

CASE NO.:
Appeal (civil) 922 of 2007

PETITIONER:
M/s Mahim Patram Private Ltd

RESPONDENT:
Union of India & Others

DATE OF JUDGMENT: 23/02/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (Civil) No. 12868 of 2006]
W I T H
CIVIL APPEAL NO. 923 OF 2007
[Arising out of S.L.P. (Civil) No.13129 of 2006]

S.B. SINHA, J :

Leave granted.

Appellant herein is engaged, inter alia, in the printing of questions papers for examination boards, competitive examination boards, recruitment boards and various universities and boards situate outside the State of Uttar Pradesh. It carries on a highly specialized and secretive work. The activities of the appellant admittedly amounts to a works contract in the course of inter-State trade or commerce.

The Central Sales Tax Act, 1956 (for short, 'the 1956 Act') was enacted to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of imports into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce.

The said Act did not contain any provision to levy tax on works contract, despite insertion of Clause 29A in Article 366 of the Constitution of India. The question of levy of sales tax on works contract, inter alia, came up for consideration before this Court in M/s Gannon Dunkerley and Co. and Others etc. v. State of Rajasthan and Others etc. [(1993) 1 SCC 364]. While noticing that the 1956 Act did not contain any definition of works contract, this Court held :

"38. Since the question of levy of inter-State sales tax under Section 6 of the Central Sales Tax Act is not in issue in these cases which only relate to imposition of sales tax by the States, we do not propose to go into the question, whether such a tax can be levied on deemed sales resulting from transfer of property in goods involved in the execution of a works contract without amending the definition of sale in Section 2(g) of the Central Sales Tax Act, so as to include such transfers within its ambit. It is, however, made clear that the absence of any amendment in the definition of sale contained in Section 2(g) of the Central Sales Tax Act, 1956 so as to include transfer of property in goods involved in execution of a works contract does not in any way affect the applicability of the Sections 3, 4 and 5 and Sections 14 and 15 of the Central Sales Tax Act to such

transfers."

It was, however, held while laying down that in the absence of law by Parliament so providing, it was not permissible for the State Legislatures to impose such a tax; it did not mean that the legislative power of the State could not be exercised till the enactment of a law under sub-clause (b) of clause (3) of Article 286 by Parliament, observing :

"\005It only means that in the event of a law having been made by Parliament under Article 286(3)(b) the exercise of the legislative power of the State under Entry 54 in List II to impose a tax of the nature referred to in sub-clauses (b), (c) and (d) of clause (29-A) of Article 366 would be subject to restrictions and conditions in regard to the system of levy rates and other incidents of tax contained in the said law. The existence of a law enacted under Article 286(3)(b) cannot, therefore, be regarded as a condition precedent for the exercise of the taxing power of the State under Entry 54 in List II to impose a tax of the nature referred to in sub-clauses (b), (c) and (d) of clause (29-A) of Article 366. This does not, however, absolve Parliament from enacting a law as envisaged by Article 286(3)(b). Keeping in view the grievance of the contractors that there is wide disparity in the sales tax legislation of the various States in the matter of imposition, mode of assessment, rates etc. of the tax on deemed sales resulting from transfer of property in goods involved in the execution of a works contract referred to in sub-clause (b) of clause (29-A) of Article 366, the need for the law envisaged by Article 286(3)(b) cannot be minimised."

This Court noticed the matters which are envisaged for imposition of tax on sale or purchase of goods after the Constitution 46th Amendment. It furthermore considered the deductions which were required to be made from the value of the entire contract in order to arrive at the value of the goods involved in the execution of a works contract. It was held :

"The value of the goods involved in the execution of a works contract will, therefore, have to be determined by taking into account the value of the entire works contract and deducting therefrom the charges towards labour and services which would cover -

- (a) Labour charges for execution of the works;
- (b) amount paid to a sub-contractor for labour and services;
- (c) charges for planning, designing and architect's fees;
- (d) charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;
- (e) cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract; and
- (f) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;
- (g) other similar expenses relatable to supply of labour and services;
- (h) profit earned by the contractor to the extent it is relatable to supply of labour and services.

