, it is observed as under:

> "90. The crucial question, therefore, is what is the basis of taxation in either of the above provisions? In other words, the question is whether levy of tax is on the purchase of goods or upon the consignment of the manufactured goods? Let us first deal with Section 9 of the Haryana Act (as amended in 1983). Properly analysed, the following are the ingredients of the Section : (i) a dealer liable to pay tax under the Act purchases goods (other than those specified in Schedule B) from any source in the State and (ii) uses them in the State in the manufacture of any other goods and (iii) either disposes of the manufactured goods in any manner otherwise than by way of sale in the State or despatches the manufactured goods to a place outside the State in any manner otherwise than by way of sale in the course of a inter-State trade or commerce or in the course of export outside the territory of India within the meaning of sub-section (1) of Section 5 of the Central Sales Tax Act, 1956. If all the above three ingredients are satisfied, the dealer becomes liable to pay

tax on the purchase of such goods at such rate, as may be notified under Section 15.

91. Now, what does the above analysis signify? 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 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. This is a well-known policy in the field of taxation. 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) the tax has to be paid on the purchase value of the raw material. The reason is simple: if the manufactured goods are disposed of otherwise than by sale within the State or are sent out of State (i.e., consigned to dealers own depots or agents), the State does not get any revenue because no sale of manufactured goods has taken place within Haryana. 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 two situations. Now coming to inter-State sale and export sale, it may be noticed that in the case of inter-State sale, the State of Haryana does get the tax revenue — may be not to the full extent. Though the Central Sales Tax 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. Where, of course, the sale is an export sale within the meaning of Section 5(1) of the Central Sales Tax Act (export sales) 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 is waived in these two situations. Thus, there is a very sound and consistent policy underlying the provision. 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. The most that can perhaps be said is that it is plausible (as pointed out by Ranganathan, J. in his separate opinion) to characterise the said tax both as purchase tax as well as consignment tax. But where two interpretations are possible, one which sustains the constitutionality and/or effectuates its purpose and intendment and the other which effectively nullifies the provision, the former must be preferred, according to all known canons of interpretation. This is also the view expressly approved by Mukharji, J. in his opinion, as pointed out hereinbefore. In para 71 of his opinion, the learned Judge states:

> "It is well settled that reasonable construction should be followed *and literal construction may be avoided if that defeats the manifest object and purpose of the Act. See C.W.T. v. Kripashankar Dayashankar Worah and Income Tax Commissioner for City of London v. Gibbs"*
>
> (emphasis supplied)"

92. However, we would presently show that 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. In several enactments, for instance, tax is levied at the last sale point or last purchase point, as the case may be. How does one determine the last purchase point in the State? Only

when one knows that no purchase took place within the State thereafter. But that can only be known later. If there is a subsequent purchase within the State, the purchase in question ceases to be the last purchase. As pointed out pertinently by P.S. Poti, J. (as he then was) in Malabar Fruit Products Co. v. S.T.O. [(1972) 30 STC 537 (Ker)] applying the logic of the dealers, it would not be possible to tax any goods at the last purchase point in the State, inasmuch as the last purchase point in regard to any goods could be determined only when the goods are sold later and not when the goods are purchased. In the said decision, the learned Judge was dealing with the validity and construction of Section 5-A of Kerala General Sales Tax Act, 1963, sub-section (1) whereof read as follows:

> "5-A. Levy of purchase tax.— (1) Every dealer who in the course of his business purchases from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under this Act, in circumstances in which no tax is payable under Section 5, and either—
>
> (a) consumes such goods in the manufacture of other goods for sale or otherwise; or
>
> (b) disposes of such goods in any manner other than by way of sale in the State; or
>
> (c) despatches them to any place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce;
>
> shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on the taxable turnover relating to such purchase for that year at the rates mentioned in Section 5.""

17. Referring to the argument and discussion on the validity of Section 5A of the Kerala Act in ***Malabar Fruit Products Company*** (supra), this Court, in ***Hotel Balaji*** (supra) observes:

> "93. One of the arguments urged against the validity of the said provision was that inasmuch as the tax is levied depending upon the mode in which the goods purchased are consumed, disposed of or despatched, the tax is really one in the nature of consumption tax or use tax, but not sales tax. This argument was answered by the learned Judge in the following words:
>
> "According to me, this contention is based on a misconception of the scope of taxation on the sale of

> goods. It is true that sales tax is a tax imposed on the occasion of the sale of goods. But it has no reference to the point of time at which the sale or purchase takes place. It refers to the connection with the event of purchase or sale and not the point of time at which such purchase or sale takes place. To read it otherwise would render any retrospective imposition of sales tax invalid as in every such case the tax would not be one which arises on the occasion of sale. By the same logic, it would not be possible to tax any goods at the last purchase point in the State, for the last purchase point in regard to any goods could be determined only when the goods are sold later and not when the goods are purchased. On the same reasoning as urged by counsel, one should say in such a case that since the goods are taxed only when the goods are sold outside the State or are despatched for such sale outside the State and so the last purchases are taxed not on the 'occasion' of the purchases and, consequently, it is beyond the competence of the Legislature. That certainly cannot be and that Supreme Court has held in the decision in State of Madras v. Narayanaswami Naidu [(1968) 21 STC 1 (SC)] that the goods are taxable in such cases in the financial year when they become the last purchases."

