FULL BENCH

Before D. S. Tewatia, Surinder Singh & S. P. Goyal, JJ.

DES RAJ PUSHAP KUMAR GULATI,—*Petitioner.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 4462 *of* 1978
January 24, 1985.

Punjab General Sales Tax Act (XLVI of 1948)—*Section* 4-*B*—*Haryana General Sales Tax Act (XX of* 1973) *as amended by Haryana Act XI of* 1984—*Sections* 9(1) *and* 24—*Constitution of India,* 1950—*Seventh Schedule List-II Entry* 54—*Manufactured goods despatched by a dealer from within the State to its own branch outside the State—Such branch transfer made liable to tax under section* 4-*B of the Punjab Act and section* 9(1) *of the Haryana Act—Provisions of sections* 4-*B and* 9(1)—*Whether constitutionally valid—These provisions—Whether envisages levy of tax on the purchase of goods and therefore, within the competence of the State Legislature.*

Held, that the taxable event in section 4-B of the Punjab General Sales Tax Act, 1948 and section 9(1) of the Haryana General Sales Tax Act, 1973 is the purchase of goods and not the act of user or consumption of such goods or despatching of goods outside the State in manner other than sale in the course of inter-State trade or commerce. Once the taxing event is identified to be the act of purchase or sale or the tax is held to be a purchaser tax or sales tax as the case may be, then admittedly, the State Legislature is competent to legislate about it. Section 9 of the Haryana Act is not only a charging provision but also a remedial one in character and for construing such a composite provision, a liberal approach has to be adopted and not the one of strict construction. Although the tax in question is a purchase tax i.e., the taxing event is the purchase of the given goods and not their despatch outside the State, yet even if two views were possible (1) that it was a tax on despatch of goods and (2) that the incidence of tax was on purchase of goods which are being despatched out of the State, then too the construction which helps in making effective the remedial measures against the mischief that it sought to curb has to be adopted. Otherwise also, when two constructions are possible, one that saves the statute from being declared *ultra vires* has to be adopted. When thus viewed, the provisions of sections 4-B of the Punjab Act and section 9(1) of the Haryana Act admittedly relate to a topic of taxation which is covered by Entry 54 of List II of Seventh Schedule of the Constitution of

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India, and, therefore, the Haryana and Punjab State Legislatures were within their legislative rights to enact the given provisions. Thus it is held that section 4-B of the Punjab Act and section 9(1) of the Haryana Act envisage imposition of purchase tax and not a tax on despatch of goods or consignment of goods outside the State otherwise than in the course of inter-State trade or commerce and the said provisions are, therefore, *intra vires.*

(Paras 38, 39, 40, 41, 42, 43 and 44)

Bata India Limited *vs.* State of Haryana (1983) 54 S.T.C. 226.

OVERRULED.

Case referred to a Larger Bench on 6th December, 1983, by the Hon'ble Mr. Justice M. M. Punchhi, for decision of an important question of law which is involved in the case. The larger Bench consisting of Hon'ble Mr. Justice D. S. Tewatia, Hon'ble Mr. Justice Surinder Singh and Hon'ble Mr. Justice S. P. Goyal, finally decided that the following reliefs be granted:—

Petition under Article 226 of the Constitution of India praying that the following reliefs be granted:—

(*i*) *A writ in the nature of a writ of certiorari be issued calling for the records of the respondents relating to the impugned order Annexure P-1, and after perusal of the same, the impugned order/annexures be quashed;*

(*ii*) *any other suitable writ, direction or order that this Hon'ble Court may deem fit in the circumstances of the case.*

(*iii*) *an ad-interim stay of recovery proceedings may please be ordered till the final disposol of this writ petition.*

(*iv*) *Notice to the respondents has been issued and copies of this petition have been sent; and*

(*v*) *Costs of the petition be allowed to the petitioner.*

S. P. Jain, Advocate, *for the Petitioner.*

D. S. Brar, A. A. G. (Pb.), *for the Respondents.*

JUDGMENT

D. S. Tewatia, J.—

(1) Civil Writ Petition No. 4462 of 1978 which came up for final hearing before Punchhi, J., was referred for the decision by a larger Bench,—*vide* order dated 6th December, 1983. In this petition vires of section 4-B of the Punjab General Sales Tax, 1948 (hereinafter referred to as the Punjab Act) were under challenge. The learned Judge referred the matter for the decision by a larger Bench because he thought that D. B. decision in *Bata India Limited* v. *State of Haryana* (1), had taken a view contrary to the Full Bench decision in *Sterling Steels & Wires Ltd.* v. *State of Punjab* (2). In the wake of this reference order to the larger Bench, a number of petitions from Haryana in which the vires of amendments to the Haryana General Sales Tax Act of 1973 (hereinafter referred to as the Haryana Act) of section 9, 24 and the notification issued under section 15 were under challenge too were admitted by the motion Bench to be heard along with C.W.P. 4462 of 1978. Thus writ petitions from Haryana, namely, C.W.P. Nos. 698 to 708, 3318, 3319, 1371, 1292, 2364, 1397, 733, 1364, 2405, 2514, 2606, 1486, 1329, 1485, 1441, 1484, 3402, 3355, 1615, 3186, 1306, 3049, and 1123 of 1984 have come to be placed before the Full Bench.

(2) The question that primarily falls for determination pertains to the vires of section 4-B of the Punjab Act and section 9(1) of the Haryana Act (hereinafter referred to as section 4-B and section 9(1). Since section 4-B and section 9 in substance are pari materia and were intended to levy purchase tax on goods which were exigible to tax under the two Acts respectively and were meant to be used by the purchaser for a given purpose but came to be dealt with by such purchasers otherwise and thus the question of law requiring consideration being identical to all the writ petitions, a common judgment is proposed. However, wherever a reference to facts would become necessary, the same would be taken so far as the Punjab case is concerned from C.W.P. No. 4462 of 1978 and in regard to Haryana case from C.W.P. No. 698 of 1984.

(1) (1983) 54 S.T.C. 226.
(2) (1980) 45 S.T.C. 438.

(3) Messrs Des Raj Pushp Kumar Gulati, petitioner-firm in Civil Writ No. 4462 of 1978, was a registered dealer under the Punjab Act, and also under the Central Sales Tax Act, 1956. The firm had a branch office within the territory of Himachal Pradesh which too was duly registered under the Himachal Pradesh General Sales Tax Act. For the assessment year 1975-76, the assessing authority while framing assessment under the Punjab Act observed that transactions worth Rs. 4,88,949.27 Paise were branch transfers from the Punjab branch to the Himachal Pradesh branch and were thus liable to tax under section 4-B of the Punjab Act. Accordingiy, these transactions were reckoned towards computation of tax due and the petitioner-firm was made liable. The petitioner-firm impugned the said assessment in this Court and also the vires of section 4-B of the Punjab Act.

