# Buishi Yada Motors Vs State of Arunachal Pradesh and Others

**Court:** Gauhati High Court (Itanagar Bench)

**Date of Decision:** July 22, 2003

**Acts Referred:** Central Motor Vehicles Rules, 1989 â€" Rule 47(1)
Central Sales Tax Act, 1956 â€" Section 3, 8(5)
Constitution of India, 1950 â€" Article 226, 246, 286, 301, 302

**Citation:** (2003) 3 GLR 550 : (2003) 3 GLT 336 : (2004) 135 STC 438

**Hon'ble Judges:** I.A. Ansari, J

**Bench:** Single Bench

**Advocate:** A.K. Saraf, S. Saikia and A. Apang, for the Appellant; R.K. Nabam, for the Respondent

## Judgement

I.A. Ansari, J.
As a functionary of the State Government, it is essential for a Government servant to be vigilant and ensure that no evasion

of tax takes place, but while attempting to stop such evasion of tax, the Government servant must know what his powers under the law are and if

he has such powers, its exercise must not be arbitrary; otherwise, a Writ Court is bound to interfere and correct the position.

2. Viewed dispassionately, the case of the petitioner emerges to be as follows:

The petitioner is an authorized dealer having service centre of Maruti Udyog Ltd., at Nahariagun, in the State of Arunachal Pradesh. As a dealer of

the Maruti Udyog Ltd, the petitioner carries on the business of selling and servicing of motor vehicles of the said company. The petitioner sells

motor vehicles of the said company in the State of Arunachal Pradesh as well as in the course of inter-State trade and commerce. The sale of

motor vehicles within the State of Arunachal Pradesh are taxable at the rate of 12 % under the Arunachal Pradesh Sales Tax Act, 1999

(hereinafter referred to as ""the Act of 1999""). The State Government, in exercise of its powers u/s 8(5)(b) of the Central Sales Tax Act, 1956

(hereinafter referred to as ""the Act of 1956"") directed, vide notification No. TAX/436/95/Part III, dated 2.5.2001 (Annexure A), that Central

Sales Tax in respect of motor vehicles sold to any person, in course of inter-State trade and commerce by any dealer having his place of business

in the State of Arunachal Pradesh and dealing with such motor vehicles, shall, with immediate effect, be calculated at the rate of 2% on the turnover

of such sale. The petitioner, which also sells motor vehicles aforementioned, in course of inter-State trade and commerce, charged, in the light of

the aforesaid notification, dated 2.5.2001 (Annexure A), central sales tax at the rate of 2% on the sale of motor vehicles made to various persons

outside the State of Arunachal Pradesh. However, by letter No. S-TAX-2-2000, dated 7.2.2002 (Annexure-B) the petitioner was directed by

respondent No. 5, namely, Additional Deputy Commissioner-cum-Superintendent of Tax and Excise, Papumpare district, to stop selling motor

vehicles to the customers outside the State with immediate effect. From the said letter, dated 7.2.2002, it is clear that the same was issued in

pursuance of another letter, dated 6.2.2002, bearing No. Tax-16/2001/411 issued by the respondent No. 2, namely, Commissioner of Taxes and

Excise, Government of Arunachal Pradesh, to the respondent No. 5. The petitioner vide letter, dated 25.2.2002 (Annexure-C) requested the

respondent No. 5 to review and re-examine the directions issued to stop sale of motor vehicles to customers outside the State, Similar letter

(Annexure-D) was also addressed to the respondent No. 2. Thereafter, by letter, dated 27.2.2002 (Annexure-E) respondent No. 5 informed the

petitioner that he was only the implementing agency and not the policy maker and directed, therefore, the petitioner to write to the respondent No.

2, namely, Commissioner, Taxes and Excise, for re-examination of the matter and for necessary action, whereupon respondent No. 3, namely,

Assistant Commissioner (Legal) Tax and Excise vide letter, dated 14.3.2002 (Annexure-F) directed the respondent No. 5, namely, Additional

Deputy Commissioner cum Superintendent of Taxes, Tax & Excise, to inform the motor vehicle dealers of his district that the inter-State sale of

motor vehicles at the rate of 2% would not be allowed pending decision of the Government in the matter. It was further stated therein that the

motor vehicle dealers were free to sell motor vehicles to the outsiders at the rate of 12% local sales tax. The respondent No. 3, namely, Assistant

Commissioner of Taxes (Legal), Tax and Excise, vide letter dated 7.5.2002 (Annexure-G) communicated to the respondent No. 5, namely.

Additional Deputy Commissioner cum Superintendent of Taxes and Excise the decision of the Government that the sale of motor vehicles, not

being sale in course of inter-State trade and commerce, Arunachal Pradesh Sales Tax at the rate of 12% shall be charged from the buyers coming

from outside the State. The petitioner submitted another representation, dated 15th May, 2002, to the respondent No. 4, namely, Deputy

Commissioner, Tax and Excise, praying for, inter alia, enforcement of the notification, dated 2.5.2001 (Annexure-A) in letter and spirit and also

not to levy tax at the rate of 12% on the inter-State sale of vehicles. Although no express order was passed by the authority rejecting the

representation, which was improperly treated as an appeal, the said representation should be deemed to have been rejected, when the respondent

No. 5 issued a notice, dated 27.5.2002 (Annexure-H) directing the petitioner to show cause as to why local sales tax amounting Rs. 2,94,19,896

only, paid in short, should not be recovered within one month therefrom and as to why penalty should not be imposed u/s 22(G) of the Act of

1999. The show cause notice, dated 27.5.2002, aforementioned was issued mainly on three broad grounds, namely, (i) that there must exist a

bond between the contract of sale and actual transportation outside the State by way of a specific purchase order, contract or agreement, (ii) the

sale must be made to the dealers and not to the individual and ''C'' form must be produced in support of the sales made in course of inter State

trade and commerce. By making the present application under Article 226 of the Constitution of India, the petitioner has, now, approached this

Court challenging legality of the impugned directions/ communications and the show cause notice aforementioned.

3. The respondents have contested this case by filing their affidavit-in-opposition, their case being, briefly stated, thus: The petitioner has, in order

to avoid payment of local tax, sold many motor vehicles by showing addresses of persons, who are claimed to be residents of the State of Assam,

but some of these vehicles have been registered in Arunachal Pradesh. Had the transactions been really inter-State sales, as claimed by the

petitioner, the vehicles, so sold, should have been registered in the Office of the District Transport Officer at the addresses mentioned in the sale

certificates/invoices. The petitioner has, on the pretext of selling the motor vehicles in course of inter-State trade or commerce, reduced tax @ 2%

of local sales and thereby short levied tax @ 10%. The impugned directions/communications, dated 7.2.2002 and 14.3.2002, have been issued

stopping sale of vehicles to the customers outside the State as a temporary measure in order to check further evasion of sales tax by the dealer

under the pretext of inter-State sale pending decision of the Government in this regard. This embargo on the sale of motor vehicles to persons

outside the State is temporary and not permanent; hence, there is no violation of Articles 301 and 304 of the Constitution of India. The petitioner

has preferred an appeal against the letter, dated 14.2.2002, aforementioned before the respondent No. 4, namely, Deputy Commissioner, Tax and

Excise, government of Arunachal Pradesh, u/s 33(1) of the Act of 1999. This appeal, which the writ petitioner claims as a representation and not

an appeal is still pending. Hence, the writ petition may not be proceeded with. As the petitioner had been avoiding payment of local sales tax, it has

been served with the notice, dated 27.5.2002, aforementioned asking it to show cause as to why local sales tax short paid amounting to Rs.

2,94,19,896 only should not be recovered from the petitioner. Instead of submitting reply to the assessing authorities, the petitioner has

approached this Court. Until the time the petitioner gives satisfactory documentary evidence that all sales made outside the States were in the

course of inter-State trade, benefit of notification, dated 2.5.2001 (Annexure A) cannot be availed of by it. After final assessment order is issued,

the petitioner, if aggrieved, can prefer an appeal. The petitioner has submitted only two documents to show that the sales, in question, took place in

the course of inter-State trade or commerce. As regards remaining transactions of sale, no material has been placed to show that the same were

covered by inter-State trade or commerce. In the absence of any document showing that there was an agreement between the parties for the

purpose of transferring of title to the goods from the State of Arunachal Pradesh to some other State, no sale of such goods can be treated as sale

taking place in course of inter-State trade or commerce. Some of the motor vehicles alleged to have been sold outside the State of Arunachal

Pradesh have not moved out of Arunachal Pradesh. The letter, dated 7.2.2002 (Annexure B) was issued by the respondent No. 5 on satisfaction

reached by the respondent No. 5 and hence, it is immaterial that the respondent No. 5 has issued instructions contained in the order, dated

7.2.2002, with reference to letter issued by the respondent No. 2.

4. I have perused the materials on record. I have heard Dr. A.K. Saraf, learned counsel for the petitioner, and Mr. R.H. Nabam, learned Addl. Sr.

Govt. Advocate, appearing on behalf of the respondents.

5. Presenting the case on behalf of the petitioner, Dr. Saraf has submitted that by the impugned letter, dated 7.2.2002, aforementioned a total ban

on sale of motor vehicles outside the State has been imposed. Such a ban, points out Dr. Saraf, is wholly contrary to the Constitutional scheme of

taxation and also in violation of the provisions of the Central Sales Tax Act of 1956. Referring extensively to the provisions of the Constitution,

particularly, to Articles 301, 302, 303 and 304, Dr. Saraf has submitted that the Constitution envisages free trade and commerce throughout the

territory of India and if the Legislature of a State intends to put any restrictions on such freedom of trade and commerce, the same can be done

only by making law by the State Legislature subject to the condition that the previous sanction of the President for making such a law has been

obtained. In the case at hand, points out Dr. Saraf, while the State Govt. made the inter-State sale of vehicles free by reducing, in respect of such

inter-State sale, the rate of tax vide notification, dated 2.5.2001 (Annexure A to the writ petition), an executive authority, such as, the

Commissioner of Taxes and/or Additional Deputy Commissioner-cum-Superintendent of Tax and Excise could not have issued executive

instructions vide notice, dated 7.2.2002 (Annexure B to the writ petition) aforementioned imposing total ban on sale of motor vehicles from

Arunachal Pradesh to customers outside the States.

