CASE NO.:
Appeal (civil) 2653 of 2006

PETITIONER:
M/s. Peekay Re-rolling Mills (P) Ltd

RESPONDENT:
The Assistant Commissioner & Anr

DATE OF JUDGMENT: 20/03/2007

BENCH:
ASHOK BHAN & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T
With
CIVIL APPEAL NOS. 2654 & 4406 of 2006

BHAN, J.

Civil Appeal Nos. 2653 and 2654 of 2006 are directed against the impugned final judgment dated 7.4.2006 of Kerala High Court at Ernakulam in Writ Appeal No. 434 of 2000 and Writ Appeal No. 433 of 2000 by which the Division Bench dismissed the writ appeals thereby upholding the order of the Single Judge, rejected the challenge to the two show cause notices issued to the appellant. Civil Appeal No. 4406 is arising out of judgment dated 7.7.2006 of the Kerala High Court in Sales Tax Revision No. 9 of 2006 by which the Division Bench dismissed the Revision relying upon the judgment of the Division Bench in Writ Appeal No. 434 of 2000 of the same High Court.

We propose to dispose of these appeals by a common order, as the point involved in all these appeals is the same.

Facts are taken from Civil Appeal No. 2653 of 2006.

FACTS

The appellant is a company registered under the Companies Act, having its Registered Office at Kozhkkode. It is a registered dealer under the Kerala General Sales Tax Act, 1963 (for short 'the State Act'). It carried on the business of steel re-rolling mills at Nallalam, Kozhikode. The raw material used by the appellant in the production of bars and rods, is steel ingots, which the appellant either manufactures or purchases from other manufacturers from within or outside the State. Purchase of steel ingots effected by the appellant within the State are from manufacturing units, which are exempt from the payment of sales tax on the sale of such ingots by virtue of an exemption notification issued under Section 10 of the State Act.

For the Assessment Year 1994-95, appellant submitted a return of turnover and was assessed to tax declaring the taxable turnover at nil, by an order dated 15.1.1998 by the assessing officer. In respect of

the assessment year 1995-96 also, the appellant's assessment was completed determining the taxable turnover at Rs. 21,85,550/- vide order dated 15.1.1998. While this was so, the appellant received a show cause notice dated 11.1.2000 for the assessment year 1994-95 and another notice dated 12.1.2000 on the same date for the assessment years 1996-97 to 1999-2000. In the first show cause notice relating to the assessment year 1994-95, the assessing officer stated that the appellant had purchased ingots from dealers within the State who were exempted from payment of tax and consumed the same in the manufacture of bars and rods during the year 1994-95. The notice further stated that the ingots purchased were goods liable to tax under the State Act and since the supply of such ingots did not suffer any tax at the time of sale due to the exemption notification under Section 10(1) of the State Act, purchase turnover of the ingots during the year and consumed in the manufacture by the appellant attracted liability to tax under Section 5A of the State Act. The notice alleged that the purchase turnover of the ingots had escaped assessment under Section 5A of the State Act and accordingly proposed to determine the turnover liable to tax and assess the same at 4%. It was stated that on the request of the appellant, a hearing would be given to the appellant before completing the assessment as proposed.

Notice relating to 1996-97 to 1999-2000 was worded differently. The said notice stated that the appellant had purchased ingots, scraps, mosrolls, etc. from units within the State claiming tax exemption and consumed the same in the manufacture of bars and rods during this period. It was further stated that since the goods had not suffered tax under Section 5A of the State Act, they were liable to pay purchase tax under Section 5A and called upon the appellant to remit tax with interest under Section 22 (3) within 10 days of the receipt of notice failing which an action would be taken to recover the tax.

The appellant being aggrieved filed the two separate writ petitions challenging the two show cause notices issued to him. Learned Single Judge dismissed the writ petitions in limine by observing that the case involved disputed questions of fact which could not be decided in a writ petition under Article 226 of the Constitution and relegated the petitioner to avail of the remedies provided under the State Act. It was held that the writ petition was not the appropriate remedy and the appellant was accordingly directed to avail of the remedies provided under the State Act. Learned Single Judge directed the appellant to file objections to the notices before the assessing officer who shall consider the same while framing the assessment. Assessing Authority was directed to complete the assessment in accordance with law after affording due opportunity to the appellant.