(4) The petitions from Haryana State challenging the vires of amendments effected in sections 9 and 24 of the Haryana Act by Act No. 11 of 1984, as would be presently referred to, too banked upon the ratio of *Bata India Limited's case* (supra).

(5) On behalf of the assessee-petitioners this decision has been held out to be a clincher whereas on behalf of the Revenue, it has been forcefully canvassed that this decision does not lay down the correct law. The petitioners having not advanced any fresh argument to challenge the vires of the given provisions of the two Acts, so the question primarily resolves into the one judging of the correctness of the law laid down in *Bata India Limited's case* (supra) by the Division Bench of this Court.

(6) Before coming to grips with the propositions canvassed in *Bata India Limited's case* (supra) and the answers indicated by the Division Bencsh, it would be necessary to recapitulate a bit of legislative evolution of the two statutes in question and the interpretative response of Courts thereto.

(7) Haryana State came into being as a result of Punjab State Reorganisation Act of 1966 on 1st November, 1966 and therefore, part of the Legislative history of the taxing statute like any other statute is shared by the Haryana State with the Punjab State and therefore, it would be right to notice as to when the concept of purchase tax came to be evolved in erstwhile State of Punjab. Purchase tax was introduced in the State of Punjab for the first time by the East Punjab General Sales Tax (Amendment) Act, 1958. Section 2(ff) was

introduced for the first time to define the expression 'purchase'. The definition of the term 'dealer' was charged to include therein a purchaser of goods also. The definition of the term 'taxable turn over' was altered. It was further provided that some goods could be purchased without payment of purchase tax if these were used for manufacture of goods. Some dealers who crushed Oil seeds and produced oil and oil cakes were called upon to pay purchase tax on the raw material purchased by them on the ground that the raw material had not been subject to a manufacturing process as the process of crushing oil seeds did not involve a process of manufacturing. The dealer approached this Court with the contention that the crushing of oil seeds and production of oil and oil cakes did not involve the process of manufacturing. Their contention was rejected by this Court in a decision reported in *Raghbir Chand Som Chand* v. *Excise and Taxation Officer* (3). An identical controversy reached Supreme Court in *Modi Spinning and Weaving Mills Co. Ltd.* v. *Commissioner of Sales Tax* (4), for resolving. In the latter case the assessee-company purchased raw cotton in Punjab, ginned it in its ginning mills in Punjab and sent the bales to the spinning and weaving mills in the State of Uttar Pradesh for the manufacture of cloth. The assessee while computing its taxable turnover, claimed deduction of the amount spent by it on purchasing raw cotton on the strength of a certificate of registration granted to it, in which there was no express condition that the goods were for use by the assessee for the manufacture of goods for sale in the State of Punjab. Their Lordships repelled the contention of the assessee and held that the old registration certificate even though did not contain the words 'in the State of Punjab' would stand impliedly modified by the charging section and the form contained in the Rules operating together. Their Lordships held that under section 5(2) (a) (ii) of the Punjab Act the manufactured goods must be for sale in Punjab State and not for use by the maunfacturer in some process of manufacturing outside the State.

(8) It appears that the Punjab State exempted from purchase tax the purchases of raw material by dealers if such raw material was to be used for manufacturing goods for sale in Punjab and thus generate more revenue to the State as a result of the sale tax on such manufactured goods. When the dealer started avoiding this condition of manufacturing goods for sale in Punjab by various

(3) (1960) 11 S.T.C. 149.
(4) (1965) 16 S.T.C. 310.

ingenious devices after having escaped the payment of purchase tax on the raw material purchased by them, the Legislature amended the Act and Punjab Act No. 18 of 1960 was brought on the statute book with effect from 1st April, 1960. Section 2(ff) of the Act was amended and it was provided that all the goods mentioned in schedule C when purchased shall be exigible to purchase tax and thus the concession given to the manufacturers was withdrawn. The taxing provision further provided that if the goods were sold within six months of the close of the year by a dealer to a registered dealer or sold in the course of inter-State trade or commerce or sold in the course of export within the territory of India, the dealler would be entitled to exclude the value of such goods from his gross turnover. But if such goods were not sold within six months after the close of the year, the purchasing dealer was made liable to pay purchase tax on the transaction of purchase, subject to the implications of the provisions of the second proviso to section 5(1) of the Act.

(9) Bhiwani Cotton Mills Ltd. challenged in this Court the levy of purchase tax on the ground that the existing law allowed purchase tax on the declared goods at more than one stage, which was in contravention of section 15 of the Central Act. This Court held that the second proviso to section 5(1) of the Act when properly interpreted provided that the selling dealer who sold goods six months after the close of the assessment year could claim refund of purchase tax from the Revenue and the Bench, therefore, held that the levy under the State law did not contravene the provisions of the Central Act. The matter was then taken to the Supreme Court in *Bhiwani Cotton Mills, Ltd.* v. *State of Punjab* (5), Their Lordships reversing the decision of this Court approvingly quoted the observations from *A. V. Fernandez* v. *State of Kerala,* (6) which read :

> "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

(5) (1967) 20 S.T.C. 290
(6) 1957 S.C.R. 837.

turnover of the dealer because they are *prima facie* liable to tax and the only thing which the dealer is entitled to in respect thereof is the deduction from the gross turnover in order to arrive at the net turnover on which the tax can be imposed. In the latter case, the sale or purchases are exempted from taxing 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 non-liability to tax is sufficient to exclude them from the calculation of the gross turnover as well as the net turnover on which sale tax can be levied or imposed."

They further held that "the above observations clearly lays down that the provisions contained in a statute, with respect to exemptions of tax or refund or rebate, on the one hand, "must be distinguished from the total non-liability or non-imposition of tax, on the other. These observations also, in our opinion, effectively provide an answer to the stand taken by the State, in this case, that section 12 of the Act provides an adequate relief by way of refund, even if tax is collected at an earlier stage.

Having due regard to the various matters mentioned above, we are satisfied that the decision of the High Court upholding the orders of assessment passed by the officer in question, cannot be sustained."

