

Jharkhand High Court

M/S Tata Steel Ltd. vs State Of Jharkhand & Ors on 20 December, 2013

1

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 1578 of 2011

With

W.P.(T) No. 1561 of 2011

M/s. Tata Steel Ltd. Petitioner (in both cases)

versus

The State of Jharkhand & Others Respondents (in both cases)

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE APARESH KUMAR SINGH

For the Petitioner : Mr. Binod Poddar, Sr. Advocate
Mr. M.S. Mittal, Sr. Advocate
Mrs. A.R. Choudhary, Advocate
Mr. Sumeet Gadodia, Advocate
For the Respondents : Mr. Rajesh Shankar, G.A.
Mr. Abhay Prakash, J.C. to G.A.

CAV on 13th of December, 2013 Pronounced on 20th of December, 2013

R. Banumathi, C.J. In these writ petitions, the issue before us is that if a registered dealer purchases goods at concessional rate of tax for use in the manufacture or processing of goods for sale, whether he will have to do so on condition of making sales of the manufactured goods within the State of Jharkhand or inter-state sale originating from the State of Jharkhand and whether the new proviso inserted in Section 13(1)(b) [by notification dated 02.01.2002

] has no geographical limitations of sale. In the present writ petitions, the petitioner is aggrieved by the orders passed by the Commercial Taxes Tribunals in Revision Petitions affirming the orders of the Appellate Authority-cum-Chief Commissioner of Commercial Taxes and that of the Assessment Officer whereby it has denied the benefit of concessional rate of tax on purchase of raw materials by the Petitioner used for manufacturing the goods which has been transferred by way of stock transfer

outside the State in terms of Section 13(1)(b), Second proviso to the Bihar Finance Act, 1981 (now Jharkhand) as amended by Notification dated 2nd January 2002.

2. The Bihar Finance Act came into force on 01.04.1981. The State of Jharkhand was formed on 15.11.2000 and the State of Jharkhand adopted the Bihar Finance Act, 1981. Sub Section (1) of Section 13 of the Bihar Finance Act (adopted by the State of Jharkhand) provides for Special/Concessional rate of tax being charged subject to certain restrictions and conditions prescribed under the Act and Rules as it stood on 1.4.1981. Amendment was made in Section 13(1)(b) with effect from 01.08.1985 by which the words "In Bihar or in the course of Inter-State trade or commerce", as appearing after the term "Sale" was deleted.

3. After the first proviso of Sub Section (1) of Section 13 of the Act, by notification No. LG-12/2001 Aj: 01 dated 2nd January, 2002 a new proviso was inserted which reads as under :-

ijUrq ;g vkSj fd bl /kkjk ds vUrxZr fj;k;rh nj ij Ø; fd;s x;s eky dk iz;ksx fofuek.kZ dk;Z ds fy, dsoy >kj[k.M jkT; ds vUrxZr fd;s tk;sxs a blls mRikfnr eky dk foØ; >kj[k.M jkT; ds vUrxZr ;k vUrkZT; O;kikj ,oa okf.kT; ds fy, gksxkA

4. As per amendment, facility of concessional rate of tax on sale or purchases is restricted only to those registered dealers who manufacture goods within the State of Jharkhand and sell the goods so produced within the State of Jharkhand or in the course of inter-state trade and commerce originating in the State of Jharkhand and not dispose it otherwise than by way of sale, i.e., stock transfer.

5. In terms of Sub-Section (3) of Section 13, penal provisions are to be enforced against the registered dealer who buys goods on concessional rate and does not use the goods for manufacture of goods only in the State of Jharkhand and does not sale such manufactured goods within the State of Jharkhand or inter-state sale originating from the State, but stock transfers the manufactured goods elsewhere outside the State. Section 13(3) provides that differential rate of tax is to be levied after deducting the concessional rate from tax levied at the rate applicable to the goods, class or description of goods under Section 12.

6. M/s. Tata Steel Limited is a Limited Company registered in Jamshedpur in the State of Jharkhand. The Company is engaged in manufacturing of various products of iron and steel at its factory at Jamshedpur and marketing the same all over the country and also outside the country. The writ Petitioner was issued a certificate under the provisions of Section 13(1)(b) of Bihar Finance Act, 1981 and is accordingly entitled to purchase goods at the concessional rate. In respect of the assessment years 2004-05 and 2005-06 in response to notice issued under Section 17(2a) of the Bihar Finance Act, 1981 (hereinafter referred to as the Act), the Petitioner-dealer company submitted monthly sale abstract, quarterly return and the annual return in the prescribed form. After affording opportunity to the Petitioner, the Assessing Officer vide orders dated 16.08.2008 and 09.03.2009 confirmed the demand made in the demand notice for the Assessment Years 2004-2005 and 2005-2006 holding that the writ Petitioner has purchased raw materials at the concessional rate and stock transferred a large portion of the manufactured goods outside state and

has violated the amended provisions of Section 13(1)(b). The Assessing Officer held that the amendment to Section 13, Second proviso provides that if benefit of concessional purchases is availed, sales of manufactured products are to be made within the State of Jharkhand or in the course of inter-state sales and the Assessing Officer resorted to Section 13(3) of the Act and levied differential rate of tax on those goods as leviable under Section 12.

7. Challenging the vires of Second proviso to Section 13(1)(b) as inserted vide the Notification dated 02.01.2002 and also order of assessment made in respect of the assessment year 2004-05 and also to quash the notice of demand dated 19.08.2008, the Petitioner filed writ petition W.P.(T) No.71 of 2009. M/s. Tata Motors Limited filed similar writ petition in W.P.(T) No. 1325 of 2009. Those writ petitions were disposed of by order dated 08.05.2009 directing the Petitioners to avail the statutory remedy of appeal against the assessment order passed by the respondent authorities and to raise all the points before the Appellate Authority. The Division Bench directed the authorities to consider "the effect of the amended provision without amending the corresponding rules".

8. Challenging the assessment order for the assessment years 2004-2005 and 2005-2006, the Petitioner Tata Steel Limited filed the appeal before the Joint Commissioner, Commercial Taxes who dismissed the appeal by order dated 23.10.2009 and 10.11.2009 respectively.

9. Challenging the order of the Appellate Authority, the Petitioner preferred revision before the Commercial Taxes Tribunal. In its order dated 04.03.2010, the Tribunal held that the amendment inserting Second proviso to Section 13(1)(b) is in relation to the State Sales Tax Law viz. Bihar Finance Act applicable to the State of Jharkhand and that the State Sales Tax Law can take in its sphere only the sale effected within the State or the inter-state sale originating within the State. The Tribunal further held that the amendment clearly puts restriction on the situs of sale of the manufactured products within the State of Jharkhand or the sales in the course of inter-state sale originating from the State of Jharkhand. In so far as second limb of contention that without amending the rules and declaration Form IX, the amended provision is non-operational, the Tribunal held that the imposition of differential rate of tax is not dependent upon Form IX and that referring to Indian Carbon Ltd. & Others versus State of Assam reported in (1997) 6 SCC 479, the Tribunal held that by the wordings of Section 13(3) of the Act, imposition of differential rate of tax is independent of Form IX. Referring to Indian Carbon Limited Case, the Tribunal held that Rule 13 does not require any amendment and absence of amendment in Form IX would not make the provisions under Section 13(1)(b) and the Second proviso and Section 13(3) non- operational.

10. Referring to the order of the Assessing Officer and also the Appellate Authority, the Tribunal held that the Assessing Officer has rightly resorted to Section 13(3) of the Act and levied differential rate of tax which is very much in conformity to Second proviso inserted by virtue of amendment in Section 13(1)(b) and Section 13(3) of the Act.

11. Challenging the order of the Tribunal, the Petitioner filed these writ petitions to quash the order of the Tribunal dated 04.03.2010 bearing No. JR 15 of 2010 relating to the financial year 2004-05 and JR 16 of 2010 relating to the financial year 2005-06.

12. The case of the Petitioner is that the Second proviso to Section 13(1) introduced by the amendment 2002 does not impose any geographical restriction of sale for being eligible for concessional rate of tax under Section 13(1)(b) and even if such goods are moved to the other states and sold elsewhere, the Petitioner will be eligible for purchase of goods at concessional rate of tax under Section 13(1)(b). There is no geographical restriction for the manufactured goods being sold elsewhere, rather the restriction is only for manufacture of goods i.e., raw materials should be used for manufacture of goods in the State of Jharkhand. According to the Petitioner, sale of manufactured goods under Section 13(1)(b) can be of four types - Intra State Sale, Inter-state Sale, Sale Outside State and also Export Sale. The writ Petitioner contends that Petitioner is entitled to the benefit of purchase of goods at a concessional rate of tax under Section 13(1)(b) of the Act in respect of the finished goods which are sent outside the State by way of stock transfer for sale in as much as Form IX does not provide for a declaration to the effect that the goods so manufactured must be sold only within the State of Jharkhand or in the course of inter-state trade and commerce and not outside the State of Jharkhand.