The amounts deductible under these heads will have to be determined in the light of the facts of a particular case on the basis of the material produced by the contractor."

In deference to the aforementioned judgment of this Court, the Parliament amended Section 2(g) of the 1956 Act by Finance Act, 2002. No rule, however, has till date been framed in regard to the manner in which sales price of such transfer is to be calculated. The Assessing Authority,

however, relying on or on the basis of Section 9(2) of the 1956 Act applied the provisions of the Uttar Pradesh Trade Tax Act, 1948 (for short, 'the 1948 Act') and the rules framed thereunder for calculating the sale price of the transfer of property in goods involved in the execution of the works contract in the course of inter-State trade and commerce for the Assessment Years 2002-03 and 2003-04.

Writ petitions were filed by the appellant questioning the said orders of assessment before the High Court of Judicature at Allahabad. It is not in dispute that a writ petition had also been filed by the appellant contending that its activities did not come within the purview of the works contract as envisaged under Section 2(g) of the 1956 Act. The said writ petition, however, is pending. We, therefore, are not called upon to answer the said question. By reason of the impugned judgments and orders dated 03.05.2006 and 05.05.2006, the Allahabad High Court dismissed the said writ petitions relying on the decision of this Court in Gannon Dunkerley (supra).

Mr. Dhruv Agrawal, the learned counsel appearing on behalf of the appellant, would submit that in the absence of any rule for determination of the sale price in respect of transfer of property in goods involved in the execution of the works contract as envisaged under Section 2(h) of the 1956 Act, the taxable turnover under Section 8A of the said Act cannot be computed for the purpose of levy of tax on the transfer of property in goods involved in the execution of works contract in the course of inter-State trade and commerce.

It was submitted that in absence of any rule required to be prescribed in terms of the provisions of the 1956 Act, the determination of sale price of such goods cannot be left to the whims and fancies of the Assessing Authority.

Mr. Kabin Gulati, the learned counsel appearing on behalf of the State, on the other hand, submitted that the 1956 Act having provided for the charging section, the deductions could be granted for the purpose of determination of quantum of tax and furthermore by reason of the provisions of Sections 9 and 13 of the 1956 Act, the mode and manner having been provided in terms whereof the quantum of tax is required to be determined, the impugned judgments are unassailable.

Our attention, in this connection, has been drawn to Section 3-F of the 1948 Act and Rule 44B of Uttar Pradesh Trade Tax Rules, 1948. It was urged that only because no rules have been framed, the same by itself would not lead to the conclusion that the provisions of the Act cannot be given effect to.

Before embarking on the questions raised at the Bar, we may notice the legislative background and history. A Constitution Bench of this Court in State of Madras v. Gannon Dunkerley & Company (Madras) Ltd. [(1959 SCR 379], inter alia, held that in an indivisible contract no sales tax could be imposed on the supply of materials used therein treating it as a sale, as the same did not involve any sale of goods.

The constitutional provision was amended by the Constitution (Forty-sixth Amendment) Act, pursuant to the recommendations of the Law Commission of India in its 61st report whereby and whereunder a new clause 29A was inserted in Article 366 thereof, which, inter alia, lays down :

"366. Definitions \026 In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say \026

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"(29A) 'tax on the sale or purchase of goods' includes \026

(a)	\005	\005	\005
(b)	a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;		
	(c)	\005	\005
	(d)	\005	\005
	(e)	\005	\005
	(f)	\005	\005

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;"

Clause 3 of Article 286 of the Constitution was also amended to enable the Parliament to specify by law restrictions and conditions in regard to the system of levy rates and other incidents of the tax on the transfer of goods involved in the execution of works contract. Pursuant to or in furtherance of the said enabling provision, as noticed hereinbefore, and in deference to observations made in Gammon Dunkerley (supra), clause (g) of Section 2 was substituted by a new clause defining 'sale' in the following terms :

"2(g). "Sale" with its grammatical variations and cognate expressions means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration and includes,

(i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) a delivery of goods on hire-purchase or any system of payment by installments;

(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuation consideration;

(v) a supply of goods by any incorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

but does not include a mortgage or hypothecation of or a charge or pledge on goods;"

However, no corresponding amendments in other provisions of the 1956 Act were made. By reason of Section 89 of the Finance Act, 2005, Section 2 of the 1956 Act was amended incorporating clause (ja) defining

'works contract' in the following terms :

"(ja) "works contract" means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property."