(10) Their Lordships' decision led to a further amendment of the Act. The State Legislature by Act No. 7 of 1967 added sub-section (3) to section 5 of the existing Act and gave it retrospective effect from 1st October, 1958. The added provision provided that the tax should be levied at one stage, i.e., in case of goods liable to sales tax at the stage of last sale and in case of goods liable to purchase tax at the stage of purchase by the last dealer liable to pay purchase tax. The validity of this amendment was challenged directly in the Supreme Court in *Ratlan Lal and Co.* v. *Assessing Authority* (7). Their Lordship upheld the amendment. In the

(7) (1970) 25 S.T.C. 136.

meantime, the attention of the Full Bench of this Court was engaged by *Punjab Khandsari Udyog* v. *State* (8), for resolving the proposition raised by the assessee-firm in that case to the effect that since it was entitled to purchase goods without payment of tax on the basis of registration certificate granted to it, it should not be burdened with the liability even though it utilised the goods purchased for the manufacture of tax free items like Khandsari. In that case the assessee had purchased goods without payment of purchase tax as he was entitled to do so on the strength of its registration certificate. From the goods so purchased he manufactured Khandsari which was a tax fee item. The Full Bench sustained the assessee's contention. The Revenue sought to sustain the levy on the strength of second proviso to section 5(2)(a)(ii). The Full Bench repelled this contention of the Revenue with the following observations:—

> "The second proviso to section 5(2)(a) (ii) has, therefore, no application and no other provision of the Act has been brought to our notices under which the State can assess the petitioner to tax on the purchase price of gur which was purchased by it for the manufacture of Khandsari on the basis of its certificate or registration and declarations in form S.T. XXII. It is quite manifest under section 5(2)(a)(ii), as amended and in force in 1965-66, the selling dealer was not entitled to claim deduction for the sale turnover of gur sold to the petitioner tax-free for the manufacture of Khandsari from his gross turnover and, if claimed, the Assessing Authority should have disallowed it. If the selling dealer has been allowed that deduction, it can be only on the basis that Khandsari is not tax-free goods. If that be so, then a different interpretation cannot be placed on khandsari in the hands of the petitioner. On that basis, the petitioner is not liable to pay any tax on the purchase of gur. Looked at from any point of view the petitioner cannot be made liable for the payment of tax to the State Government on the purchase price of the gur because to the Government the selling dealer is liable to pay tax on his sale turnover of gur and if he defaulted in collecting the tax from the petitioner, he may have a cause of action against the

(8) (1972) 30 S.T.C. 414.

petition but not the State Government. The State Government cannot act on behalf of the selling dealer who is himself an assessee, but the Assessing Authority could disallow any deduction from his sale turnover ,if claimed under section 5(2)(a)(ii) with regard to the sale of gur to the petitioner."

The Revenue for its submission placed reliance on *Modi Spinning and Weaving Mill's case* (supra) which the Full Bench distinguised with the following observations:—

"The learned counsel for the respondents has placed great reliance on a judgment of their Lordships of the Supreme Court in *Modi Spinning and Weaving Mills Co.* v. *Commissioner of Sales Tax, Punjab* (supra), which is quite distinguishable on facts. In that case Modi Spinning and Weaving Mills Co. Ltd., was a registered dealer and on the basis of its registration certificate purchased raw cotton and after ginning it in its ginning Mills in Punjab, sent the bales to its weaving mills in Uttar Pradesh for the manufacture of cloth. In computing its taxable turnover, the assessee claimed that the purchases of cotton were free of tax under section 5(2)(a)(ii) of the Act as there was no condition in the certificate of registration granted to it that the cotton purchased under the certificate should be subjected to manufacture in the State of Punjab. After the grant of certificate, section 5(2)(a)(ii) of the Act and rule 26 of the Punjab General Sales Tax Rules, 1949, had been amended to provide for that condition. On those facts, it was held that the registration certificate was only evidence that the assessee was a registered dealer for purposes of certain commodities to be used in manufacture, one of them being cotton. The old registration certificate, even though it did not contain the words 'in the State of Punjab' would stand impliedly modified by the sections, the rule and the form operating together. The assessee had to comply with the Act and the Rules and could not take shelter behind the unamended certificate.

In the present case, the petitioner is not claiming any deduction under section 5(2)(a)(ii) of the Act but is resisting its liability to pay tax which has been levied under the

second proviso to clause (ii) of section 5(2)(a) of the Act. On the basis of the Supreme Court judgment, all that can be said is that by virtue of the amendment made in section 5(2)(a)(ii) of the Act by Act 2 of 1963, the petitioner could not purchase free of tax gur for the manufacture of khandsari on the basis of its certificate which had been wrongly issued to it by the Assessing Authority. In that view of the matter, the selling dealer/dealers should not have sold gur to the petitioner free of tax as he/they were also presumed to know the law as much as the petitioner."

(11) The Full Bench in *Punjab Khandsari Udyog's case* (supra) absolved the purchasing dealer of the liability to pay tax even when he did not use the goods in accordance with the conditions laid down in his registration certificate on the ground that there was no express provision in the charging section to impose liability on him. In the wake of this decision, the dealers who were entitled to purchase goods for the manufacture of finished articles under the provisions of their respective registration certificates started purchasing goods in the State of Punjab without payment of tax and then exported them with impunity. The State thus suffered loss of tax. In order to remedy this situation, the Act was again amended by Act, No. 3 of 1973 which was made effective with effect from 15th November, 1972. The amended section 4-B took the following shape:—

"4-B. Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule 'B' from any source and—

(i) uses them within the State in the manufacture of goods specified in Schedule 'B', or

(ii) uses them within the State in the manufacture of any goods, other than those specified in Schedule 'B', and sends the goods so manufactured outside the State in any manner other than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India; or

(iii) uses such goods for a purpose other than that of resale within the State or sale in the course of inter-State trade or commerce or in the course of export out of the territory of India; or

(iv) sends them outside the State other than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, and no tax is payable on the purchase of such goods under any other provision of this Act, there shall be levied a tax on the purchase of such goods at such rate not exceeding the rate specified under sub-section (1) of section 5 as the State Government may direct."