94. The decision of Poti, J. was affirmed by a division bench of Kerala High Court in Yusuf Shabeer v. State of Kerala [(1973) 32 STC 359 (Ker)]. Both these decisions were expressly referred to and approved by a three-Judge Bench of this Court in State of T.N. v. Kandaswami [(1975) 4 SCC 745] . Kandaswami [(1975) 4 SCC 745] was concerned with the construction of Section 7-A of the Tamil Nadu General Sales Tax Act which too levied a purchase tax and is couched in language similar to Section 5-A of the Kerala Act. While dealing with the scheme of Section 7-A, this Court quoted with approval certain passages from the judgment of Poti, J. including the following sentence:

> "If the goods are not available in the State for subsequent taxation by reason of one or other of the circumstances mentioned in clauses (a), (b) and (c) of Section 5-A(1) of the Act then the purchaser is sought to be made liable under Section 5-A."

95. This statement accords with our understanding of the scheme of Section 9 of Haryana Act as set out hereinabove. To repeat, the scheme of Section 9 of Haryana Act is to levy the tax on purchase of raw material and not to forego it where the goods manufactured out of them are disposed of (or despatched, as the case may be) in a manner not yielding any revenue to the State or serving the interests of nation and its economy, as explained

> hereinbefore. The purchased goods are put an end to by their consumption in manufacture of other goods and yet the manufactured goods are dealt with in a manner as to deprive the State of any revenue; in such cases, there is no reason why the State should forego its tax revenue on purchase of raw material.
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> 96. Another observation in Kandaswami [(1975) 4 SCC 745] relevant for the present purpose may also be noticed: (SCC p. 751, para 26)
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> > "It may be remembered that Section 7-A is at once a charging as well as a remedial provision. Its main object is to plug leakage 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. The view taken by the High Court is repugnant to this cardinal canon of interpretation."
>
> 97. 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."

18. Ranganathan, J., in his concurring opinion, observed that he was delivering a separate judgment since he had been a party to ***Goodyear*** (supra) and wished to explain his views. He acknowledged the force of the argument of the States that the provisions in question only impose a tax on purchases. He observed that it is designated as a purchase tax and levied on the turnover of such

purchases. Pertinent to us are his observations that the State may sometimes give up tax or specify concessional rates of tax on sales based on some declarations or certificates, but the goods may be taxed in the hands of the purchaser. It is emphasised that such a levy clearly falls within the legislative competence of the State Legislature. The ambit of the power to levy tax in respect of the sale or purchase of goods is very wide and would cover any tax having nexus with the sale or purchase of goods, including attaching a levy to the last purchase in the State. This test, Ranganathan, J. held, was a more appropriate one than the ambiguous standard of 'taxable event'. A tax on the sale or purchase of goods will not cease to be a tax simply because the determination of the character as a 'last purchase' depends on certain subsequent events that may be spread over a subsequent period of time.

19. In our opinion, the judgment in ***Hotel Balaji*** (supra) covers the issues in question. However, ***Hotel Balaji*** (supra) did not consider and examine the judgment of the three-Judge Bench in ***Mukerian Papers Ltd.*** v. ***State of Punjab***,[21] which followed the ratio of ***Goodyear*** (supra). Interpreting the provisions of Section 4B of the Punjab General Sales Tax Act, 1948,[22] ***Mukerian Papers Ltd.*** (supra) held that one of the requirements for the accrual of purchase tax is that the manufactured goods must be sent outside the State. The liability to pay purchase tax does not arise at the time of purchasing raw materials within the State or their use in manufacturing goods other than those listed in Schedule B. It was observed that, although the purchase tax is levied on the raw materials purchased by the manufacturer, the actual levy is deferred

[21] (1991) 2 SCC 580.
[22] For short, "Punjab Act".

until those materials are consumed in the manufacture of a commercially distinct commodity. The relevant date, for the purpose of taxation, is the date on which the goods are sent outside the State. Thus, the taxable event occurs when the goods are sent outside the State, regardless of when the raw materials were purchased or converted into a new commodity. The Revenue relied on the decision in ***Kandaswami*** (supra), contending that it was rendered in the context of a similar provision and thus its ratio covers the case. Rejecting this argument, this Court in ***Mukerian Papers Ltd.*** (supra), observed that although ***Kandaswami*** (supra) was indeed rendered in relation to an analogous provision, it had been distinguished in ***Goodyear*** (supra) on the ground that it did not address the core that arose in the latter case. Notably, ***Mukerian Papers Ltd.*** (supra), in paragraph 6, holds that the Bench need not dilate on that issue further, as the correctness of ***Goodyear*** (supra) had not been questioned before it.

