Pioneer Tanneries and Glue Works and Another Vs The State of Uttar Pradesh and Another

Court: Allahabad High Court

Date of Decision: April 13, 1991

Acts Referred: Central Sales Tax Act, 1956 â€" Section 5, 5(3)
Constitution of India, 1950 â€" Article 14, 19(1), 269, 269(1), 286
Uttar Pradesh Sales Tax Act, 1948 â€" Section 3, 3AAA, 3AAAA

Citation: (1991) 2 AWC 600

Hon'ble Judges: P.P. Gupta, J; A.N. Varma, J

Bench: Division Bench

Advocate: Bharatji Agarwal, for the Appellant;

Final Decision: Allowed

Judgement

A.N. Varma, J.
This group of petitions raises the much debated issue, viz., whether Section 3-AAAA of U.P. Sales Tax Act is, in pith and

substance, a tax on the consignment of goods and, therefore, beyond the legislative competence of the State Legislature.

2. Let us straightaway have the provision before us in order to appreciate the controversy leaving out the Explanation which is not relevant for our

purposes. Section 3-AAAA reads thus:

3-AAAA. Liability to purchase tax on certain transactions--Where any goods liable to tax at the point of sale to the consumer are sold to a dealer

but in view of any provision of this Act No. sales tax is payable by the seller and the purchasing dealer does not resell such goods within the State

or in the course of inter-State trade or commerce, in the same form and condition in which he had parched them, the purchasing dealer shall

subject to the provisions of Section 3, be liable to pay tax on such purchases at the which tax is leviable on sale of such goods to the consumer

within the State;

Provided that if it is proved to the satisfaction of the assessing authority that the goods so purchased had already been subjected to tax or may be

subjected to tax u/s 3-AAA, No. tax under this section shall be payable.

3. The main point urged in support of the challenge to the provision by the learned Counsel for the Petitioners was that the taxable event is not the

purchase of the goods described in the provision but the utilization of the goods purchased within the State for manufacturing some other goods

and thereupon their dispatch outside the State by way of stock, transfer or consignment or by way of dispatch of the goods in the course of export.

In effect, it was urged the impugned tax is (i) on consumption of the goods purchased within the State (ii) on the consignment of the goods in the

course of inter-State trade or commerce and (iii) on the export of the goods. In each of these contingencies, it was argued, the levy of the tax

would be beyond the legislative competence of the State.

4. Before examining these contentions, we may briefly set out the essential facts of the leading case--writ petition No. 168 of 1983. The pattern of

facts of other connected petitions is materially the same. The Petitioners are engaged in the business of purchasing raw hides, converting them into

dressed hides which are then sold by them within the State as well as outside it and also out of the territory of the country. During the assessment

year 1979-80, the Petitioners received orders from foreign buyers for sale of dressed hides and in pursuance of such orders they purchased raw

hides, converted them into dressed hides and thereafter dispatched them in the course of export to foreign buyers, it is alleged, on the basis of

preexisting orders of those buyers.

5. Apart from these export sales, the Petitioners also sell dressed hides converted by them from raw hides, both within the State as well as in the

course of inter-State trade and commerce In some cases, the Petitioners purchased raw hides from registered dealers within the Slate of Uttar

Pradesh after furnishing Form 3-A and thereafter exports the tanned hides to foreign buyers outside India. Such sales, it is urged, would be wholly

beyond the legislative reach of the State Legislature.

6. Despite the protests of the Petitioners, however, the Sales Tax Officers have been assessing the Petitioners to tax Thus for the Assessment Year

1978-79 of the turnover of such purchases of raw hides the. Sales Tax Officers have imposed purchase tax amounting to Rs. 1,52,000/- The

Petitioners contend that their turnovers comprising wholly of purchases made of raw hides and dressed hides within the State and despatched in

the course of export after dressing the saw hides are being illegally subjected to the levy of purchase tax u/s 3AAAA on the basis of a circular

dated September 12, 1981, issued by the Commissioner asking all the Assessing Authorities in the State not to give benefit of Section 5(3) of the

Central Sales Tax Act where raw hides are being converted into dressed hides and exported outside India on the fallacious ground that raw hides

and dressed hides are two different commodities totally ignoring the Explanation to Section 3-AAAA.

