Balaji Computers and ors. Vs. the State of Karnataka Represented by Its Principal Secretary Fd (Ct) and ors.

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Court : Karnataka

Decided On : Sep-01-2005

Reported in : ILR2006KAR38; [2006]147STC269(Kar)

Judge : P. Vishwanatha Shetty and ;H.G. Ramesh, JJ.

Acts : Karnataka Sales Tax Act, 1957 - Sections 3(1), 3A, 3A(1), 3A(2), 5(3), 6B, 6B(2), 6C, 8A, 10, 10(1), 10(2), 12A, 21, 22A, 22A(1), 22A(2), 38(3), 42B, 42B(1), 42B(2) and 68; Karnataka General Clauses Act, 1899 - Sections 20 and 21; Income Tax Act, 1961 - Sections 194C; Uttar Pradesh Krishi Utpadan Mandi Adhiniyam Act, 1964 - Sections 2 and 17; Central Excises and Salt Act, 1944; Central Excise Rules, 1944 - Rule 8(1); Constitution of India - Articles 19(1), 29(2), 226 and 227; Karnataka Sales Tax Rules; Karnataka Sales Tax (Amendment) Act

Appeal No. : Writ Appeals No. 1931 of 2005

Appellant : Balaji Computers and ors.

Respondent : The State of Karnataka Represented by Its Principal Secretary Fd (Ct) and ors.

Advocate for Def. : B.T. Parthasarathi, Adv. General alongwith ;Sujatha, AGA

Advocate for Pet/Ap. : R.N. Narasimhamurthy, Sr. Adv. alongwith ;N.N. Harish, Adv.

Disposition : Appeal allowed

Judgement :

P. Vishwanatha Shetty, J.

1. The appellants in this appeal were the petitioners in writ petitions No. 5158-61 of 2005. The substantial grievance of the appellants (hereinafter referred to as 'the assessees') in the writ petitions was that since the parts of Computer and Computer peripherals were exempted from levy of Turnover Tax/Resale Tax (hereinafter referred to as 'the TOT/RST) under Section 6B of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as 'the Act'), by means of Notification No. FD 48 CSL 2000 (2) dated 18'' July 2000; No. FD 97 CSL 2001 (7) No. 660 dated 31st March 2001 and No. FD 54 CSL 2002 (4) dated 30'' March 2002, the copies of which have been produced as Annexure-E, F and G respectively to this appeal, the proposition notices issued by the Assessing Authorities pursuant to the Circular dated 31st December 2004 in No. CLR CR. 157/04-05, a copy of which has been produced as Annexure-D to the writ petitions, were without jurisdiction and were liable to be quashed. They have also sought for quashing of the aforesaid Circular, Annexure-D. The learned single Judge, by means of his Order dated 10th February 2005 dismissed the writ petitions on the short ground that since the appellants have alternative remedies provided under the Act, it is not appropriate, in exercise of the power conferred on him under Articles 226 and 227 of the Constitution of India, to grant reliefs sought for by the assessees in the writ petitions. Aggrieved by the said order, this appeal is presented.

2. Facts in brief, as set out by the assessees in the writ petitions, may be stated as hereunder:

The Appellants 1 to 3 are the dealers in parts and accessories of Computers and Computer peripherals and are registered as dealers under the provisions of the Act on the file of the 3rd, 4th and 5th respondents respectively. The assessments of the 1st appellant for the year 2001 -02 was concluded on 21sl November 2002 assessing the gross and taxable turnover as at Rs. 7,30,46,1727- (Rupees seven crore thirty lakh forty six thousand one hundred seventy two only). The turnover of

subsequent sales of parts of computers and computer peripherals was determined at Rs. 7,29,016/- (Rupees Seven lakh twenty nine thousand and sixteen only) and the Assessing Authority exempted the levy of turnover tax under Section 6B of the Act on the ground that the levy of turnover tax under Section 6-B of the Act was exempted in view of the notifications Annexure-E and F, issued by the Government of Karnataka in exercise of the power conferred on it under Section 8A of the Act. Subsequently, the Assessing Authority had issued proposition notice dated 25th January 2005, a copy of which has been produced as Annexure-A to this appeal, proposing to levy turnover tax under Section 6-B of the Act at a sum of Rs.7,25,000/- (Rupees Seven lakh twenty five thousand only) on the ground that the levy of turnover tax on the parts of Computer and Computer peripherals had escaped.