The assessee who purchased raw cotton, ginned it and crushed the oil seeds into oil and sent the oil for sale out of the State of Punjab on consignment basis or crushed oil from oil seeds and manufactured oil cakes which products were sent out of the State for sale on consignment basis or purchased pig-iron, manufactured agricultural implements and other steel articles therefrom and sent for sale out of Punjab State such goods on consignment basis challenged the wires of section 4-B in this Court. The matter came up before a Full Bench of this court in *Sterling Steels & Wires Ltd's case* (supra). In this case on the basis of the contention raised by the assessee, the opinion of the Full Bench was, *inter alia*, sought on the following question formulated by the referring Bench:—

"Whether section 4-B of the Punjab General Sales Tax Act, 1948, is ultra vires section 15 of the Central Sales Tax Act, 1956, and of section 5(3) of the Punjab General Sales Act, 1948?".

The Full Bench for clarity sake reformulated the aforesaid question into three separate questions:—

(1) Whether section 4-B of the Act is applicable to declared goods?

(2) Whether section 5(3) of the Act excludes the applicability of section 4-B or any other provision of the Act (in case of declared goods) as section 5(3) starts with the non-obstante clause starting with 'notwithstanding'?

(3) Whether section 4-B is ultra vires article 286 of the Constitution of India and contravenes section 15 of the Central Sales Tax Act, 1956?"

The Full Bench answered the first question in affirmative and 2 and 3 in the negative, thus holding section 4-B of the Punjab Act as intra-vires.

(12) Haryana Legislature enacted Haryana General Sales Tax Act of 1973. In this legislation the Haryana Legislature introduced section 9, a provision parallel to the provision of section 4-B of the Punjab Act. Relevant part of section 9 then read as under:—

"9. *Liability to pay purchase tax.*—(1) Where a dealer purchases goods other than those specified in Schedule B from any source in the State and—

(a) uses them in the State in the manufacture of—

(i) goods specified in Schedule B; or

(ii) any other goods and disposes of the manufactured goods in any manner otherwise than by way of sale whether within the State or in the courses of inter-State trade or commerce or in the course of export out of the territory of India;

(b) exports then,

in the circumstances in which no tax is payable under any other provision of this Act, there shall be levied, subject to the provisions of section 17, a tax on the purcase of such goods at such rate as may be notified under section 15.

* * * * *".

The Haryana Government issued a notification dated 19th July, 1974, prescribing the rate of tax envisaged under section 9 and it is in the following terms:

"HARYANA GOVERNMENT EXCISE AND TAXATION DEPARTMENT

Notification No. S.O. 119/H.A. 20/73/Ss. 9 and 15/74, dated 19th July, 1974.

In exercise of powers conferred by section 9 and sub-section (1) of section 15 of the Haryana General Sales Tax Act, 1973, the Governor or Haryana, hereby direct that the rate of tax payable by all dealers in respect of the purchases of goods other than goods specified in Schedules C and D or goods liable to tax at the first stage notified as such under section 18 of the said Act, if used by them for

purposes other than those for which such goods were sold to them, shall be rate of tax leviable, on the sale of such goods :

Provided that where any such dealer, instead of using such goods for the purpose for which they were sold to him, despatches such goods or goods manufactured therefrom at any time for consumption or sale outside the State of Haryana to his branch or commission agent or any other person on his behalf in any other State and such branch, commission agent or other person is a registered dealer in that State and produces a certificate from the assessing authority of that State or produces his own affidavit and the affidavit of the consignee of such goods duly attested by a Magistrate or Oath Commissioner or Notary Public in the form appended to this notification to the effect that the goods in question have been so despatched and received and entered in the account books of the consignee, the rate of tax on such goods shall be three paise in a rupee on the purchase value of the goods so despatched."

The assessee firm challenged the said notification in **Goodyear India Ltd.** v. **State of Haryana** (9), when the assessing authority sought to levy tax on proportionate value of the goods purchased in the State and utilised in the manufacture of such goods as were being sent by the company outside the State of Haryana as per its books to its own branches and sales depot. The assessee-company before this Court raised the contention that the transfer of stocks by the company to its branches and sales depots located outside the State of Haryana did not amount to the disposal of the same and was consequently not exigible to tax under section 9 of the Act as the title and the possession of goods had admittedly been retained by the assessee company and mere despatching of goods outside the State did not amount to disposal of such manufactured goods. The Bench posed the following question for answering:—

"Whether the mere despatch of manufactured goods by a dealer to his branches outside the State of Haryana (whilst retaining both title and possession thereof) would come within the ambit of the phrase "disposes of the manufactured goods in any manner otherwise than by way of

(9) (1983) 53 S.T.C. 163.

sale, as employed in section 9(1) (a) (ii) of the Haryana General Sales Tax Act, is the spinal question in this set of six Civil Petitions."

The Bench amplified above question by observing:—

"In more specific terms, the validity of Notification No. S.O. 119/H.A. 20/73 Ss. 9 and 15/74, dated 19th July, 1974, issued under section 9 (prior to its amendment by Act No. 11 of 1979) and sub-section (1) of section 15 of the Haryana General Sales Act, 1973, levying purchase tax on the despatch of such goods is strenuously challanged on the grounds of the same being beyond the scope of the Act aforesaid.

The Division Bench of this Court in **Goodyear's case** (supra) sustained the contention of the assessee and struck down the impugned notification with the observations "that both on the ordinary meaning as also its legal connotation, the phrase "disposes of" or "disposal" cannot possibly be equated with the despatch of goods to oneself. Even if the somewhat larger connotation envisaged by the statute, namely "disposes of the manufactured goods in any manner otherwise than by way of sale" is taken into consideration, it cannot possibly be elongated to a mere despatch of goods to self. It may well include other modes of disposal than by way of sale, namely by gift, by consumption of the goods, by mortgaging with possession, and for arguments sake (without holding so), even a mere delivery of possession to another. However, where the owner retains both the title in the goods as also the control and possession thereof, it seems difficult if not impossible to hold that he has nevertheless disposed of those goods. Indeed, equating disposal with a mere despatch of goods to oneself under section 9(1)(a) of the Act, seems to lead not only to anomalous but also absurd results. On this contruction, even if a dealer despatches goods to another branch or another godown of his, within the same State, even than it would come within the ambit of section 9(1) (a) of the Act. Surely, one cannot attribute to the Legisclature the intention of taxing every movement of goods from one place to another, whilst they remained under the same ownership and possession, within the State itself.

(13) To conclude, it must be held both on principle and precedent that a mere despatch of goods out of the State by a dealer to

his own branch whilst retaining both title and possession thereof, does not come within the ambit of the phrase "disposes of the manufactured goods in any manner otherwise than by way of sale," as employed in section 9(1)(a)(ii) of the Haryana General Sales Tax Act. The answer to the question posed at the very outset is thus rendered in the negative.