Aggrieved by the above order of the learned Single Judge, the appellant preferred two separate writ appeals. The Division Bench dismissed the writ appeals by a common order and held that the learned Single Judge was in error in directing the appellant to

avail the remedies provided under the State Act. The Division Bench, however, rejected the main contention of the appellant that in view of the provisions of Article 286(3) of the Constitution of India read with Section 15 of the Central Sales Tax Act (for short 'the Central Act'), it was impermissible to levy purchase tax under Section 5A of the State Act. In support of this contention, it was submitted by the counsel for the appellant that the iron ingots being declared goods could be subjected to tax under Section 5 read with Second Schedule of the State Act in the hands of the seller only; that the declared goods like the one involved in the present case could be subjected to levy only at one point and that point had been specified by the Statute as being 'first sale'. That goods could not be subjected to purchase tax in the hands of the purchaser under Section 5A of the State Act. The Division Bench of the High Court relying upon a judgment of this Court rejected these contentions and held that the expression "levy" includes collection of tax as well and not mere imposition. It was held that in the absence of collection of tax, there is no levy and since, the goods were exempted from payment of Sales Tax, the goods could be subjected to levy of purchase tax under Section 5A of the State Act. That the levy did not mean imposition only, the same included the collection of tax as well. Where there is no collection, there is no levy and accordingly, the goods which are not subjected to levy of tax at the point of sale could be subjected to levy of purchase tax under Section 5A.

Learned counsel for the appellant has contented before us that goods being declared goods, under Section 14 of the Central Act are subjected to limits placed by Section 15 of the Central Act, namely:

(1) the tax payable on the sale or purchase of iron and steel under the law of a State shall not exceed 4% and
(2) such tax shall not be levied at more than one stage.

It follows that if, iron and steel are subjected to a single point levy of tax at the first point of sale, then there is no question of a second levy or charge at any subsequent point of sale or purchase.

According to him, iron and steel which are the goods in question were made liable to sales tax at the stage of first sale at 4% under Section 5(1) read with Second Schedule of the State Act. That in view of Section 5(1) read with Second Schedule of the State Act, the burden of tax could not be shifted to the purchaser as the State Government had already notified that the tax would be at the point of first sale and the rate of tax would be 4%. That the High Court erred in assuming that the word "levied" in Section 15(a) of the Central Act is used in the sense of imposed and collection. According to him, the word levy could cover both imposition and non-collection of tax imposed will not cease to be a levy of tax.

It was further contended that the High Court erred in distinguishing the judgment of this Court in Shanmuga Traders & Ors. v. State of T.N. and Ors.,

(1998) 5 SCC 349 and that of the Constitution Bench judgment in Bhawani Cotton Mills Ltd. v. State of Punjab", (1967) 3 SCR 577. According to him, the reliance placed by the High Court in Town Municipal Committee, Amravati v. Ramchandra Vasudeo Chimote, (1964) 6 SCR 947 is unwarranted as in the said case this Court was interpreting the expression "continued to be levied" and "to be levied to the same purposes" in Article 277 of the Constitution of India.

A strong reliance was placed by him on the decisions of this Court in Assistant Collector of Central Excise, Calcutta Division v. National Tobacco Co. of India Ltd.", (1972) 2 SCC 560, Somaiya Organics (India) Ltd. v. State of U.P., (2001) 5 SCC 519, Pine Chemicals Ltd. v. Assessing Authority, (1992) 2 SCC 683 and Associated Cement Companies Ltd. v. State of Bihar, (2004) 7 SCC 642.

As against this, learned counsel appearing for the respondent contended that Section 5A was introduced in the State Act with effect from 1.4.1970 which is an independent charging as well as a remedial section. The main object of Section 5A of the State Act is to plug leakage and prevent evasion of tax. According to him, it created a liability against the dealer on his purchase turnover, with regard to goods, the sale or purchase of which though generally liable to tax under the State Act has not due to circumstances of particular sales, suffer tax and which after the purchase, have been dealt by him in any of the modes indicated in clauses (a) (b) and (c). It was conceded that in the case of declared goods, the conditions imposed by Section 15 of the Central Act have to be complied with and the levy could not be at more than one stage but Section 5A of the State Act operates by its own force in cases where taxable goods did not suffer tax under Section 5 and purchaser does not use the goods in any of the three modes specified in clauses 'a to c'. That the purchase tax in the State of Kerala is capable of being levied only where no sales tax is levied on the taxable goods, thus only a single point levy or one stage levy takes place, i.e., either sales tax or purchase tax and not both. According to him, in view of the provisions of the State Act, the expression levy would include collection or payment as well and not mere authorization of levy.