13. Resisting the writ petition, the respondents have filed counter affidavit contending that the intention of the State legislature is to increase revenue of State. After amendment, the goods manufactured out of the raw materials purchased at concessional rate under Section 13(1)(b) has to be sold within the State of Jharkhand which refers to Section 3 of Central Sales Tax Act. The concessional rate of tax is not to be granted if these conditions are not fulfilled. If the raw materials are purchased at concessional rate of tax, the goods manufactured out of these raw materials cannot be stock transferred and if these goods are stock transferred, then the facility of purchase of raw material at concessional rate cannot be allowed.

14. We have heard submissions of learned Senior Counsel Mr. M.S. Mittal as also learned Senior Counsel Mr. B. Poddar appearing along with Mrs. A.R. Choudhary and Mr. Sumeet Gadodia appearing for the Petitioner. We have also heard Mr. Rajesh Shankar, Government Advocate and Mr. Abhay Prakash, J.C. to G.A. appearing for the State and we have perused the materials on record.

15. Learned Senior counsel for the Petitioner Mr. M.S. Mittal submitted that the term "sale" as defined in Bihar Finance Act does not contain any geographical restriction as to the situs of "sale" therefore, all four types of sale are included in the gross turnover (GTO) of the Petitioner. That is, according to the Petitioner, Second proviso inserted by amendment includes (i) sale within the State of Jharkhand (ii) in the course of inter-state trade and commerce on which CST is payable to the State of Jharkhand (iii) sale outside the State of Jharkhand through the Petitioner's various depots located in different parts of the country and on which the State of Jharkhand does not get any tax [in view of Article 286(1)(a) of the Constitution of India] and (iv) sale in the course of export on which the State of Jharkhand does not get any tax [in view of Article 286 (1)(b) of the Constitution of India].

16. The contention of the Petitioner is that after the impugned amendment, the benefit of concessional rate of tax under Section 13(1)(b) has been restricted only to the extent that the dealer is required to use the goods purchased under Section 13(1)(b) for manufacturing within the State of

Jharkhand and the amendment does not contemplate any geographical restriction on sale of manufactured goods within the State of Jharkhand and the same is evident from the language of the impugned notification which uses the word 'BHI' () rather than 'HEE' (). Learned Senior Counsel for the Petitioner contended that had it been the legislative intention to restrict the benefit of Section 13(1)(b) read with the Second proviso, only to intra state and inter-state sale originating from the State of Jharkhand to make good the losses of tax on purchase and increase the State revenue by putting geographical restrictions then it would have used the word 'HEE' () rather than 'BHI' () in the impugned notification while providing for sale of goods manufactured in the State of Jharkhand. The learned Senior Counsel for the Petitioner submitted that the authorities were not right in invoking Section 13(3) of the Act and the Tribunal failed to appreciate that concession was being allowed to the Petitioner between 1985 to 2002 then the term "sale" in Section 13(1)(b) was not qualified by either "inside State of Bihar" and "in the course of inter-state trade and commerce". The learned senior counsel further submitted that the Tribunal erred in holding that - (i) State Sales Tax Law can take into sphere only sales within the State or inter- state sales originating from State and no other sales, and (ii) if the word "sale" occurs in the notification of State Sales Tax Act, it always means sales within the State or inter-state sale originating from State.

17. Learned counsel for the State of Jharkhand Mr. Rajesh Shankar submitted that by the Second proviso inserted to Section 13(1)(b), the emphasis is on the word "sale inside Jharkhand" (**>kj[k.M jkT; ds vUrxZr**) and "inter-state trade and commerce" (**vUrjkZT; O;kikj ,oa okf.kT;**), thus, signifying the intention of the legislature to confine the benefit of Section 13(1)(b) only to intra state sale within the State of Jharkhand and inter-state sale originating in the State of Jharkhand in Section 3 of C.S.T. Act. The contention of the respondent is that the benefit of Section 13(1)(b) can be allowed only in the event of intra state sale within the State of Jharkhand and inter-state sale of finished goods originating from the State of Jharkhand and such benefit is not permissible for any other purpose such as stock transfer. The learned counsel submitted that the dealer company has purchased raw materials at the concessional rate and stock transferred a large portion of the manufactured goods outside the State which is not permissible and is violative of the provision of Section 13(1)(b) and when the goods are sent to other branches in other States, there is inter-state movement but the movement has not occasioned on account of any covenant or contract of sale and therefore, State rightly invoked Section 13(3). The learned counsel submitted that the Assessing Officer and the Appellate Authority as well as the Tribunal considered all these aspects and rightly held that the Petitioner is bound to pay the differential rate of tax and the Writ Petitions are to be dismissed.

18. In order to determine the issues, we are called upon to interpret the language of the amended provision. At the outset, it is to be stated that the Bihar Finance Act was enacted to consolidate and amend the law relating to levy of tax on the sale or purchase of goods in Bihar and it operated in the whole of the State of Bihar. After bifurcation of the parent State, newly created successor State of Jharkhand has duly adopted the original Act in which the aforesaid amendment was introduced on 02.01.2002. The definition 'gross turnover' includes the sale of goods made outside the State or in the course of interstate trade or commerce or export. Section 2(t) provides definition of sale which means any transfer of property in goods or cash or deferred payment or other valuable consideration, but does not include a mortgage or hypothecation of a charge or pledge of goods.

Section 3 provides that subject to the provisions of this part, sales tax would be paid by every dealer if his gross turnover during the period not exceeding 12 month, exceeded the specified quantum. Sub- section 9 thereof stipulates that the provisions of Central Sales Tax Act which shall apply for determining when a sale shall be deemed to have taken place inside the Bihar. Section 7 provides for exemption and indicates that no tax shall be payable under this part on sales or purchase of goods which have taken place (a) in the course of interstate trade or commerce (b) outside the State; (c) in the course of import or export of the goods outside the territory of India.

19. Section 21 provides for definition of taxable turnover. In the aforesaid scheme of the Act, rates of taxes to be ordinarily paid are prescribed under Section 12. Section 12 provides for rates of taxes payable by the dealer under Sections 3 and 4 which may be varied by notification of the State Government subject to conditions and restriction as it may impose. Thereafter, the provisions of Section 13 have been incorporated in the Act which provides for special rate of tax on certain sales or purchase.

20. Section 13 of the Bihar Finance Act (adopted by the State of Jharkhand) provides for concessional rate of tax being charged subject to certain restrictions and conditions prescribed in the rules to registered dealers for goods utilized in manufacture or processing of goods ... etc. The important conditions stipulated for availing of the concession are that the purchaser should possess a prescribed certificate issued by a prescribed authority in the prescribed manner to the seller/dealer and conditional upon the observance of the conditions and restrictions prescribed by or under this Act. We are concerned with special/concessional rate of tax availed by the writ Petitioner for purchase of goods to be used in the manufacture and the manufactured goods be sold in the State of Jharkhand.

21. The original provision of Section 13(1) as it stood on 01.04.1981 reads as under: -

13. Special rate of tax on certain sales or purchases. - (1) Notwithstanding anything contained in this part but subject to such conditions and restrictions as may be prescribed-

(a)

(b) sales to or purchases by a registered dealer of goods required by him directly for use in the manufacture or processing of any goods for sale in Bihar or in course of inter-State trade or commerce;

(c) ...

(d) ...

And in respect of which the purchaser has been granted a certificate by the prescribed authority in the prescribed manner and for prescribed period shall, unless the goods are taxable at a lower rate under Section 12 be subject to sub-section (2); leviable to

tax at such rate as may be notified by the State Government in this behalf not exceeding 4 per centum;

Provided that the State Government may, from time to time by notification in Official Gazette, exclude any goods or class or description of goods from the operation of this section.

(2) In case of sales under clauses (a), (b) or (c) of sub-section (1) a declaration in the prescribed form duly filled up and signed by the purchaser shall be furnished in the prescribed manner by the selling dealer and the prescribed authority may require the selling dealer to satisfy him that the sale was made to the purchaser holding certificate granted under the said sub-section.

(3) In respect of sales under clauses (a), (b), (c) and purchase under clause (b) of sub-section (1), if the goods purchased are utilized by the purchaser for any purpose other than those specified in the said clause the purchaser shall, without prejudice to any action which is or may be taken under Section 49, be liable to pay tax on the sale or purchase price, as the case may be, at the rate which is arrived at after deducting the concessional rate under this Section from the rate applicable to the goods, class or description of goods under Section 12.

(4)

22. By the amendment made with effect from 01.08.1985, the words "in Bihar or in the course of inter-State trade or commerce" as appearing after the term "sales" was deleted. That is after the amendment from 01.08.1985, the restriction for use of goods purchased under concessional rate in the manufacture or processing of any goods for sale in Bihar was deleted. Deletion of the aforesaid words by the amendment from 01.08.1985, removed the geographical restriction for manufacture of goods from raw materials purchased on concessional rates within the State or for sale of such goods in Bihar or in the course of inter-state trade or commerce.