(14) Once it is held as above, the impugned Notification No. S.O. 119/H.A. 20/73/Ss. 9 and 15/74, dated 19th July, 1974 (Annexure P. 2) plainly travels far beyond the parent section 9 of the Act. Whereas the said provision provided only for the levy of a purchase tax on the disposal of manufactured goods, the notification by making a mere despatch of goods to the dealer themselves taxable in assence, legislates and imposes a substantive tax which it obviously cannot. Indeed, its terms run contrary to and are in direct conflict with the provisions of section 9 itself. There is thus no option but to hold that the notification, which is a composite one, is ultra vires of section 9 of the Act and is hereby struck down."

(15) In order to over-ride the effect of the judgment of this Court in **Goodyear's case** (supra) the Governor of Haryana promulgated an ordinance on 13th January, 1983, whereby section 9 of the Act was sought to be amended with retrospective effect to include to a place outside the State in any manner otherwise by way of sale in the course of 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, and also validating the notification dated 19th July, 1974, which was struck down in **Goodyear's case** (supra). Later on, the said Ordinance took the shape of Haryana General Sales Tax (Amendment and Validation) Act, 1983, as a result of Haryana Act No. 3 of 1983. The said Act replaced and repealed the earlier Ordinance.

(16) Bata India Limited impugned the Amending Haryana Act No. 3 of 1983 (hereinafter referred to as the Amending Act of 1983) with particular reference to the imposition of tax on despatch of manufactured goods to a place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce, etc., within the meaning of sub-section (1) of section 5 of the Central Sales Tax Act, 1956, including despatches by a manufacturer to his own branches and offices and equally challenged the validation of the earlier notification dated 19th July, 1974, and the action taken thereunder.

(17) It was the Forty-sixth Constitutional amendment of 1983 adding entry No. 92-B to List I of the Seventh Schedule and also effecting amendment to Article 269 of the Constitution which furnished an instrument to the assessee-company to assail the aforesaid Amendment Act of 1983.

(18) The Bench held that the State legislature under entry 54 of List II of the Seventh Schedule had no legislative competence even to enact a legislation taxing goods, transferred on consignment basis by the dealers to another State to their own branches or depots or agents otherwise than by way of sale in the course of inter-State trade or commerce, etc., as the Parliament alone was competent, by virtue of residuary Entry 97 to List I of the Seventh Schedule before the enacting of Forty-sixth amendment to the Constitution and after Forty-sixth amendment to the Constitution, by virtue of Entry 92-B of List I of the Seventh Schedule, to enact a legislation taxing such transfers.

(19) Since the taxing event was held to be the despatch of goods outside the State of Haryana otherwise than by way of sale in the course of inter-State trade or commence and the despatch of goods was held to be synonymous with transfer on consignment basis. So the Haryana legislature was held to be incompetent to enact a legislative measure providing for levying of tax on transfer of goods on consignment basis outside the State of Haryana in the said manner and, therefore, Haryana Act No. 3 of 1983 amending section 9 of the Haryana General Sales Tax Act and validing the notification issued under section 15 was declared **ultra vires** the Constitution of India.

(20) The State of Haryana has challenged in the Supreme Court the aforesaid Division Bench decision of this Court which is pending decision. Their Lordships of the Supreme Court declined the request for interim stay of the operation of the said decision, but directed that the refund of tax claimed by the respondent-assessee would be allowed by the High Court Registrar only on furnishing security.

To off set the effect of the aforesaid Division Bench decision in *Bata India Limited's cose* (supra) the Haryana State legislature again intervened by enacting Haryana General Sale Tax Act (Amendment and validation) Act No. 11 of 1984. By this amending Act, the legislature also added sub-section (3) to the existing section 24, which

reads as under:—

"(3) Notiwithstanding any other provisions of this Act or any judgement, decree or order of any Court or other authority to the contrary, if a dealer who purchases goods, without payment of tax, under sub-section (1) and fails to use the goods so purchased for the purposes specified therein, he shall be liable to pay tax, on the purchase value of such goods, at the rates notified under section 15, without prejudice to the provisions of section 50 :

Provided that the tax shall not be levied where tax is payable on such goods under any other provision of this Act."

Section 9 was also amended. Existing clauses (b) and (bb) of sub-section (1) were substituted by a new clause (b), which reads as under :

"(b) purchases goods, other than those specified in Schedule B, from any source in the State and uses them in the State in the manufacture of any other goods and 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 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 ; or"

(21) The aforesaid amendment touching sections 9 and 24 of the act and thereafter issuing of show-cause notice to the assessees regarding the imposition of penalty, inter-arila, in terms of section 50 of the Act, appears to have stirred the hornet's nest which has led to the filing of the amended petitions in this Court. The petitioners have challenged therein, inter-alia, the vires of the aforesaid amendments and the right of the assessing authority to initiate proceedings for imposition of penalty by issuing the show-cause notice. The petitioners have, besides impugning the vires of the said amendments, also alleged that the action of the State Government suffers from-legal mala fides in that if once the court held that taxing event was the despatching of goods outside the State in a manner otherwise than by way of sale in course of inter-State trade or commerce and that the State legislature was incompetent to enact a legislation taxing the transfer of goods from the State of

Haryana to a place outside that State by way of despatch or consignment, as the topic of such legislation was not included in Entry 54 of List II of the Seventh Schedule and was covered expressly by Entry 92-B of List I of the Seventh Schedule after the enactment of Forty sixth amendment to the Constitution and before the said constitutional amendment, it was covered by the residuary Entry 97 of List I of the Seventh Schedule and the Parliament alone was competent to enact legislation in that regard. That the binding effect of the Division Bench decision could not be got over by dressing the substance of the legislation in new clothes and that, in fact, section 9 remained the charging section which, even after amendment, was, in substance, the same as when it was struck down in **Bata India Limited's** case (supra) by this Court. It was merely a case of putting old wine in new bottles.

(22) It is further alleged that the State Government activated the legislature to pass the said amendment with a view to stop the refund of the tax already realised when its effort to obtain stay from the supreme Court had failed and that the action of the State Government by adding sub-section (3) to section 24, inter alia, was vindictive, in that if the assessees had not succeeded in having the amendment to section 9 effected by Act No. 11 of 1984, struck down as ultra vires, then they were to pay tax at the rate of 3 per cent to 4 per cent, but their success has now led the legislature to impose for the very assessment years purchase tax at the rates provided by section 15 which happen to be ranging between 7¾ per cent to 12 per cent.