20. ***Mukerian Papers Ltd.*** (supra), ***Goodyear*** (supra), as well as the decision in ***Hotel Balaji*** (supra), were considered by a three-Judge Bench of this Court in ***Devi Dass Gopal Krishan Pvt. Ltd. and Others*** v. ***State of Punjab and Others***.[23] The three-Judge Bench in ***Devi Dass*** (supra) comprised two Judges – A.M. Ahmadi, J. (as his Lordship then was) and M.N. Venkatachaliah, CJI. – who were also members of the Bench in ***Mukerian Papers Ltd.*** (supra).[24] In ***Devi Dass*** (supra), this Court noticed that several state legislations— including those from Punjab, Tamil Nadu, Kerala, West Bengal, and Bombay— had been brought up for consideration in ***Hotel Balaji*** (supra). However, due

[23] (1994) Supp 2 SCC 59.
[24] A.M. Ahmadi, J., as his Lordship then was, was the author of the judgment in ***Mukerian Papers Ltd.*** (supra).

to time constraints, only the cases relating to the Uttar Pradesh, Gujarat, and Andhra Pradesh Acts were taken up in ***Hotel Balaji*** (supra), segregating the cases concerning the other States. One of the arguments raised in ***Devi Dass*** (supra) was that a conflict existed between ***Hotel Balaji*** (supra) and ***Mukerian Papers Ltd.*** (supra), the latter being said to squarely affirm the decision in ***Goodyear*** (supra). A reference was sought to a larger Bench on this basis. Rejecting the contention, this Court noted that the correctness of ***Goodyear*** (supra) had not been examined in ***Mukerian Papers Ltd.*** (supra), a fact expressly recorded in ***Mukerian Papers Ltd.*** (supra) and further addressed in paragraph 101 in ***Hotel Balaji*** (supra). Moreover, ***Mukerian Papers Ltd.*** (supra) merely applied ***Goodyear*** (supra) to the specific facts of the case; it neither affirmed nor dissented from the reasoning in ***Goodyear*** (supra). Referring to the issue of the *vires* of the State enactments that were struck down as unconstitutional in ***Goodyear*** (supra) on the grounds that they imposed a tax during the course of inter-State trade or commerce amounting to a consignment tax, and also that the taxable event was not purchase, specific reference was made to the reasoning of Ranganathan, J. in ***Hotel Balaji*** (supra), which reads as under:

> **"3.** (…)The learned Judge recalled his observations in his concurring opinion in *Goodyear* and observed that the particular viewpoint presented in *Hotel Balaji* was not presented in *Goodyear* and that on reconsideration, he finds the reasoning in support of the validity of the provisions more persuasive. The learned Judge said: (SCC pp. 549-50, para 10)
>
> > "This larger concept, namely, that these various alternatives are not set out in the section with a view to fasten the charge of tax at the point of use, consumption, manufacture, production and consignment or despatch but in an attempt to make clear that what is sought to be levied is a tax on raw materials on the occasion of their last purchase inside the State had not been projected before, or considered

by us. *I am inclined now to think that this is an approach that basically alters the parameters and removes the provision from the area of vulnerability*."
(emphasis supplied)"

This Court in ***Devi Dass*** (supra) affirmed the reasoning in ***Hotel Balaji*** (supra), clearly holding that the decision in ***Goodyear*** (supra) did not lay down the correct law:

> **"6.** Now coming to the merits of the contention, we are of the considered opinion that there is no reason to take a view different from the one taken in *Hotel Balaji* [1993 Supp (4) SCC 536 : (1993) 88 STC 98] . All the contentions urged now have been considered and dealt with in the said decision. In our opinion, the approach adopted in *Goodyear* [(1990) 2 SCC 71 : 1990 SCC (Tax) 223] does not accord with the scheme, intendment and language of the relevant provisions of the Haryana and Bombay Acts and cannot be accepted."