3. The 4th respondent calculated the assessment of the 2nd appellant for the assessment year 2002-2003 on 14th September 2003 in respect of subsequent sales and determined the gross turnover at Rs. 99,27,642.58 (Rupees Ninety nine lakhs twenty seven thousand six hundred forty two and paise fifty eight only) and exempted the turnover of the said subsequent sales of parts of Computer and Computer peripherals from levy of tax under Section 6-B of the Act in view of Notification Annexure-G issued by the State Government, in exercise of the power conferred on it under Section 8-A of the Act. However, the Assessing Authority subsequently issued proposition notice dated 18th January 2005 to the assessee under Section 12-A of the Act proposing to levy resale tax under Section 6-B of the Act on the ground that the said turnover of the subsequent sale of parts of Computer and Computer peripherals were not exempted from levy of resale tax in terms of the Notification Annexure-G dated 30th March 2002 issued by the State Government and as such the said turnover had escaped the assessment. The copy of the said proposition Notice has been produced as Annexure-B to this appeal. Similarly, the assessment of the 3rd appellant for the assessment year 2002-03 was calculated by the assessing authority on the turnover of subsequent sales of parts of Computer and Computer peripherals and granted exemption from levy of resale tax under Section 6-B of the Act in view Notification Annexure-G. However, subsequently, the assessing authority issued proposition notice dated 6th January, 2005, a copy of which has been produced as Annexure-C to this

appeal, under Section 12-A of the Act proposing to levy resale tax under Section 6-B of the Act on a turnover of Rs. 1,14,31,818/- (Rupees One crore fourteen lakh thirty one thousand eight hundred eighteen only) on the ground that the turnover on subsequent sales of parts of Computer and Computer peripherals were not exempted from levy of resale tax in terms of Notification Annexure-G dated 30th March 2002 and as such levy of real tax under Section 6-B of the Act in respect of subsequent sale of parts of Computer and Computer peripherals had escaped.

4. The 4th appellant in this appeal claims to be an Association formed for the benefit and to protect the cause of persons connected with the Information Technology Industry and as such it has filed the writ petition along with the appellants 1 to 3 being aggrieved by the Circular Annexure-D dated 31st December 2004 issued by the Commissioner. As noticed by us earlier, the appellants 1 to 3 challenged the proposition notices Annexure-A, B and C dated 25th January 2005; 18th January 2005 and 6th January 2005 respectively issued to them, inter alia contending that the said notices issued by the Assessing Authorities were one without the authority of law in as much as the levy of TOT/RST under Section 6-B of the Act were exempted from levy of tax by virtue of Notifications Annexure-E, F and G. During the pendency of the writ petitions the Assessing Authority completed the assessment of the 3rd appellant and issued demand notice dated 5th February 2005 demanding payment of Rs. 1,71,4767- (Rupees One lakh seventy one thousand four hundred seventy six only) within a period of 21 days. After the disposal of the writ petitions, the assessing authority passed an order of assessment dated 11'' February 2005 and issued demand notice dated 11lh February 2005 calling upon the 1st appellant to pay sum of Rs. 7,29,016/- (Rupees Seven lakh twenty nine thousand sixteen only). In this appeal, the copies of the Order of re-assessment and demand Notice dated 11th February 2005 made against the 1st appellant has been produced as Annexure-K and L, and Order of re-assessment and Demand Notice dated 5th February 2005 made against the 3rd appellant have been produced as Annexure-M and N to this appeal. In this appeal, the assesses filed an application seeking permission to produce the Orders of re-assessment Annexure-K and L and Annexure-M and N as additional documents. By means of Order dated 7th July 2005, we have allowed the application and permitted production of the said orders of re-

