PETITIONER:
GOBIND SUGAR MILLS LTD.

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT: 17/08/1999

BENCH:
S.P.Bharucha, N.Santosh Hegde

JUDGMENT:

SANTOSH HEGDE, J.

These appeals by special leave are against the judgment and order dated 4.7.1996 passed by the High Court of Judicature at Patna in C.W.J.C. No.8754/93 and other connected matters. The appellants in these appeals are engaged, inter alia, in the business of manufacturing sugar and for its production they use sugarcane as the basic raw-material. The State of Bihar, according to the appellants, is levying and collecting purchase tax on the sugarcane purchased by them both under the provisions of the Bihar Finance Act, 1981 (for short 'the Finance Act'] as well as the Bihar Sugarcane (Regulation of Supply & Purchase) Act, 1981 (for short 'the Sugarcane Act'). Thus, subjecting the same purchase of sugarcane to tax twice under two different Acts. The appellants contend that the State legislature having once provided for the levy of purchase tax under the sugarcane Act, cannot impose the same levy under the Finance Act. This challenge of theirs having failed before the High Court, the appellants are now before us in these appeals. On behalf of the appellants, Mr. Shanti Bhushan, learned senior counsel, contended that the Sugarcane Act being a special enactment for levying purchase tax exclusively on sugarcane while providing also for regulation of production, supply and distribution of sugarcane, it would become a special enactment and would override the provisions of the Finance Act, with reference to levy of purchase tax on sugar cane. He contended that the Finance Act is a general Act which provides for collection of commercial taxes on sale and purchase of goods. Hence, on a harmonious construction of the two enactments, it should be held that the State of Bihar could only levy purchase tax on the purchase of sugarcane under the Sugarcane Act. In response, Mr. Rakesh Dwivedi and Mr. S.B. Sanyal, learned senior counsel appearing for the State of Bihar, contended that the purchase tax levied under these two Acts are two different levies, covering different aspects and operate in different fields. Therefore, according to them, the rule of special Act overriding the general is not attracted in the instant case. It is also contended on behalf of the State that the levy of purchase tax under Section 49(1)(b) of the Sugarcane Act is a provision to create a separate fund to cover the expenses of the Board and the Council created under sub-section (8) of Section 49 of the said Act. Lastly an

attempt was made to contend that the levy of purchase tax under Section 49 of the Sugarcane Act is, in fact, in the nature of fee and not a tax on purchase. On the above arguments, the following points arise for our consideration :

a) Whether the two Acts under reference operate in the same field ? If so, which one of the two Acts is a special Act ? b) Is the Sugarcane Act an enactment intended solely for the purpose of regulation of supply, production and distribution of sugarcane and the collection of purchase tax under the said Act is only incidental for the purpose of creating a fund for maintenance and functioning of the Board and the Council under the said Act ? c) Whether the levy under the Sugarcane Act is only a fee for the services rendered ? At the outset, it should be borne in mind that both the enactments are legislated under the same Entry, namely, Entry 54 of List II of the Seventh Schedule which empowers the State Legislature to levy tax on sale and purchase of goods. If it is not so, the State of Bihar could not have imposed the levy of purchase tax under the Sugarcane Act. The object of the Finance Act reads thus : "An Act to consolidate and amend the law relating to the levy of tax on the sale and purchase of goods in Bihar;"

This clearly shows that the Finance Act is a general Act relating to the levy of tax on sale and purchase of goods in the State of Bihar and the same would apply to all transactions of sale and purchase of goods wherever applicable. Sections 4 to 6 of the said Act which empower the levy of various types of commercial taxes read thus :- "4. Levy of purchase tax. - Subject to the provisions of section 5, 6 and 7 of this part, every dealer liable to pay tax under section 3, who purchases goods in circumstances in which no sales tax is payable or has been paid on the sale price of such goods and either consumes such goods in the manufacture of other goods for sale or otherwise or disposes of such goods in any manner other than by way of sale in the State or sale in the course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods under section 12.