21. Appropriate at this stage would be to refer to the order dated 27.10.2009 passed in the present batch of appeals, wherein the two-Judge Bench referred the matter to a larger Bench. After making a reference to Section 5A of the Kerala Act, this Court distinguished 'payability' and 'liability' to observe:

> "We have analyzed Section 5A of the Act. In our view, Section 5 is the charging section. Under Section 5A, what is, inter alia, stated is that every dealer who, in the course of his business purchases from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under this Act, in circumstances in which no tax is payable under sub-sections (1), (2), (3), (4) and (5) of Section 5 and who either consumes such goods in the manufacture of other goods for sale or who uses or disposes of goods in any manner other than by way of sale in the State or who despatches such goods to any place outside the State, except as a direct result of sale or purchase in the course of inter-State trade or commerce shall pay tax on the taxable turnover relating to such purchase for the year at the rates mentioned in Section 5.
>
> If one carefully analyse Section 5A of the Act, it becomes clear that there is a clear dichotomy between liability to tax [taxability] on the one hand and "payability" on the other. The significance of Section 5A, prima facie, appears to be that if the State has lost revenue/tax which otherwise it would have recovered had the purchase taken place from a registered non-exempted dealer, then Section 5A enables the State to recover such loss from the

assessee herein. In such a case, Section 5A would stand attracted, subject to the other conditions being fulfilled. This is where the difference between "payability" and "leviability" comes into existence. The goods in question were undoubtedly liable to tax. However, since exemption notification under Section 10 of the Act came into the field, though liable to tax, such goods were exempted from payment of tax. In our view, therefore, there is a clear demarcation between these two concepts of "leviability/taxability" on the one hand vis- a-vis "payability" on the other. Our view is also fortified to this extent by the reasoning of the judgement of this Court in the case of State of Tamil Nadu vs. M.K. Kandaswamy & Ors. reported in [1975] 36 S.T.C. 191. In that case, a three-Judge Bench of this Court was required to decide interpretation and scope of Section 7A of the Madras General Sales Tax Act, 1959 [for short, "Madras Act"], which section was in pari materia with Section 5A of the Act. While interpreting Section 7A of the Madras Act, this Court observed that the main object of Section 7A of the Madras Act is to plug leakage and prevent evasion of tax. It further stated that, in interpretation of such a provision, a construction which would defeat the purpose of the Act should be eschewed. It further observed that the phraseology used in Section 7A of the Madras Act, though somewhat involved, is fairly plain when it comes to giving meaning of the Section. The Court further observed that the language of Section 7A of the Madras Act [which is akin to Section 5A of the Act] indicates the meaning of the word "taxability/liability" is to be read in the context of the expression "taxable goods". If one reads the judgement, it clearly indicates what we have said in the earlier paragraphs, namely, that the concept of "taxability/leviability" is different and distinct from the concept of "payability". That is why when the goods, which are otherwise liable to tax, are exempted by virtue of notification from payability under Section 10 of the Act, Section 5A of the Act has been enacted to levy tax on certain transactions on which otherwise the State loses its revenue. This distinction has not been kept in mind in the decision of a two-Judge Bench of this Court in the case of Peekay Re-rolling Mills (P) Ltd. vs. Assistant Commissioner & Anr. reported in 2007 (4) S.C.C.30. In that judgement, it has been held that the expression "levy" would include ‘collection’ or ‘payment’ as well and not merely authorisation of the levy. With respect to our learned brothers, we do not agree that the word ‘levy’ in the context of Section 5 and Section 5A of the Act would include ‘collection’ or ‘payment’ of tax.

In the circumstances, on account of difference of opinion, we direct the Registry to place the present batch of civil appeals before the Hon’ble the Chief Justice of India for referring the matter to the larger Bench of this Court.”

22. A reading of the aforesaid quotation would reveal that the Division Bench clearly agreed with the reasoning given in ***M.K.Kandaswami*** (supra) distinguishing 'taxability'/'liability' and 'payability' as two different concepts in tax. The reference order notes that the exemption granted under Section 10 of the Kerala Act does not affect the taxability/liability, but only payability. Thus, where goods ordinarily subject to tax are exempted from payment under Section 10 of the Act by virtue of a notification, Section 5A has been enacted to nonetheless impose tax on certain transactions, thereby safeguarding the State's revenue from potential loss. The reasoning and ratio in ***M.K.Kandaswami*** (supra) was expressly agreed as correct. However, what prompted the two-Judge Bench to refer the matter to a larger Bench was the decision of another two-Judge Bench of this Court in ***Peekay Re-Rolling Mills (P) Ltd.*** v. ***Assistant Commissioner and Another***,[25] which the Bench felt holds that the expression 'levy' would include 'collection' or 'payment' as well and not mere authorisation for levy. The two-Judge Bench in the reference order dated 27.10.2009 did not agree with the observation that the 'levy' would include 'collection' or 'payment' of tax in the context of Section 5 and 5A of the Act.