(23) Counsel appearing for the State of Haryana made a statement that if the Full Bench held that **Bata India Limited's case** (supra) did not lay down the correct law and the amendment effected by Act No. 11 of 1984 to section 9 was **intra vires**, then provision of sub-section (3) of section 24 regarding the rate of tax shall not be enforced and only the old rate will be leviable.

(24) In view of the aforesaid stand of the respondent-State in regard to the rate of tax that would be leviable in the event of the reversal of **Bata India Limited's case** (supra), learned counsel for the petitioners, Mr. H.L. Sibal, Senior Advocate, who primarily argued the case and counsel for the other petitioners did not attack the amendments in question from the stand point of legal **mala fides**

or the vindictiveness being the motivating force to have the aforesaid legislative measures enacted by the State legislature. The learned counsel for the petitioners primarily confined their submissions to the aspect that clause (b) that substituted the existing clauses (b) and (bb) of sub-section (1) of section 9 did not, in fact, change the existing provisions and the existing provisions, in substance, remained the same and that, in view of the ratio of *Bata India Limited's case* (supra) the amended provision of clause (b) of sub-section (1) of section 9 is very much vulnerable to the very attack which was successfully delivered against the existing provision in *Bata India Limited's case* (supra).

(25) Before proceeding to consider the aforesaid proposition, it would be necessary at this stage to have the comparative view of the existing provision as a result of the amendment effected by Act No. 11 of 1984 :

Exising provisions:	*Amended Provisions*
* * * *	* * *
(b) purchase goods, other than those specified in Schedule B, from any source in the State and uses them in the State in the manufacture of any other goods and 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 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; or	(b) purchases goods, other than those specified in Schedule B, from any source in the State and uses them in the State in the manufacture of any other goods and either disposes of the manufactured goods in any manner otherwise than by wayof 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 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; or
(bb) purchases goods, other than those specified in Schedule	

B except milk, from any source in the State and uses them in the State in the manufacture of any other goods and either disposes of the manufacttural 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 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; or

* * * * * *

As a bare look at the aforesaid extracted provisions would reveal that as a result of the amendment in question the only change effected in section 9(1) is that clause (bb) thereof has been omitted and clause (b), which is word by word the same as the substituted clause (b), has been retained. In the existing clauses (b) and (bb) the only difference was that in clause (bb) after the words 'Schedule B' the words 'except milk' had been added. Besides the addition of these two words, there is no difference whatsoever between the existing clause (b) and clause (bb). The two clauses, after the words 'except milk' are taken off, read word by word the same.

(26) In view of the above, counsel for the petitioners are right in invoking the authority of *Bata India Limited's case* (supra) to persuade the Full Bench to hold that the amended clause (b) of section 9(1) is *ultra vires* the provisions of the Constitution. Therefore, as earlier observed in the beginning of this judgment, the question that has to be seen is as to whether the Bench in *Bata India Limited's case* (supra) lays down the correct law.

(27) In order to examine the correctness of the view of the Bench in *Bata India Limited's case* (supra) it would be necessary to have an idea of the provisions of section 9(1) as it existed in the form in which it was interpreted in *Good-Year Tyres' case* (supra) and its wording after it was amended.

(28) Section 9(1) in its original position and after amended reads as follows :—

Original Provisions	*Amended Provisions*
"9(1) Where a dealer liable to pay tax under this Act,—	
(a) Purchases goods, other than those specified in Schedule B, from any source in the State and uses them in the State in the manufacture of goods specified in Schedule B; or	(1) * * * * *
(b) purchases goods, other than those specified in Schedule B except milk from any source in the State and used them in the State in the manufacture of any other goods and disposes of the manufactured goods in any manner otherwise than by way of sale whether within the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India within the meaning of sub-section (1) of Section 5 of the Central Sales Tax Act, 1956.	(b) purchases goods other than those specified in Schedule B, from any source in the State and uses them in the State in the manufacture of any other goods and 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 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."
	(bb) . . . . ."

(29) The underlined words in the amended provisions of section 9 alone were highlighted before the Bench as being beyond the competency of the Haryana Legislature to enact and it was claimed that by adding those words to the said provision, the Haryana Legislature trenched on the exclusive Parliamentary field of legislation. According to the Bench, the following relevant portion of section 9 required to be construed :—

"9. Liability to pay purchase tax. (1)Where a dealer liable to pay tax under this Act,—

(a) . . . . . .

purchases goods, other than those specified in Schedule B except milk, from any source in the State and uses them in the State in the manufacture of any other goods and despatches the manufactured goods to a place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce;

In the circumstances in which no tax is payable under any provision of this Act, there shall be levied, subject to the provisions of section 17, a tax on the purchase of such goods at such rate as may be notified under section 15."

(30) As a preliminary to the consideration of the Legislative competency of the State Legislature the Bench reached three basic conclusions; (i) that the expression "despatching of goods" occurring in amending provision of section 9 is synonymous with the expression "consignment of goods" occurring in Entry No. 92-B of List 1 of VII Schedule of Constitution of India; (ii) that the taxing event is the despatching of the manufactured goods to the place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce; (iii) that section 9 of the Haryana Act was a charging section for the levy of tax and consequently was to be precisely and strictly construed. The second assumption aided by third assumption determined the fate of the statutory provision under challenge. It is to be seen as to whether this Court in Bata's case (supra) was right in its aforesaid two assumptions.

(31) The Revenue has joined issue with the assessee-petitioners in regard to the second conclusion of the Bench. In regard to the third formulation of the Bench the Revenue has pointed out that

provision of section 9 was not only a charging provision but additionally was also a remedial provision, a fact, of which the Bench lost sight of.

(32) It has been canvassed on behalf of the Revenue that Division Bench in Bata's case (supra) erred in presuming that taxing event was the despatch of goods out of Haryana State in a manner otherwise than by way of sale in the course of inter-State trade or commerce. According to the Revenue, the taxing event was the purchase of the raw material which had been consumed in the manufacture of goods which were being despatched outside the State otherwise than by way of sale in the course of inter-State trade or commerce. We entirely agree with the aforesaid contention of the Revenue.