Section 13 of the 1956 Act was also amended. The amended provision reads thus :

"92.-Amendment of Section 13,-In Section 13 of the Central Sales Tax Act, in sub-section (1), clause (aa) shall be re-lettered as clause (ab) thereof, and before clause (ab) as so re-lettered, the following clause shall be inserted, namely :

"(aa) the manner of determination of the sale price and the deductions from the total consideration for a works contract under the proviso to clause (h) of section 2."

Section 6 is the charging provision making a dealer liable to pay tax under the said Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified therefor. Section 8A provides for determination of turnover. We may at this juncture notice the provisions of Sections 9(2) and 13(3) of the 1956 Act, which read as under :

"9. Levy and collection of tax and penalties.-

(1) \005 \005 \005

(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly.

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matter specified in this sub-section."

"S.13(3).- "State Government may make rules, not

inconsistent with the provisions of this Act and the rules made under sub-section (1) to carry out the purposes of this Act."

Sections 9(2) and Section 13(3) of the 1956 Act refer to the State Act. The State of Uttar Pradesh inserted Section 3F of the 1948 Act, sub-section (1) whereof reads as under :

"3F. Tax on the right to use any goods or goods involved in the execution of works contract :

(1) Notwithstanding anything contained in section 3 or section 3AAA or section 3D but subject to the provisions of sections 14 and 15 of the Central Sales Tax Act, 1956, every dealer shall, for each assessment year, pay a tax on the net turnover of \026

- (a) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment of other valuable consideration; or
- (b) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract,

at such rate not exceeding twenty per cent as the State Government may, by notification, declare and different rates may be declared for different goods or different classes of dealers."

Sub-section (2) of Section 3F of the 1948 Act provides for the amounts which were to be deducted from the total amount received or receivable by a dealer in respect of a transfer referred to in clause (a) of sub-section (1), where such transfer occurred during that assessment year or also for the purpose of determining net turnover referred to in sub-section (1).

The State of Uttar Pradesh framed Central Sales Tax (U.P.) Rules, 1957 in exercise of its power conferred upon it under sub-sections (3) and (4) of Section 13 of the 1956 Act; Rule 9 whereof reads as under :

"R.9.-Application to State Act and Rules : the provisions of UP Sales Tax Act, 1948 and the UP Sales Tax Rules, 1948, as amended from time to time shall in so far as they are not inconsistent with the Act, or the rules made thereunder apply to the dealers liable to assessment under the Act."

The State has also framed Uttar Pradesh Trade Tax Rules, 1948, Rules 44B and 44C whereof read as under :

"44B.- Determination of turnover of goods involved in the execution of works contracts.- The tax under Section 3-F on the turnover relating to the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract shall be computed on the net turnover relating to works contracts. In determining the net turnover, the amounts specified below shall be deducted if they are included in the gross turnover \026

- (a) the amounts representing the purchase price of such goods, involved in the execution of such

works contract, on the sale or purchase whereof the tax under the Act is shown to the satisfaction of the assessing authority to have been paid;

(b) the amounts representing the purchase price of such goods, involved in the execution of such works contract, as are exempt from tax under Section 4 or have been purchased from an industrial unit which is exempt from tax under Section 4-A;

(c) the amounts representing the value of such of the goods, involved in the execution of such works contract, as were supplied to the contractor by the contractee himself; provided the property in such goods remains under the terms of the contract throughout with the contractee and the contractor is bound to return the unused goods to the contractee.