6. Referring to the impugned letter, dated 14.3.2002, (Annexure F to the writ petition) whereby the respondent No. 3 directed that pending

Government decision, no inter-State sale of motor vehicles @ 2% would be allowed and that the dealers were free to sell motor vehicles to

outsiders on payment of local sales tax @ 12%, Dr. Saraf has submitted that when the State Government had issued, in exercise of their powers

u/s 8(5)(b) of the Central Sales Tax Act, 1956, notification, dated 7.5.2002, (Annexure A to the writ petition) reducing the sales tax to 2% in

respect of sale of vehicles by any dealer to any person in course of inter-State trade and commerce, the executive authority, such as, the Assistant

Commissioner (Legal) Taxes and Excise, (i.e., the respondent No. 3) could not have directed that no inter-State sale of motor vehicle @ 2% will

be allowed and/or that the dealers shall be free to sell motor vehicles to outsiders on payment of local sales tax @ 12%.

7. Referring to various provisions of the Constitution and, particularly, to Articles 246 and 286 vis-a-vis Entry 92(A) of the Union List and Entry

54 of the State List, Dr. Saraf has submitted that the Constitution imposes restrictions on the powers of the State to impose tax on sale and

purchase, which takes place in course of inter-State trade and commerce, inasmuch as it falls entirely within the legislative domain of the Parliament

to frame laws in respect of inter-State trade and commerce. In such a situation, points out Dr. Saraf, it was wholly without jurisdiction for the

respondent No. 3 to inform the respondent No. 5 that pending Government decision, no inter-State sale of motor vehicles @ 2% would be

allowed and/or that the dealers were free to sell motor vehicles on payment of 12% local sales tax to outsiders. In support of his submissions, so

made, Dr. Saraf has referred to Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, 20th Century Finance Corporation

Limited v. State of Maharashtra, reported in (2002) 6 SCC 12 , and State of A.P. Vs. National Thermal Power Corporation Ltd. and Others,

8. The notice to show cause, dated 27.5.2002, aforementioned was, according to Dr. Saraf, issued on account of allegedly three lapses on the

part of the petitioner, namely, (i) that there must exist a bond between the contract of sale and actual transportation outside the State by way of a

specific purchase order, contract or agreement, (ii) the sale must be made to the dealers and not to the individuals and (iii) ''C'' form must be

produced in support of the sale made in course of inter-State trade and commerce. Drawing this Court''s attention to the contents of the notice,

dated 27.5.2002, aforementioned, Dr. Saraf has submitted that this notice demands that in the absence of any written contract for sale of goods in

course of inter-State trade and commerce, no inter-State sale of vehicle can be held to have taken place. The contract for inter-State sale,

contends Dr. Saraf, may be expressed or implied and/or that the same may be oral or written. Hence, the act of the respondents in demanding that

there must be a written contract for every inter-State sale is wholly without jurisdiction inasmuch as the definition of inter-State sale, occurring in

Section 3 of the Sates Tax Act, 1956, does not, points out Dr. Saraf, envisage the necessity of there being any written contract. As far as the

movement of vehicle is concerned from the State, where the sale takes place, to the State to which the vehicle is sold, Dr. Saraf submits that the

same can be inferred, in the absence of any direct evidence, on the basis of materials available with the dealer. A dealer in motor vehicles is

required to issue sale certificate, points out Dr. Saraf, in Form-21 as per Rule 47(a) of the Central Motor Vehicles Rules, 1989, for registration of

the vehicle sold by the dealer. This certificate, further points out Dr. Saraf, has to be addressed to the registering authority furnishing therein the

name of the buyer along with his address. Relying on two such certificates issued by the petitioner, Dr. Saraf contends, that these certificates show

that the buyers were from the State of Assam and these documents are, in themselves, enough to show that as far as the petitioner is concerned,

the vehicles were sold to persons, who are residents of the State of Assam and not of Arunachal Pradesh. In the absence of any material to show,

contends Dr. Saraf, that the vehicles, despite such certificates, did not move out of the State of Arunachal Pradesh, no demand imposing sales tax

treating the sales, in question, as not being inter-State sale can be raised by the sales tax authorities. That a sale, in order to be an inter-State sale,

need not be express or in writing, Dr. Saraf has referred to Commissioner of Commercial Taxes Vs. Bhag Singh Milkha Singh, Oil India Ltd. Vs.

The Superintendent of Taxes and Others, and The State of Andhra Pradesh Vs. Parasu Kuppuswamy Chetty and Sons,

9. Referring to the provisions of Section 8 of the Central Sates Tax Act, 1956, Dr. Saraf has submitted that State Government has the freedom of

removing any restriction in respect of inter-State sate and when in their wisdom, the State has dispensed with the requirement of furnishing ''C''

Form in respect of inter-State sale to individuals, no sales tax authority of the State can make "C" Form a precondition for treating a sale as inter-

State sale even if such sale is to an individual and not to a registered dealer or the Government. The notification, dated 2.5.2001, whereby the sales

tax in respect of inter-State sale of motor vehicles has been reduced to 2%, points out Dr. Saraf, refers to sale by any dealer to any person. This

shows, points out Dr. Saraf, that according to the said notification, the dealer, in the State of Arunachal Pradesh, need not necessarily sell motor

vehicles to any registered dealer and that the dealer is free to sell motor vehicles to any person or persons including private individuals. Hence, the

notice to show cause on the ground that the sale has not been made to registered dealers, but to private individuals is, submits Dr. Saraf, wholly

misconceived in law and without jurisdiction. This apart, points out Dr. Saraf, the show cause notice, amongst others, was issued on the ground

that "C" Form ought to have been produced by the dealer in support of inter-State sale, but the respondent No. 5, while issuing this show cause

notice, has omitted to note, submits Dr. Saraf, that Section 8(4) of the Act of 1956 makes it clear that the requirement of declaration in the

prescribed form, i.e., Form C, as per the Central Sales Tax (Registration and Turnover) Rules, is in respect of sales, which are made to registered

dealers or to the Government and not when the sale is made to the private individual or to an unregistered dealer. Thus, the Act of 1956 does not

envisage, contends Dr. Saraf, that even when a motor vehicle is sold to an individual in the course of inter-State sale and not to a registered dealer

or Government, declaration in Form C will be required. Hence, the demand raised by the authority concerned in the show cause notice that in the

absence of Form "C", sales cannot be treated as inter-State sale is, according to Dr. Saraf, without jurisdiction. This apart, reiterates Dr. Saraf, the

notification (Annexure A) granting exemption issued u/s 8(5) of the Act of 1956 clearly shows that the sale may be made to ""any person"", which

means that the buyer may be a registered dealer or the Government itself or a private individual. Hence, the sales made by the petitioner to

individuals, who are residents of the State of Assam, cannot, contends Dr. Saraf, be treated as sales within the State of Arunachal Pradesh and

hence, notice to show cause, so issued, is without jurisdiction. For the submissions made by Dr. Saraf that State Government has the power to

remove any restrictions on the inter-State sale, Dr. Saraf has referred to Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, and Shree

Digvijay Cement Co. Ltd. and Others Vs. State of Rajasthan and Others,

10. Assailing the various letters and the show cause notice, which are under challenge in the present writ petition, Dr. Saraf has pointed out that the

letter, dated 7.2.2002, of the respondent No. 5 that the sales tax would have to be paid @ 12% even in respect of sales, where the buyers are

from outside the State, was actually issued, according to Dr. Saraf, in pursuance of the letter, dated 6.2.2002, issued by the respondent No. 2,

who is an authority superior to the respondent No. 5. The respondent No. 5 has, thus, contends Dr. Saraf, not applied his mind independently to

the facts of the present case before issuing the letter, dated 7.2.2002, and acted, in fact, mechanically. Similarly, the notice to show cause, in

question, according to Dr. Saraf, has been an offshoot of the letter, dated 6.2.2002, issued by the respondent No. 2 and it is for this reason that

the contents of the show cause notice, in question, reveal that a copy of the notice to show cause was forwarded to the respondent No. 2 too for

information and necessary action. Thus, the respondent No. 5 has exercised his powers to issue notice demanding payment of alleged unpaid sales

tax not by applying his mind, but in accordance with the dictates of his superior authority. Issuance of such show cause notice under the instructions

of the superior and without application of his own mind by respondent No. 5 makes, according to Dr. Saraf, the notice illegal and without

jurisdiction inasmuch as the power to issue such notices is, contends Dr. Saraf, an exercise of quasi-judicial function of the authority and the same

cannot, therefore, be exercised according to the whims and fancies and/or dictates of the superior authority and/or without application of mind by

the authority, who issues the demand notice. In support of this contention, Dr. Saraf has placed reliance on Mahadayal Prem Chandra v.

Commerce Tax Officer AIR 1958 SC 667, Orient Paper Mills Limited v. Union of India and Ors. AIR 1969 SC 49 and Sirpur Paper Mills Ltd.

Vs. The Commissioner of Wealth Tax, Hyderabad,

11. Lastly, it has been contended by Dr. Saraf that when show cause notice has been issued on considerations, which are not maintainable under

the law, such a notice is without jurisdiction and a writ Court can interfere with issuance of such notice. Support for this contention is sought to be

derived by Dr. Saraf from the law laid down in Union of India (UOI) and Another Vs. Brij Fertilizers Pvt. Ltd. and Others, Tata Iron and Steel

Company v. S.R. Sarkar 11 STC 665 and Shree Kamrup Industries (Assam) v. State of Assam, reported in (1994) 2 GLR 118.