23. After the formation of the State of Jharkhand (15.11.2000), the Bihar Finance Act, 1981 was adopted by the State of Jharkhand. While Bihar Finance Act was adopted by the State of Jharkhand, Section 13(1)(b) reads as under: -

13. Special rate of tax on certain sales or purchases. - (1) Notwithstanding anything contained in this part but subject to such conditions and restrictions as may be prescribed-

(a)

(b) sales to or purchases by a registered dealer of goods required by him directly for use in the manufacture or processing of any goods for sale;

(c) ...

(d) ...

24. In the judgment reported in 1199 112 STC 0248 (Pat) (Union of India versus Hindalco Industries), the Patna High Court has opined that the amended provisions of Section 13(1)(b) as incorporated with effect from 01.08.1985 did not restrict the situs of manufacture within the State of Bihar. In the aforesaid background of the history of the legislation, the parent State got bifurcated on 15.11.2000. The successor State of Jharkhand thereafter has consciously chosen to incorporate the second proviso to Section 13(1)(b).

25. Section 13(1)(b) amended by Notification No. LG-12/2001 Aj:01 dated 2nd January 2002 and Second proviso has been added and the Second proviso to Section 13(1)(b) which is the subject matter in issue reads as under: -

ijUrq ;g vkSj fd bl /kkjk ds vUrxZr fj;k;rh nj ij Ø; fd;s x;s eky dk iz;ksx fofuek.kZ dk;Z ds fy, dsoy >kj[k.M jkT; ds vUrxZr fd;s tk;sxs a bls mRikfnr eky dk foØ; >kj[k.M jkT; ds vUrxZr ;k vUrjkZT; O;kikj ,oa okf.kT; ds fy, gksxkA

26. In the Supplementary Counter Affidavit filed on 10.06.2011 by the respondents, the respondents have stated that there is no official English Translation of the amended Second proviso. In the writ petition, the Petitioners have given their own English Translated Version of the Second Proviso. During the course of final hearing of the arguments, the State has filed an affidavit giving the English Translated Version of the Second Proviso. The counsel for the Petitioners raised strong objection for looking into the said English Translated Version of the Second proviso produced during the course of hearing and submitted that earlier the respondents have filed Supplementary Counter Affidavit on 10.06.2011 stating that there is no official English Translated Version of the Second proviso and therefore, English Translated Version now produced by the respondents cannot be taken into consideration.

In the aforesaid circumstance of rival versions of the English Translation given by both the parties, we have tried to construe the amended Second proviso in the manner indicated as in its original version in Hindi.

27. In the amendment, the words "evam utpadit maal ka vikray Jharkhand rajya ke antargat ya antarajya vyapar avam vanijya ke liye bhi (Hkh) hoga", have been inserted. But the emphasis is on "foØ;" and ">kj[k.M jkT; ds vUrxZr ;k vUrjkZT; O;kikj ,oa okf.kT; ds fy,".

28. The language used in the amended proviso makes clear the intention of the legislature that the goods manufactured out of the raw materials purchased at a concessional rate under Section 13(1)(b) has to be used for manufacture of goods within the State of Jharkhand and such manufactured goods are to be sold in the State of Jharkhand or in course of inter-state trade and commerce. The purchaser who buys goods on the concessional rate of tax and does not utilize the goods for the purpose indicated in Section 13(1)(b) read along with amended proviso, are made

liable for paying up the differential rate of tax i.e., the difference between tax at the full rate and the concessional rates under Sub-Section (3) of Section 13, apart from liability for criminal prosecution under Section 49.

29. Section 12 of the Act prescribes that the rate of (sale or purchase) tax payable by a dealer under Section 3 or 4 shall be levied at the rate of 8%. As per notification No. 1096 dated 09.09.1983 issued in respect of sales covered by Clause (b) of Sub-Section (1) of Section 13 for the raw materials required directly for use in the manufacture or processing of goods for sale in the State or in the course of inter-state trade of commerce, concessional rate of tax is levied which is at the rate of 2%. Thus, the Petitioner who is to pay normal rate of tax under Section 12, avails special rate of tax on purchase of goods required by him directly for use in the manufacture or processing of any goods for sale and when a registered dealer purchases goods for use in the manufacture and avails the special rate of tax, the same is subject to the conditions and restrictions imposed by the legislature. Granting of special rate of tax on sales or purchases cannot be claimed as a matter of right. In terms of Section 13(1)(b), (c) and (d), the State Government is empowered to impose the conditions and those conditions and restrictions must be strictly construed.

30. To avail the concessional rate of tax, the legislature imposed the conditions by inserting Second proviso to Section 13(1)(b). For arriving at the logical conclusion, Sub-Section (3) of Section 13 is to be read along with Second proviso inserted by the amended provision. A combined reading of the above provision indicates that the goods purchased at a concessional rate of tax would be leviable to tax at the normal rate prevailing as prescribed under Section 12 of the Act if the following conditions are not being satisfied :-

(i) The dealer must be a registered dealer.

(ii) The class of goods purchased at the concessional rate of tax shall be used for the purposes of manufacturing of goods only in the State of Jharkhand.

(iii) Manufactured goods so produced shall be sold within the State of Jharkhand or in the course of inter-state trade and commerce.

31. The above conditions are integral part of the concessional rate of tax availed by a dealer on purchases of goods for use of manufacture which is a concession made available to the dealer. In case the goods so purchased at a concessional rate are used for any other purposes or sold outside the State of Jharkhand, the dealer shall pay the differential tax on the goods.

32. In the Second proviso inserted by the amendment in 2002, the Jharkhand legislature has restricted the concessional rate of purchase only to those dealers who manufacture goods within the State and sell these goods within the State or inter-state sales originating from the State on which taxes have accrued to State and not to dispose it otherwise than by way of sale i.e. stock transfer for which revenue does not accrue to the State.

33. The learned Senior Counsel for the Petitioner Mr. Mittal submitted that the Second proviso inserted by the amendment does not contemplate any geographical restriction on sale of manufactured goods and the same is evident from the plain language of the impugned notification which uses the word 'BHI' () rather than 'HEE' (). As far as the condition with respect to the sale of manufactured goods is concerned, it was submitted that the manufactured goods can be sold in the State or in the course of inter-state trade and commerce in addition to sale outside the State of Jharkhand and also the export sale. The learned Senior Counsel submitted that the intention of the legislature has to be gathered from the plain reading of the statute and in the instant case, if the legislative intention was to restrict the benefit of Section 13(1)(b) only to intra state sale and inter-state sale originating from the State of Jharkhand to make good the losses of concessional rate of tax on purchase and to increase the State revenue by putting geographical restrictions then it would have used the word 'HEE' () rather than 'BHI' () in the impugned notification. The learned senior counsel further submitted that Bihar Finance Act, 1981, after its amendment in 1985, had no geographical restriction for manufacture of the goods and in view of deletion of the words "in Bihar or in the course of inter-state trade or commerce" occurring in Section 13(1)(b) (by virtue of amendment made in Section 13(1)(b) with effect from 01.08.1985, from 1985 till 2002, manufacture can be done at any place and there was no geographical restriction for manufacture of goods purchased at concessional rate. Learned senior counsel has drawn our attention to the notings made before the Bill was presented in 2002 for inserting Second proviso and submitted that the notings would clearly show that the legislature intended to amend the geographical limit only for manufacture and never intended for geographical limitations of the manufactured goods within the State of Jharkhand or inter- state trade and commerce. Learned senior counsel further cited Petitioner's own English version of the amendment in the writ petition and also the notings and the deliberation prior to the amendment and submitted that the intention of the legislature was to bring in the amendment to the extent that "situs of manufacture was restricted to the State of Jharkhand only".

34. Learned Senior Counsel submitted that the word 'HEE' () means 'precisely', 'particularly', 'only' etc. whereas the meaning of the word 'BHI' () is 'yet', 'besides', 'also' etc. Learned senior counsel submitted that the intention and motto of the legislature has to be gathered from the plain language of the statute and if the legislature's intention was to restrict the benefit of Section 13(1)(b) only to intra-state sale within the State of Jharkhand and inter-state sale originating from the State, to make up the losses of tax and increase the State revenue by putting the geographical restrictions, than it would have used the word 'HEE' () rather than 'BHI' () in the impugned notification while providing for sale of goods manufactured in Jharkhand. Learned senior counsel further submitted that if the meaning of the word 'BHI' () which means "also" is taken into consideration, then the interpretation which would emerge is that the goods manufactured "may also" be sold in the State or in the course of inter-state trade and commerce in addition to export sale and sale outside the State. The contention of the Petitioner is that the Petitioner dispatched the goods manufactured in Jharkhand to its depots all over the country on stock transfer basis against Form F and such goods have been admittedly sold in other states in which depots are situated and such sale outside the State of Jharkhand also qualifies for the benefit of Section 13(1)(b) and, therefore, the State is not right in invoking Section 13(3) to impose the differential rate of tax on the Petitioner.