23. We have examined the judgment in ***Peekay Re-Rolling Mills (P) Ltd.*** (supra), which refers to several decisions, including the judgments in ***Bhawani Cotton Mills Ltd.*** v. ***State of Punjab and Another***[26] and ***Shanmuga Traders and Others*** v. ***State of Tamil Nadu and Others***.[27] The Court in ***Peekay Re-Rolling Mills (P) Ltd.*** (supra) holds that Sections 5 and 5A of the Kerala Act

[25] (2007) 4 SCC 30.
[26] (1967) 20 STC 290.
[27] (1998) 5 SCC 349.

are distinct and independent, relying on the observations in ***M.K.Kandaswami*** (supra). The Court quotes the finding that Section 7A of the Madras Act is a self-contained charging provision and applies the same reasoning to uphold the validity of the levy under Section 5A of the Kerala Act.

24. However, the two-judge Bench in ***Peekay Re-Rolling Mills (P) Ltd.*** (supra) states that the observations in ***M.K. Kandaswami*** (supra) have no real bearing on the relevant issue, since ***M.K. Kandaswami*** (supra) did not involve a question of tax on declared goods under Section 14 of the Central Sales Tax Act, 1956[28] and conditions laid down in this regard, particularly that of a single-point levy. Since Section 15 of the Central Act mandates that tax on declared goods must be levied at a single point, the Court held that once the goods are declared goods they cannot again be taxed under Section 5A. That would amount to a second-stage levy, contrary to the scheme under Section 15 of the Central Act.

25. ***Peekay Re-Rolling Mills (P) Ltd.*** (supra) then turns to the majority view in ***Bhawani Cotton Mills*** (supra). In ***Bhawani Cotton Mills*** (supra) the majority judgment of the Constitution Bench authored by Vaidialingam, J. had examined the question of levy of purchase tax on declared goods which are goods of national importance included in Schedule C notified in terms of Section 14 of the Central Act. Section 15 of the Central Act,[29] as then

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[28] For short, "Central Act".

[29] "15. 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 three per cent of the sale or purchase price thereof, and such tax shall not be levied 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

applicable, had a stipulation that sales tax law of a State, insofar as it imposes or authorizes levy of tax, shall be subject to the conditions specified in Clauses (a) and (b). Clause (a) in specific terms has stated that tax in respect of any sale or purchase of declared goods inside the State shall not exceed 3% of the sale and purchase price and secondly, the tax will not be levied at more than one stage. In the said case, the levy of purchase tax on cotton was set aside on the grounds that the tax imposed under the Punjab Act conflicted with Section 15 of the Central Act. The plea of the assessee that sales tax may have been paid by the earlier transactions and therefore the levy of purchase tax would violate clause (a) to Section 15 was accepted. Pertinently, ***Bhawani Cotton Mills*** (supra) refers to the decision of this Court in ***A.V. Fernandez*** v. ***The State of Kerala***,[30] which refers to the following observations in ***Chatturam Horilram Limited*** v. ***Commissioner of Income Tax, Bihar and Orissa***,[31] to distinguish three stages in the imposition of tax, namely, declaration of liability, assessment and recovery:

> "If there is a liability to tax, imposed under the terms of the taxing statute, then follow the provisions in regard to the assessment of such liability. If there is no liability to tax there cannot be any assessment either. Sales or purchases in respect of which there is no liability to tax imposed by the statute cannot at all be included in the calculation of turnover for the purpose of assessment and the exact sum which the dealer is liable to pay must be ascertained without any reference whatever to the same.
>
> There is a broad distinction between the provisions contained in the statute in regard to the exemptions of tax or refund or rebate of tax on the one hand and in regard to the non-liability to tax or non-imposition of tax on the other. In the former case, but for the provisions as regards the exemptions or refund or rebate of tax, the sales or purchases would have to be included in the gross turnover of the dealer because they are prima facie liable to tax and the only thing which the dealer is entitled to in respect thereof

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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." – as quoted in ***Bhawani Cotton Mills*** (supra).

[30] AIR 1957 SC 657.

[31] AIR 1955 SC 619.

> is the deduction from the gross turnover in order to arrive at the net turnover on which the tax can be imposed. In the latter case, the sales or purchases are exempted from taxation altogether. The Legislature cannot enact a law imposing or authorising the imposition of a tax thereupon as they are not liable to any such imposition of tax. If they are thus not liable to tax, no tax can be levied or imposed on them and they do not come within the purview of the Act at all. The very fact of their nonliability to tax is sufficient to exclude them from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed."