Counsels for the parties have been heard at length.

Section 5 and Second Schedule of Section 5 of the State Act, as it stood at the relevant time, read as under:

"S.5-Levy of tax on sale or purchase of goods \026(1) Every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year is not less than (two lakh rupees) and every casual trader or agent of a non-resident dealer, whatever be his total turnover for the year, shall pay tax on his taxable

turnover for that year,-

(i) in the case of goods specified in the First or Second Schedule, at the rates and only at the points specified against such goods in the said Schedules;
(ii) XXXXXXXXXXXX
(iii) XXXXXXXXXXXX
(iv) XXXXXXXXXXXX"

Second Schedule of Section 5 of the State Act, as it stood at the relevant time, reads as under:
"Second Schedule
Declared goods in respect of which a single point tax only is leviable under sub-section (1) or sub-section (2) of Section 5

SL. No.	Description of Goods	Point of levy	Rate of Tax per cent
(1)	(2)	(3)	(4)
1.	Oil seeds as defined in Sec.14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), other than groundnut, coconut and copra	At the point of first sale in the State by a dealer who is liable to tax under Section 5	4
2. (i)	Coal including coke in all its forms but excluding charcoal	-do-	4
(ii)	Iron and steel that is to say	-do-	4
xx	xxxx	xx	xx

Section 5A of the State Act, as it stood at the relevant time, reads as under: -

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

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or
(b) uses or disposes of such goods in any manner other than by way of sale in the State; or
(c) despatches them to any place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce; shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on

the taxable turnover relating to such purchase for the year at the rates mentioned in Section 5."

Section 15 of the Central Act, as it stood at the relevant time, reads as under: -
"15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State - Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions namely:-

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

(These provisions have been modified later on or have been done away with as of now.)

DISCUSSION

Article 286(3) of the Constitution of India places restriction on the power of every State to impose or authorize the imposition of tax on sale or purchase of declared goods. Article 286 and Section 14/15 of the Central Act are solely concerned with the declared commodities. We are concerned with the taxation of goods which under Section 14 of the Central Act have been declared to be of special importance in inter-state trade or commerce. In case turnover of such goods is subjected to tax under the sales tax laws, Section 15 prescribes the maximum rate at which such tax shall be levied and the same could not be levied at more than one stage. The two conditions have been imposed in order to ensure that inter-state trade or commerce in such goods is not subjected to heavy taxation within the State occasioned by excessive rate of tax or by multipoint taxation. If either of the two conditions are not satisfied, the imposition of sales tax will not be valid.

Section 5 of the State Act provides that in the case of goods specified in the First and Second Schedule, the tax could be at the rates and points specified against such goods in the said Schedules which in the present case is at the point of first sale in the State by a dealer. The liability to tax and the rate of tax under Section 5 is prescribed at 4%. As far as this section is concerned, the conditions specified under Section 15 of the Central Act are prima facie complied with. Further, under Section 10 of the State Act the State

Government granted certain exemptions by way of S.R.O.No.1729/93, within the purview of which the goods in the present case fall.

The controversy in the instant case arises when a tax is sought to be levied under section 5A of the State Act on the same goods that are taxable under section 5, but exempted. The essential question that we are required to adjudicate upon is whether the tax sought to be levied under section 5A on these goods, would amount to tax at a second stage and therefore violate Section 15 of the Central Act.

It is clear that by virtue of Section 15 of the Central Act, declared goods once made liable to tax cannot be made to suffer an additional tax liability. In the present case, the goods have already been made liable to tax under Section 5 of the State Act and exempted by a notification under Section 10; and the same goods are sought to be taxed under Section 5A in the hands of the purchaser.