35. Learned counsel for the State Mr. Rajesh Shankar submitted that the word 'BHI' () has been used in the Second proviso as a conjunction in view of the two transactions indicated in the Second proviso. Learned counsel for the State further submitted that the Petitioner is a purchasing dealer of raw materials in the concessional rate of tax for the purpose which have been stated in proviso to Section 13(1)(b) and having made the concessional purchase, the Petitioner had to meet the requirement of the Second proviso. Meaning thereby, the Petitioner has to use raw material for the purpose of manufacturing of goods only in the State of Jharkhand and the goods so produced shall be sold within the State of Jharkhand and in the course of inter-state trade and commerce originating from the State. Learned counsel submitted that the emphasis is on "sale" and as per the Second proviso, there are two qualifications for the sale and those qualifications are "inside the State of Jharkhand" and also for "inter-state trade and commerce". Learned counsel for the State submitted that the object of the Second proviso is to levy the tax on the sale of manufactured goods inside the State of Jharkhand or inter-state sale so as to recompense the revenue to the State which granted concessional rate of tax for purchase of raw materials to the Petitioner.

36. There is no force in the contention of the Petitioner that the amendment does not contemplate any geographical restriction on sale of manufactured goods and that the use of the word 'BHI' () denotes that the manufactured goods can be sold in the State or in the course of inter-state trade and commerce in addition to the export sale and sale outside the State of Jharkhand. The expression 'BHI' () used as a conjunction cannot affect the intention of the legislature that the goods so manufactured shall be sold within the State of Jharkhand and in the course of inter-state trade and commerce. The contention that the word 'BHI' () which, according to the Petitioner, means "also" includes the sale outside the State of Jharkhand, is unacceptable.

37. In the present case, the original provision i.e., Section 13(1)(b) stipulates that the goods so purchased on concessional rates were to be used in the manufacture or processing of goods for sale in Bihar or in course of inter-state trade or commerce. The relevant expression "in Bihar or in course of inter-state trade or commerce" were deleted on 01.08.1985. Legislature while incorporating Section 13 has intended to provide special rate of tax on certain sales or purchase with a conscious objective. Otherwise, any levy of sales tax would be charged at the normal rates prescribed under Section 12. Once the words "in Bihar or in course of inter-state trade or commerce" were deleted on 01.08.1985, though the purchaser availed of concessional rate of tax, but were not required either to manufacture the goods within the State or to sell it in Bihar or in course of inter-state trade or commerce. This obviously would have resulted in absence of any increase in manufacturing activity within the State by such purchase of raw material availing concessional rate and also absence of increase of revenue as there was no restriction on sale of goods so manufactured in the State or in course of inter-state trade or commerce. The amended proviso introduced in the year 2002 therefore appears to have been incorporated with a conscious objective to ensure that such grant of benefit of concessional rate to the purchaser is coupled with a restriction to manufacture the goods from such raw materials within the State of Jharkhand and at the same time, the goods were also sold within the State of Jharkhand or in course of inter-state trade or commerce. This was intended to encourage not only the manufacturing activity within the State but also increase revenue resultant from such sale. In the aforesaid background, Legislature therefore must have intended to insert the

Second proviso to ensure that the grant of such concession benefit results in consequential advantage to the State in terms of the manufacturing activity as also for increase in revenue.

38. The interpretation of the aforesaid provision can also be understood from another angle. Under the State Sales Tax Law, State is entitled to levy tax on sale or purchase on intra-state sale and the State also levies tax on inter-state sales which are covered under the provisions of Central Sales Tax Act and originating from within the State. The State Legislature has the competence to make the aforesaid provision through the machinery of law laid down by it. Obviously, as per the provisions of Article 286 of the Constitution of India, neither the sales outside the State nor sales during the course of export or import can be charged by the Legislature of the State. The Legislature while giving concession benefit therefore consciously prescribed only two types of sale which could have been undertaken on such goods manufactured out of the raw material purchased on concessional rates under Section 13(1)(b) i.e., inter-state sale or in course of inter-state trade or commerce also. The contention of the Petitioner that the gross turnover and taxable turnover include all kinds of sale is not relevant for interpretation of the present amended proviso as the said provisions are incorporated for different purposes in the scheme of the Act. They are meant to specify the gross turnover of a dealer for the purposes of coming within the specified quantum for the charge of sales tax as conceived under Section 3 and subject to the exemption provided under Section 7 at the normal rates of tax prescribed under Section 12 of the Act.

39. The Bihar Finance Act is an Act to consolidate and amend the law relating to the levy of tax on the sale and purchase of goods in Bihar. The amendment by notification dated 2nd January, 2002 inserting the Second proviso is made in the Bihar Finance Act which is the law relating to levy of tax on sale and purchase made in Bihar (as per Adopted Act in the State of Jharkhand). The adopted Bihar Finance Act extends to the State of Jharkhand. The word "sale" occurring in the adopted Bihar Finance Act always means sale within the State of Jharkhand or inter-state sale originating from the State. In view of the prohibition under Article 286(1)(a) of the Constitution of India, State of Jharkhand cannot impose tax on sale taking place outside its geographical limits. The State is barred from levying any tax on export sale in view of prohibition under Article 286(1)(b) of the Constitution of India. There is no merit in the contention of the Petitioner that the Second proviso to Section 13(1)(b) has no geographical restrictions on sale and that it includes goods stock transferred to outside State for sale outside the State.

40. Learned counsel for the respondent State submitted that if the goods manufactured out of the raw materials purchased at the concessional rate under Section 13(1)(b) are sold outside the State, the State is deprived of its revenue and, therefore, the Second proviso was inserted restricting that the goods manufactured out of the raw materials purchased at concessional rate under Section 13(1)(b) has to be sold within the State of Jharkhand or in course of inter-state trade and commerce. The learned counsel further submitted that in case, if the sales are effected outside the State and the conditions of Second proviso are not complied with, the State rightly invoked Section 13(3) imposing the differential rate of tax.

41. Learned senior counsel for the Petitioner submitted that in the taxing statute "intention" and "motto" of the legislature has to be gathered from the plain language of the statute. The learned

senior counsel reiterated the submissions that had the legislative intention been to restrict the benefit of Section 13(1)(b) only to intra state sale and inter-state sale to make up the loss of tax on purchase and increase the State revenue, the notification would have appeared as ("evam utpadit maal ka vikray Jharkhand rajya ke antargat ya antarajya vyapar avam vanijya ke liye hee hoga").

42. If the State has chosen to grant concessional rate of tax to a registered dealer on purchase of certain raw materials, it is entitled to lay down the conditions which is required to be fulfilled for availing such a benefit. By the amended proviso, two such conditions have been imposed: -

(i) that the raw material so purchased should be used for manufacture within the State of Jharkhand.

(ii) that the goods so manufactured should be sold within the State of Jharkhand or in course of inter-state trade or commerce.

The proviso therefore uses both expressions 'manufacturing' as well as 'sale' and qualifies the term 'sale' with two categories of sale as referred to herein above.

43. It is another well settled rule of interpretation of statute that the mention of one thing implies exclusion of another thing. It therefore logically follows that if the statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect. It is an ordinary rule that if authority is given expressly, though by affirmative words, upon a defined condition, the expression of that condition excludes the doing of the act authorized, under other circumstances than those so defined : *expressio unius est exclusio alterius*. So, where in an instrument there are general words first, and express exception afterwards, the ordinary principle of law has been said to apply - *expressio unius est exclusio alterius*. [Chapter 19 para 195 Crawford's 1998 Edition]. As is obvious, the legislature has consciously enumerated two types of sales i.e., sale within the State of Jharkhand or inter-state trade or commerce. The petitioner therefore is not right in saying that the other two kinds of sale i.e., sale outside the State and the export sales could be logically read into it.

44. The Courts must always seek to find out the intention of the legislature. The Second proviso has to be interpreted in harmony with other provisions of the statute and the State legislature would not have intended to legislate to suffer revenue loss. We are of the view that the words occurring in the notification "... goods so produced shall be sold within the State of Jharkhand or also in the inter-state trade and commerce" (*evam use utpadit maal ka vikray Jharkhand rajya ke antargat ya antarajya vyapar avam vanijya ke liye bhi hoga*) clearly means that the goods manufactured out of the raw materials purchased at a concessional rate of tax under Section 13(1)(b) has to be sold within the State of Jharkhand or in course of inter-state trade and commerce which refers to Section 3 of the C.S.T. Act. The intention of the legislature is quite clear in the amendment.

45. The intention and object of the Second proviso is to recompense the revenue to the State which grants concessional rate of tax to the Petitioner for purchase of raw materials used in the manufacture of goods and the goods so manufactured be sold in the State of Jharkhand or in the

course of inter-state trade and commerce so that the State gets back the revenue and the State does not suffer any revenue loss. The expression 'BHI' () used is only as a conjunction since two types of transactions namely intra state sale and inter-state sale are referred to in the Second proviso. As held by the Hon'ble Supreme Court, the language more often than not is an imperfect instrument of expression of human thought.