12. Controverting the above submissions made on behalf of the petitioner, Mr. R. H. Nabam, learned Additional Government Advocate, has

submitted that in many cases, the vehicles, which have been sold by the petitioner claiming to be inter-State sales, are found to have been

registered within the State of Arunachal Pradesh. This shows, according to Mr. Nabam, that the sales were, in fact, not inter-State sales. This

apart, contends Mr. Nabam, the petitioner must give satisfactory materials to show that the sales made by it were inter-State sales, but in the case

at hand, no such material exists.

13. Referring to the decisions in Kelvinator of India Ltd. Vs. The State of Haryana, Manganese Ore (India) Ltd. Vs. The Regional Assistant

Commissioner of Sales Tax, Jabalpur, and Balabhagas Hulaschand Vs. State of Orissa, Mr. Nabam has contended that the sales, in the instant

case, were not inter-State sales under the law contained in that behalf. The respondent No. 5 was, according to Mr. Nabam, competent to issue

the notice, which stands impugned in the present writ petition inasmuch as there is no satisfactory written record to show that the sales, in

questions, were made to buyers outside the State of Arunachal Pradesh.

14. It has been submitted by Mr. Nabam that against the letters, dated 14.3.2002 (Annexure F) and dated 7.5.2002 (Annexure G) whereby

directions were given that no inter-State sale of motor vehicles @ 2% would be allowed and that sales to buyers, who are from outside the State,

not being inter-State sale, were to be charged @ 12% local sales tax, the petitioner has already preferred an appeal before the respondent No. 4,

namely, Deputy Commissioner of Tax and Excise, Government of Arunachal Pradesh, and during the pendency of this appeal, the petitioner ought

not to have approached a writ Court. Hence, the writ petition is, according to Mr. Nabam, not maintainable.

15. Reacting to the above submissions, made on behalf of the respondents, Dr. Saraf has submitted that Section 43 of the Motor Vehicles Act

envisages temporary registration of vehicles and if any purchaser of the vehicle to whom a sale certificate has been issued by the petitioner showing

him to be a resident of the State of Assam gets his vehicle registered temporarily u/s 43 of the Motor Vehicles Act, 1988, in the State of Arunachal

Pradesh, the dealer cannot be held responsible therefore nor can such sale, which is, otherwise, an inter-State sale, be treated to have become an

inter-State sale merely on the basis of such temporary registration despite the fact that the sale certificate indicates that the purchaser is from the

State of Assam. If any resident of Assam, in order to obtain the benefit of reduced rate of sales tax available in the State of Arunachal Pradesh on

inter-State sale of motor vehicles, comes to the State of Arunachal Pradesh and buys the same from the petitioner, the petitioner cannot be held

responsible for the same inasmuch as the reduced taxation has been offered by the State Government.

16. Dr. Saraf has also submitted that even if the goods sold during the course of inter-State sale is delivered within the State, where the purchase

was made, the sale will not become intra-State sale if, according to the contract entered into between the seller and purchaser, the goods are taken

outside the State. The site of delivery is, thus, contends Dr. Saraf, immaterial. Hence, even if the delivery of the vehicles sold by the petitioner took

place within the State of Arunachal Pradesh, such delivery will not make the sales intra-State sale inasmuch as the sale certificates issued show that

the same were made for being effective in the State of Assam, where the vehicles were to be carried to and registered with the motor vehicles

authorities concerned. In the face of the materials on record, contends Dr. Saraf, it is for the respondents to show that the vehicles had not moved

out of the State of Arunachal Pradesh in pursuance of such sales. In this regard, it has not been contended by the respondents in the show cause

notice, in question, points our Dr. Saraf, that the vehicles had not moved outside the State of Arunachal Pradesh. In respect of his submissions, so

made, Dr. Saraf has referred to Hindustan Paper Corporation Limited v. Commissioner of Taxes and Ors., reported in 2003 (1) GLT 221.

17. As regards the submission of the respondents that this writ petition is not maintainable on account of the pendency of the appeal said to have

been lying for disposal with respondent No. 5, Dr. Saraf has submitted that it is noteworthy that this appeal is actually a representation and the

same could not have been legally treated as a statutory appeal inasmuch as the materials on record clearly reveal that it is at the instruction of the

respondent No. 2, namely, Commissioner of Taxes and Excise, Government of Arunachal Pradesh, that the sale of motor vehicles to outsiders was

sought to be taxed at the rate of local sales tax and, hence, the question of preferring appeal before the respondent No. 4 against such instructions

of respondent No. 2, who is an authority superior to respondent No. 4, did not legally arise at all. Dr. Saraf further submits that against the

instructions given by the respondent No. 2, no appeal can lie to the respondent No. 4 and, hence, even if the petitioner uses the

word/nomenclature appeal in respect of his said representation, the representation, so made, does not acquire the status of a statutory appeal. This

apart, contends Dr. Saraf, the jurisdiction of a writ Court cannot be barred on account of the fact that a representation is pending with the

respondent No. 4 against the instructions given by the respondent No. 2.

18. Before entering into the merit of the rival submissions made on behalf of the parties, what is essential to note is that the impugned notice, dated

27.5.2002 (Annexure H to the writ petition) directing the petitioner to show cause is, admittedly, culmination of a number of directions issued by

various authorities concerned on the question of sale of vehicles in the course of inter-State trade and commerce. All the directions, which have,

according to the petitioner, led to the issuance of the show cause notice, stand impugned in the present writ petition. These directions are,

therefore, required to be looked into very carefully. From the case set up by the petitioner, it is clear that the directions, which are under challenge

in the present, writ petition, are as follows :

(i) Letter, dated 7.2.2002 (Annexure B to the writ petition) issued by the respondent No. 5, namely, Additional Deputy Commissioner-cum-

Superintendent of Tax and Excise, Papumpare District, Yupia, directing the petitioner to stop, with immediate effect, sale of motor vehicles to

customers outside the State.

(ii) Letter, dated 27.2.2002 (Annexure C to the writ petition) issued by the respondent No. 5, namely, Additional Deputy Commissioner-cum-

Superintendent of Tax and Excise, Papumpare District, Yupia, that he (i.e., the Superintendent of Tax and Excise, Yupia) is not a policy maker

and that the letter, dated 7.2.2002 (Annexure B to the writ petition) aforementioned, was issued by him (respondent No. 5) in compliance with the

directions issued to respondent No. 5, by respondent No. 2, namely, the Commissioner of Tax and Excise, Government of Arunachal Pradesh,

stopping sale of motor vehicles from Arunachal Pradesh to persons outside the State.

(iii) Letter, dated 14.3.2002 (Annexure F to the writ petition) issued by the respondent No. 3, Assistant Commissioner (Legal) Tax and Excise,

Government of Arunachal Pradesh, informing the petitioner that pending government decision, no inter-State sale of motor vehicles @ 2% of sale

tax will be allowed. However, the motor vehicle dealers are free to sell motor vehicle @ 12% local sales tax to outsiders.

(iv) Letter, dated 7.5.2002 (Annexure-G), issued by respondent No. 3, Assistant Commissioner (Legal) Tax and Excise, informing the petitioner

that the Government has decided that sales tax @ 12% would be charged from the buyers coming from outside the State for buying motor vehicles

to Arunachal Pradesh on the ground that such sales are not inter-State sale.

(v) Notice to show cause, dated 27.5.2002 (Annexure-H), issued by respondent No. 6, Assessing Officer, Office of the Deputy Commissioner,

Papumpare District, Yupia, demanding short paid sales tax.

19. Let me, now, deal, with the above challenges made in the present writ petition.

Letter, dated 7.2.2002 (Annexure B) imposing total ban on sale of motor vehicles outside the State

20. While dealing with the letter, dated 7.2.2002 (Annexure B) issued by respondent No. 5, namely, the Additional Deputy Commissioner-cum-

Superintendcnt of Tax and Excise, imposing, in pursuance of the letter, dated 6.2.2002, received by the respondent No. 5 from respondent No. 3,

namely, the Commissioner of Taxes & Excise, Itanagar, total ban, with immediate effect, on the sale of motor vehicles to the customers outside the

State, it is pertinent to note that Article 301 of the Constitution of India, which is embodied in Part XIII of the Constitution, provides that subject to

constitutional provisions contained in Part XIII, trade, commerce or inter-course throughout the territory of India shall be free. Article 301, thus,

imposes limitations on the exercise of legislative powers by the Union as well as the States, the limitations being what the Constitution may choose

to impose. These limitations are enumerated in Articles 302, 303 and 304.

21. It is noteworthy that Article 302 empowers the Parliament to impose, by making law, such restrictions on the freedom of trade, commerce or

inter-course between one State and another or within any part of the territory of India as may be required in the public interest. Article 303

imposes restrictions on the legislative powers of the Union and of the States with regard to the trade and commerce. Tn exercise of the powers

under Article 304, even the legislature of a State may, by making law, impose such reasonable restrictions on the freedom of trade, commerce or

inter-course with other States or within their own State as may required in the public interest. However, the proviso to Article 304(b) puts an

embargo on this power of the State legislature, the embargo being that no bill or amendment for the aforesaid purpose shall be introduced or

moved in the Legislature of the State without the previous sanction of the President.