assessment. It is also the case of the assesses that apart from the fact that the parts of Computer and Computer peripherals, by fiction of law, are required to be treated as computers and computer peripherals, in view of the consistent orders of Assessment made by all the Assessing Authorities for the Assessment years 1997-98 onwards except one Assessing Authority referred to in the statement of objections, and also the Clarification dated 15th December 2004 bearing No. CLR.CR./l57/04-05, a copy of which has been produced as Annexure-H to this appeal, issued by the Commissioner in exercise of the power conferred on him under Section 3-A(2) of the Act, clarifying that the parts of Computer and Computer peripherals are exempted from levy of TOT/RST under Section 6-B of the Act, it was not permissible for the Commissioner to issue Circular Annexure-D directing the Assessing Authorities to reopen the assessments already made in the purported exercise of the power conferred on them under Section 12-A of the Act. It is also their case that since the Assessing Authorities were required to apply their mind and decide as to whether the order of reassessment is required to be made under Section 12-A of the Act, however, since in the instant case, the authorities, as a matter of fact, were dictated to reopen the assessment in exercise of their power under Section 12-A of the Act in view of the Circular Annenxure-D, the proceedings initiated for reopening the assessment are also liable to be quashed.

5. Since the State did not file statement of objections to the writ petitions, we had permitted the State to file its statement of objections in this appeal and connected writ petitions. In the statement of objections, inter alia, it is contended that the parts of Computer and Computer peripherals are not exempted from levy of TOT/RST under Section 6-B of the Act and the Notification Annexure-E, F and G only exempt levy of TOT/RST under Section 6-B of the Act only in so far as Computer and Computer peripherals are concerned and they do not exempt from levy of TOT/RST under Section 6-B of the Act in so far as the parts of Computer and Computer peripherals are concerned. It is also the stand of the State that though the Commissioner, by means of his Clarification Annexure-H had clarified that parts of Computer and Computer peripherals were exempted from payment of TOT/RST by a dealer under Section 6-B of the Act, in the light of the objection raised by the Deputy Accountant General that the parts of Computer and

Computer peripherals were not exempted from payment of TOT/RST by a dealer under Section 6-B of the Act and the same came to be re-examined; and on such re-examination, the Commissioner having found that the parts of Computer and Computer peripherals were not exempted from levy of TOT/RST, he issued another circular dated 23rd December 2004 bearing No. CLR.CR. 157/04-05, a copy of which has been produced as Annexure-J to this appeal, withdrawing the Clarification Annexure-H and issued Circular Annexure-D bringing to the notice of all the Assessing Authorities, the correct legal position and instructed the departmental officers to proceed with the orders of assessment/ re-assessment in accordance with law. It is also contended that since the assessees have alternative remedies provided under the Act, the Learned Single Judge was fully justified in dismissing the writ petitions, therefore, there is no justification for us to interfere against the order passed by the Learned Single Judge.

6. Since this appeal, along with the other connected Writ Appeals and Writ Petitions, which were referred to the Division Bench were listed for hearing, we have heard the Learned Counsel appearing in all the Writ Appeals and Writ Petitions on behalf of the assessees and the Learned Advocate General and Smt. Sujatha, learned Additional Government Advocate, on behalf of the State.

7. Sri R.N. Narasimhamurthy, learned Senior Counsel appearing along with Sri N.N. Harish for the appellants in this appeal and Sriyuths K.P. Kumar, learned Senior Counsel, E.R. Indrakumar, R.V. Prasad, C.G Gopalaswamy, Narayan, Vikram, A. Satyanarayana, S. Nagaraj, K. Rama Shetty, T.N. Keshava Murthy, B.T. Mahesh, V.S. Jagannath M.N. Shankare Gowda, H.B.V. Patil, E.S. Kiresur, B.N. Jayadeva, T.H. Ramalingam, Smt. A. Rama, Sanath Kumar Shetty, B.N. Suresh, S.G. Bhat, Atul K. Alur, G.K.V. Murthy, Ajitkumar L. Raheja, S. V. Desai, C. Prakash, T. Krishna, P.H. Ramalingam, N.J. Ramesh, Venkatesh, Lakshmikumaran, Suresh S. Joshi, appearing for the appellants/petitioners in connected appeals/petitions strongly urged five contentions. Firstly, they submitted that the view taken by the learned Single Judge that the writ petitions were not maintainable as the appellants in this appeal have an alternative remedy provided under the Act, is erroneous in law since in Circular Annexure-D, the Commissioner had directed all the Assessing Authorities in the State to immediately take up