5. Surcharge. - (1) Every dealer whose gross turnover during a year exceeds rupees five lakhs shall, in addition to the tax payable by him under this part also pay a surcharge at such rate not exceeding ten percentum of the total amount of the tax payable by him, as may be fixed by the State Government by a notification published in the Official Gazette :

Provided that the aggregate of the tax and surcharge payable under this part shall not exceed in respect of goods declared to be of special importance in inter-State trade or commerce, by section 14 of the Central Sales Tax Act, 1956 (Act 74 of 1956), the rate fixed by section 15 of the said Act :

Provided further that in the case of an assessment year which has commenced before the commencement of this part or this Section, if there be a different date for the commencement of this section, turnover of the whole of such assessment year shall be taken into account for purposes of determining whether the dealer is liable to pay surcharge under this Section, but the surcharge shall be payable only

in respect of that part of the turnover which relates to the period after the commencement of this section.

(2) All provisions of this part relating to the payment, assessment, recovery and refund of the tax shall apply to the payment, assessment, recovery and refund of the surcharge. (3) Notwithstanding anything to the contrary contained in this part, no dealer mentioned in sub-section (1), who is liable to pay surcharge, shall be entitled to collect the amount of this surcharge. (4) The State Government may, by notification, and subject to such conditions and restrictions as it may impose, exempt from the levy of surcharge, any goods or class or description of goods.

6. Charge of additional tax.- Notwithstanding anything contained sub section (3) of section/or sections 11, 12, 13 and 21 or in any notification issued thereunder every dealer having a gross turnover exceeding the specified quantum as laid down in section 3 shall, with effect from a date to be specified by the State Government by a notification published in Official Gazette, pay an additional tax at such rate, not exceeding two percentum of his gross turnover (excluding the sales or purchase of goods which have taken place either in the course of inter-State trade or commerce, or outside the State, or in the course of import of goods into, or export of goods out of the territory of India) as the State Government may, from time to time by notification in the Official Gazette, fix :

Provided that State Government may fix different rates within the ceiling rate of 2 percentum on the gross turnover of different goods :

Provided further that in the case of declared goods, as defined in the Central Sales Tax Act, 1956 (Act LXXIV of 1956) -

(i) where the tax payable under section 3 or section 4 equals the maximum amount of tax permissible under section 15 of the Act, no additional tax shall be payable under this section : (ii) where the additional tax under this section together with the tax payable under section 3 or section 4 would exceed the maximum amount of tax permissible under section 15 of that Act, the additional tax shall stand reduced to such amount as, together with the tax payable as aforesaid, equals the said maximum amount.

(2) The State Government may by notification and subject to such conditions and restrictions, as it may impose exempt from the levy of additional tax gross turnover in respect of any goods or class description of goods."

A perusal of these provisions shows that the Finance Act has provided for the levy of different types of commercial taxes which are generally leviable in the State of Bihar. The object of the Sugarcane Act says that it is an Act to regulate the production, supply and distribution of sugarcane intended for use in sugar factories and for taxation of sugarcane (emphasis supplied) and matters incidental thereto. Section 49(1)(b) of the Sugarcane Act reads thus "49. Tax on Sugarcane.- (1) The State Government may, by notification in the official Gazette, impose - (a) x x x

(a) a tax not exceeding one rupee per quintal on the purchase of sugarcane by or on behalf of the occupier of a factory:"