26. This reasoning in ***Bhawani Cotton Mills*** (supra) applies only where the exemption is absolute—i.e., from both sale and purchase. It does not apply when the exemption is partial. If the legislature exempts sales but taxes purchases, the tax on the purchaser remains valid. In such cases, an exemption for one leg of the transaction does not imply exemption for the other. This interpretation is supported by the language of Sections 5A and 7A of the Kerala and Tamil Nadu Acts, which allow purchase tax even where no sales tax is imposed on the seller or the sale.

27. ***Peekay Re-Rolling Mills (P) Ltd.*** (supra) also refers to ***Shanmuga Traders*** (supra), which had been distinguished by the High Court in the impugned judgment. However, the Court was of the opinion that in the impugned judgment the Division Bench of the High Court erroneously distinguishes ***Shanmuga Traders*** (supra) from the facts of the case. ***Shanmuga Traders*** (supra) again is a case relating to declared goods under Section 14 of the Central Act, which it was held can be taxed only at a single point. It is for the State to determine whether the single point should be the point of first sale, intermediate sale or the last sale in the State. If the State designates the point of first sale as the single point of taxation and then exempts that point—whether through a general provision or one specifically applicable to a

particular class of sellers or goods—then tax cannot be levied either at the first sale or at any subsequent stage. The ratio in the said case is not applicable as this is not a case of declared goods and the bar under Section 15 of the Central Act does not apply.

28. ***Peekay Re-Rolling Mills (P) Ltd.*** (supra) also relies on ***M/s Pine Chemicals Ltd. and Others*** v. ***Assessing Authority and Others***,[32] which holds that exemption arises only when there is a tax liability. The Court reaffirms that exemption presupposes that tax is otherwise leviable. This was further affirmed in ***Associated Cement Companies Ltd.*** v. ***State of Bihar and Others***,[33] which clarified that exemption is relevant only when there is liability. Thus, goods can be liable or exigible to tax, but due to exemption, the obligation to pay may not arise.

29. ***Peekay Re-Rolling Mills (P) Ltd.*** (supra) refers to ***Assistant Collector of Central Excise, Calcutta Division*** v. ***National Tobacco Co. of India Ltd.,***[34] which makes a distinction between "levy" and "assessment", holding that levy includes both imposition and assessment of tax but not collection. This interpretation stems from Article 265 of the Constitution, which separately mentions levy and collection. Cases like ***Somaiya Organics (India) Ltd. and Another*** v. ***State of Uttar Pradesh***[35] and ***Collector of Central Excise, Hyderabad and Others*** v. ***Vazir Sultan Tobacco Company Ltd., Hyderabad and Others***[36] are also cited, particularly with respect to excise duty under the Central Excise and Salt Act, 1944. These cases explain that levy is on

[32] (1992) 2 SCC 683.
[33] (2004) 7 SCC 642.
[34] (1972) 2 SCC 560.
[35] (2001) 5 SCC 519.
[36] (1996) 3 SCC 434.

manufacture, while collection is deferred to the stage of removal for administrative convenience, and this did not affect the nature of the levy, which was on the manufacture of the goods. These observations pertain to the levy of excise duty under the Central Excise and Salt Act, 1944. It has been consistently held that excise duty is levied on the event of manufacture or production of goods. While the point of collection may be deferred until the goods are removed, the taxable event remains manufacture. In our view, the decision in ***Peekay Re-Rolling Mills (P) Ltd.*** (supra) does not support the argument advanced by the assessees. The legal position is well established; the levy or incidence of tax, and the payment of tax are distinct concepts. Goods may be liable or exigible to tax by virtue of their nature or transaction, but when an exemption is granted, it only means that the payment of tax is not required—though the liability in principle remains.

30. The confusion in ***Peekay Re-Rolling Mills (P) Ltd.*** (supra) arises under the portion of the judgment *viz*. "distinction between 'levy' and 'collection'". ***Peekay Re-Rolling Mills (P) Ltd.*** (supra) refers to the following observations of this Court in ***National Tobacco Co. of India Ltd.*** (supra) :

> "19. The term 'levy' appears to us to be wider in its import than the term 'assessment'. It may include both 'imposition' of a tax as well as 'assessment'. The term 'imposition' is generally used for the levy of a tax or duty by legislative provisions indicating the subject-matter of the tax and the rates at which it has to be taxed. The term 'assessment', on the other hand, is generally used in this country for the actual procedure adopted in fixing the liability to pay a tax on account of particular goods or property or whatever may be the object of the tax in a particular case and determining its amount. The Division Bench appeared to equate 'levy' with an 'assessment' as well as with the collection of a tax when it held that 'when the payment of tax is enforced, there is a levy'. *We think that, although the connotation of the term 'levy' seems wider than that of 'assessment', which it includes, yet, it does not seem to us to extend to 'collection'. Article 265 of the Constitution makes a distinction between 'levy' and 'collection'*.