46. Referring to various decisions in Para 33 and 34 of AIR 2001 SC 886 [Oxford University Press versus Commissioner of Income Tax], the Hon'ble Supreme Court held as under: -

33. In State of Tamil Nadu V. Kodaikanal Motor Union (P) Ltd., (1986) 3 SCC 91 {AIR1986 SC 1973 : 1986 Tax LR 2363} this Court referring to K.P.Varghese V. I.T.O. (1981) 4 SCC 173 : {AIR 1981 SC 1922 : 1981 Tax LR 1448} and Luke V Inland Revenue Commissioners (1964) 54 ITR 692 (HL) observed :

"The Courts must always seek to find out the intention of the legislature. Though the Courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye 'some' violence to language is permissible".

34. In KeshavjiRavji and Co. v. Commr. of Income-tax (1990) 2 SCC 231 : (1991 AIR SCW 1845 : AIR 1991 SC 1806 : 1991 Tax LR 669), this Court held that in a taxation statute where literal interpretation leads to a result not intended to subserve the object of the legislation another construction in consonance with the object should be adopted. Therein referring to the words of Thomas M. Cooley in Law of Taxation Vol.2, this Court observed (at p.

243) (of SCC) : at (at p. 1812 of AIR, Para6) :

"Artificial and unduly latitudinarian rules of construction which, with their general tendency to give the tax payer the breaks", are out of place where the legislation has a fiscal mission. Indeed, taxation has ceased to be regarded as an impertinent intrusion into the sacred rights of private property" and it is now increasingly regarded as a potent fiscal tool of State policy to strike the required balance required in a context of the felt needs of the times - between citizen's claim to enjoyment of his property on the one hand and the need for an equitable distribution of the burdens of the community to sustain social services and purposes on the other. These words of Thomas M. Cooley in Law of Taxation Vol.2 are worth mentioning :

"Artificial rules of construction has probably found more favour with the Courts than they have ever deserved. Their application in legal controversies has oftentimes been pushed to an extreme which has defeated the plain and manifest purpose in enacting the laws. Penal laws have sometimes had all their meaning construed away and in remedial laws, remedies have been found which the legislature never intended to give. Something akin to this has befallen the revenue laws ..."

47. The object of the amended proviso is to ensure that the goods purchased at a concessional rate be used for manufacturing of goods only in the State of Jharkhand and the goods so produced shall be sold within the State of Jharkhand and also in the course of inter-state trade and commerce. The object of the amended proviso is to make good the losses of tax availed by the manufacturer for purchase of raw materials. As rightly submitted by the learned counsel for the State, the State legislature would not have intended to bring in the amendment covering the sale outside the State of Jharkhand and making the State revenue to suffer loss.

48. State is free to impose the condition that for earning the concessional rate of tax, the sale must take place within the State of Jharkhand or in the course of inter-state sale. One of the considerations while granting concessional rate of tax would be its effect on the revenue of the State. While so granting concessional rate of tax, the loss of revenue to the State is an important factor to be borne in mind. In order to see that a proper balance of conflicting interests is maintained it would be open for the State Government to devise a policy and legislate the necessary amendment which takes into account the extent of revenue loss that would be caused to the State.

49. As pointed out earlier, the special rate of tax granted under Section 13 is a concession granted by the legislature. In the absence of the special rate of tax and Section 13, the selling dealer/purchasing dealer would be liable to pay normal rate of tax under Section 12. There is no independent right to claim concessional rate of tax apart from Section 13. The entitlement to the concessional rate of tax is created by the taxing statute and the terms on which such concession is granted by the legislation must be strictly construed, ensuring that the State does not lose its revenue.

50. As per Section 2(j) of the Act, the gross turnover of a dealer is taken into account for the purposes of determining his liability for tax under Section 3, for surcharge under Section 5 and additional tax under Section 6. For actual levy of taxes certain deductions are allowed to be made under Section 21 to arrive at taxable turnover under the Act. In the case of the Petitioner, for the assessment year 2004-05 and 2005-06, the gross turnover is Rs.11,626.47 crore and Rs.12,868.24 crore respectively out of which the Petitioner transferred stock of Rs.7,535.88 crore (64.816% of the G.T.O.) during the assessment year 2004-05 and stock of Rs.8,475.07 crore (65.86% of the G.T.O.) during the assessment year 2005-06 to other depots of the company for sale outside the State. The Petitioner furnished Form F stating that he has transferred the goods so produced to other depots and claimed deduction on the ground that it is not a sale. In the assessment year 2004-05, stock of Rs.7,535.88 crore and in the assessment year 2005-06 stock of Rs.8,475.07 crore have been transferred to other depots of the company for sale outside the State and before the Assessing Officer the Petitioner preferred a claim that he is not liable to pay tax under Section 6A of the CST Act because the goods have been transferred to outside the State.

51. The manufactured products worth Rs.7,535.88 crore (2004-05) and Rs.8,475.07 crore (2005-06) transferred to other depots of the company situated outside the State which were manufactured using the raw materials purchased at the concessional rate. On the one hand, the State has lost the revenue by granting concessional rate of tax levying tax @ 2% - 3% on the goods purchased under Section 13(1)(b) as against the normal rate of tax of 8%; on the other hand, on transfer of the manufactured goods the State of Jharkhand cannot collect the tax and State is losing the revenue. The contention of the Petitioner that there is no geographical limitation of the sale in respect of the manufactured goods using the goods purchased availing the concessional rate of tax, is not only unreasonable but also lacks logic. The State legislature would not have intended to legislate such a proviso causing huge loss of revenue to the State.

52. As pointed out earlier, the Petitioner has no legal right to purchase raw materials at concessional rate of tax. It is only by virtue of Section 13, the Petitioner is entitled to make purchase of goods at such concessional rate of tax for use in the manufacture of goods in the State of Jharkhand and for sale within the State of Jharkhand. It is really a concession and an indulgence. The conditions stipulated are that the goods so purchased at concessional rate shall be used for the manufacture of goods only in the State of Jharkhand and the goods so produced has to be sold within the State of Jharkhand or in the course of inter-state trade and commerce. When the manufactured goods are not sold within the State of Jharkhand but are sent to the Petitioner's branches/depots in other states and sold there, no sales tax can be levied and collected by the State of Jharkhand. The State of Jharkhand gets no revenue in respect of those sales effected outside the State of Jharkhand. For availing the concessional rate of tax, it is for the legislature to impose the conditions that the goods purchased at a concessional rate of tax are to be used for manufacturing of goods only in the State of Jharkhand and the goods so produced has to be sold within the State of Jharkhand or in the course of inter-state trade and commerce originating from the State of Jharkhand.

53. While giving benefit of concessional rate of tax, it is open to the legislature to impose such conditions while extending the concession. The denial of concession and imposition of differential rate of tax is denial of concession, only to the extent of sales which were effected outside the State so that there is no revenue loss to the State. The State legislature thus inserted Second proviso imposing condition that the manufactured goods has to be sold in the State of Jharkhand or inter-state trade and commerce to see that there was no revenue loss caused to the State. The amendment is only to balance the loss in respect of the sales effected outside the State and normal revenue accrues to the State in respect of the sale of the raw materials purchased by the registered dealer availing concessional rate of tax.

54. The submissions made by the learned Senior Counsel for the Petitioner relying upon the notings is not acceptable since if the language of the statute is clear and the legislative intent and purpose can be deciphered, then the court is not required to fall back on any intrinsic or extrinsic aid to its construction. The rules of interpretation clearly provide that only if the language of the statute is not clear and is ambiguous, then court may resort to intrinsic aid. Only after exhausting the resort to intrinsic aid, the court may seek to discover the intent from extrinsic aid as may be available. In the present case therefore, the reliance of the Petitioner upon the notings in the file at different levels of executive hierarchy in the department, even before the introduction of the Bill in the Legislature,

shall not come in the category of extrinsic aid. Even otherwise, they are not required for interpretation of the amended Second proviso introduced in 2002 where language is plain and unambiguous.

55. The condition imposed under the Second proviso to Section 13(1)(b) is an integral part of the concession availed by the Petitioner. Having availed the benefit of concessional rate of tax and having caused loss to the State revenue by making such purchases at concessional rate, the Petitioner is bound to make good the loss by resale of the goods in the State of Jharkhand. If the raw materials purchased at the concessional rate of tax are not utilized for manufacture of goods in the State of Jharkhand and not sold in the State of Jharkhand or inter-state trade and commerce, as per Section 13(3), the Petitioner is bound to pay the differential rate of tax. Having availed the concessional rate of tax for purchase of goods, the Petitioner is now trying to wriggle out of the situation. The contention of the Petitioner that the Second proviso includes the sales effected outside the State is untenable.