Explanation.-For the purposes of this rule, gross turnover shall mean the aggregate of the amounts received or receivable by a dealer in an assessment year as valuable consideration for the transfer of property in goods used in the execution of a works contract after the commencement of this rule, whether or not the amount receivable as valuable consideration for such transfer is separately shown in the works contract, and whether the execution of such works contract commenced during the year or earlier, and includes any advance received by the dealer towards valuable consideration for the works contract."

"Rule 44-C Determination of turnover relating to the transfer of right to use goods.- The tax under Section 3-F on the turnover relating to the business of transfer of the right to use any goods for any purpose shall be computed on the net turnover. In determining the net turnover, the amounts specified below shall be deducted if they are included in the gross turnover \026

- (a) the amount representing the valuable consideration received for such transfer in respect of goods exempt from tax under Section 4;
- (b) the amounts received as penalty for defaults in payment or as damages for any loss or damage caused to the goods by the person to whom such transfer was made.

Explanation.- For the purpose of this rule, gross turnover shall mean the total amount received or receivable by a dealer in an assessment year as valuable consideration for the transfer of the right to use the goods whether such transfer was agreed to during that assessment year or earlier :

Provided that in cases where the transfer of the right to use goods was agreed to before the date of commencement of this rule and the right to use has been continued after the said date, only the amount received or receivable after the said date shall form part of the gross turnover."

Sales tax is an indirect tax. It is leviable on transfer of goods. It is, however, well-settled that while construing a taxing statute one has to look merely at what is clearly said. [See speech of Viscount Simon referred to in *State of West Bengal v. Kesoram Industries Ltd. & Others* \026 (2004) 10 SCC 201], wherein it was noticed :

"105. Justice G.P. Singh in *Principles of Statutory Interpretation* (8th Edn., 2001) while dealing with general principles of strict construction of taxation statutes states:

A taxing statute is to be strictly construed. The well-established rule in the familiar words of Lord Wensleydale, reaffirmed by Lord Halsbury and Lord Simonds, means: The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words. In a classic passage Lord Cairns stated the principle thus: If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute. Viscount Simon quoted with approval a passage from Rowlatt, J. expressing the principle in the following words: In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. (at p. 635)"

The 1956 Act contains the charging provision. Upon amendment of the definition of 'sale' in the year 2002, the transfer of property in goods involved in the execution of works contract would be treated to be a sale. It may be true that further amendments had been made in the year 2005 and for certain purposes, the subsequent legislations may also be considered for the construction of a statute, but in our opinion, it is not necessary to do so.

A taxing statute indisputably is to be strictly construed. [See *J. Srinivasa Rao v. Govt. of Andhra Pradesh & Another* - 2006 (13) SCALE 27]. It is, however, also well-settled that the machinery provisions for calculating the tax or the procedure for its calculation are to be construed by ordinary rule of construction. Whereas a liability has been imposed on a dealer by the charging section, it is well-settled that the court would construe the statute in such a manner so as to make the machinery workable.

In *J. Srinivasa Rao* (supra), this Court noticed the decisions of this Court in *Gursahai Saigal v. Commissioner of Income-tax, Punjab* [(1963) 3 SCR 893] and *M/s Ispat Industries Ltd. v. Commissioner of Customs, Mumbai* [2006 (9) SCALE 652] :

"In *Gursahai Saigal v. Commissioner of Income \026 Tax, Punjab* [(1963) 3 SCR 893], the question which fell for consideration before this Court was construction of the machinery provisions vis-à-vis the charging provisions. Schedule appended to the Motor Vehicles

Act is not machinery provision. It is a part of the charging provision.

By giving a plain meaning to the Schedule appended to the Act, the machinery provision does not become unworkable. It did not prevent the clear intention of the legislature from being defeated. It can be given an appropriate meaning.

In a case of doubt or dispute, it is well-settled, construction has to be made in favour of the taxpayer and against the Revenue. [See *Sneh Enterprises v. Commissioner of Customs, New Delhi*, (2006) 7 SCC 714]

In *M/s. Ispat Industries Ltd. v. Commissioner of Customs, Mumbai* [JT 2006 (12) SC 379 : 2006 (9) SCALE 652], this Court opined:

"In our opinion if there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule ultra vires the Act."