The Bench reached its conclusions about the taxing event by the following reasons:—

> "Though the above finding would in a way conclude the matter in favour of the writ petitioners, yet the same results seen to flow on a closer analysis of the real taxing event spelt out by the impugned provisions of section 9(1)(b) of the Act. Adverting to its specific terms and placing them on the well-known anvils, it is first plain that the taxable person herein is in terms specified as a dealer liable to pay tax under the Act. The phrase "dealer" has been expressly defined in section 2(c) of the Act and thus no ambiguity with regard to the "taxable person" under section 9 of the Act remains. Similarly, the "taxable goods" are equally determinable with precision. Specifically, under clause (b) these are goods other than those specified in Schedule B, used in the manufacturing process. There was no dispute before us that the taxable goods here were plainly identifiable. The third and the crucial thing, namely the "taxable event" under section 9(1)(b), therefore, is only the despatch of the manufactured goods to a place outside the State. In other words, it is the consignment of goods which attracts the liability of purchase tax and in pristine essence is the "taxable event" under section 9(1)(b) of the Act. Once that is so, it is plain that shorn off all surplusage, the Act purports to tax even the consignment of goods to the person making it in the course of inter-State trade or commerce.

"Again, viewed from another angle also it is first evident that under section 9(1) (b), where a dealer purchases goods for the express purpose of manufacturing other goods within the State, then stricto sensu such purchase by itself does not attract any tax under the provision. It was rightly argued on behalf of the writ petitioners that if the company, being a "dealer" under the Act purchases large quantities of packing materials and lubricating oils (under its registration certificate) for manufacturing shoes, and stores them even for a year or more, no liability for purchase tax under section 9(1)(b) of the Act would by itself arise. Similarly, even when the purchased material are used up and absorbed in the manufacture of goods such conversion or manufacture by itself again does not attract any purchase tax liability. Herein again, the rightful stand is that if the manufactured goods, namely, shoes here, were kept in storage in the company's godown in the factory for even a year or two, this would not still attract any purchase tax liability. Therefore, neither the original purchase of goods nor the manufacture thereof into the end-product by itself attracts purchase tax and consequently are not even remotely the taxable events. What directly and pristinely attracts the tax and can be truly labelled as the taxing event under section 9(1)(b) of the Act is the three-fold exigency of :

(i) disposal of manufactured goods in any manner otherwise than by way of sale in the State; or

(ii) despatch of the manufactured goods to a place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce; or

(iii) disposal or despatch of the manufactured goods in the course of export outside the territory of India.

It is these three exigencies alone which are the taxable event in the amended section 9(1)(b) of the Act. As already noticed, the challenge is levelled only to the taxable event of the mere despatch of the manufactured goods to a place ouside the State in category (ii) above. Consequently, in a statute where the taxable event is the

despatch or consignment of goods outside the State, the same would come squarely within the wide sweep of entry No. 92-B and thus excludes taxation by the States."

(33) So, the aspect, that assumes significance is as to whether section 9(1)(b) of the Haryana Act and the corresponding provision in the Punjab Act envisages levying of tax on the purchase of the goods or, **inter alia** on the despatch of such goods outside the State of Haryana otherwise than by way of sale in the course of inter-State trade or commerce.

(34) Provision almost **para materiat** with section 9 of the Haryana Act and 4-B of the Punjab Act exists in the Sales Act statutes of other State also. These has come up for consideration before the High Court and the Supreme Court. The view that the High Court and the Supreme Court had enunciated regarding the taxing event is contrary to the view that this Court in **Bata's case** (supra) has taken and the said view with respect deserves noticing.

(35) Section 7-A of the Madras General Sales Tax Act a provision relevant portion whereof in substance is **pari materia** with relevant provision of section 9 and section 4-B of the Haryana Act and Punjab Act respectively came up for consideration before their Lordships in *State of Tamil Nadu* v. *Kandaswami* (10). In that case the assessees were dealers under the Madras General Sales Tax Act of 1959. They purchased (1) are canuts, turmeric and gram from agriculturists; (2) gingelly seeds from agricultural and crushed the seeds so purchased into oil; (3) butter from householders and then converted into ghee; (4) castor seeds from unregistered dealers under bought notes and thereafter crushed them into oil and transported them outside the State for sale on consignment basis. Their Lordships held that the assessees would be liable to tax **on the purchase turnover of the goods under sction 7-A of the Act.** The Lordship approvingly quoted the following observations occurring in *Ganesh Prasad Dixit* v. **Commissioner of Sales Tax** (11), while considering section 7 of the Madhya Pradesh General Sales Tax Act of 1959 for according to

(10) (1975) 36 S.T.C. 192.
(11) (1969) 24 S.T.C. 343.

them section 7-A of the Madras Act was based on section 7 of the Madhya Pradesh Act:—

> "The phraseology used in that section is somewhat involved, but the meaning of the section is fairly plain. Where no sales tax is payable under section 6 on the sale price of the goods, purchase tax is payable by the dealer who buys taxable goods in the course of his business, and (1) either consumes such goods in the manufacture of other goods for sale, or (2) consumes such goods otherwise; or
>
> (3) disposes of such goods in any manner other than by way of sale in the State; or
>
> (4) 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. The assessees are registered as dealer and they have purchased building materials in the course of their business; the building materials are taxable under the Act, and the appellants have consumed the materials otherwise than in the manufacture of goods for sale and for a profit motive. On the plain words of section 7 the purchase price is taxable."

(36) In *Malabar Fruit Products Company Bharananganam Kottayam* v. *Sales Tax Officer, Palia* (12), *in which section 5A of* the Kerala General Sales Tax Act, 1963, the relevant portion of which was in the following terms :

> "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 section 5, and either—
>
> (a) consumes such goods in the manufacture of other goods for sale or otherwise; or
>
> (b) disposses of such goods in any manner other than by way of sale in the State; or

(12) (1972) 30 S.T.C. 537.

(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.

was challenged **inter alia** on the ground that the said provision imposed tax not only on the sale or purchase of goods but on its use and consumption and that the State Legislature had no competency to impose tax on the use and consumption of goods. The learned single Judge upheld the vires of section 5A which judgment was affirmed in appeal by a Division Bench decision in *Yusuf Shabeer* v. *State of Kerala* (13). Their Lordships in *Kanda Swam's case* (supra) affirmed the Kerala High Court view with the following observations:

"In our opinion, the Kerala High Court has correctly construed section 5A of the Kerala Act which is in *pari materia* with the impugned section 7A 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 the 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 section 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)."

Andhra Pradesh High Court in *Hindustan Milkfood Manufacturers Ltd.* v. *State of Andhra Pradesh and another* (14), while repelling

(13) (1973) 32 S.T.C. 359.