56. To summarise our conclusion: the language of the Second proviso inserted by the amendment is to be interpreted bringing it in harmony with the other provisions of the Act. Giving a purposeful interpretation of the language in the Second proviso it will be reasonable to hold that Second proviso, inserted by amendment, stipulates that "the goods manufactured using the goods purchased at the concessional rate of tax under Section 13(1)(b) has to be sold within the State of Jharkhand or in the course of inter-state trade and commerce. This interpretation of the Second proviso advances the legislative purpose and object which the Second proviso intended to serve. The aforesaid interpretation otherwise also fits into the scheme of the Act as discussed hereinabove.

Re. Contention & Reliance upon Polestar Case:-

57. Much reliance was placed upon the decision of the Supreme Court in the case of Polestar Electronic (Pvt.) Ltd. versus Additional Commissioner, Sales Tax & Another reported in (1978) 1 SCC 636 and the learned senior counsel appearing for the Petitioner repeatedly relied upon paragraphs 18, 19 and 20 of the Polestar Case. In that case Bengal Finance (Sales Tax) Act, 1941 was applied to the Union Territory of Delhi and the Act was applied to Delhi subject to certain modification by a Notification dated 28.04.1951 issued by the Central Government. The said Act provided a Clause that concessional rate of tax shall be available only if the goods are manufactured in Delhi for sale. An amendment was introduced on 28.05.1972 and Section 5(2)(a)(ii) was substituted. As per amendment, Section 5(2)(a)(ii), taxable turn over means that part of a dealer's gross turn over during any period, which remains after deducting therefrom the allowable deductions. Section 5(2)(a)(ii) reads as under: -

(2) In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom

(a) his turnover during that period on-

(i)

(ii) sales to a registered dealer - of goods of the class or classes specified in the certificate of registration of such dealer, as being intended for re-sale by him, or for use by him as raw materials in the manufacture in the Union Territory of Delhi (hereinafter in this sub-clause referred to as Delhi), of goods (other than goods declared tax free under Section 6): - (A) for sale inside Delhi; or (B) for sale in the course of inter-State trade or commerce, being a sale occasioning or effected by transfer of documents of title to such goods during the movement of such goods from Delhi; or (C)

58. In the said Bengal Finance Act (adopted by Delhi) even though the amendment came into force on 28.05.1972, no amendment was made in the Form of the Certificate of Registration and they stood as it is prior to its amendment on March 29th 1973 and they did not specify that the re-sale of the goods purchased or their use as raw materials in the manufacture of goods or the sale of the manufactured goods should be inside Delhi. It was on March 29, 1973, Clause (iii) of the Form of the Certificate of Registration was amended.

59. In paragraphs 5 to 9, the Hon'ble Supreme Court, elaborately referred to the scheme and intendment of Section 5(2)(a)(ii) and these two provisos read in the context of other provisions of the Act. By the terms of Section 5(2)(a)(ii), deduction was permissible only if "a declaration form duly filled in and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars on a prescribed form is furnished" by the selling dealer. The result is that a dealer cannot get deduction in respect of the turnover of his sales falling within Section 5(2)(a)(ii) unless he furnished a declaration containing the prescribed particulars on the prescribed form duly filled in and signed by the purchasing dealer. Declaration given by the purchasing dealer to the dealer selling the goods would afford evidence that the goods were purchased by the purchasing dealer "as being intended for resale by him or for use by him as raw materials in the manufacture of goods for sale". The dealer selling the goods would be granted deduction in respect of the sales on the strength of such declaration given by the purchasing dealer.

60. In Polestar Case two groups of appeals were filed. One group consists of appeals where the assessee purchased the goods of the class specified in the Certificate of Registration as being intended for resale by them; while the other, consists of appeals where the assessee purchased goods of the class specified in the Certificate of Registration as being intended for use by them as raw material in the manufacture of goods for sale and furnished to the dealer's selling the goods declaration in the prescribed form as it stood prior to March 29, 1973 stating that the goods were purchased by them for use as raw materials in the manufacture of goods for sale and thereafter used the goods as raw materials in the manufacture of goods in some cases outside Delhi and in some other inside Delhi.

61. The Hon'ble Supreme Court held that even where the assessee used the goods purchased as raw materials in the manufacture of goods outside Delhi or having manufactured the goods sold by them outside Delhi, there was no breach of the intention expressed by them in the declaration given to the selling dealer and therefore cannot be said to have utilized the goods for any purpose other than that for which they were purchased so as to attract applicability of the Second proviso.

62. The reliance by the Petitioner in the case of Polestar appears to be misplaced in view of the fact that under the relevant provisions of Delhi Act i.e., Section 5(2)(a)(ii), the words 'inside the Union Territory of Delhi' were absent. In the said context the Hon'ble Supreme Court found that there was no such expression in the declaration form also to charge the assessee with such differential rate of tax after having availed of concessional rate of tax for purchase of raw materials for manufacture of goods.

63. Since repeated arguments were advanced placing much reliance upon Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act (as made applicable in Delhi) contending that the facts in Polestar Case are identical as the instant case and therefore the transfer of manufactured goods by the Petitioner to other States cannot be said to be in contravention of Section 13(1)(b) read with the Second proviso, we considered the submissions by comparing the relevant provisions.

64. Second proviso to Section 5(2)(a)(ii) of the Bengal Act stipulates the consequences of non-utilisation of the raw materials in the manufacture of goods for sale within the territory of Delhi, but are utilized for any other purpose. The Second proviso to Section 5(2)(a)(ii) of the Bengal Act reads as under: -

"Provided further that where any goods specified in the certificate of registration are purchased by a registered dealer as being intended for re-sale by him or for use by him as raw materials in the manufacture of goods for sale, but are utilized by him for any other purpose, the price of the goods purchased shall be allowed to be deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer;"

Whereas, Section 13(3) of the Bihar Finance Act (adopted by the State of Jharkhand) reads as follows:-

"In respect of sales under clauses (b), (c), (d) and (e) and purchase under clause (b) of sub-section (1), if the goods purchased are utilized by the purchaser for any purpose other than those specified in the said clauses, the purchaser shall, without prejudice to any action which is or may be taken under Section 49, be liable to pay tax on the sale or purchase price, as the case may be, at the rate which is arrived at after deducting the concessional rate under this section from the rate applicable to the goods, class or description of goods under section 12."

65. On conjoint reading of both the provisions, it would emerge that Second proviso to Section 5(2)(a)(ii) of the Bengal Act, puts interdependence in the gross turnover of selling dealer, as well as the purchasing dealer. As per the said provision, if the goods specified in the 'Certificate of Registration are purchased by the purchasing dealer but utilized by it for any other purpose, the price of goods purchased had to be deducted from the gross turnover of selling dealer but to be included in taxable turnover of the purchasing dealer.

66. It is under these circumstances, the involvement of both the selling as well purchasing dealer comes in case, the form of declaration as well as Certificate of Registration are mis-utilised. Whereas, in Section 13(3) of the Bihar Finance Act, there is a direct incidence of differential rates of tax upon the purchasing dealer (the Petitioner herein) if it does not fulfill the requirement for concessional rates of tax as mandated in Section 13(1)(b). Moreover, Second proviso of Bengal Act starts with the condition of misutilisation of Certificate of Registration by the registered Dealer, whereas, Section 13(3) of the Bihar Finance Act does not speak of any such misutilisation of Certificate of Registration/ Form by the purchasing dealer, rather the incidence of differential rates of tax automatically comes into play to be charged from the purchasing dealer (the Petitioner herein), if the conditions of Section 13(1)(b) are not fulfilled.

67. In the present case, the Petitioner by submitting 'Form F' has admitted that there has been no sale of the goods so manufactured out of the purchase of the raw material on concessional rate of tax vide Section 6-A of Central Sales Tax Act, 1956 read with Rule 12(7) of the CST (Registration & Turnover) Rule, 1957. Thus, the requirement of Section 13(1)(b) of the Bihar Finance Act and the Second proviso is directly violated by the Petitioner. However, in the case of Polestar, there had been no such admission either by the selling dealer or purchasing dealer. In the background of the provisions of Bengal Finance Act, the Hon'ble Supreme Court held that the purchasing dealer cannot be said to have committed a breach of the statement made in the declaration so as to attract the applicability of the Second proviso. Reliance upon Polestar Electronics case is misplaced since in the present case the Second proviso inserted by amendment is directly violated by the Petitioner warranting levy of differential rate of tax under Section 13(3).

Re. Contention - effect of Second proviso to Section 13(1)(b) without corresponding amendment to Rule 13 and Form IX

68. Since elaborate arguments were advanced on the non- amendment of the Rule 13 and the Form IX - form of declaration to appreciate the contention, it is necessary for us to extract Form IX.