What we are required to examine is the impact of this exemption to ascertain whether the second levy made under Section 5A of the State Act violates Section 15 of the Central Act. In other words, we need to find out whether not collecting the tax amount pursuant to the exemption necessarily implies that there was never any levy to begin with, as has been contended by the respondent. For if this is indeed the position, then there would be no infirmity with the levy of tax made under Section 5A of the State Act in respect of the declared goods, since the exemption would negate the levy and the consequent liability to pay tax. However, if the exemption does not affect the liability to tax and operates subsequent to the levy, as the counsel for the appellant has contended, then the tax under Section 5A of the Sate Act would fall foul of the conditions of Section 15 of the Central Act.

It is an accepted position before us today that Section 5 and Section 5A of the State Act are independent sections and this is acknowledged by both parties, in the light of the observations made in State of Tamil Nadu v. M.K. Kandaswami, (1975) 4 SCC 745. This case involved the interpretation and validity of Section 7A of the Madras General Sales Tax Act, 1959 which is in pari materia to Section 5A of the Kerala General Sales Tax Act, 1963 . Although this case did not deal with declared goods under Section 14 of the Central Act and the resulting applicability of the condition of single-stage levy under Section 15 of the Central Act, it did make certain observations relevant to the present discussion. The Court observed that:

"In our opinion, the Kerala High Court has correctly construed Section 5A of the Kerala Act which is in pari materia with the impugned Section 7A of the Madras Act. "Goods the sales or purchase of which is liable to tax under this Act in Section 7A(1)" means ’taxable goods’, that is, the kind of goods, the sale of which by a particular person or dealer may not be taxable in the hands of seller

but the purchase of the same by a dealer in the course of his business may subsequently become taxable. We have pointed out and it needs to be emphasised again that Section 7A itself is a charging section. It creates a liability against a dealer on his purchase turnover with regard to goods, the sale or purchase of which though generally liable to tax under the Act, have not due to the circumstances of particular sales, suffered tax\005.

[Emphasis supplied]

The Court also analyzed the Section and indicated the conditions necessary for the applicability of the Section and reaffirmed its validity. It has been contended that since these conditions are fulfilled, the levy under section 5A of the State Act is valid. However, while these observations are relevant for the understanding of the section and its validity, this case has no real bearing on the present one since it never involved a question of tax on declared goods under Section 14 of the Central Act and the conditions laid down in this regard, specifically that of a single point levy. Satisfying the conditions laid down in Kandaswami's case (supra) therefore does not validate the present levy, which is on declared goods under Section 14 of the Central Act.

The impugned judgment of the Division Bench has distinguished the case of Shanmuga Traders (supra). The Shanmuga's case (supra) involved the sale of iron and steel by the Tamil Nadu Electricity Board and later made exempt from tax under the State Act pursuant to an exemption notification. These goods were declared goods under Section 14 of the Central Act and therefore could only be subject to a single-stage levy. However, by a circular issued by the Commissioner of Commercial Taxes, the person who purchased from the Board and sold the metal was made liable to tax, on the ground that "he was effectively the first seller liable for tax". The circular placed reliance on two Madras High Court judgments, Vasu General Traders v. State of T.N. [(1987) 66 STC 358] in which the goods involved were not declared goods. Vasu's case (supra) was followed by the Madras High Court in the case of Royal Steel Traders, Madras [(1992) 1 MTCR 580] wherein the goods involved were declared goods under Section 14 of the Central Act. The circular under challenged was issued in supersession of the earlier circulars in view of the fact that the Madras High Court in Royal Traders case (supra) had held that declared goods could also be subjected to tax at a later stage because no tax had been paid on it. The High Court accepted the submission of State and upheld the validity of the circular. This Court, however, did not accept the reasoning of the Madras High Court and set aside the Judgment. Overturning the judgment, it was held that the circular was bad in law because if there was a condition of a single stage levy, and there was an exemption, then, no subsequent sales could be taxed. The Court observed as follows:

Para 12
"\005.The goods with which we are concerned being declared goods, they can only be taxed at a single point, that is, only one sale in the State can be subjected to tax. It is for the State to determine whether the single point should be the point of first sale in the State or the last sale in the State or any intermediate sale in the State. If the single point is fixed by the State at, say, the point of first sale and the State exempts the first sale from payment of tax, either by a general provision or a specific provision applicable to a class of seller, the particular seller or the goods sold may not be subjected to tax at either that point of first sale or any subsequent sale in the State.