assessment proceedings in all the pending cases of dealers of parts of Computer and Computer peripherals and to proceed to levy TOT/RST and additional tax on turnover and sale of parts of Computers and Computer peripherals at the rate specified under Section 6-B and 6-C of the Act and also has directed all the Assessing Authorities to immediately initiate re-assessment proceedings under Section 12-A of the Act in cases where assessments have already been completed allowing exemption from TOT/RST and additional tax on turnovers relating to sale of parts of Computer and Computer peripherals which was not available; and all the Revisional Authorities were also directed to initiate revision proceedings in cases of which the Assessing Authorities are unable to initiate assessment proceedings, the alternative remedy provided under the Act being only an empty formality, the learned Single Judge ought to have held that the assessees have no remedy provided under the Act. They also pointed out that as the discretion conferred on the assessing/revisional authorities have been completely curtailed or erased by virtue of Circular Annexure-D wherein it is also made clear that the instructions issued in Circular Annexure-D were required to be followed scrupulously by all the officers concerned and any deviance shall be viewed seriously, the learned Single Judge has seriously erred in law taking the view that the assessees have alternative remedies provided under the Act. It is also their submission that since the question involved being purely a question of law where this Court is required to decide on consideration of Sl. No. 20 of Part 'C of second schedule of the Act and also exemption notification in question whether the parts of Computer and Computer peripherals are exempted from levy of TOT/RST under Section 6-B of the Act, it is appropriate that this Court should decide the said question in exercise of its power under Article 226 of the Constitution of India as it would minimise the multiplicity of the proceedings and any error committed by the assessing authorities seriously affects the right to carry on their business or trade, guaranteed to them under Article 19(1)(g) of the Constitution of India. It is also pointed out by them that if the erroneous decision of the Assessing Authorities rendered pursuant to Circular Annexure-D has to be nullified in appeal, the assesses will have to deposit 50 per cent of the amount assessed in the order of re-assessment made. Therefore, it is their submission that when the order of re-assessment seriously affects the right of the assessees

to carry on their trade or business guaranteed to them under Article 19(1)(g) of the Constitution of India, this Court has the power to interfere against any illegalities committed by the authorities. In support of these submissions, they relied upon the decision in the case of Himmatlal v. State of M.P. : [1954]1SCR1122 , Kailashnath v. State of U.P. : AIR 1957 SC790 , Bhopal Sugar Industrial Limited, M.P. v. D.P. Dube, Sales Tax Officer, Bhopal AIR 1967 SC 549, State of Bombay v. Bombay Education Society : [1955]1SCR568 , State of Tamilnadu v. P.L. Malhotra : 1983(13)ELT1582(SC) , Onkarlal Nandlal v. State of Rajasthan : AIR 1986 SC2146 , Filter Co. v. C.S.T. : 1986(24)ELT180(SC) . Secondly, the Learned Counsel submitted that since it is for the assessing authority to make up its mind under Section 12-A of the Act as to whether the assessment has escaped, on objective consideration of the materials before it; and since undisputedly the proceedings have been initiated by virtue of the dictation given by the Commissioner by means of Circular Annexure-D dated 31St December 2004, all the proceedings initiated to reassessment already made including the order of re-assessment made in the purported exercise of the power conferred on the assessing authorities under Section 12-A of the Act, are liable to be quashed by this Court. Thirdly, it is seriously urged by the learned Counsel appearing for the assessees that the parts of Computer and Computer peripherals, by means of legal fiction, have been treated as Computers and Computer peripherals, in Sl. No. 20 of Part 'C of the second schedule of the Act and according to the Learned Counsel this is clear from the language employed in Sl. No. 20 of Part 'C' of second schedule of the Act wherein the word 'namely' before the words 'Computers of all kinds' and the words 'that is to say' before the word 'peripherals' is used. Therefore, it is their submission that in view of the Notification Annexure-E, F and G issued by the Government in exercise of the power conferred on it under Section 8-A of the Act exempting from levy of TOT/RST in respect of Computer and Computer peripherals falling under Sl. No. 20 of Part 'C of second schedule of the Act, levy of tax on the parts of Computer and Computer peripherals are also exempted. They also pointed out that in view of the specific reference in the exemption notifications to Sl. No. 20 of Part 'C' of second schedule of the Act and also the phrase in the said Notifications is that 'falling under Sl. No. 20 of Part 'C' of second schedule of the Act', it is clear that all the