(14) (1982) 51 S.T.C. 1.

challenge to the provision of section 6-A of the Andhra Pradesh General Sales Tax Act, 1957, *inter alia*, on the ground that section in substance was a levy on the act of user or consumption and so cannot reasonably be construed as tax on sale or purchase and hence, it was *ultra vires* the powers of the State Legislature, held that a commodity purchased and later used or utilised for the manufacture of a commodity which, though later, is made exigible to tax will nevertheless be liable to tax as the imposition of tax is on the event of purchase, How and when its character is changed by virtue of its being processed in the manufacture of some other commodity is of little or no consequence, and therefore, section 6-A is *intra vires* as the very act of purchase attracts the tax.

(37) Chief Justice Sandhawalia, who delivered the opinion for the Bench, distinguished *Kandaswami's case* (supra) and the High Court cases referred to therein on the ground that the constitutionality of the relevant taxing provision of the given statutes on the touch-stone of the legislative competency of the State legislature to enact them, did not come up for consideration.

(38) Factually, that is so; but this fact does not in any way detract from the import of the conclusion arrived in those cases by the Courts that the taxable event was the purchase of the goods and not the act of user or consumption of such goods or despatching of goods outside the States in manner other than sale in the course of inter-State trade or commerce.

(39) Once the taxing event was identified to be the act of purchase or sale or the tax is held to be a purchase tax or sale tax as the case may be, tax which State legislature admittedly is competent to legislate about, then the question of examining the competency of State legislature to enact these provisions before or after the Forty-sixth Constitutional Amendmnt does not arise.

(40) Now coming to the third assumption on the part of the Bench in *Bata India Limitd's case* (supra) it may be observed that section 9 is not only a charging provision but also a remedial one in character. For construing such a composite provision, their Lordship in *Kandaswami's case* (supra) have commended a liberal approach, as is evident from the following observations :

> "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."

(41) The provision of section 9(1) of the Haryana Act was, therefore, required to be viewed through the interpretational prism of the kind commended by their Lordships and not the one of strict construction adopted in *Bata's case* (supra) by this Court.

(42) The judicial consensus as already noticed in regard to the identical provision of the taxing statutes of other States that the tax in question is a purchase tax, i.e., the taxing event is the purchase of the given goods and not their despatch outside the State, which view find affirmation in the high authority of *Kandaswami's* case (supra) apart, but, even if two views were possible (1) that it was a tax on despatch of goods and (2) that the incidence of tax was on purchase of goods which are being despached out of the State, then too the construction which helps in making effective the remedial measures against the mischief that it sought to curb has to be adopted. Otherwise too, when two constructions are possible, one that saves the statute from being declared *ultra vires* has to be adopted.

(43) When thus viewed, the impugned provision of section 9(1) of the Haryana Act admittedly related to a topic of taxation which was covered by Entry 54 of List II of Seventh Schedule of the Constitution of India, and, therefore, the Haryana and Punjab States' Legislatures were within their Legislative right to enact the given provisions.

(44) In view of the conclusion reached by us that section 9(1) envisages imposition of purchase tax and not a tax on despatch of goods or consignment of goods outside the State otherwise than in the course of inter-State trade or commerce, it is not necessary to examine the Entry 92-B, the reasons that led to the addition of the said entry (which were adverted to in the report of the Law Commission) and the further question as to whether the legislation regarding taxing of the goods sent out on consignment basis was within the competency of the Parliament alone, by virtue of residuary entry 97 to List 1 even if entry 92-B had not been added to List 1.

45. In view of the aforesaid conclusion, we hold that the Bench decision in *Bata India Limited's case* (supra) does not lay down the correct law and we, therefore, overrule the same, with the result that the provision of section 9(1), as amended by Act. No. 3 of 1983, is hereby held to be *intra-vires* and so also its reincarnate in the form of section 9(1) (b) as a result of the amending Act No. 11 of 1984, as also the provision of section 4-B of the Punjab Act

(46) One of the questions urged in the petition on behalf of the petitioners was that show-cause notices for imposing penalty, inter-alia, in terms of section 50 were illegal in view of the decision in *Bata India Limited's case* (supra) that no tax by way of purchase tax was payable, because if no tax by way of purchase tax was payable, then amount of levy which was fixed to be 1-1/2 times of the purchase tax would have no purchase tax to be related to.

(47) In this regard, one may point out, that section 50, in fact, relates the amount of penalty to the tax that would have been paid if the goods in question had not been purchased on the strength of the registration certificate. The dealer is penalised not for evading the payment of tax, but for using the goods in a manner other than the one envisaged in the registeration certificate, on the stength of which the goods had been purchased, and, therefore, purchasing dealer shall be liable to pay penalty envisaged under section 50, whether or not he was held to be liable to pay purchase tax on the said goods. In view of this the decision of the Bench in **Bata India Limited's case** (supra) could be of no avail to such dealers in regard to their liability to pay penalty in terms of section 50 of the Act, which is in the following terms :

> "50. Misuse of registration certificate: When a dealer fails without reasonable excuse, to make use of the goods purchased by him without the payment of tax for any of the purposes specified in section 24, the assessing authority

may, after affording such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty a sum not exceeding one-and-a-half times the tax that would have been payable under this Act, if such goods had not been purchased on the strength of the registration certificate."

In any case, in view of our decision that **Bata India Limited's case** (supra) does not lay down the correct law and that section 9(1) of the Haryana Act envisages levying of purchase tax in the given circumstances, the show-cause notices issued to the petitioners cannot be considered to be illegal as such.

(48) It may also further be observed that in the wake of the over-ruling of the decision in *Bata India Limited's case* (supra), the petitioner-company would have no right to refund of the tax already paid, for the given assessment years.

(49) For the reasons aforementioned, Civil Writ petitions Nos. 4462, of 1978 and 698 to 708, 3318, 3319, 1371, 1292, 2364, 733, 1364, 2405, 2514, 2506, 1486, 1329, 1485, 1441, 1484, 3402, 3355, 1615, 3049 and 1123 of 1984 in which legal proposition dealt by us alone was raised, are hereby dismissed with no order as to costs.

(50) Civil Writ petitions Nos. 1397, 3186 and 1309 of 1984 in which an additional point is raised, which is under consideration before the Division Bench in Civil Writ Petition No. 2494 of 1984, are directed to be listed for hearing after the decision rendered by the Division Bench in that case and then to be decided in the light of full Fench decision and of the Division Bench decision rendered in Civil Writ Petition No. 2494 of 1984.

Surinder Singh, J,—I agree.

S. P. Goyal, J.—I also agree.

N.K.S.