7. The constitutionality of Section 3-AAAA has also been assailed on the ground of violation of Articles 14, 19(1)(g), 286 and 301 of the

Constitution of India. The contention is that the impugned provision (as it stands at present) was enacted by U.P. Taxation Laws (Amendment and

Validation) Act, 1979 (U.P. Act No XII of 1979) with retrospective effect from 1-4-74. We will take up these issues later, if necessary.

8. In the counter affidavit filed on behalf of the State, the stand taken by the State is this. The taxable event is the purchase of the goods by the

Petitioner under the circumstances set out in Section 3-AAAA. The incidence of the tax is at the point of the sale to the consumer and this

incidence remains the same. Only the liability shifts to the purchaser instead of the seller in cases covered by Section 3-AAAA Further, even

though the incidence of purchase tax arises at the point of purchase, the liability to pay the said tax shifts to the point at which all the conditions

envisaged under that provision are fulfilled. The provision does not in the slightest degree hamper the free flow of trade and commerce envisaged

under Article 301 of the Constitution of India nor, it is contended, does the provision violate Article 19(1)(g) or 286 or any other provision of the

Constitution of India. The State further contends that the impugned legislation does not suffer from the lack of legislative competence. The

impugned legislation has been necessitated to plug the loopholes in the State Revenue and to prevent whole-sale evasion of sales tax under the

garb of stock transfers.

9. The pattern of facts as also the legal contraversies arising for our consideration in the connected petitions are materially the same and

consequently we are not elaborating them.

10. The crux of the controversy seems to be whether the impugned legislation is, in truth and substance a law imposing tax on the consignment of

goods by a manufacturer to his own branches outside the State If the answer is "Yes", the impugned legislation would undoubtedly be bad for

trenching upon the exclusive field of legislation reserved to Parliament in view of the Forty-Sixth amendment of the Constitution adding Entry 92 B

in List. I of the Seventh Schedule of the Constitution Prior to the forty-sixth amendment, Entry 54 of List II of the Seventh Schedule demarcated

the exclusive field of State Legislation to impose tax on the transactions of sale or purchase of goods other than newspapers subject to the

provisions of Entry 92-A of List I. Entry 92-A of List I, which is in the exclusive domain of the Union, states taxes on sale or purchase of goods

other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce." This was the position before the

forty-sixth amendment. In the statement of "Objects and Reasons" of the forty-sixth Constitutional Amendment Act, it was observed :

There were reports from State Governments to whom revenues from sales tax have been assigned, as to the large scale avoidance of Central sales

tax leviable on interstate sales of goods through the device of consignment of goods from one State to another and as to the leakage of local sales

tax in works contracts, hire purchase transactions, lease of films, etc. Though Parliament could levy a tax on these transactions, as tax on sales has

all along been treated as an item of revenue to be assigned to the States, in regard to these transactions which resemble sales also, it is considered

that the same policy should be adopted.

A new entry is sought to be inserted in the Union List in the Seventh Schedule, as entry 92-B, to enable the levy of tax on the consignment of

goods where such consignment takes place in the course of inter-State trade or commerce.

It was in this background that Entry 92-B was added to the Union List.

11. Taking note of the changes brought about by the Forty-Sixth amendment in the shape of Entry 92-B and insertion of new Sub-clause (h) in

Article 269(1) of the Constitution, their Lordships of the Supreme Court observed in the case of Messrs. Goodyear India Ltd. v. State of Haryana

1990 UPTC 198:

It appears to us that the effect of the aforesaid amendment is that the field of taxation on the consignment/despatch of goods in the course of inter-

State trade or commerce expressly come within the purview of the legislative competence of the Parliament. It is well-settled that the comen-

clature of the Act is not conclusive and for determining the true character and nature of a particular tax with reference to the legislative competence

of a particular Legislature, the Court will look into its pith and substance.