22. From a combined reading of Articles 301, 302, 303 and 304, it becomes abundantly clear that trade, commerce or intercourse throughout the

territory of India shall be, generally, free subject to such restrictions, which the Parliament may choose to impose. However, even a State

Legislature may, by making law, impose reasonable restrictions on the freedom of trade, commerce and intercourse as may be required in the

public interest subject to the condition that before making such law, sanction of the President shall be obtained. In other words, apart from the fact

that the restriction, sought to be imposed by a State, has to be reasonable, such restriction, even if reasonable, can be imposed only in public

interest by the State Legislature and that too, by making law after obtaining previous sanction of the President. Imposition of complete restriction

on the trade, commerce and intercourse throughout the country or movement of the goods from one State to another by issuance of an executive

order is, as correctly submitted by Dr. Saraf, foreign to the entire constitutional scheme of taxation. When Article 304 provides that the State

Legislature cannot enact any law putting even reasonable restrictions on the trade, commerce and intercourse without the previous sanction of the

President, the executive authorities like the Commissioner of Tax and Excise and/or the Deputy Commissioner of Taxes and Excise, Itanagar

and/or the Addl. Deputy Commissioner-cum-Superintendent of Taxes and Excise cannot, by executive instructions, impose total ban on sale of

motor vehicles from Arunachal Pradesh to the customers outside the State. Such a ban imposed by letter, dated 7.2.2002, (Annexure-B) is,

undoubtedly, in gross violation of the entire constitutional scheme of taxation envisaged by Article 301, 302, 303 and 304. The impugned letter,

dated 7th February, 2002, therefore, issued by the Additional Deputy Commissioner-cum-Superintendent of Taxes and Excise as well as the

letter, dated 6th February, 2002, issued by the Commissioner of Taxes and Excise, Itanagar, on the basis of which the letter, dated 7.2.2002

(Annexure- B) was written are wholly without jurisdiction, void ab initio and must be deemed to be non est in law.

Direction contained in the letter, dated 14.3.2003 (Annexure F to charge sales tax under the local sales tax law in respect of interstate transations.

23. The respondent No. 3, namely, Assistant Commissioner (Local) Taxes and Excise, vide letter, dated 14th March, 2002 (Annexure F)

addressed to the respondent No. 5, namely, Superintendent of Taxes and Excise, informed the latter that pending Government decision, no inter-

State sale of motor vehicles @ 2% would be allowed. However, it was also clarified that the motor vehicle dealers were free to sell to outsiders

motor vehicles @12% local sales tax.

24. Article 246 of the Constitution of India embodies the scheme for distribution of legislative powers between the Union and State Legislatures

with regard to the different entries mentioned in the lists contained in the Seventh schedule to the Constitution of India. According to Entry 92A of

List (i.e., Union List), Parliament is vested with exclusive powers to make laws imposing taxes on sale and purchase of goods other than

newspapers. Entry 54 of the State list empowers the States to frame laws imposing taxes on sales and purchases of goods other than newspapers

subject to, however, the provisions of Entry 92A of the Union List. Article 286 puts restrictions on the powers of the State to enact legislation on

taxes of sale of goods. Clause (1) of Article 286 places restrictions on the legislative powers of the State relating to imposition of taxes by laying

down to the effect that no taxes shall be imposed on the sale and purchase, which has taken place outside the State or is in the course of import or

export out of India. Clause (2) of Article 286 vests the Parliament with the powers to frame laws formulating principles for determining as to when

a sale or purchase of goods, within the meaning of Article 286(1), can be held to have taken place outside the State or in the course of import or

export. Clause (3) of Article 286 provides that any law framed by State imposing or authorising imposition of taxes in the course of inter-State

trade and commerce shall be subject to the restrictions as may be imposed by the Parliament.

25. A careful study of Articles 246 and 286 read with Entry 92A and Entry 54 of List I and List II respectively clearly reveals that the power to

impose taxes on sale or purchase of goods, other than newspapers, which takes place within a State, belongs to the State in terms of Entry 54 of

List II of the Seventh Schedule of the Constitution, whereas levy of taxes on movement of goods in the course of inter-State trade and commerce

or in the course of import and export are within the exclusive domain and jurisdiction of the Union Parliament in terms of Entry 92(A) of List I of

the Seventh Schedule. Thus, Article 286 aims at ensuring that taxes imposed by a State on sales do not interfere with the taxes imposed on the

goods purchased in the course of import or export and/ or inter-State trade and commerce, which are beyond the competence of the State. Article

286, therefore, places restrictions on the powers of the State to enact law imposing taxes on sale of goods in the course of inter-State trade and

commerce. Under the powers conferred by Clause (2) of Article 286, the Parliament has, by enacting the Central Sales Tax Act, 1956, and the

Rules framed thereunder, formulated the principles for imposition of taxes on sale and purchase of goods, which take place outside the States and

in the course of inter-State trade and commerce. From a careful perusal of the provisions of the Central Sales Tax, Act, 1956, tax on sale or

purchase of goods in the course of inter-State trade and commerce is payable by a person, who carries on the business as defined in Section 2(a)

and who is a dealer within the meaning of Section 2(b) and is registered u/s 7 of the Act of 1956. Section 3 of the Central Sales Act, 1956, which

defines an inter-State sale or purchase, lays down that if a sale or purchase of goods occasions the movement of goods from one State to another

or is effected by a transfer of document of title to the goods during their movement from one State to another, such a sale or purchase shall be

treated to have taken place in the course of inter-State trade and commerce.

26. Thus, the mandate of the Constitution, as envisaged under Article 246 and Article 286, is that the power to frame laws for imposition and

realization of taxes on sales and purchases of goods taking place in the course of inter-State trade and commerce and in the course of export and

import is vested in the Union and, similarly, the power to frame laws for imposition as well as realization of taxes on sales and purchases of goods

within the State is vested in the State. The object of such distinction, as correctly contended by Dr. Saraf, is obviously to prevent double taxation

on single transaction. Hence, taxes on sales and purchases made in the course of inter-State trade and commerce can be imposed only under the

Central Sales Tax Act, 1956, and not under any State legislation. In other words, no taxes can be imposed by the State on sales and purchases,

which arc covered under Central Sales Tax Act. Any attempt made to the contrary would amount to double taxation and would, therefore, be

contrary to not only the provisions of the Constitution, but the Central Sales Tax Act, 1956, and the Rules framed thereunder. This aspect of the

matter becomes clear from the law laid down in Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, wherein the Apex Court

held as under :

Transaction of sale is subject to tax under the central Sales Tax Act, 1956, on the completion of the sale and a mere contract of sale is not a sale

within the definition in Section 2(g). A sale being, by definition, transfer of property, becomes taxable u/s 3(a) if the movement of goods from one

State to another is rnder a covenant or is incident of the contract of sale and the property in the goods passes to the purchaser otherwise than by

transfer of documents of title when the goods are in movement from one State to another. In respect of an inter State sale tax is leviable only once

and the two clauses of Section 3 are mutually exclusive. A sale taxable as falling within Clause (a) of Section 3 will therefore be excluded from the

purview of Clause (b) of Section 3."" (Emphasis is supplied)

27. That no State Legislature can impose tax on a sale, which is covered by the definition of inter-State sale within the meaning of Section 3 of the

Central Sales Tax Act, 1956, is clear from 20th Century Finance Corporation Ltd. v. State of Maharashtra, reported in (2002) 6 SCC 12,

wherein the Apex Court has laid down as follows ;

The State Legislature cannot tax such transactions when deemed sales take place (i) in the course of inter-State trade or commerce, (ii) is outside

the State, (Hi) is in the course of import or export of goods. It further held that as regard the transfer of right to use any goods for any purpose, the

determination of situs of sale, in absence of legal function created by the appropriate Legislature contemplating otherwise, would be the place

where the property in the goods passes and not the place of location of the goods where they are put to use."" (Emphasis is supplied)

28. Let me, now, come to Sub-section (5) of Section 8, which forms the core of the notice, dated 2.5.2001 (Annexure A). Section 8(5) reads as

follows :

(5) Notwithstanding anything contained in this section, the Central government may, if it is satisfied that it is necessary so to do in the public

interest, by notification in the official gazette, direct that in respect of such goods or classes of goods as may be mentioned in the notification and

subject to such conditions as it may think fit to impose, no tax under this Act shall be payable by any dealer having his place of business in any

Union Territory in respect of the sale by him from any such place of business of any such goods in the course of inter-State trade and commerce or

that the tax on such sales shall be calculated at such lower rates than those specified in Sub-section (1) or Sub-section (2), as may be mentioned in

the notification.

29. A dispassionate analysis of Section 8 indicates, as correctly points out Dr. Saraf, that the scheme for levy of the Central Sates Tax Act, 1956,

relating to inter-State sales falls under the following five categories:

(i) Inter-State sales by a dealer to the Government or to a registered dealer of the goods of the description referred to in Section 8(3) shall be at

4% orovided that conditions prescribed in Section 8(4) are satisfied [Section 8(1)]

(ii) Tax payable by a dealer on his turnover of inter-State sales, not falling u/s 8(1) of ""declared goods"", shall be twice the rate applicable to the

sale or purchase of such goods Inside the appropriate State [Section 8(2)(a)]

(iii) Tax payable relating to inter-State sale of other than declared goods and not falling u/s 8(1) shall be at 10% or at the rate applicable for sales

inside the appropriate State, whichever is higher [Section 8(2)(b)l

(iv) Notwithstanding anything contained in Section 8(1) or 8(2)(b), if the goods are sold in course of inter-State trade and commerce, the sale or

purchase of which is, under the sales tax law of the appropriate State exempted from tax generally or subjected to tax generally at a rate lower

than four percent, it shall be either exempted from tax or the tax under the Central Sates Tax shall be levied at the lower rate as applicable inside

the appropriate ""State"" [Section 8(2A)].

(v) Notwithstanding anything contained in Section 8(1) to 8(4) of the Central Tax Act, the State Government may, in public interest and subject to

such conditions as may be specified by it, exempt any person from payment of tax regarding the inter-State sales or levy a rate lower than that

specified in Section 8(1) or 8(2). Section 8(5) empowers the State Government, in public interest, to dispense with the requirements of Section

8(4)"".