69. The contention of the Petitioner is that consequent to the amendment by notification dated 02.01.2002 inserting Second proviso to Section 13(1)(b), there was no corresponding amendment in Rule 13 and Form IX. The contention of the Petitioner is that Form IX does not provide for a declaration to the effect that the goods so manufactured must be sold only within the State of Jharkhand or in the course of inter-state trade or commerce and not outside the State of Jharkhand and in the absence of aforesaid declaration in the prescribed form, the Petitioner cannot be denied purchase of goods at the concessional rate of tax under Section 13(1)(b) as the Petitioner has not acted in contravention of the intention expressed in Form IX which is the prescribed Form. On behalf of the Petitioner it was further contended that in the absence of amendment in Form IX along with corresponding changes in Section 13(1), the Petitioner could not be said to have utilized the goods for "any other purchase" under Section 13(3) and, therefore, the Petitioner cannot be held guilty of violating Section 13(1)(b) read with Second proviso of the Act, especially in view of the fact that it has not used the goods purchased at the concessional rate of tax under Section 13(1)(b), contrary to declaration and intention expressed by it in Form IX.

70. Laying emphasis upon Clause (iv) in the Form IX it was submitted that Clause (iv) only states "for direct use in the manufacturing/processing of goods for sale..." and does not contain any clause that the goods so manufactured must be sold only within the State of Jharkhand. It was therefore contended that in the absence of any amendment in Form IX, the Petitioner cannot be said to have utilized the goods for purposes other than the one declared by the Petitioner and therefore the Petitioner cannot be held liable for paying the differential rate of tax - the difference between the tax at the full rate and the concessional rate of tax.

71. Placing reliance upon Polestar Electronics (Pvt.) Ltd. Case, it was contended that in the said case the Hon'ble Supreme Court has held that the declaration form on the strength of which seller claims exemption/concession from tax contains declaration as to the intention of the purchaser regarding the uses of the goods purchased by him. It was further submitted that the Hon'ble Supreme Court further held that even if geographical restriction to sale of manufactured goods has been imposed by amending the substantive law, still the benefit of concession cannot be denied to the purchasing dealer even if it sells the finished goods contrary to such geographical restriction since the declaration form issued by the purchasing dealer does not contain similar geographical restriction regarding the sale of manufactured goods.

72. Rule 13 deals with evidence in support of claim for payment of tax at a special rate under Section 13. The requirement of submission of 'Form IX' originates from Rule 13 of Bihar Sales Tax Rule 1983, which is reproduced as under: -

Rule 13 "Evidence in support of claim for payment of tax at special rate under Section 13. - A dealer who claims that any amount of his turnover should be assessed to tax at the rate provided in Section 13 shall substantiate such claim before the authority prescribed in Rule 18 by producing the purchase order, if any, and duplicate copies of the cash memoranda or bills prescribed in sub-rule (3) of rule 15 and true declaration in writing in Form IX obtained from the prescribed authority or IXA or IXB, as the case may be, by the purchaser that the goods which are the subject of sale are specified in the certificate of the purchaser and are required by him for the purpose specified therein"

Form IX to be filed by the seller as evidence in support of claim for payment of tax at special rate under Section 13.

73. As per Section 13(2)(i), in case of sale under Clauses (b) or

(c) of sub section (1), the selling dealer is to file a declaration in the prescribed form (Form IX) duly filled up. Section 13(2)(i) and

(ii) reads as under: -

13. Special rate of tax on certain sales or purchases-

(1)

2(i) In case of sales under clauses (b) or (c) of sub-section (1) a declaration in the prescribed form duly filed up and signed by the purchaser shall be furnished in the prescribed manner by the selling dealer and the prescribed authority may require the selling dealer to satisfy him that the sale was made to the purchaser holding certificate granted under the said sub-section.

(ii) In the case of sales under clause (e) of sub-section (1) a declaration in the prescribed form duly filled up and signed by the purchaser shall be furnished by the selling dealer to the prescribed authority in the prescribed manner.

74. By a careful reading of Section 13(2), it is evident that Form IX is to be filed by the selling dealer, of course by enclosing the prescribed form duly filled up and signed by the purchaser. On perusal of Section 13(2) and Rule 13, it is seen that the requirement of submission of 'Form IX' has been made with respect to the selling dealer in support of its claim that any amount of his turnover should be assessed at the rate provided in Section 13 of the Bihar Finance Act.

75. Rule 13 read with 'Form IX' is not meant for the purchasing dealer (the Petitioner herein). On the contrary, the Petitioner is directly concerned with complying the provision of Section 13(1)(b) read with Second proviso, failing which the provision of Section 13(3) of the Bihar Finance Act automatically comes in application having no bearing on 'Form IX'.

76. Under Section 5(2)(a)(ii) of Bengal Finance (Sales Tax) Act, 1941 as applied in the Union Territory of Delhi, the prescribed form was to be filed by the purchasing dealer. In the light of the provisions of the said Act and that the declaration form to be filed by the purchasing dealer, the Hon'ble Supreme Court held that the intention of the assessee was evidenced by the declarations given by them to the selling dealers at the time of purchase and therefore in the absence of consequential amendment in the Form of declaration, the purchasing dealer cannot be said to have committed breach of the statement made in the declaration. Therefore, the ratio of the decision in Polestar Case cannot be applied to the case in hand.

77. Form IX is prescribed under the State Sales Tax law which stipulates only two types of sale viz., intra state sale and the inter-state sale originating from the State. The Form IX being a statutory form under the State Sales Tax Act, stipulates that the form could relate only to the sale inside the State or the sale in the course of inter-state trade and commerce.

78. Sub-Section (3) of Section 13 or penal provisions to be enforced against the purchaser who buys goods on concessional rate of tax and does not utilize the goods for the purposes stipulated in the provisions of the Act and the Second proviso inserted by the amendment. Section 13(3) is the charging Section. The essential ingredients of Section 13(3) is :-

(i) Sale and purchase under Clause 13(1)(b) or (c) and (d) of the Act,

(ii) The goods so purchases on concessional rate of tax are utilized by the purchaser for any purpose other than those specified in the said clauses,

(iii) Without prejudice to any action which is or may be taken under Section 49, the purchaser is liable to pay differential rate of tax by calculating the concessional rate of tax under Section 13 and the rate of tax applicable to the goods under Section 12.

79. Sub-Section (3) of Section 13 does not speak about any form including Form IX or Sub-Section (2) of Section 13. For arriving at a logical conclusion Sub-Section (3) of Section 13 is to be read along with Section 13(1)(b) along with the Second proviso inserted by the amendment. As per the amendment, the goods purchased on the concessional rate of tax is to be used for the purposes of manufacturing the goods only in the State of Jharkhand and the goods so produced has to be sold within the State of Jharkhand and in the course of inter-state trade and commerce. Section 13(3) is to be invoked in case of violation of the conditions stipulated in the Second proviso inserted by the amendment. Section 13(3) is the charging Section for levying differential rate of tax in case of contravention of Section 13(1)(b) read with the Second proviso and other provisions. The charging provision Section 13(3) is independent by itself. If the goods purchased under Section 13(1)(b) on concessional rate of tax and utilized by the purchase for any purpose other than those specified in the said clauses under Section 13(3), liability is created or fixed to impose differential rate of tax.

80. The charging Section 13(3) is to be invoked when the conditions stipulated in the Second proviso is violated. Section 13(3) is the substantive provision for imposing differential rate of tax in case the goods purchased and utilized for any purpose other than those specified. Whereas Rule 13 and Form IX is a form to be filed by the selling dealer enclosing the form of declaration given by the purchasing dealer evidencing the support of claim for payment of tax at a special rate under Section 13. Section 13(3) is a substantive provision; whereas Rule 13 Form IX is a procedural provision. The Tribunal referred to the decision of the Hon'ble Supreme Court in the case of India Carbon Limited and Others versus State of Assam reported in (1997) 6 SCC 479 to hold that substantive provisions will prevail over the procedural provisions and we endorse the view taken by the Tribunal.