12. This then is the constitutional prospective from which we have to judge the validity of Section 3-AAAA. On a simple analysis of this provision,

it is apparent that the liability to purchase tax would arise on the fulfilment of cumulatively of the following conditions:

(i) the goods in question should be liable to tax at the point of sale to the consumer;

(ii) it should be a sale to a dealer;

(iii) the seller should not be liable to pay sales tax in view of some provision of the U.P. Sales Tax Act;

(iv) the purchasing dealer does not resell the goods within the State or in the course of inter-State trade, in the same form and condition.

13. The first three conditions need present No. problem. The goods should be taxable at the point of sale to the consumers and should have been

sold to a dealer and lastly they should have been sold in circumstances as may entitle the seller to exemption under some provision of the U.P.

Sales Tax Act.

14. It is the application of the fourth and the last condition which has been the subject of the main debate at the Bar. For the Petitioners it was

urged that the fourth condition set forth above constitutes a taxable event on the happening of which alone the liability to purchase tax u/s 3-AAAA

arises. It was further argued that all the four conditions must be cumulatively satisfied before the turnover of purchases can be brought to tax.

Indeed the submission was that the first three conditions are merely descriptive of the nature and character of the goods sought to be brought to tax

u/s 3-AAAA and that it is only the last condition which constitutes the taxable event. Strong reliance was placed on a recent pronouncement of the

Supreme Court in the case of Messrs. Goodyear India Ltd. (supra) where somewhat identical submission was considered in considerable depth by

their Lordships of the Supreme Court.

15. Having given the matter a careful and anxious consideration, we find considerable substance in the submissions of the learned Counsel for the

Petitioners. We are also of the view that the Goodyear''s case (supra) completely covers this part of the controversy. The legislations of two States

(Haryana and Bombay) designed to achieve the same objective as the legislature of this State, namely, plugging the loopholes in the existing tax

structure of the States so as to prevent exodus of goods outside the State resorted to by the dealers for avoiding tax within the State in which

goods are manufactured, were the subject of consideration. Section 9 of the Haryana General Sales Tax Act which was the subject of discussion

before the Supreme Court read as follows at the relevant time:

9. Where a dealer liable to pay tax under this Act 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 course

of inter-State trade or commerce or within the meaning of Sub-section (i) of Section 5 of the Central Sales Tax Act, 1956, in the course of export

out of the territory of India.

(b) exports them, 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 purchase of such goods at such rate as may be notified u/s 15.

16. The vires of this provision was challenged principally on the selfsame ground viz., that the impugned tax was not purchase tax but in truth and

substance, a tax on the consignment outside the State other than by way of sale in the course of inter-State trade or commerce and, therefore,

beyond the legislative competence of the State Legislature. Striking down the levy, their Lordships of the Supreme Court held that the impugned

tax was not a purchase tax but a tax on consignment of goods outside the State and consequently the same was beyond the legislative competence

of the State Legislature in view of Entry 92-B of List I of the Seventh Schedule and other related provisions of the Constitution. The Taxable event

was, it was ruled, not the purchases of the goods but the despatch of the goods without any sale outside the State. It was only after the

consignment of the goods manufactured out of the raw material purchased by the Assessee that the tax was attracted and consequently it was bad

for lack of legislative competence.