30. The power of a State Government to issue a notification u/s 8(5) of the Act of 1956 is, undoubtedly, very wide. The State Government may

exempt or reduce the rate of tax leviable on sales, made by any dealer in respect of any such goods or class of goods or in respect of all sales of

goods or sales of all classes of goods made to any class of such dealers or to any person or any such class of persons as may be specified in the

notification. By virtue of the notification, dated 2.5.2002 (Annexure A) issued by the State of Arunachal Pradesh, in exercise of powers u/s 8(5) of

the Act of 1956, benefit of reduction of the Central Sales Tax Act has been granted in respect of inter-State sale made by any dealer, having its

place of business in the State, to ""any person"" in course of inter-State trade and commerce,

31. What follows from the above discussion is that the letter, dated 14.3.2002, (Annexure F) issued by Respondent No. 3 to Respondent No. 5

informing the latter that pending Government decision, no inter-State sale of motor vehicle @ 12% will be allowed, but dealers are free to sell

motor vehicles @ 12% local tax to the outsiders is in complete violation of the provisions of the Constitution of India and the Central Sales Tax

Act, 1956, inasmuch as when the State Government, in exercise of its powers u/s 8(5)(b), has, vide the notification, dated 2.5.2001 (Annexure A)

reduced the rate of sales tax to 2%, no executive authority can, as already indicated hereinabove, remove such concession. This apart, on an inter-

State sale, rate of tax applicable will be under the Central Sales Tax, Act, 1956, and no executive authority can direct, as has been done by the

impugned letter, dated 14.3.2002, that on inter-State sales, the dealer will have to pay local/State sales tax. Thus, the directions contained in the

letter, dated 14.3.2002 (Annexure F) have to be held as without jurisdiction and void ab initio.

32. I may, now, pause here to further point out that as to what constitute an inter-State sale, the Apex Court in State of A.P. Vs. National Thermal

Power Corporation Ltd. and Others, has laid down as follows :

It is well settled that a sale in the course of inter-State trade has three essential ingredients (i) there must be a contract of sale, incorporating a

stipulation, express or implied, regarding inter-State movement of goods, (ii) the goods must actually move from one State to another, pursuant to

such contract of sale, the sale being the proximate cause of movement and (iii) such movement of goods must be from one State to another State

where the sale concludes. Therefore, a movement of goods which takes place independently of a contract of sale would not fall within the meaning

of inter-State sale. Similarly if the transaction of sale stands completed within the State and the movement of goods takes place thereafter, it would

obviously by or on behalf of the purchaser alone and, therefore, the transaction would not be having an inter-State element."" (Emphasis is supplied)

33. What, thus, crystallizes from the law laid down by the Apex Court in National Thermal Power Corporation Ltd. (supra) is that in order that a

sale or purchase can be said to have taken place in the course of inter-State trade and commerce, the following conditions must be satisfied:

(i) There is an agreement to sell, which contains a stipulation, express or implied, regarding the movement of the goods from one State to another ;

(ii) In pursuance of that agreement, the goods, in fact, moved from one State to another ;

(iii) Eventually, a concluded sale takes place in the State, where the goods are sent and the State, where the sale is so concluded, must be different

from the one from where the goods moved.

34. In National Thermal Power Corporation Ltd. (supra) the Apex Court has clarified that it is not permissible to artificially appoint the situs of a

sale so as to create territorial nexus attracting applicability of taxing statute enacted by any State Legislature and levy tax on such artificially created

inter-State sale in breach of Section 3 of the Central Sates Tax Act read with Article 286 and 269(1) and (3) of the Constitution. It has been

further clarified therein that no State Legislature and no stipulation in any contract can fix the situs of sale within the State or artificially define the

completion of sale in such a way so as to convert an inter-State sale into an intra-State sale or create a territorial nexus to tax on inter-State sale

unless permitted by an appropriate Central legislation. Thus, the sale, which is, for all purposes, an inter-State sale cannot be treated to be a local

sale by sales tax authorities and cannot be made liable to taxation at the rate applicable to the local sales tax fixing sites of the sale within the State.

If in pursuance of the terms of a contract of sale, which may be explicit or implicit, the goods move from one state to another, the same will be

inter-State sale irrespective of the place, where the delivery of the goods is given. Even if the delivery of the goods is taken at a particular place,

but the goods in pursuance of the contract of sale are moved from one State to another, the same will be an inter-State sale and cannot be made

liable to taxation under the State Sales Tax law.

35. In view of the fact that the Government of Arunachal Pradesh has issued, in exercise of its powers under NAVNITSection 8(5)(b) of the

Central Sales Tax Act, 1956, notification, dated 7th May, 2001 (Annexure A) reducing the rate of central sales tax to 2% in respect of sale of

various kinds of motor vehicles by any dealer to any person in course of inter-State trade and commerce and the said notification is still in force,

the Assistant Commissioner (Local) Taxes and Excise has no authority and jurisdiction to issue any direction to the assessing authority not to allow

sales of motor vehicles in course of inter-State trade and commerce @ 2% as contemplated in the notification, dated 2.5.2001 (Annexure-A).

Moreover, the inter-State transactions are governed by the provisions of the Central Sales Tax Act, 1956, and the rate of tax, in normal course to

be applied to such inter-State transactions having been specified in the Act of 1956, no demand for payment of tax at the rate applicable under the

States Sales Tax law can be raised by any executive authority in respect of inter-State transactions, particularly, when there is no law permitting

demand for such enhanced rate of local sales tax.

36. The action of the respondents in directing that the sale made in course of inter-State trade and commerce to the outsiders shall be taxed at the

rate of 12% as applicable to the local sale is, thus, in clear contradiction to not only the specific provisions of the Central Sales Tax Act, 1956, and

Article 286 of the Constitution of India but also the law laid down by the Apex Court and, hence, the impugned letter, dated 14.3.2002 (Annexure

F) issued by the respondent No. 3 cannot be allowed to stand good on record.

The notice to show cause (Annexure A)

37. The notice, dated 27.5.2002 (Annexure A) directing the petitioner to show cause has been issued on, broadly speaking, three grounds,

namely, (i) that there must exist a bond between the contract of sale and actual transportation outside the State by way of a specific purchase

order, contract or agreement, but no such concluded contract could be shown in writing, (ii) that the sale must be made to dealers and not to

individuals, but in the case at hand, sales have been made to individuals and (iii) that "C" form must be produced in support of the sales made in

course of inter-State trade and commerce, but in the case at hand, "C" forms have not been furnished by the petitioner,

38. Let me, now, deal with the question if a notice could have been issued on any of the grounds mentioned hereinbefore.

Whether contract of sale must be in writing

39. There is nothing in the language used in Section 3 of the Central Sales Tax Act, 1956, which defines inter-State sale and purchase, to show

that the contract of sale must always be in writing. Hence, the conditions for movement of the goods from one place to another may be inferred

from the conduct of the parties or even from collateral acts. There may not always be available direct evidence showing stipulation for movement

of the goods. The intention of the parties is a relevant factor in determining the nature of the contract. Where the movement of the goods is so

inextricably linked with the sale that the bond cannot be disassociated without breach of the mutual understanding between the seller and the buyer

arising out of the nature of the transaction, the sale must, until the contrary is shown, be treated as one in the course of inter-State trade and

commerce. What is of importance to make the sale as one in the course of inter-State trade and commerce is that there must be an obligation to

transport the goods outside the State, the obligation may be of the seller or of the buyer and it may arise by reason of the statute, from terms of

contract, mutual understanding or agreement between the parties and/or from even the nature of the transaction, which linked the sale to such

transaction. Such an obligation may be expressed under the contract itself or it may be implied by a mutual understanding. It is not necessary that in

all cases, there must be pieces of direct evidence showing such obligation in a written contract or oral agreement. Such obligations are inferable

from circumstantial evidence also.

40. In Commissioner of Commercial Taxes Vs. Bhag Singh Milkha Singh, the assesse''s firm, which was registered as a dealer in timber under

Bihar Sales Tax Act, had supplied, on the basis of orders placed, over phone, by purchasers timber without there being any separate written

contract of sale. The Patna High Court, while dealing with this case, wherein the dealer''s claim for deduction from the taxable turnover of a certain

sum on account of sale of timber in course of inter-State trade and commerce to dealers outside the State of Bihar had been denied by the

assessing authority on the ground that there was no written contract between the parties, held as follows :

To make a sate as one in the course of inter-State trade or commerce it must be an obligation, whether of the seller or the buyer, to transport the

goods outside the State and it may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between

them or the nature of the transaction which linked the sale to such transportation. Such an obligation may be imposed expressly under the contract

itself or impliedly by a mutual understanding. It is not necessary that in all cases there must be pieces of direct evidence showing such obligation in a

written contract or oral agreement. Such obligations are inferable from circumstances evidence also."" (Emphasis is supplied)

41. I respectfully agree with the position of law laid down in Bhag Singh Milkha Singh''s case (supra).

42. Similarly in, Thavakkal Agencies Vs. The State of Tamil Nadu, relied upon by Dr. Saraf, Madras High Court has, I find, held that where the

purchaser was an outside State purchaser and had no place of business within the State of Madras, it could be safely inferred that the parties, in

fact, contemplated even at the time of sale, movement of the goods from the State of Madras to another State. The High Court further observed

that if the parties had contemplated or agreed at the time of sale that the goods should be transported from one State to another, the transaction

would be an inter-State sale and could not be considered to be a local sale. To the law so laid down, I respectfully add one condition, namely, that

such inference of a sale or purchase being in the course of inter-State sale or purchase is subject to the condition that such inference is rebuttabte

and can survive until the contrary is shown or proved.

43. I may, at this stage, pause to point out that Rule 47 of the Central Motor Vehicles Rules, 1989, lays down the procedure for making

application for the purpose of obtaining permanent registration of motor vehicles. Clause (a) of Sub-rule (1) of Rule 47 provides that an application

for registration of a motor vehicle shall be made in Form 20 to the registering authority, within a period of seven days from the date of taking

delivery of such a vehicle, excluding the period of journey and shall be accompanied by, inter alia, a sale certificate in Form 21. According to this

Form, the name of the buyer with address must be mentioned in the certificate. If the certificate, so issued, shows that the buyer is from a State

other than the State, where the seller is located, the inference, until rebutted, will be that the vehicle is aimed at being taken to, and get registered

at, the place, where the buyer resides and that the vehicle had moved out of the State in terms of what the certificate granted in Form 21 indicates.