items referred to in Sl. No. 20 of Part 'C' of second schedule of the Act including the parts of Computer and Computer peripherals, are exempted from levy of tax. They further submitted that the legislature extended the meaning of Computer and Computer peripherals by including parts of Computer and Computer peripherals by using two expressions, 'namely' and 'that is to say'. In this connection, they drew our attention to the language employed in Sl. No. 20(i) of Part 'C' of the second schedule wherein the word 'namely' has been employed immediately after the words 'computers of all kinds' wherein various types of computers viz., mainframe, mini, personal, micro computers are set out and immediately thereafter, the words 'and the like and their parts' are provided. According to the learned Counsel, the words 'and their parts' provided in Sl. No. 20(i) of Part 'C' of second schedule immediately after the description of various types of computers, is indicative of the fact that the parts, by legal fiction, are made as parts of Computers. In other words, it is their submission that the word 'namely' which describes various types of computers and the words 'and their parts' are required to be understood as the legislature intending to include their parts for the purpose of levy of tax as computers. So far as the parts of peripherals are concerned, it is their submission that under Clause (a) of Sl. No. 20(ii) of Part 'C of the second schedule, immediately after the word 'peripherals' the words 'all kinds of printers and their parts' is employed. They have been described by using the words 'and various types of printers' and they have been described after employing the word 'namely'. The Learned Counsel also pointed out that under Clause (b) of Sl. No. 20(ii) of Part 'C' of the second schedule, various types of peripherals like terminals, scanners, multimedia kits, plotters, modem and their parts, have been set out. Therefore, from the words 'that is to say' employed immediately after the word 'peripherals' describing various types of peripherals along with their parts and the words and their parts' having been included, they submit, it must be understood that the words and their parts' is indicative of the legislative intention that the parts of the peripherals for the purpose of levy of tax is treated as computers. Therefore, it is the submission of the Learned Counsel for the assesses that since the parts of Computer and Computer peripherals, by legal fiction, are treated as Computers and Computer peripherals, the exemption Notifications Annexure-E, F and G, undisputedly exempts levy of TOT/RST under Section 6-B of the Act on Computer

and Computer peripherals, the parts of Computer and Computer peripherals are also exempted from levy of tax. They also pointed out that the word 'namely' takes within its fold parts of computers also, is evident from the words 'and the like'. There is no punctuation mark such as 'semi-colon' or 'comma' between the words 'Computers of all kinds namely mainframe, mini, personal, micro computers and the like' and 'and their parts' so as to read the words 'and their parts' distinctively. According to the Learned Counsel if the words 'and their parts' is read distinctively, the same cannot stand by themselves as a separate taxable goods if earlier the parts of the said goods are totally deleted or left out. Therefore, they submit that the word 'and their parts' employed in Sl. No. 20 of Part 'C' of second schedule of the Act, in the context, has to be read conjunctively only. Therefore, they submit that once expression 'computer' is used as title, and their parts are connected in the contents of title wherever the expression computers is used, it would take within its fold the parts also by a method of artificial definition. They also pointed out that the legislature has defined computers for the limited purpose of classification to include their parts, is also evident from the definition of peripherals in Sl. No. 20(ii) of Part 'C of second schedule of the Act, wherein the legislature has chosen to use the words 'all kinds of printers and their parts', and thereafter enumerated the type of printers in Clause 20(ii)(a); and in Clause 20(ii) (b), the parts are mentioned after referring to terminals, scanners, multimedia kits, plotters, modem and their parts. They also pointed out that legislature, while defining the term Computer at Sl. No. 20(i) of Part 'C' given to second schedule, has chosen to put the words 'and their parts' at the end of the definition. Therefore, they pointed out mat from the placement of phrase 'and their parts' in different sub-heading it is clear that the legislature has not intended to exclude parts from the main items and it always intended to treat them synonymously for the purpose of taxation. It is also their submission that since item No. 9 of the exemption notification Annexure-F reads that computers, computer peripherals, computer consumables and computer cleaning kits 'falling under Sl. No. 20 of Part 'C' of second schedule of the Act', it must be understood that all the items set out in Sl. No. 20 of Part 'C' of second schedule of the Act are exempted from levy of tax. According to the learned Counsel, item 9 of exemption notification in substance takes into its fold all the items mentioned in Sl. No. 20 of Part 'C' of second schedule of the Act.