17. In order to decide this controversy, the learned Chief Justice Sabvasachi Mukharji who spoke for the Court, proceeded to examine which of

the events contemplated u/s 9 of the said Act, constitutes taxable event and made the following significant observations in paragraph 28 of the

judgment at page 219:

Taxable event is that which on its occurrence creates or attracts the liability to tax. Such liability does not exist or accrue at any earlier or later point

of time. The identification of the subject-matter of a tax is to be found in the charging section. In this connection, one has to analyse the provisions

of Section 9(2)(b) as well as Section 9(1)(b) and 9(1)(c). Analysing the section, it appears to us that the two conditions specified, before the event

of despatch outside the State as mentioned in Section 9(1)(b), namely, (i) purchase of goods in the State and (ii) using them for the manufacture of

any other goods in the State, are only descriptive of the goods liable to tax u/s 9(l)(b) in the event of despatch outside the State If the goods do not

answer both the descriptions cumulatively, even though these are despatched outside the State of Haryana, the purchase of those goods would not

be put to tax u/s 9(1)(b) The focal point in the expression ''goods'' the sale or purchase of which is liable to tax under the Act'', is the character and

class of goods in relation to eligibility. In this connection, reference may be made to the observations of this Court in Andhra Sugars Ltd. v. State

of Andhra Pradesh (1968) (I) SCR 705. On a clear analysis of the said section, it appears that Section 9(1)(b) has to be judged as and when

liability accrues under that section. The liability to pay tax under this section does not accrue on purchasing the goods simlictior, but only when

these are despatched or consigned out of the State of Haryana. In all these cases, it is necessary to find out the true nature of the tax. Analysing the

section, if one looks to the alleged purchase tax u/s 9, one gets the conclusion that the section itself does not provide for imposition of the purchase

tax on the transaction of purchase of the taxable goods but when further the said taxable goods are used up and turned into independent taxable

goods losing its original identity. and thereafter when the manufactured goods are despatched outside the State of Haryana and only then tax is

levied and liability to pay tax is created. It is the cumulative effect of that event which occasions or causes the tax to be imposed, to draw a familiar

analogy it is the last straw on the camel''s back.

(emphasis supplied).

Again, in paragraph 74 of the judgment at page 232, the learned Chief Justice observed:

It is, therefore, not possible to accept the argument that the chargeable event was lying dormant and is activated only on the occurrence of the

event of despeteh The argument on the construction of the enactment is misconceived. The charging event is the event the occurrence of which

immediately attracts the charge Taxable event cannot be postponed to the occurrence of the subsequent condition In that event, it would be the

subsequent condition the occurrence of which would attract the charge which will be taxable event. If that is so, then it is a duty on despatch. In

that view of the matter, this charge cannot be sustained.

18. Their Lordships of the Supreme Court also referred to with approval the famous dictum of the Federal Court in the case of AIR 1939 1 (Privy

Council) , in which it was observed that the power to tax the sale of goods is quite distinct from any right to impose tax on use or consumption. It

cannot be exercised at the earlier state of the product nor at the later stage of use and consumption, but only at the stage of sale. Nor could the tax

be levied merely because the goods have been consumed or used or even destroyed.

19. Applying these tests, the Supreme Court ruled in Goodyear''s case (supra) that the taxable event in the case of Haryana Act was not the

purchase of the goods but when further the goods purchased are manufactured into taxable goods and thereafter despatched out of the State of

Haryana. It is, their Lordships observed, at the point of despatch of goods that the levy was attracted and not earlier at the point of purchase. The

argument advanced on behalf of the State that the taxable event was the purchase of the goods in Haryana and that there was a mere

postponement of the obligation to pay to the point of despatch was categorically rejected by the Supreme Court. It was held that it was only at the

point of the despatch of the goods that the charge was affixed and not earlier at the point of purchase of the goods.

20. The ratio directly applies to the problem at hand. There is No. fundamental difference relevant to the controversy between, the Punjab and

Bombay Acts discussed by their Lordships of the Supreme Court in Goodyear''s case (supra) and the U.P. Act. The only distinction is that in the

former the taxable events have been expressed in positive terms, namely, the use of the goods purchased by the dealer in the manufacture of some

other taxable goods and then their disposal otherwise than in the course of sale within the State or in the course of inter-State trade and commerce.