We are, however, not oblivious of the decision of this Court wherein the measure or value to which the rate will be applied for computing the tax liability is considered to be one of the components of tax *Messrs Govind Saran Ganga Saran v. Commissioner of Sales Tax and Others* [See (1985) Supp. SCC 205 \026 para 6]. But then measure or value to which rate would be applied is one thing, but how the turnover would be determined is another. Computation provisions may bear a relationship with the nature of charge and charging section and computation provisions together constitute an integrated code as was held in *C.I.T., Bangalore etc. v. B.C. Srinivasa Setty etc.* [(1981) 2 SCC 460 at 465]; but it is equally well-settled that only because rules had not been framed under the Central Act, the same per se would not mean that no tax is leviable.

In *Sudhir Chandra Nawn v. Wealth Tax Officer* [1969 (1) SCR 108], this Court rejected the contention that Section 7(1) of the Wealth Tax Act was unconstitutional as no rules had been framed to value the asset for the purpose of the Act, stating :

"The plea that s. 7(1) of the Wealth Tax Act is ultra vires the Parliament is also wholly without substance. That clause provides :

"Subject to any rules made in this behalf, the value of an asset, other than cash, for the purposes of this Act shall be estimated to be the price which in the opinion of the Wealth Tax Officer it would fetch if sold in the open market on the valuation date" :

It was urged that no rules were framed in respect of the valuation of land and buildings. But s. 7 only directs that the valuation of any asset other than cash has to be made subject to the rules. It does not contemplate that there shall be rules before an asset can be valued. Failure to make rules for valuation of a type of asset cannot therefore affect the vires of s. 7. It was also said that s. 7 (1) which requires that the asset shall be valued at the price which it would fetch if sold in the open

market on the valuation date, was expropriatory. This contention was not raised in the petition, and no ground is made out for holding that the rate at which wealth-tax is levied is expropriatory."

The question which, in our opinion, is required to be posed and answered, is as to whether there exist sufficient guidelines for determination of the turnover in the hands of the Assessing Authority for the purpose of levy of tax. The 1956 Act provides for levy of tax. Works contract has been brought within the purview of sale. Wherever the said words have been used, the new definition, therefore, would be applied. Section 8 provides for rates of tax on sales in the course of inter-State trade or commerce. Section 8A provides for determination of turnover. Section 9 provides for levy and collection of tax and penalties. The said provision would, thus, be applied in respect of transfer of property in goods involved in the execution of works contract. The 1956 Act provides for grant of exemptions and various provisions e.g. proviso appended to Section 6(1) and 6(2) of the Act.

Section 9(2) of the Act is of wide amplitude. It confers powers on the officers of the State to make assessment or re-assessment, which the officers of the State have, under the general sales tax laws, to carry on assessment under the 1956 Act, as if it is an assessment under the State Act. The expression 'as if' is of some significance. The powers conferred and the procedures laid down under the State sales tax laws would, therefore, be applicable also for the purpose of carrying out assessment under the State Act. Sub-section (2) of Section 9 provides that the authorities under the State Act for the purpose of making assessment and re-assessment under the 1956 Act shall have all the powers which they have under the general sales tax law of the State. Assessment would mean the entire process of computation and levy of tax. [See *Additional ITO v. Alfred* - 1962 Supp. 1 SCR 143 at 149 and *S. Sankappa v. ITO* 168 2 SCR 674 at 678].