44. In the case at hand, the petitioner claims to have issued sale certificates in Form 21 as per Rule 47(1)(a) of the Motor Vehicle Rules, 1989,

addressed to the registering authority for registration of the vehicles, in question, and in the certificates so issued, the names of the buyers along

with their respective address were mentioned. In support of this plea, the petitioner has annexed two of such certificates as Annexure I to the writ

application. There is no dispute before me that it is on the basis of such certificates only that the registration of the vehicle is to be granted by the

concerned motor vehicle official of the district. A perusal of the certificates annexed to the writ petition indicates the intention of the contracting

parties, namely, the buyers and the seller. The sale certificates establish, until the contrary is shown, the nature of the transaction entered into by

and between the buyers and the petitioner. Since the buyers, as reflected from the addresses mentioned in the certificates, are residents of the State

of Assam, the irresistible conclusion, until rebutted, is that the vehicles, in question, were sold to the buyers in the course of inter-State trade and

commerce with a certificate in Form 21 for registration of the vehicle outside the State and the vehicles moved out of the State of Arunachal

Pradesh in terms of conditions of contract between the parties. It is correctly contended, on behalf of the petitioner, that once the vehicle moves

out of the State in the course of inter-State trade and commerce in pursuance of the agreement, the contract comes to an end and the subsequent

sale or user of the vehicle by the buyer contrary to what the parties had agreed to cannot change the nature of the first sale. Any contravention of

any law by the buyer or the concerned transport official cannot alter the nature and/or character of the inter-State sale.

45. It has been pointed out by Dr. Saraf that in certain cases, where the cars are purchased by the outsiders on the basis of loans procured from

banks quotations were sought for by the petitioner and on the basis of the quotation, drafts were sent by the banks to the petitioner and after

receipt of the payment, the vehicles were sent to the concerned persons. All these facts will be apparent, according to Dr. Saraf, from the various

materials annexed to the writ petition as annexure I and, hence, it cannot be inferred that the sales of motor vehicles, in question, were not inter-

State sale and not liable to tax at the rate of 2% as per the notification, dated 2.5.2001 (Annexure A). I find, for the reasons already indicated

herein above, considerable force in the submissions so made on behalf of the petitioner.

46. What logically follows from the above discussion is that the mere fact that some vehicles sold by the petitioner have been registered with the

motor vehicle authorities in the State of Arunachal Pradesh is immaterial until the time the respondents show that it is on the strength of the

certificates issued in Form 21 by the petitioner that the vehicles have been registered in the State of Arunachal Pradesh and/or that in terms of the

certificates granted by the petitioner, the vehicles, in question, never moved out of the State of Arunachal Pradesh. Amazingly enough, no such

material, which could contradict or demolish the case set up by the petitioner, could be produced by the respondents.

47. Situated thus, one has no option but to hold, until rebutted, that the mere fact that some of the vehicles, in question, have been registered with

the motor vehicles authorities in Arunachal Pradesh cannot demolish the petitioner"s case that the vehicles, in question, were sold by the petitioner

on clear understanding with the buyers concerned that the vehicles would be taken out of the State of Arunachal Pradesh to the State of Assam,

where the buyers claim to be residents of, and that in pursuance of such contracts, the vehicles did move out of the State of Arunachal Pradesh.

Whether sales in all cases must be made to registered dealers and supported by Form C to avail benefit of the notification, dated 2.5.2001

(Anexure A)

48. It is not in dispute before me that the impugned notice of show cause has been issued on the ground that the motor vehicles, in question, were

sold to individuals and not to dealers and that such sales were made without procuring the Form C and, hence, the conditions precedent for

availing of the benefit of the notification, dated 2.5.2001 (Annexure A) have not been fulfilled. Such a demand by the assessing officer is, according

to the petitioner, wholly illegal, without jurisdiction and contrary to the specific provisions of the Act of 1956.

49. While dealing with the above aspects of the matter, it is apposite to note that according to Section 8(1) of the Act of 1956, every dealer, who,

in course of inter-State trade and commerce, sells to the Government or to a registered dealer other than the Government goods of the description

as referred to in Sub-section (3) shall be liable to pay tax @ 4% on its turn-over. Sub-section (2) of Section 8 provides that the tax payable by

any dealer on its turnover not falling under Sub-section (1) shall be calculated at twice the rate as applicable to the sale and purchase of the goods

inside the appropriate State in case of declared goods and in case of goods other than declared goods, the same shall be calculated @ 10% or at

the rate applicable to the sale and purchase of such goods inside the appropriate State, whichever is higher.

50. A careful analysis of the provisions contained in Sub-section (2) of Section 8 reveals that Sub-section (2) does not cover sales, made under

Sub-section (1), i.e., sales made to the Government or to a registered dealer other than the Government. As a corollary, what follows is that Sub-

section (2) applies to sales made to unregistered dealers and persons other than those, who fall under Sub-section (1).

51. From a co-joint reading of Sections 8(1) and 8(2) of the Act of 1956, it becomes clear that this Act contemplates three types of sales, namely,

(1) sale to the Government, (2) sale to a registered dealer and (3) sale to a person other than the Government and a registered dealer. In other

words, it is possible for a sale to remain inter-State sale not only when the sale is made to the Government and/or to a registered dealer, but also

when the sale is made to a person other than the Government or a registered dealer, that is, to an unregistered dealer or an individual person.

52. Sub-section (2A) of Section 8 provides that in case the sale or purchase of any goods is exempted from tax generally or is subjected to tax,

generally, at the rate, which is lower than 4% under the sales tax law of the appropriate State, then, the central sales tax shall also be nil or, as the

case may be, shall be calculated at such a lower rate. Subsection (3) of Section 8, however, places a restriction in so far as sales made to

registered dealer u/s 8(1)(b) are concerned and provides that the goods must be of the class or classes specified in the certificate of registration of

the registered dealer purchasing the goods as being intended for re-sale by him or, subject to any rule made by the Central Government in this

behalf, for use by him in the manufacture and processing of the goods for sale or any mining or in the generation and distribution of electricity or

any other form of power or as containers of the descriptions referred to in Sub-section (3). Sub-section (4) of Section 8 further clarifies that the

provisions of Section 8(1) shall not apply unless and until the dealer selling the goods furnishes to the prescribed authority a declaration in the

prescribed form and signed by the duly authorized officer of the government. It is this declaration, as contemplated in Sub-section (4) of Section 8,

which is required to be furnished in Form C as per Central Sales Tax (Registration and Turnover) Rules.

53. Thus, the above requirement of furnishing of declaration in Form C is necessary only when the sales are made to a registered dealer and to a

Government.

54. Let me, now, once again, revert to Sub-section (5) of Section 8, which forms as mentioned above, the core of the notice, dated 2.5.2001

(Annexure A). Section 8(5) reads as follows :

(5) Notwithstanding anything contained in this section, the Central government may, if it is satisfied that it is necessary so to do in the public

interest, by notification in the Official Gazette, direct that In respect of such goods or classes of goods as may be mentioned in the notification and

subject to such conditions as it may think fit to impose, no tax under this Act shall be payable by any dealer having his place of business in any

Union Territory in respect of the sale by him from any such place of business of any such goods in the course of inter-State trade and commerce or

that the tax on such sales shall be calculated at such lower rates than those specified in Sub-section (1) or Sub-section (2), as may be mentioned in

the notification.

55. A dispassionate analysis of Section 8 indicates, if I may reiterate, that the scheme for levy of the Central Sales Tax Act, 1956, relating to inter-

State sales falls under the following five categories :

(vi) Inter-State sales by a dealer to the Government or to a registered dealer of the goods of the description referred to in Section 8(3) shall be at

4% provided that conditions prescribed in Section 8(4) are satisfied [Section 8(1)].

(vii) Tax payable by a dealer on his turnover of inter-State sales, not falling u/s 8(1) of ""declared goods"", shall be twice the rate applicable to the

sale or purchase of such goods inside the appropriate State [Section 8(2)(a)].

(viii) Tax payable relating to inter-State sale of other than declared goods and not falling u/s 8(1) shall be at 10% or at the rate applicable for sales

inside the appropriate State, whichever is higher [Section 8(2)(b)].

(ix) Notwithstanding anything contained in Section 8(1) or 8(2)(b), if the goods are sold in course of inter-State trade and commerce, the sale or

purchase of which is, under the sales tax law of the appropriate State exempted from tax generally or subjected to tax generally at a rate tower

than four percent, it shall be either exempted from tax or the tax under the Central Sates Tax shall be levied at the lower rate as applicable inside

the appropriate ""State"" [Section 8(2A)].

(x) Notwithstanding anything contained in Section 8(1) to 8(4) of the Central Tax Act, the State Government may, in public interest and subject to

such conditions as may be specified by it, exempt any person from payment of tax regarding the inter-State sales or levy a rate lower than that

specified in Section 8(1) or 8(2). Section 8(5) empowers the State Government, in public interest, to dispense with the requirements of - Section

8(4).

56. As mentioned herein above, the power of a State Government to issue a notification u/s 8(5) of the Act of 1956 is unquestionably very wide.

The State Government may, if I may repeat, exempt or reduce the rate of tax leviable on sales, made by any dealer in respect of any such goods or

class of goods or in respect of all sales of goods or sales of all classes of goods made to any class of such dealers or to any person or any such

class of persons as may be specified in the notification. By virtue of the notification, dated 2.5.2002 (Annexure A) issued by the State of Arunachal

Pradesh, in exercise of powers u/s 8(5) of the Act of 1956, if I may, once again, emphasise, benefit of reduction of the Central Sales Tax Act has

been granted in respect of inter-State sale made by any dealer, having its place of business in the State, to ""any person"" in course of inter-State

trade and commerce.