In the U.P. enactment, on the other hand, the ultimate taxable event has been expressed in Section 3-AAAA negatively, viz., ""and the purchasing

dealer does not re-sell such goods within the State or in the course of inter State trade or commerce in the same form and condition in which he

had purchased them"". The words quoted clearly indicate that it is the use and the disposal of the goods by the purchasing dealer otherwise than by

way of sale within the State or in the course of inter-State sale in the same form and condition in which he had purchased them that was intended to

be brought to tax. Put differently, the fourth and last condition attracting the levy is the use of the goods purchased by the dealer in a manner that

renders the sale of the goods within the State and in the course of inter-State trade and commerce in the same form and condition an impossibility.

Shortly stated, it is the ''non-sale'' of the goods purchased under the circumstances mentioned in Section 3-AAAA within the State or in the course

of inter-State trade and commerce which constitutes the taxable event. As already mentioned, Section 3- A AAA would be attracted only on the

fulfiment cumulatively of all the four conditions enumerated hereinabove, the last of which is the use and disposal of the goods in a manner that

totally excludes the sale of the goods purchased within the State or in the course of inter-State trade and commerce in the same form and

condition. It is only on the happening of this event that the purchasing dealer would be liable to tax under this provision. The mere purchase of the

goods by the dealer of the kind and in the circumstances mentioned in Section 3-AAAA cannot result in the levy of the tax for the simple reason

that the fourth condition has still to be satisfied. The first three conditions set out hereinabove are mere description of the taxable goods and the

taxable person. They do not per se, attract the levy. As observed by their Lordships of the Supreme Court in Goodyear''s case (supra) a taxable

event is that which is closely linked with the imposition. Such a close relationship arises only when the purchasing dealer does some act which

renders the subsequent sale of the goods purchased by him in the same form and condition within the State or in the course of inter-State sale an

absolute impossibility.

21. Our conclusion, therefore, is that purchase of the goods simpliciter by the purchasing dealer does not constitute the taxable event. Incidence of

tax takes place at a later point of time. The charge, u/s 3 -AAAA, as we shall presently show, gets fixed only when the dealer does some further

act after the purchase of goods which renders the sale of the goods purchased within the State or in the course of inter-Slate trade and commerce

in the same form an impossibility. It is only on the happening of such an event that the tax u/s 3AAAA becomes exigible. The tax is, in our

considered view, a levy on the manner in which the Assessee deals with the goods after purchase.

22. That brings us to the vital question as to which are the circumstances in which sale of the goods purchased within, the State or in the course of

inter-State trade and commerce in the same form and condition in which the dealer purchased the goods, may be rendered impossible. To our

mind, keeping in view the usual course of business, the normal possibilities seems to be these:

1. Use and consumption of the goods purchased by the purchasing dealer in the manufacture of some other taxable goods within the State;

2. despatch of the manufactured goods, without sale, outside the State otherwise than in the course of inter-State trade and commerce;

3. despatch of the goods out of the territory of India pursuant to a contract of sale i.e. despatch in the course of an export sale;

23. These then are the activities or transactions that constitute the taxable events on the happening of which the tax would be immediately attracted,

that is to say, the tax in question becomes exigible at these points Once these points are reached the possibility of She sale of goods purchased

within State or in the course of inter State trade and commerce in the same form and condition, shall stand excluded. The fourth and the last

condition envisaged by Section 3AAAA set out hereinabove necessary for attracting the levy would also stand fulfilled. It is only on the happening

of these events that the taxing authority cm reach the conclusion that the purchasing dealer has become liable u/s 3-AAAA.

24. Yet none of the events discussed by us in the preceding paragraph could be lawfully subjected to any tax by the State Legislature. As

observed by their Lordships of the Supreme Court in Goodyear''s case (supra as well as by the Federal Court in the case of Central Provinces &

Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 (supra) the power to tax the sale of goods is quite distinct from the right to impose

tax on use or consumption of the goods Such a power cannot be exercised at any earlier state of the product or at a later stage of use and

consumption, but is available only at the stage of sale (or purchase in the present case). Nor could the tax be levied merely because the goods have

been consumed or used or even destroyed. Purchase tax could, therefore, be levied only on the transaction of sale or purchase and not on the use

and disposal of the goods subsequent to the sale of purchase of the goods.