(emphasis supplied)"

In our opinion, the word 'levy' rightly refers to the exigibility or imposition of tax. The 'assessment' of tax is the second stage and refers to the determination of the tax liability imposed by the levying/charging/imposition provisions. The 'collection' or 'recovery' of tax is the third aspect. Lastly, it must be remembered that ***Peekay Re-Rolling Mills (P) Ltd.*** (supra) is also a case of declared goods.

CONCLUSION

31. In view of the aforesaid discussion and applying the ratio in terms thereof, we must reject the argument on behalf of the assessee that Section 7A of the Tamil Nadu Act and Section 5A of the Kerala Act will have no application when tax is exempt at the hands of the seller, or for that matter, the tax under Section 3 or Section 5 of the aforesaid Act at the hands of the seller is payable at the point of first sale. Sections 5A or 7A, as the case may be, impose purchase tax specifically in situations where the seller is granted exemption from payment of tax. The legal position is that exemption from payment of tax at the time of sale is a pre-condition for attracting Sections 5A and 7A respectively. Further, the fact that in case the goods were not exempt from payment of tax at the time of sale and the goods would have attracted tax at the first point of sale, is immaterial and inconsequential. Levy of purchase tax is governed by the provisions and stipulations of Sections 5A or 7A. They are independent and in a way constitute charging sections. Purchase tax is leviable on and payable by the purchaser. However, the legislations do not levy the purchase tax to tax the transaction of the sale and purchase twice. Instead, it levies purchase tax

only where no sales tax was payable on the sale. Further, purchase tax has not been made leviable in all situations, except in three situations, namely, (a) where the goods on which no tax is paid were used in manufacture; or (b) where the goods were despatched out of the State other than by way of inter-State trade or commerce; or (c) where the goods are disposed of in a manner other than sale within the State. However, the need to satisfy the conditions do not change the nature of the charge, which is, tax on purchase. These aspects and the constitutionality has been explained in ***Hotel Balaji*** (supra) and ***Devi Dass*** (supra) referred to above.

32. The challenge to the constitutional validity must be rejected on the basis of the ratio elucidated by this Court in ***Kandaswami*** (supra), ***Hotel Balaji*** (supra) and ***Devi Dass*** (supra). The contention of the appellant-assessees that the constitutional validity of the impugned provisions was not examined while deciding ***Kandaswami*** (supra) ought to be rejected, even if we would accept that the question of constitutional validity was not directly addressed. ***Hotel Balaji*** (supra) specifically upholds the constitutionality of the impugned provisions, disagreeing with the opinion/ratio expressed in ***Goodyear*** (supra). We would also like to record that purchase tax is levied on the purchase of goods on which no tax has been paid on account of any exemption as a result of which the seller is not required to collect and pay sales tax. The decision whether or not to levy purchase tax is a prerogative and power of the State Legislature. As noticed above, the liability to pay is distinct from levy of tax. This being so, the argument that purchase tax is leviable when there is cross-border or inter-State movement of the goods or is a consignment tax must be rejected. Even otherwise, the event, that is inter-State movement of the goods,

which does not amount to inter-State sale, falls within the legislative domain and power of the State Legislature. The State, when it imposes such tax, does not exceed its power to impose tax conferred by the State List as inter-State sale of goods is not being subjected to tax. The rationale explaining the validity have been elucidated in both ***Hotel Balaji*** (supra) and ***Devi Dass*** (supra).

33. While examining tax provisions, we must give sufficient latitude to the Legislature. Income generation in the form of taxes is an important source of revenue for both the State and the Central governments. Some play in the joints should be given to the Legislature while dealing with laws relating to taxation and economic activities except in case of encroachment upon the power to tax that is not vested with them in terms of the Union or the State List, etc.[37]

34. Realising the above legal position, a different set of arguments was raised in Civil Appeal Nos. 3024-3025 of 2012 filed by M/s Britannia Industries Limited. According to us, the arguments do not have any merit and must be rejected. We would briefly refer to the said arguments and our reasons for rejecting them.

35. It is submitted that in terms of Section 17 of the Tamil Nadu Act, sales of vegetable oil by the dealers up to a particular turnover was granted exemption from payment of tax.[38] This, in our opinion, supports the case of the Revenue for what is granted is exemption from payment of sales tax and not the

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[37] See *Chief Commissioner of Central Goods and Service Tax and Others* v. *Safari Retreats (P) Ltd. and Others*, (2025) 2 SCC 523; *Elel Hotels and Investments Limited and Others* v. *Union of India,* (1989) 3 SCC 698; *Federation of Hotel and Restaurant Association of India, Etc.* v. *Union of India and Others*, (1989) 3 SCC 634.