The expression 'assessment', therefore, comprehends the power to even compute the amount chargeable to tax in terms of the procedure prescribed under the State Act. Furthermore, Section 13(1) provides that the Central Government 'may' by notification make rules for computation of turnover. It is an enabling provision. It is not obligatory for the Central Government to do so. When one looks at the language of Section 3 of the 1956 Act, it becomes clear that the State Government has also been given a power to make rules, which are not inconsistent with the provisions of the Act and any rules which may have been made under sub-section (1) of Section 13 by the Central Government to carry out the purposes of the 1956 Act. So long as there exists no inconsistency between the rules made by the State Government and the rules framed by the Central Government, the rules of the State Government may be made applicable. The statute does not impose any fetter on the part of the State Government to make rules. The State rules would be independent of the Central Government rules. The only fetter is that the State Rules should not be inconsistent with the provisions of the Central Rules or the Act. [See *Hanuman Prasad Singhania v. CTO* - 27 STC 289 at 301].

If the State Rules have been made applicable using Rule 9 of the State Rules, it makes not only the original rule duly applicable in the case of assessment of Central sales tax law, but also as amended from time to time.

So long as, therefore, the Central Government does not make any rules, the determination of turnover may be carried out by the Assessing Authority in terms of the State Rules, in view of Section 13(3) of the 1956 Act read with Rule 9 of the Central Sales Tax Act (U.P.) Rules, 1957. The rules made by the State Government as also the provisions of the Act are incorporated by reference. When a provision is incorporated by reference, it need not be so stated again and again. [See *Nagpur Improvement Trust etc. v. Vasantrao and Others etc.* (2002) 7 SCC 657 and *Sneh Enterprises* (supra)]

Validity of Rule 9 of the Central Tax Act (U.P.) Rules, 1957 is not under challenge. Furthermore, it is not necessary that the charging provision and the machinery provisions must be found at the same place in the same section, as the machinery provisions may be found elsewhere. If the rules of the State are applicable, Rule 44-B of the Uttar Pradesh Trade Tax Rules, 1948 would apply, which provides for computation of net turnover by providing for deduction under Section 3F(2)(b) of the 1948 Act from the gross turnover. Section 3F(2)(b) of the 1948 Act in turn provides for all the deductions as has been directed by this Court in M/s Gannon Dunkerley (supra).

In the aforementioned background, the submission of Mr. Agrawal that the matter has to be considered from the point of view of amendments of Section 2 and Section 13 of the 1956 Act by Finance Act, 2005 must be held to be not applicable in the instant case. Even if they are, they provide only for an enabling provision.

A proviso inserted subsequently cannot be the determinative factor for restricting the operation of the Act. The proviso would be applicable subject to the other provisions of the Act. If in absence of any rules, the determination of turnover becomes payable, an assessee or a dealer cannot derive any benefit by reason of non-framing of any rule which is contemplated under the Act. Strong reliance has been placed by Mr. Agrawal on a decision of this Court in M/s Khemka & Co. (Agencies) Pvt. Ltd. V. State of Maharashtra [(1975) 2 SCC 22]. Therein, this Court observed :

"15. It is only tax as well as penalty payable by a dealer under the Central Act which can be assessed, reassessed, collected and enforced in regard to payment. The words as if the tax or penalty payable by such a dealer under the Central Act is a tax or penalty payable under the general Sales Tax law of the State have origin and root in the words payment of tax including any penalty payable by dealer under the Central Act. Just as tax under the State Act cannot be payable and collected and enforced, similarly penalty under the State Act cannot be assessed, collected and enforced.

16. The words and for this purpose they may exercise all or any of the powers they have under the general Sales Tax law of the State in Section 9(2) of the Central Act are important. The words and for this purpose relate to assess, reassess, collect and enforce payment of tax including any penalty payable by dealer under this Act. In that context, the last limb of Section 9(2) of the Central Act viz. and the provisions of such law ... shall apply accordingly mean that the provisions of the State Act are applicable for the purpose of assessment, reassessment, collection and enforcement of payment of tax including penalty payable under the Central Act. The words of the last part of Section 9(2) viz. shall apply accordingly relate clearly to the words and for this purpose with the result that the provisions of the State Act shall apply only for the purpose of assessment, reassessment, collection and enforcement. The doctrine of ejusdem generis shows that the genus in Section 9(2) of the Central Act is for this purpose. In other words, the genus is assessment, reassessment, collection and enforcement of payment. The genus is applicable in regard to the procedure for assessment, reassessment, collection and enforcement of payment. The genus is from whom to collect and against whom to enforce. It is apparent that the extent of liability for tax as well as penalty is not attracted by the doctrine of ejusdem generis in the application of the provisions of the State Act in

regard to assessment, reassessment, collection and enforcement of payment of tax including any penalty payable under the Central Act.