25. Indeed, the State Legislature was wholly incompetent to impose purchase tax with respect to any of the uses or disposal of goods in the

manner set out hereinabove In the first illustration mentioned above, i.e., use of the goods purchased in the manufacture of other taxable goods, the

taxable event would be manufacture of the goods. The levy would in that event be in the nature of excise and therefore, beyond the legislative

competence of the State Legislature We are fortified here by a recent pronouncement of the Bombay High Court in the case of Hindustan Lever

Ltd. v. State of Maharashtra 79 STC 255. Their Lordships of the Bombay High Court were considering the challenge to Section 13-A A of

Bombay Sales Tax as amended by Bombay Sales Tax (Amendment) Act (No. 2 of 1990) on the self-same ground, namely, that though described

as purchase tax or additional tax the levy was in truth and substance in the nature of excise or on mere despatch or consignment of the goods other

than by way of sale and, therefore, wholly beyond the legislative competence of the State Legislature. The challenge was upheld. As the provision

is quite close to the statute under our examination we will give the barest outlines essential to appreciate the controversy. Section 13-AA of the

Bombay Act (as amended) insofar as relevant for our purpose reads thus:

Where a dealer who is liable to pay tax under the said Act, purchases any goods specified in Part I of Schedule C and uses such goods in the

manufacture of taxable goods, then, unless the goods so manufacture are sold by the dealer, there shall be levied a purchase tax at the rate of 0.2P

in the rupee on the purchase price of the goods so used in the manufacture.

26. Their Lordships emphasized the words "unless the goods so manufactured are sold by the dealer" and the word "than" and held that the tax

becomes chargeable not at the point of purchase but only at the point when the purchasing dealer does some act which makes the subsequent sale

of the manufactured articles within the State an impossibility. It was observed that the tax was in truth and substance on the use of the goods

purchased in the manufacture of taxable goods and consequently being in the nature of excise the same was beyond the legislative competence of

the State Legislature. This is how the learned Judges summed up the law at page 266 of the Report:

To consider, now, the validity of the new Section 13-AA upon the construction put forward by the learned Government Pleader, if the liability to

pay the levy under the new Section 13-AA arises upon non-sale, i.e., upon the dealer doing some act which makes the subsequent sale of the

manufactured article within the State an impossibility, the Goodyear judgment (1990) 76 STC 71 (SC) applies, it seems to us, on all fours To

adapt the words used in it, analysing the provisions of the new Section 13-AA, we reach the conclusion that it does not provide for the imposition

of the additional purchase tax on the transaction of purchase of the taxable goods but when, further, the taxable goods are used up and turned into

independent taxable goods, losing their original identity, and thereafter, when the dealer does some act which renders the sale of the independent

taxable goods within the State an impossibility, only than is the tax levied and the liability to pay is created. It is the cumulative effect of that event

which causes the tax to be imposed. To draw a familiar analogy, it is the last straw on the camel back. To adapt the judgment"s words again, a

taxable event is that which is closely related to imposition. In the new Section 13-AA. As construed by the learned Governed Pleader there such

close relationship only when the act of the dealer which renders the subsequent sale of the manufactured article within the State an impossibility.

Therefore, the goods purchased are used in the manufacture of a new independent commodity and thereafter the dealer clean with the

manufactured article in such a manner as renders its subsequent sale in the State an impossibility In this series of transaction, when the levy is

imposed at the third stage of rendering the sale of the manufactured article within the State an impossibility transaction is completely eclipsed or

ceases to exist The levy his No. direct connection with the purchase of the Schedule C Part I raw materials. It has only a remote connection or

lineage. It may be directly and very remotely connected with the transaction of the purchase of raw material. The levy loses its character of

purchase tax on that transaction.