[38] As per Government Order dated 27.03.1998, as amended by Government Order dated 02.06.2000.

purchase tax. Thereafter, reference is made to sub-sections (1), (2) and (2A) of Section 8 of the Central Act. In particular, with reference to explanation to Section 8(2A) of the Central Act, it is submitted that the benefit of the said sub-section is not available as the Government Order[39] granting exemption had specified circumstances or conditions for grant of exemption. This, it is submitted, is to ensure that the exemption is available only to intra-State sales and not inter-State sales. This argument also supports the case of Revenue. The contention that purchase tax payable under Section 7A at the rates mentioned under Sections 3 and 4 should be treated as exempt in view of the GO issued under Section 17, as stated above, is untenable. The GO refers to the tax payable at the time of sale, that is, the sales tax. The GO does not grant exemption from payment of purchase tax. The grant of exemption being for the purpose of payment of sales tax, it does not follow that purchase tax would not be payable when conditions of Section 7A are satisfied. Further, it would be contradictory or rather nugatory to argue that the rate of tax specified in the Schedule should be taken as nil as no payment is to be made on the sale amount as sales tax. If we accept this argument, it would defeat the very purpose and objective of enacting Section 7A of the Tamil Nadu Act. Section 7A is only attracted where the sales tax is not payable, which means there should be an exemption notification under Section 17 or exemption under the Third Schedule, read with Section 8 of the Tamil Nadu Act.

36. In view of the aforesaid reasoning, the judgments of this Court in ***Kailash Nath and Another*** v. ***State of Uttar Pradesh and Others***[40] and ***Collector of***

[39] For short, "G.O."
[40] AIR 1957 SC 790.

Central Excise, Bombay-I and Another v. ***Parle Exports Pvt. Ltd.***[41] will have no application. The reason as noted above is simple: the exemption notification pertains solely to tax on sales and does not extend to purchase tax, which becomes payable only when sales tax is exempt.

37. In view of the above, we also reject the argument that the applicable rate of tax on purchase would be nil as the tax payable on the sale in view of the exemption from payment of sales tax is nil. Reliance placed on ***Casio India Company Private Limited*** v. ***State of Haryana***[42] is misplaced and liable to be rejected as ***Casio India*** (supra) deals with the issue of payment of tax under the Central Act and not with the provisions we are concerned. The ratio of the said case cannot be applied in view of the direct judgments of this Court in ***Kandaswami*** (supra), ***Hotel Balaji*** (supra) and ***Devi Dass*** (supra).

38. The argument that the rate applicable under Section 7A would be the effective rate and not the rate mentioned in the Schedule must be rejected for the reasons set out above. The exemption in the present case relates only to payment of sales tax and not purchase tax. For the same reason, we would reject the argument relying upon the judgment in the case of ***Rajputana Agencies Ltd.*** v. ***CIT***[43] and ***Thermax Private Limited*** v. ***Collector of Customs (Bombay)***.[44] These decisions again are directly not applicable to the legislations in question but relate to the rate of tax applicable in case of dividend tax or the levy of additional duty under the Central Excise Rules, 1944 with reference to the provisions of the relevant enactments and the rules

[41] AIR 1989 SC 644.
[42] (2016) 6 SCC 209.
[43] (1959) 35 ITR 168.
[44] (1992) 4 SCC 440.

thereunder. It must be remembered that excise duty and customs duty are payable by the importer or the manufacturer. There is no reverse levy in the case of customs duty or the excise duty in terms of the two enactments. Purchase tax can be levied and payable, even the sales tax is not payable.

39. Accordingly, question nos. I and II are answered in affirmative, that is, in favour of the Revenue and against the appellant-assessees in terms of the aforesaid reasoning and decision. Question No. III is answered in negative in favour of the State and against the appellant-assessees by upholding the constitutional validity of Section 5A of the Kerala Act and Section 7A of the Tamil Nadu Act. The reference is answered accordingly. All the appeals preferred by the appellant-assessees are dismissed and the judgments/orders of the High Court of Kerala and the High Court of Judicature at Madras are upheld.

40. The stay order(s) shall stand vacated.

41. Pending applications, if any, shall stand disposed of.

42. There shall be no order as to costs.

.....CJI.
(SANJIV KHANNA)

….....J.
(SANJAY KUMAR)

….....J.
(R. MAHADEVAN)

NEW DELHI;
MAY 09, 2025.