Para 13

The Second Schedule of the State Act specifies the single point; it is "the point of first sale in the State". The first sale in the State was the sale by the said Board to the appellants/petitioners. That sale was exempt from tax by reason of the notification dated 1-12-1982 aforementioned. The iron and steel sold by the said Board to the appellants/petitioners was, therefore, not liable to tax either at the point of first sale or any subsequent sale in the State.

Para 14

There is no warrant for the emphasis that would appear to have been "placed by the Madras High Court on the phrase "taxable sale". The State Act does not fix the single point of the levy at the first taxable sale; it fixes it at "the point of first sale". The impugned circular cannot validly shift the point of levy from the first sale to a subsequent sale and it is, therefore, bad in law.
[Emphasis supplied]

The Division Bench however in the present impugned judgment distinguished the Shanmuga’s case (supra) by observing:

"We find that the observations made by the Supreme Court in Shanmugha Trader’s case supra, in paragraph 12, came to be made in the facts of the case. The single point of levy was at the point of first sale and not at the point of first taxable sale. The impugned Circular, the Court held, could not validly shift the

point of levy from the first sale to a subsequent sale."

We are of the opinion that the Division Bench erroneously distinguished the Shanmuga's case (supra) from the present circumstances. We find that there is no substantial difference between Shanmuga's case (supra) and the present one. Both cases involve the condition of a single stage tax fixed at the point of first sale, which was exempted and the subsequent sale being taxed. The distinction sought to be brought in by the impugned judgment is that Shanmuga's case involved the "point of first sale" and not the "point of first taxable sale". It is true that the Second Schedule of the state Act fixes the point of tax at "the point of first sale in the state by a dealer who is liable to tax under Section 5". However, the addition of the words 'liable to tax under Section 5' does not make any difference because in our opinion exemption does not negate the liability to tax, which as we shall presently discuss, continues regardless. The only other difference is that in Shanmuga's case (supra), it was a circular which clarified that the subsequent sale would be taxed, whereas the present case does not involve any such clarification by way of a circular, but a direct claim for tax under Section 5A of the State Act. In our opinion, this difference is insignificant as well. Shanmuga's case (supra) has made it clear that exemption at the point of first sale does not affect the liability to tax and any subsequent levy on the goods would fall foul of the conditions of the Central Act. This position is equally true whether the subsequent levy is by way of a circular or directly under Section 5A of the State Act \026 since both are required to comply with the conditions of the Central Act. With this view of the matter, we find that the reasoning of this court in the Shanmuga's case (supra) is equally applicable to the present facts.

It might be pertinent to mention here that the decision taken by the Division Bench in the impugned judgment is in conformity with the minority decision in the Bhawani Cotton Mills case (supra). In his dissenting judgment, Sikri J. observed as follows:

"\005.In my opinion the Punjab Act does in effect comply with the requirements of s.15 of the Central Sales Tax Act because it is possible to find out the stage at which purchase tax becomes leviable on goods mentioned in Schedule C. This stage is the first purchase by a dealer, which is not exempted from taxation or which is not deductible from the taxable turnover of a dealer under s. 5(2) of the Punjab Act\005.."

However, the majority decision took a different, much stricter view of the matter, which is the law of the land today. The majority in Bhawani Cotton Mills (supra) was of the opinion that the Act in question did not identify the specific stage for the levy on declared goods and that it was possible for the goods to be taxed at more than one stage, which was contrary to the condition in the Central Act. The Court observed

as follows:

"Pausing here for a minute, it may be stated that the attack, regarding the validity of some of the provisions of the Act, by the appellant, is rested on s.l5(a) of the Central Act, on the ground that such a levy of purchase tax, regarding cotton, is neither definite nor ascertainable in the Act and that, as the provisions now stand, there is a possibility of the tax being levied at more than one stage\005.The essence of a one-stage taxation consists of fixation of a single point or stage, either by the State Act or the rules framed thereunder\005Under those circumstances, there is always a possibility, or even a certainty, of more persons than one having paid tax or being made liable to pay tax in, respect of the same goods at different stages.