57. It is crystal clear from even a cursory reading of the notification (Annexure A) aforementioned that this notification has not restricted the

benefits of reduction of sales tax to the sales made to registered dealers or any class of dealers. Hence, even if a sale is made, in course of inter-

State trade and commerce, by any dealer, having its place of business in Arunachal Pradesh, to any person other than a registered dealer, the

benefit of the notification, in question, issued u/s 8(5) of the Act, can still be availed of by such a dealer. Since furnishing of Form C is a pre-

condition only in respect of sales made to a registered dealer and no such condition has been imposed by the notification, dated 2.5.2001,

(Annexure A) issuance of the show cause notice on the assumption that in the absence of Form C, the benefit of the notification, dated 2.5.2001,

(Annexure A) cannot be availed of by a dealer is wholly misconceived and contrary to the express provisions of Section 8(5)of the Act of 1956.

58. Issuance of a notification u/s 8(5) of the Act of 1956 exempting or reducing tax leviable on inter-State sale rests on public interest and on a

variety of correlated factors. The Apex Court in Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, observed at page 845 as under :

The rate which a State Legislature imposes in respect of inter-State transaction in a particular commodity must depend upon a variety of factors.

A State may be led to impose a high rate of tax on a commodity either when it is not consumed at all within the State, or if it feels that the burden

which is falling on consumers within the State be more than offset by the gain in revenue ultimately derived from outside consumers. The imposition

of rates of sales tax is normally influenced by factors political and economic. If the rate is so high as to drive away prospective traders from

purchasing a commodity and to resort to other sources of supply, in its own interest the State will adjust the rate to attract purchasers. Again, in a

democratic forces would operate against the levy of an unduly high rate of tax. The rate of tax on sales of a commodity may not ordinarily be

based on arbitrary considerations, but in the light of the facility of trade in a particular commodity the market conditions-internal and external and

the likelihood of consumers not being scared away by the price, which includes a high rate of tax. Attention must also be directed to Sub-section

(5) of Section 8 which authorizes the State Government, notwithstanding anything contained in Section 8, in the public interest to waive tax or

impose tax on sales at a lower rate on inter-State trade or commerce. It is clear that the legislature has contemplated that elasticity of rates

consistent with economic forces may be maintained."" (Emphasis is added)

59. That a State Government may, in exercise of its powers under Sub-section (5) of Section 8 of the Act of 1956, exempt, in the case of sales

taking place in the course of inter-State trade and commerce, the requirement of filling of a declaration form, such as Form C, becomes clear from

the law laid down in Shree Digvijay Cement Co. Ltd. and Others Vs. State of Rajasthan and Others, wherein the Apex Court has observed as

follows :

It is no doubt true that Section 8 of the Act contemplates the furnishing of Form C and Form D where inter-State sale is made to registered dealer

or to the Government department outside the State. But a notification which is issued under Sub-section (5) of Section 8 can have an overriding

effect in view of the non obstante clause. Form C and D are regarded as proof of inter-State sale being made by dealers from Rajasthan to a

registered dealer to a Government department outside Rajasthan. The Impugned notification requires the seller to record the name and address of

the purchaser on the bill or cash memo which he is required to issue in relation to an inter-State sale and the dealer is required to prove that the

transaction was in the nature of inter-State sale. We are unable to agree that the substitution of the requirement of furnishing Form C and D by

making it obligatory on the dealer to record the name and address of the purchaser in the bill or cash memo would have the effect of facilitating tax

evasion."" (Emphasis is supplied)

60. From the above observations of the Apex Court, it clearly transpires, as rightly contended by Dr. Saraf, that the power of the State

Government u/s 8(5) of the Act of 1956 is not restrictive in nature and even in the cases, where the notification contemplates grant of exemption

only in respect of the sales made to a registered dealer or to the Government, the State Government may, in its wisdom, waive, the requirement of

furnishing of the Form C and in such a case, the dealer may prove by some other mode that the sale was made in course of inter-State trade and

commerce. However, when the notification (Annexure A), under consideration, contemplates that sales may be made to ""any person"", then, the

question of imposing of the requirement of furnishing of Form C for availing the benefit of the exemption u/s 8(5) of the Act of 1956 does not,

concedes even Mr. Nabam, arise at all.

61. It is, now, imperative to note that once a notification u/s 8(5) of the Act of 1956 has been issued by the appropriate authority of the State, it

cannot be put to naught or be made inoperative by any agent of the Government. It is only the authority, which had granted the exemption and/or

concession under Sub-section (5) of Section 8 of the Act, which can withdraw or modify such exemption or concession by way of another

notification issued in this regard. The assessing authorities and/or executive authorities are legally bound to act in terms of the notification issued u/s

8(5) of the Act. Since the notification, dated 2.5.2001 (Annexure A) aforementioned has not made any distinction between the sales made to

registered dealer and sales made to unregistered dealer, no assessing authority or any other executive authority can impose any other condition

and/or read therewith any other condition. Since the State Government has reduced the rate of tax in respect of sales made in course of inter-State

trade and commerce to any person whether registered or unregistered dealer, the question of procuring Form C to claim the benefit of the said

notification in all cases does not arise at all. Had the notification, dated 2.5.2001, (Annexure A) aforementioned, issued under Sub-section (5) of

Section 8 been issued to reduce the rate of tax in respect of sales made to only registered dealers, the Assessing Officer would have been justified

in demanding that Form C be produced. Thus, the impugned show cause notice purporting to extract tax from the petitioner without allowing it to

avail any exemption/concession granted by the notification, dated 2.5.2001, (Annexure A) is absolutely Illegal, without jurisdiction and deserves to

be set aside and quashed. Further, the impugned notices and/or circulars issued in contravention of the notification, dated 2.5.2001, are also illegal,

without jurisdiction and liable to be set aside and quashed.

Whether the notice to show cause suffers from lack of application of mind and if so, consequences thereof.

62. One of the grounds on which the notice, dated 27.5.2002 (Annexure F) stands challenged in the present writ application is that this notice has

been issued at the behest of the superior officers and, hence, the notice is bad in law. Let me, now, examine the correctness of this submission too.

63. While dealing with the above aspect of the matter, it is essential to note that by the letter, dated 7.2.2002, respondent No. 3, namely, the

Assistant Commissioner (Legal) informed the respondent No. 2, namely, Superintendent of Tax and Excise that the sales made in course inter-

State trade and commerce, in question, are not inter-State sales and sale tax @ 12 % under the Arunachal Pradesh Sales Tax Act shall be charged

from the buyers coming from outside the State. A bare perusal of this letter shows, correctly contends the petitioner, that this letter was issued in

pursuance of another letter, dated 6.2.2002, issued by the respondent No. 2, who is the superior authority of respondent No. 5. From a careful

perusal of the letter, dated 27.2.2002 (Annexure E) too, it clearly emerges that the letter, dated 7.2.2002, was issued in pursuance of the letter,

dated 6.2.2002, of the superior officer. Further, respondent No. 5 has clearly stated in his letter, 27.2.2002 (Annexure F) that he is only an

implementing agency and not the policy maker. This, in turn, clearly indicates that no enquiry, on his own, was made by the assessing authority nor

was there any application of mind by the assessing authority and, thus, no satisfaction, as required, was arrived at before issuance of the letter,

dated 7.2.2002 by the assessing authority (i.e., the respondent No. 6). Hence, rightly contends the petitioner, prior to the issuance of the show

cause notice, a decision had already been taken by the superior officers that such sales were to be charged at the rate of 12%, although the

notification, dated 2.5.2001, (Annexure A) has reduced the rate of Central Sales Tax to 2%. Further, even a copy of the show cause notice issued

to the petitioner was forwarded to the respondent No. 2, namely, Commissioner of Tax and Excise, Government of Arunachal Pradesh, for

information and necessary action. The powers and function exercised by any officer under the Act has to be exercised after due and proper

appreciation of the facts and circumstances of the case and after due application of mind. The exercise of quasi-judicial powers by any officer

without application of mind and/or at the instance of the superior officer is without jurisdiction and untenable in law. Since the impugned show

cause notice has been issued by the Assessing Officer to give effect to the directions of the superior officers and/or to bring the directions of the

superior authorities to logical conclusion, it is rightly contended, on behalf of the petitioner, that the impugned show cause notice, having been

issued at the instance of the superiors authorities, is without application of mind, without jurisdiction and not tenable in law.

64. In Mahadayal Prem Chandra v. Commercial Tax Officer AIR 1958 SC 667, the Apex Court, while examining an order passed by the

Commercial Tax Officer, held that the order, which the Commercial Tax Officer, ultimately, passed showed that he was merely voicing the opinion

of the Asstt. Commissioner without any conviction of his own and that this was hardly a satisfactory way of dealing with the matter. The Apex

Court further held that since the Tax Officer did not exercise his own judgment in the matter and faithfully followed the instructions conveyed to him

by the Asstt. Commissioner, the whole procedure was contrary to the principles of natural justice. The Apex Court further observed that the

procedure adopted was, to say the least, unfair and was calculated to undermine the confidence of the public in the impartial and fair administration

of the Sales Tax Department.

65. In Orient Paper Mill Ltd. v. Union of India and Ors. AIR 1969 SC 49, the Supreme Court has held that when the Administrative Officers are

entrusted with quasi-judicial functions, then, they are to keep aside the administrative considerations, while discharging their quasi-judicial functions.

It was further held that while functioning as a quasi-judicial officer, they should not allow their judgments to be influenced by the administrative

considerations or by the instructions or considerations given by their superiors.

66. From the law laid down by the Apex Court in Mahadayal Prem Chandra (supra) orient Paper Mill Ltd., it more than abundantly clear that a

notice to show against alleged evasion of tax can be issued to a person by an assessing authority, when the assessing authority, on applying his own

mind to the facts and circumstances of the case, opines, albeit tentatively, that such an evasion of tax, as alleged by him, has taken place, but if such

a notice to show cause is issued mechanically, without application of mind, contrary to law or at the behest or in accordance with the decision of a

superior authority, such notice is untenable in law. Viewed from this angle, the impugned notice to show cause, for the reasons discussed above, is

bound to be held illegal, without jurisdiction and untenable in law.