It is to be noted here the incidence of taxation is on the purchase of sugar cane, as in the Finance Act. This section nowhere says that the levy of purchase tax therein is in addition to the levy under the Finance Act. Therefore, it is seen that this Act specifically provides for levy of purchase tax on sugarcane and it is not applicable to levy of purchase tax on any other goods which are otherwise taxable under the Finance Act. The Sugarcane Act also provides for regulation of production, supply and distribution of sugarcane. Thus, it is an enactment which is specifically meant for the control of the activities of production, supply and regulation of sugarcane, including the levy of purchase tax. So far as the activity of levy of purchase tax on sugarcane is concerned, both the Acts, namely, the Finance Act and the Sugarcane Act operate in the same field. Therefore, the Sugarcane Act being a special Act pertaining to all aspects of the control of sugarcane as well as levy of purchase tax, the same will have to be construed as a special enactment with reference to sugar cane. While determining the question whether a Statute is a general or a special one, focus must be on the principal subject-matter coupled with particular perspective with reference to the intendment of the Act. Keeping in mind this basic principle, we will have to examine the provisions of the two Acts to find out whether it is possible to construe harmoniously the provisions of Section 4 of the Finance Act and Section 49 of the Sugarcane Act. If it is not possible then an effort will have to be made to ascertain whether the legislature had intended to accord the levy on sugarcane a special treatment vis-a-vis the levy of purchase tax on other items, and a further endeavour will have to be made to find out whether Section 49 of the Sugarcane Act excludes the applicability of the levy under Section 4 of the Finance Act. On a perusal of the provisions of the above Acts including the objects of the two Acts, it could be seen that the two enactments in question contemplate levy of purchase tax. While the Finance Act empowers the State to levy all commercial taxes generally, the Sugarcane Act empowers the levy of purchase tax only on sugarcane. In this background, there can be no doubt that the Legislature intended to enact a special enactment for the purpose of levy of purchase tax with reference to sugarcane under the Sugarcane Act to the exclusion of such levy under the Finance Act. Once we come to the conclusion that this is the intention of the legislation then the rule "general provision should yield to special provision" is squarely attracted. The next contention on behalf of the State, as noted above, is that the two enactments operate in different fields inasmuch as while the Finance Act is an enactment for the purpose of generating revenue for the State, the Sugarcane Act is enacted generally for the purpose of production, supply and distribution of sugar. The power of taxation contemplated under this Act is only incidental to further the object of Section 49(8) of the Sugarcane Act. In other words, an attempt was made to contend that the tax which was levied and collected under Section 49 of the Sugarcane Act was to be appropriated towards the requirements of the Board and the Council constituted under the Sugarcane Act. In this connection, it was contended that Section 3 of the Sugarcane Act contemplated establishment of the Sugarcane Board with

specific power to fulfil the objects of the said Act. Therefore, the levy that was being collected as purchase tax under Section 49(1)(b) of the Act, being an exclusive levy for the purpose of the requirement of the Board, same cannot be equated with the levy of purchase tax contemplated under Section 4 of the Finance Act. We do not find sufficient force in this argument to repel the contention of the appellant that the tax collected under Section 49(1)(b) of the Sugarcane Act is the same as is contemplated under Section 4 of the Finance Act but confined to sugarcane. A perusal of Section 49(8) of the Sugarcane Act shows that a part of the amount of purchase tax collected under its sub-section (3) is utilised for the purpose of the Board and the Council as grant but sub-section (8) of Section 49 does not, in any manner, indicate that entirety of this collection under Section 1(b) of Section 49 is solely earmarked for the purpose of the expenditure of the Board or the Council. A perusal of Sections 6 and 9 of the Sugarcane Act clearly shows that the legislature has made separate provisions for the funds of the Board as well as the Council under the said Act, and only a portion of the collection under sub-section 1(a) of Section 49 is earmarked for these purposes, hence, it is clear that the balance of collection goes to the State exchequer/general fund. So, there is no merit in the arguments advanced on behalf of the State that the collection of purchase tax under sub-section 1(b) of Section 49 is for the purpose of creating a fund for the exclusive use of the Board and the Council created under the said Act. Last argument advanced by Mr. Sanyal, learned senior counsel appearing in some of the cases on behalf of the respondent-State is that the amount collected under sub-section 3(b) of Section 49 is in fact not a tax but a fee for the services rendered by the Board and the Council under the Sugarcane Act. With respect, this argument has to be noted only for the purpose of rejection. Legislative history of the Sugarcane Act bears testimony to the fact that at one point of time the legislature had intended to collect a levy under sub- section (3) of Section 49 as a fee which imposition came to be challenged before the High Court and the challenge succeeded because the State was not able to satisfy the Court that the said levy was supported by quid pro quo. It is in this background that the present section 1(b) of Section 49 came to be brought on the Statute book, first by way of an Ordinance and then by virtue of an Act, making the collection a tax under Entry 54 of List II of the Seventh Schedule. It is too late in the day for the State now to contend once again that the said levy is a fee and not a tax. It may also be noted at this stage that nowhere in the pleadings, material has been placed by the State to satisfy the requirement of levy of fee by showing that there is a reasonable service rendered to the purchasers of sugarcane so as to justify the said levy as a fee. For the reasons stated above, these appeals are allowed, setting aside the judgment and order of the High Court impugned herein, and the writ petitions from which these appeals arise, are allowed, with all consequential relief.