17. The deeming provision in the Central Act that the tax as well as penalty levied under the Central Act will be deemed as if payable under the general Sales Tax law of the State cannot possibly mean that tax or penalty imposed under any State Act will be deemed to be tax or penalty payable under the Central Act. The entire authority of the State machinery is that for this purpose meaning thereby the purpose of assessing, reassessing, collecting and enforcing payment of tax including any penalty payable under the Central Act, they, meaning the State agencies, may exercise powers under the general Sales Tax law of the State. The words for this purpose cannot have the effect of enlarging the content of tax and the content of penalty payable under the Central Act. Liability to pay tax as well as liability to pay penalty is created by the Central Act. One of the reasons why tax as well as penalty is the substantive provision in the Central Act and is not incorporated by reference to the State Act is illustrated by the history of Section 9(2) of the Central Act. The present Section 9(2) of the Central Act was formerly Section 9(3) of the Central Act. The Madras High Court in D.H. Shah & Co. case pointed out that the imposition of penalty under Section 12(3) of the Madras Act, 1959 could not be attracted for levy of penalty. The Madras High Court gave the reason that the then Section 9(3) of the Central Act only adopted the procedure of the State Act for assessment, reassessment, collection and enforcement of tax as well as penalty payable under the Central Act."

The said decision does not run counter to what we have said hereinbefore. What is being emphasized is application of the State Rules for the purpose of assessment or re-assessment. Therein, the question which arose for consideration was as to whether the assessee under the 1956 Act could be made liable for penalty under the provisions of the State Sales Tax Act. Such a penalty was sought to be imposed for default in payment of tax within the prescribed time. The source of power to impose penalty under the 1956 Act cannot be drawn from the State Act and in that view of the matter, the contention in regard to the application of sub-section (2) of Section 9 of the 1956 Act in that case did not find favour with this Court. The said decision, however, clearly is an authority for the proposition that the recourse to the State Act and the rules framed thereunder can be resorted, inter alia, for the purpose of assessment or re-assessment.

Reliance by Mr. Agrawal on Yogendra Nath Naskar v. CIT, Calcutta [(1969) 1 SCC 555] for the proposition that a subsequent legislation can be relied upon as the Parliamentary exposition of earlier Act has no application in the instant case. Recourse to a subsequent legislation is permissible if there exists any ambiguity in the earlier legislation for the purpose of ascertaining as to whether by a subsequent legislation proper interpretation has been fixed which is to be put upon the earlier Act. Therein the question was as to whether an individual included a deity. There was no ambiguity in the definition of works contract as contained in Section 2(g) of the Act.

Application of proviso to an Act is well-known. [See Sadashiv Dada Patil v. Purushottam Onkar Patil (D) by L.Rs. - 2006 (10 SCALE 21), wherein it was observed :

"As in 1957 the right of the respondent to purchase the land became a vested right, proviso appended to Section 8 of the 1962 Act could not be read to mean that such right stood divested. Proviso appended to Section 8

refers to the application of the provisions of the relevant tenancy laws as the same does not abrogate a vested right. Proviso, it is well known, has a limited role to play. It may create an exception. It ordinarily does not create a right or takes away a vested or accrued right. Proviso to Section 8 of the 1962 Act, in our considered opinion, does not take away a vested right conferred under the Tenancy Act."

We have noticed hereinbefore that the 2005 amendments are not retrospective in operation. Furthermore, they provide merely for an enabling provision. If enough machinery provisions can be found in the existing Act, it is not necessary to construe the provisions having regard to the subsequent legislation.

For the reasons aforementioned, we do not find any merit in these appeals, which are dismissed accordingly. However, in the facts and circumstances of the cases, there shall be no order as to costs.