(emphasis added).

27. The Bench further observed at P. 269 that inasmuch as the levy takes effect at the point of manufacture it is in the nature of excise, and,

therefore, beyond the legislative competence of the State Legislature. The learned Judges then went on to add that even if the levy attaches on

''non-sale'' of the goods as contended by the State counsel, that is upon the despatch of goods, the levy would be wholly authorised in view of the

fact that the taxable event would in that case get much too distanced from the original transaction of purchase. Their Lordships also observed that

even if it was assumed that the levy gets attracted on the point of despatch of the manufactured goods, the provision would be lacking the

legislative competence in view of Goodyear"s case (supra).

28. We entirely agree, with respect, with the analysis and summing up of the law on the subject. The ratio squarely applies, as basically there is a

striking similarity between the enactments of the two States The taxable event under the first illustration in the present case would be the use of the

goods purchased in the manufacture of some other taxable goods and, therefore, the levy would be beyond the legislative competence being in the

nature of excise.

29. The second illustration of the use and disposal of the goods rendering the sale within the State or in the course of inter-State trade and

commerce an impossibility would also lead to the sane conclusion. The taxable event in the case would be the despatch and consignment of goods

outside the Stale otherwise than by way of sale. Such a tax would, therefore be wholly beyond the purview of the State Legislature inasmuch as a

tax on consignment not involving sale would be within the exclusive field legislation reserved to Parliament under Entry 92-B of List 1. As this

aspect of the controversy stands concluded by the decision of the Supreme Court in Goodyear''s case (supra), it is unnecessary to dilate on it

further.

30. Similarly, a tax with respect to the events contemplated under the third set of circumstances would also be beyond the legislative competence

of the State Legislature. Obviously, the State Legislature cannot make a law with respect to an export sale nor even with respect to a corsignment

of goods outside the State in the course of export sale. Article 269 of the Constitution as amended completely prohibits State Legislatures from

making law with respect to export sales Where, therefore, the purchasing dealer despatches goods in pursuance of a contract of sale with foreign

buyers, i.e. in the course of export sale the State Legislature cannot levy any tax on such transactions or movement

31. It will thus be seen that the impugned tax is sought to be levied with respect to matters which are wholly beyond the purview of the State

Legislature. Every single event sought to be taxed is beyond the reach of the State Legislature and as we cannot visualize any other transaction or

transactions which may fulfil the fourth condition, i.e., which may render the sale of the goods specified in Section 3. AAAA by the purchasing

dealer within the State or in the course of inter-Stale trade and commerce in the same form and condition in which he purchases them, an

impossibility it (the provision) cannot survive for any purpose and must, therefore, be struck down.

32. Sri V.B. Upadhya, the learned Counsel for the State, however, submitted that the taxable event u/s 3 AAAA is the purchase of goods by the

dealer under the circumstances set out in that provision. The incidence of the tax is at the point of sale to the consumer and this position does not

change merely because the liability to tax merely shifts to the point at which all the conditions envisaged under that provision are fulfilled. A

complete answer to this submission is furnished by their Lordships of the Supreme Court in Goodyear''s case (supra) in which an identical

contention raised on behalf of the States of Punjab and Haryana was rejected vide the discussion in paragraph 74 of the judgment at page 232 of

the Report (U.P. Tax Cases p. 198). Ft was observed that the charging event is licit on the occurrence of which the tax gets immediately attracted.

The taxable event could not be postponed to the occurrence of the subsequent condition. Their Lordships further observed that in case there is any

such postponement it is the subsequent condition or event the occurrence or the happening of which the charge gets immediately affixed.

33. Sri Upadhya next contended that the words ""and the purchasing dealer does not resell such goods"" occurring in Section 3-AAAA are not

indicative of any condition but they are merely suggestive of a provision for exemption. That is to say, if the goods purchased are resold in the State

or in the course of inter State trade and commerce in the same form and condition, there will be No. liability u/s 3-AAAA.