XXXX XXXX XXXX XXXX
If a person is not liable for payment of tax at all, at any time, the collection of a tax from him, with a possible contingency of refund at a later stage, will not make the original levy valid; because, if particular sales or purchase are exempt from taxation altogether, they can never be taken into account, at any stage, for the purpose of calculating or arriving at the taxable turnover and for levying tax."

Thus, the Court finally concluded that the conditions of Section 15 of the Central Act had not been complied with.

The view taken in Shanmuga's case (supra) as well as the majority decision in Bhawani Cotton Mills (supra) is reiterated in a number of other cases, which make it clear that exemption operates after the levy and does not negate the liability to tax.

The arguments raised by the respondent before us have two aspects. They contend that since the goods in question were exempt from tax at the first sale, no liability to tax attached on the seller. Additionally, they also argue that since there was no collection of tax, there could be no 'levy' of tax. In both cases, the obvious implication that the respondent seeks to establish is that at the point of first sale, the seller was not liable to tax and therefore if a subsequent tax were to be levied on these goods, as Section 5A of the State Act seeks to do, there is no violation of Section 15 of the Central Act.

IMPACT OF EXEMPTION ON THE LIABILITY TO TAX

The first aspect of the argument of the respondent is with respect to the impact of exemption upon the liability to tax. In our opinion, exemption can only

operate when there has been a valid levy, for if there was no levy at all, there would be nothing to exempt.

In this regard two cases decided by this Court are relevant. The first is the Pine Chemicals case (supra), which involved questions of sales tax and exemption under the Jammu and Kashmir General Sales Tax Act, 1962. While examining certain exemption orders made by the government, the Court observed as follows:

"Under Section 4(1) of Jammu & Kashmir General Sales Tax Act the goods are taxable only once, that is it could be taxed only at one point of sale. We have already held that the Government Orders 159 and 414 are exemption orders and exempt the sale by appellants of their manufactured products. The exemption would not arise unless the goods are taxable at the point of their sale. Thus the effect of exempting their sale is that the said goods manufactured by them could not be taxed at the second or subsequent sales also as that would offend Section 4(1) which provides for single point levy. In cases where there are no exemption orders and the state fixed the second or subsequent sale as point of taxation the first or prior or subsequent sales are not exempted sales but are not taxable sales\005."

[Emphasis supplied]

Thus the Court was of the opinion that when certain goods were subjected to the single-stage tax condition, and the stage identified for the levy was exempted, subsequent sales could not be taxed by the authorities despite the exemption.

This position has been reaffirmed in Associated Cement (supra). In Associated Cement (supra) the Court was faced with an argument very similar to the one made before us today. The case involved an exemption notification issued by the State Government reduced the liability to tax under the Bihar Finances Act, 1981 to the extent of tax paid under an earlier Ordinance in respect of entry of goods. The appellant claimed that it was entitled to adjust the entry tax paid under the Entry Tax Act while computing the tax payable under the Bihar Finances Act. The respondent however argued that such adjustment could not be made since the same was exempted, which meant that there was no liability to tax. The Court rejected the argument of the respondent, holding as follows:

"Crucial question, therefore, is whether the appellant had any "liability" under the Act\005. The question of exemption arises only when there is a liability. Exigibility to tax is not the same as liability to pay tax. The former depends on charge created by the Statute and latter on computation in accordance with the provisions of the Statute and rules

framed thereunder if any. It is to be noted that liability to pay tax chargeable under Section 3 of the Act is different from quantification of tax payable on assessment. Liability to pay tax and actual payment of tax are conceptually different. But for the exemption the dealer would be required to pay tax in terms of Section 3. In other words, exemption presupposes a liability. Unless there is liability question of exemption does not arise. Liability arises in term of Section 3 and tax becomes payable at the rate as provided in Section 12. Section 11 deals with the point of levy and rate and concessional rate."

[Emphasis supplied]

A reading of the above judgments make it amply clear that exemption does negate a levy of tax altogether. Despite an exemption, the liability to tax remains unaffected, only the subsequent requirement of payment of tax to fulfill the liability is done away with.