81. It is worthwhile to refer to the decision of the Hon'ble Supreme Court in the case of M/s. ICI India Ltd. & Anr. versus State of Orissa &Ors. reported in (2007) 8 SCC 629 relied upon by the learned counsel for the respondent State which is identical to the case in hand. In the said case, arising under Orissa Sales Tax Act, the assessee purchased raw material i.e. Ammonium Nitrate Liquor to be used for manufacture/processing of 'bulk premix' to be sold in the State of Orissa. The 'bulk premix' so manufactured at Rourkela was not sold as such because it is an intermediary product which is used for manufacture of bulk explosive and the bulk explosive is not manufactured in the Rourkela plant of the appellant, so the 'bulk premix' was sent to its other branches at Angul (Talchar) and Belpahar in the State of Orissa where raw material has been mentioned as 'bulk premix', while the finished product is mentioned as bulk explosive. Apart from sending the 'bulk premix' to different branches in the State of Orissa, appellant also transferred/sold goods outside the State. The Assessing Officer held that the assessee contravened the declarations given in the form by purchasing raw material and the order was confirmed by the Appellate Authority. Placing reliance upon Polestar Electronic (Pvt.) Ltd., the assessee contended that the law does not require

that the final products which are for sale should be sold within the State of Orissa and, therefore contended that there was no contravention of the provisions of the Act. Repelling the contention of the assessee and holding that the manufactured product i.e. 'bulk premix' has not been sold within the State of Orissa but has been transferred to other branches of the appellant situated inside as well as outside the State of Orissa and such transfer clearly falls within the expression "any other purpose" mentioned in the 5th proviso of Section 5(i), the Hon'ble Supreme Court held as under:-

"The transfer clearly falls within the expression "any other purpose" mentioned in the 5th proviso to Section 5(1) of the Act. As goods manufactured have not been sold but have been transferred, there is a violation of the terms of the declaration and the assessee has been rightly held to be liable for payment of the differential tax payable on the raw materials purchased at concessional rate of tax by 4% paid by furnishing Form IV. The High Court's impugned judgment, therefore, does not warrant any interference. It may be noted that the High Court made some observation about what would have been the consequence had there been mention of final product in the certificate of registration of the appellant."

82. Applying the ratio of the above decision in the case on hand, we are of the view that transfer of the manufactured goods by the Petitioner to the other depots situated outside the State of Jharkhand is "used for any other purpose" within the meaning of Section 13(3) for imposing the differential rate of tax.

83. Petitioner's liability under Section 13(3) to pay differential rate of tax - As discussed above, the essential ingredients of the Second proviso and availing of concessional rate of tax is in respect of sale either well within the State of Jharkhand or inter-state trade and commerce originating from the State of Jharkhand. The concessional rate of tax is not to be extended if these conditions are not fulfilled. If the raw materials are purchased at a concessional rate of tax, they are to be sold in these modes and there cannot be stock transfer to other State. The emphasis is on the word "sale". For the assessment year 2004-05, the Petitioner Company filed annual return stating that its gross turnover is Rs.11,626.47 Crore. The Petitioner company submitted Form F under Section 6A of the Central Sales Tax Act and claimed that it has transferred stock of Rs.7,535.88 Crore (64.816% of the Petitioner's G.T.O.) to its stock yards and depots situated outside the State of Jharkhand. Likewise, for the assessment year 2005-06, the Petitioner company filed annual return stating that its gross turnover is Rs.1286.82 Crore and submitting Form F claimed that it has transferred stock of Rs.8,475.07 Crore (65.86% of the Petitioner's G.T.O.) to its stock yards and depots situated outside the State of Jharkhand. Form F is submitted "when transfer of goods otherwise than by way of sale". Section 6A of the Central Sales Tax Act uses the phrase "transfer of goods otherwise than by way of sale" and provides that where a dealer claims that the goods have been transferred otherwise than by way of sale, he has to prove the sale by submitting statutory Form F apart from other evidence. Referring to submission of Form F regarding the transfer of goods of Rs.7,535.88 Crore (2004-05) and Rs.8,475.07 Crore (2005-06), the Assessing Officer held that in stock transfer, there is transfer of goods otherwise than by way of sale and that goods were sent to the branches of the Petitioner in some other States and the movement has not occasioned on account of any covenant and contract for the sale. The Assessing Officer held that the Petitioner company has purchased raw material at

concessional rate and stock transferred a large portion of the manufactured goods outside the State of Jharkhand which is not permissible. Since the Petitioner company has utilized the goods for other purposes and that the Petitioner company has violated the amended provisions of Section 13(1)(b), the Petitioner has to pay tax at full rate on the goods purchased. The Assessing Officer recorded factual findings that in respect of Rs.7,535.88 Crore (2004-05) and Rs.8,475.07 Crore (2005-06), the goods have been transferred outside the State and the Petitioner has to pay the tax at full rate on the goods purchased. The order of the Assessing Officer has been confirmed by the order of the Appellate Authority. Referring to the concurrent findings recorded by the Assessing Officer and the Appellate Authority, the Tribunal dismissed the revision petition by its well considered order and we do not find any error warranting interference.

84. The learned Senior Counsel for the Petitioner has placed reliance upon M/s. Lafarge India Limited's case and submitted that in the said case the goods purchased under Section 13(1)(b) of the Act at concessional rate have been utilized in manufacture of cement for sale. On the same set of facts, the Commercial Taxes Tribunal, Ranchi held that since the rules have not been amended accordingly and in as much as, declaration in the prescribed Form IX continues, the amended provision cannot be given effect to. The learned Senior Counsel appearing for the Petitioner submitted that the State revenue has not chosen to challenge the said order passed in Lafarge India Limited which would show that the State revenue has accepted the said order and while so, the State cannot turn around and contend otherwise in the case of the Petitioner.

85. As rightly contended by the learned counsel for the State, in Lafarge India Limited's case the Assessing Officer had not recorded finding that the goods purchased at a concessional rate of tax were utilized for any other purpose and there were no factual findings regarding stock transfer and that the goods were transferred otherwise than by way of sale. In the instant case, the Assessing Officer has recorded clear findings that substantial quantity of manufactured goods i.e. 64.816% of GTO of the petitioner (2004-05) and 65.86% of GTO (2005-06) were stock transferred to other States and that the manufactured goods purchased at a concessional rate of tax were utilized for other purposes warranting invoking of Section 13(3) for imposing the differential rate of tax. In the light of the definite factual finding recorded by the Assessing Officer, the Petitioner cannot rely upon Lafarge India's case.

86. Learned Senior Counsel for the Petitioner further submitted that even though the amendment came into force on 02.01.2002, in respect of the gross turnover filed by the Petitioner for the assessment year 2002-03 and 2003-04, the Department has not invoked Section 13(3) to impose differential rate of tax and while so the Department is not justified in imposing the differential rate of tax for the succeeding assessment years 2004-05 and 2005-06.

87. In response, the learned counsel for the respondent submitted that in respect of escaped assessment, as per Section 19, the Department can reopen the assessment within a period of 8 years from the date of order of the assessment or re-assessment in other cases. The learned counsel submitted that after noticing the escaped assessment/turnover, for invoking Section 19 the Department was contemplating to reopen the assessment for the assessment years 2002-03 and 2003-04 and in the meanwhile the Petitioner had chosen to file writ petition W.P.(T) No. 2257 of

2009 challenging the demand notice for the assessment year 2004-05 and the said writ petition was disposed of. It was further submitted that challenging the demand notice and order of assessment for the assessment years 2004-05 and 2005-06 the Petitioner had filed writ petition W.P.(T) No. 71 of 2009 and another writ petition W.P.(T) No. 1325 of 2009 which were disposed of on 08.05.2009 giving liberty to the Petitioner to agitate the matter before the statutory appellate forum. It was submitted that W.P.(T) No. 2257 of 2009 filed earlier was subsequently disposed of on 27.06.2009. Learned counsel for the State submitted that in view of the filing of the writ petitions challenging the order of assessments, the Department did not proceed in respect of two assessment years 2002-03 and 2003-04. Since the Petitioner had chosen to challenge the demand notice and also the order of assessment for the assessment years 2004-05 and 2005-06, the Department was perhaps waiting for the matter to reach finality. In such facts and circumstances, the Petitioner cannot contend that in respect of the assessment years 2002-03 and 2003-04 the Department has not invoked Section 13(3) and thus acquiesced the returns filed by the Petitioner claiming stock transfer.

88. In the result we summarize our conclusions as under -

Second proviso to Section 13(1)(b) of Bihar Finance Act (adopted by the State of Jharkhand), inserted by amendment, 2002 stipulates that the goods manufactured using the goods purchased at the concessional rate of tax under Section 13(1)(b) has to be sold within the State of Jharkhand or in the course of inter-state trade and commerce. This interpretation gives a harmonious construction of the Second proviso which subserves the object and purpose, which the Second proviso intended to serve.

The conditions stipulated as per the Second proviso inserted by the amendment that the goods purchased under Section 13(1)(b) at concessional rate of tax shall be used for the purposes of manufacturing the goods only in the State of Jharkhand and the goods so produced has to be sold within the State of Jharkhand and in the course of inter-state trade and commerce originating within the State of Jharkhand form integral part of Section 13(1)(b) and the goods purchased at a concessional rate of tax are to be utilized only for the purposes stipulated in the Second proviso.

Goods manufactured in the State of Jharkhand using the materials purchased on concessional rate of tax cannot be stock transferred to other States and such stock transfer amounts to utilization of goods for other purposes other than those specified in Section 13(1)(b) read with the Second proviso, warranting levy of differential rate of tax under Section 13(3).

89. In view of the aforesaid discussions, it is held that the inferior authorities and the Tribunal have committed no error of law or on facts in passing the impugned orders. The writ petitions therefore are liable to be dismissed and are accordingly dismissed.

(R. Banumathi, C.J.) (Aparesh Kumar Singh, J.) N.A.F.R.

Birendra/LAK