34. We regret we cannot accept the contention. In that first place, the construction suggested by Sri Upadhya is not warranted by the language

employed by the Legislature. The words used are ""and...and the purchasing dealer does not resell such goods within the State.."" which clearly

suggest that the non sale of the goods within the State or in the course of inter State trade and commerce was intended to be a condition for the

imposition of the tax. The words used have not been expressed either as a proviso or exception which one should normally expect where the

Legislature intends to carve out a clause of exemption.

35. Secondly, No. time-limit has been prescribed u/s 3-AAAA for resale within the State etc. on the happening of which the Assessee would not

be liable to pay the tax The result is that if the purchasing dealer does not resell the goods within the State or in the course of interstate trade in the

year of purchase he would be liable to purchase tax on the purchase of the goods simplicitor, if we were to accept the contention of the learned

Counsel for the State and, on that basis the turnover of purchases shall suffer a tax even though in the very next year the dealer might sell the goods

within the State or in the course of inter-State trade.

36. Plainly, such a result could not have been intended by the Legislature. As a matter of plain construction of the statute, therefore, we are clearly

of the view that the words quoted above constitute a positive condition, a taxable event which means ''non-sale'' of the goods purchased in the

same form and condition on the happening of which alone purchase tax would be attracted u/s 3-AAAA.

37. Sri Upadhya also placed strong reliance on the decision of the Supreme Court in the case of the State of Tamil Nadu v. M.K. Kandaswami

(1975) 36 S.T.C. 191 approving the decision of the Kerala High Court in the case of Malabar Fruit Products Co., Bharananganam, Kottayam v.

Sales Tax Officer, Palai (1972) 30 S.T.C. 537, and submitted that these decisions negative the contention of the learned Counsel for the Petitioner

and the decision of the Supreme Court in Kandaswami''s case (supra) having been rendered by a three Judge Bench of the Supreme Court, this

Court should follow that decision rather than the judgment in Goodyear''s case.

38. We are unable to agree. Both the decisions cited by the learned Counsel for the State were considered at some length by their Lordships in

Goodyear''s case but they were distinguished on the ground that neither Kandaswami''s case nor Malabar Fruit Products'' case (supra) was really

concerned with the question falling for consideration in Goodyear''s case. As the question involved in the present case is, in our opinion, clearly

covered by the law laid down in the later Supreme Court decision in Good-year''s case and as their Lordships had specifically noticed the decision

cited above on behalf of the State and distinguished them, we cannot ignore the ratio of the subsequent Supreme Court decision in Goodyear''s

case and follow the earlier decision in Kandaswami''s case. Further the decisions in both Kandaswami''s case as well as Malabar Fruit Products''

case were rendered in a constitutional setting which has undergone radical changes in the fields of legislation reserved to Parliament and State

Legislatures.

39. The upshot is that Section. 3 AAAA as it stands after its amendment by U.P. Act No. XII of 1979 is liable to be struck down inasmuch as it

seeks to bring to tax matters falling outside the legislative competence of the State Legislature. It is, in pith and substance, not a provision imposing

tax on sale or purchase of goods but seeks to tax events and activities subsequent to the purchase which do not fall within parameters of the

legislative powers of the State Legislature. The Legislature has, in our opinion, clearly overstepped its limits and sought to impose tax with respect

to matters falling exclusively in the Union list.

40. In the premise, the petitions succeeds and are allowed. Section 3-AAAA of the U.P. Sales Tax Act (as it stands after its amendment by U.P.

Act No. XII of 1979) is declared null and void The assessment orders made in these petitions by the Assessing Authorities based on that provision

are also declared null and void and are quashed. The recovery proceedings including the demand notices initiated and issued against the Petitioners

for realisation of tax assessed under the aforesaid provision are also quashed. The Petitioners of each petition shall be entitled to their costs.