DISTINCTION BETWEEN LEVY AND COLLECTION

The second aspect of the argument is that an absence of collection means an absence of levy or liability. This question has already been examined in certain earlier cases, and this Court has consistently maintained a distinction between levy and collection.

In National Tobacco case (supra), this Court was faced with certain questions relating to the refund of excise duty on the manufacture of cigarettes. In this context, the Court examined the scope of the term ’levy’ and made the following observations:

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

"collection". Article 265 of the Constitution makes a distinction between "levy" and "collection"\005."

[Emphasis supplied]

The Court made it very clear that levy and collection are not synonymous and that collection of the tax is not a necessary facet of a 'levy'.

Referring to the above case, the Court made similar observations in the case of Somaiya Organics (supra). It observed:

"\005.The words used in Article 265 are "levy" and "collect". In taxing statute the words "levy" and "collect" are not synonymous terms, (refer to Assistant Collector of Central Excise, Calcutta Division vs. National Tobacco Co. of India Ltd. at page 572, while "levy" would mean the assessment or charging or imposing tax, "collect" in Article 265 would mean the physical realisation of the tax which is levied or imposed. Collection of tax is normally a stage subsequent to the levy of the same\005."

The distinction between levy and collection has also been emphasized in Collector of Central Excise, Hyderabad v. Vazir Sultan Tobacco Company Limted, Hyderabad (1996) 3 SCC 434. The crux of this case involved the levy of a special excise duty, the liability for which did not exist on the date of manufacture and only on the date of removal of goods. The excise duty however was normally collected on the date of removal, and it was contended that since the liability to pay the special duty existed on the date of collection of duty, the same must be paid as well. Rejecting this argument, the Court held that the stage of removal was identified for collection of duty only for administrative convenience, and that this did not affect the nature of the levy, which was on the manufacture of goods. In this context, the Court distinguished levy and collection. It observed:

"\005.Once the levy is not there at the time when the goods are manufactured or produced in India, it cannot be levied at the stage of removal of the said goods. The idea of collection at the stage of removal is devised for the sake of convenience. It is not as if the levy is at the stage of removal; it is only the collection that is done at the stage of removal. Admittedly, the special excise duty is an independent duty of excise separate and distinct from the duties of excise levied by the Central Excises and Salt Act, 1944. This levy came into effect only on and from March 1, 1978 which means that the goods produced prior to that date were not subject to such levy. If that is so, the levy cannot attach nor can

it be realised because such goods are removed on or after March 1, 1978. The provisions of the Central Excise Act and the Rules, in our opinion, do not say otherwise.

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\005.The levy is and remains upon the manufacture or production alone. Only the collection part of it is shifted to the stage of removal. Once this is so, the fact that the provisions of the Central Excise Act are applied in the matter of levy and collection of special excise duty cannot and does not mean that wherever the Central Excise duty is payable, the special excise duty is also payable automatically. That is so as an ordinary rule. But insofar as the goods manufactured or produced prior to March 1,1978 are concerned, the said rule cannot apply for the reason that there was no levy of special excise duty on such goods at the stage and at the time of their manufacture/production. The removal of goods is not the taxable event. Taxable event is the manufacture or production of goods."

[Emphasis supplied]

In the light of the above two cases, it is evident that collection and levy are distinct and that collection is not an essential facet of levy. It is true that collection of a tax may some times be indicative of a lawful levy of tax, but in our opinion it does not logically follow that absence of collection means an absence of liability. We are also of the opinion that the reliance on the Town Municipal Committee (supra) by the Division Bench which involved an interpretation of "continued to be levied" and "to be applied to the same purposes" in Article 277 of the Constitution was misplaced. While that case did hold that in the circumstances before them 'levy' was intended to include 'collection', in our opinion the logic or ratio of that case cannot be extended so far as to say that every 'levy' must include collection and without such collection no levy can be said to have been made.

CONCLUSION

Thus, after an examination of the relevant case law, we find that the liability to tax or taxability under Section 5 of the State Act remains unaffected by an exemption under Section 10 of the State Act. Consequently, the respondent cannot validly shift the burden of tax to the purchaser under Section 5A of the State Act for the same would violate the condition of single-stage tax under Section 15 of the Central Act.

For the reasons stated above, these appeals are allowed. There will be no orders as to costs.