Writ against show cause notice main tenable, if maintainable

67. It has been contended on behalf of the respondents, as already indicated hereinabove, that against the letter, dated 14.3.2002 (Annexure F),

and letter, dated 7.5.2002 (Annexure G), whereby directions were given that no inter-State sale of motor vehicles @ 2% would be allowed and

that sales to buyers, who are from outside the State, not being inter-State sale, were to be charged @ 12% local sales tax, the petitioner has

already preferred an appeal before the respondent No. 4, namely, Deputy Commissioner of Tax and Excise, Government of Arunachal Pradesh,

and that during the pendency of this appeal, the petitioner ought not to have approached a writ Court and hence, the writ petition is not

maintainable.

68. Reacting to the above submission, Dr. Saraf has, as already mentioned above, pointed out that this appeal is actually a representation and the

same could not have been legally treated as a statutory appeal inasmuch as the materials on record clearly reveal that It is at the instruction of the

respondent No. 2, namely, Commissioner of Taxes and Excise, Government of Arunachal Pradesh, that the sale of motor vehicles to outsiders was

sought to be taxed at the rate of local sales tax and, hence, the question of preferring appeal before the respondent No. 4 against such instructions

of respondent No. 2, who is an authority superior to respondent No. 4, did not legally arise at all. Dr. Saraf further submits that against the

instructions given by the respondent No. 2, no appeal can lie to the respondent No. 4 and, hence, even if the petitioner uses the

word/nomenclature appeal in respect of his said representation, the representation, so made, does not acquire the status of a statutory appeal. This

apart, contends Dr. Saraf, the jurisdiction of a writ Court cannot be barred on account of the fact that a representation is pending with the

respondent No. 4 against the instructions given by the respondent No. 2.

69. In view of the fact that the letter, dated 14.3.2002 (Annexure F) is a letter, which flew as a result of the letter, dated 6.2.2002, issued by the

respondent No. 2, namely, Commissioner of Tax and Excise, Arunachal Pradesh, and similarly the letter, dated 7.5.2002 (Annexure G) was a

continuation of the letter, dated 6.2.2002 aforementioned, it is abundantly clear that the directions/instructions had been issued by the letters

aforementioned at the instructions/command of the respondent No. 2, who is the senior-most authority in the matter. Hence, against the

directions/dictations of such senior-most authority, namely, respondent No. 2, question of preferring an appeal to the respondent No. 4, who is

junior to the respondent No, 2 does not arise at all and this representation cannot really constitute an appeal, far less, a statutory appeal u/s 33 of

the Arunachal Pradesh Sales Tax Act. Viewed from this angle, this appeal is nothing but as correctly contended by the petitioner, a representation

and such a representation cannot bar the exercise of jurisdiction by the High Court under Article 226 of the Constitution of India.

70. The present writ application has been filed challenging not only the show cause notice, dated 27.5.2002, but also the communications, dated

7.2.2002, 27.2.2002, 14.3.2002 and 7.5.2002, aforementioned issued by the respondents. The show cause notice is the cumulative effect of the

various notices/letters/circulars issued by the respondent authorities denying the benefit of sales tax exemption/concession granted by the

notification, dated 2.5.2001 (Annexure A) by the State Government u/s 8(5) of the Central Sales Tax Act, 1956. Under such circumstances, the

show cause notice cannot be read separately, or independent of, the directions contained in the various notices/letters/circulars under challenge.

Hence, the legality and validity of this notice has to be examined, tested and adjudged keeping in view the letters/circulars/notices, dated 7.2.2002,

27.2.2002, 14.3.2002 and 7.5.2002 aforementioned issued by the respondents. While considering the above aspects of the matter, it is apposite

to refer to Union of India (UOI) and Another Vs. Brij Fertilizers Pvt. Ltd. and Others, wherein the Apex Court held as under:

That though the High Court should normally not interfere at the stage of show cause notice, but where, form the facts it s apparent that there was

no material available with the department to doubt the statement on behalf of the respondents and their own officers at every point of time had

issued the certificate the correctness of which could not be disputed or doubted except by raising unfounded suspicion or drawing imagination it

would be failing to exercise jurisdiction if the Court does not discharge its constitutional obligation of protecting the manufacturers who are in

perilous condition as they are not able to meet their liabilities to pay to financial institutions and various other authorities and are facing proceedings

on various counts and have virtually closed their unit.

71. While dealing with the above aspects of the matter, I may also refer to Tata Iron and Steel Co. v. S.R. Sarkar 11 STC P 665, wherein the

Apex Court has held that a threat by the State to realize, without authority of law, tax from a citizen by using coercive machinery of an impugned

Act is an infringement of the fundamental right guaranteed to him under Article 19(1)(g) of the Constitution of India and give to the aggrieved citizen

a right to seek relief by a petition under the Constitution.

72. In Shree Kamrup Industries (Assam) v. State of Assam, reported in (1994) GLR 118, this Court has held that since the writ petition has been

filed challenging the very jurisdiction of the sales tax authorities to impose and levy tax, the writ petition under Article 226 is maintainable.

73. What follows from the above discussions and the position of law as laid down by the Apex Court is that an assessing authority can demand

even by way of a notice to show cause payment of alleged unpaid tax only when it is satisfied, on application of its own mind, that such a demand

can be raised. This apart, the demand, which is so raised, has to be based on materials, which are prima facie tenable under the law. If the demand

raised is contrary to the law or not based on any authority of law, such a demand can be interfered with by the High Court in exercise of its powers

under Article 226 of the Constitution of India even at the very initial stage, when such a demand is raised. Viewed from this angle, the show cause

notice, which proceeds on the assumptions, namely, (i) that in order to constitute a contract of sale during the course of inter-State trade and

commerce, the contract must be supported by materials in writing, (ii) the vehicles, in question, could have been sold to only registered dealers and

not to individuals and/or (iii) that a declaration in Form C ought to have been furnished by the petitioner in respect of each sale of vehicle to enable

it (i.e., the petitioner) to claim benefits of the notification (Annexure ''A''), although no such pre-conditions is required to be fulfilled by the petitioner

to be able to claim the benefits of the notification (Annexure ''A''), the very issuance of the show cause notice is, at its very threshold, being on

considerations and assumptions of law, which are extraneous and un-tenable make the notice without jurisdiction and deserves to be interfered

with.

74. Mr. Nabam has referred to Manganese Ore (India) Ltd. (supra), to show as to what constitute a sale in the course of inter-State trade and

commerce. In this case, the Apex Court has laid down the conditions, which must be satisfied to constitute a sale as a sale in the course of inter-

State trade and commerce. The conditions laid down are as to follows:

(i) that there is an agreement to sell, which contains a stipulation express or implied, regarding the movement of the goods from one State to

another ;

(ii) that in pursuance of the said contract the goods in fact moved from one State to another ; and

(iii) that ultimately, a concluded sale takes place in the State where the goods are sent which must be different from the State from which the goods

move.

75. The decision in Manganese Ore (India) Ltd. (supra) does not, for the reasons discussed above, help, in any way, the case of the respondents

inasmuch as the they have not been able to show so far, as already indicated, that in the case at hand, the sales, in question, contrary to what the

petitioner claims, did not take place in the course of inter-State trade and commerce.

76. Coming to the case of M/s Kelvinator of India Ltd, suffice it to mention here that Mr. Nabam relies on this decision too to show as to when a

sale can be described as a sale in the course of inter-State trade and commerce, but even this case docs not, in any way, help the, respondents in

showing that the sales, in question, were not inter-State sales. In the case of Kelvinator India Ltd. (supra) the Apex Court has clearly laid down

that for constitutiong inter-State sale, the sale movement of the goods should be incident and being necessitated by a contract of sale and, thus, be

inter-linked with the sale of goods.

77. In the case at hand, it has already been indicated hereinabove that in the face of the certificates granted by the petitioner in Form 21 of the

Central Motor Vehicle Rules, 1989, showing addresses of the buyers located in the State of Assam, the movements of vehicles to the State of

Assam for registration at the residential addresses of the buyers form the incident of contract, such movements were necessitated by the contracts

themselves and that the movements of the vehicles were inextricably inter-linked with the sale inasmuch as for the transactions to be completed,

vehicles were required to be moved to the State of Assam for the purpose of registration. In the face of the assertion of the petitioner that the

vehicles had moved out in pursuance of the contracts of sale, the onus rested squarely on the respondents to show that contrary to the terms of the

agreement of the sales, the vehicles, in question, had not moved out of the State of Arunachal Pradesh. Until it is so done, the sales will not be

treated as intra-State sales. The mere fact that the vehicles have been subsequently registered in the State of Arunachal Pradesh will not make the

first sale intra-State sale in the absence of any material to show that notwithstanding the terms of the contract of sale between the petitioner and the

buyers thereof, vehicles, in question, had not moved at all out of the State of Arunachal Pradesh.

79. In the result and for the reasons discussed above, this writ petition partly succeeds. The impugned orders/directions/instructions contained in

the letters, dated 7.2.2002 (Annexure B), 7.2.2002 (Annexure C), 14.3.2002 (Annexure F) and 7.5.2002 (Annexure-G) aforementioned issued

to the petitioner are hereby set aside and quashed. The impugned notice, dated 27.5.2002 (Annexure H) also shall stand set aside and quashed.

The respondents are, however, left at liberty to proceed with the matter in accordance with law if they find any specific case of short-paid sales tax

or unpaid sales tax or evasion of sales tax by the petitioner in the course of transactions, which form the subject matter of the present writ petition.

80. With the above observations and directions, this writ petition shall stand disposed of.

81. No order as to costs.