Elaborating this submission, the learned Counsel pointed out that otherwise there was no need to refer to in item 9 of the exemption Notification as 'falling under Sl. No. 20 of Part 'C' of Second Schedule'. They submitted that similar is the position in so far as Notification Annenxure-G, which granted exemption on resale tax under Section 6-B of the Act. According to them, in this Notification also the language employed is Computer and Computer peripherals, computer consumables and computer cleaning kits 'falling under Sl. No. 20 of Part 'C' of the second schedule.' Emphasizing the words 'falling under Sl. No. 20 of Part 'C' of the second schedule', the Learned Counsel pointed out that from this it is clear that all the items referred to in Sl. No. 20 of Part 'C' of second schedule of the Act is exempted from levy of TOT/RST payable by a dealer under Section 6-B of the Act. It is their submission that once the words Computer and Computer peripherals are used in the Notifications Annexure-E, F and G which refers back at Sl. No. 20 of Part 'C' of second schedule of the Act, the definition contained in the said item should be treated as automatically incorporating as a whole in the Notifications Annexure-E, F and G. Once the definition in Sl. No. 20 of Part 'C' of second schedule of the Act includes Computer and Computer peripherals, the said Notifications would also apply to the parts of Computer and Computer peripherals. It is their submission that the expression defined in the Act should be understood in the same sense as it is used in the Rules and Notification issued under the Act. They also pointed out that from the contents of the exemption Notifications, it is clear that it is bodily lifted from Sl. No. 20 of Part 'C' of second schedule of the Act for grant of exemption. They further pointed out that since Section 20 of the Karnataka General Clauses Act, 1899, provides that where, by any enactment, a power to issue any notification, order, scheme, rule, form, or bye-law is conferred, then the expression used in the notification, order, scheme, rule form or bye-law, shall unless there is anything repugnant in the subject or context, have the same respective meanings as in the enactment conferring the power. Therefore, they submitted that since Notifications Annexure-E, F and G were issued by the Commissioner in exercise of the power conferred on him under Section 8-A of the Act, the contents of the said Notifications must be understood as one found in Sl. No. 20 of Part 'C of the second schedule of the Act. The Learned Counsel also pointed out that the principle of doctrine of incorporation by a reference, has to be

applied in view of Section 20 of the General Clauses Act and the Sl. No. 20 of Part 'C' of second schedule of the Act must be read into with the exemption Notification. In support of submissions referred to above made, the Learned Counsel relied upon the judgment of the Supreme Court in the case of Tata Oil Mills Co. Ltd v. Collector of Central Excise : 1989(43)ELT183(SC) , Collector of Central Excise v. Neoli Sugar Factory 1993 Supp. (3) SCC 69, Commissioner of Income Tax v. Straw Board 1989 Supp. (2) SCC 523, Prestige Engineering (India) Ltd. v. Collector of Central Excise, Merrut : 1994(73)ELT497(SC) , Steel Authority of India Ltd. v. Collector of Central Excise, Bolpur, West Bengal : 1997(91)ELT529(SC) , Collector of Central Excise, Hyderabad v. Galada Continuous Castings Ltd. : 2000(119)ELT272(SC) , Krishiutpadan Mandisamiti, Kanpur v. Gang A Dal Mill and Co. and Ors. 1985 (58) STC 23, Collector of Customs, Bangalore v. Maestro Motors Ltd : 2004(174)ELT289(SC) , Navnit Lal C. Javeri v. K.K. Sen , Appellate Assistant Commissioner of Income Tax, Bombay 56 ITR 198 (SC), Commissioner of Customs v. Indian Oil Corporation and Anr. 2004 Vol. 267 1TR 272, M/s Srinivasa Electricals v. Additional Commissioner of Commercial Taxes : ILR 2004 KAR5042 . Fourthly, they submitted that the intention of the Government has always been to exempt even the parts of Computer and Computer peripherals, whenever the exemption was granted to Computer and Computer peripherals. In support of this contention, they pointed out that the Government has been granting exemption in addition to the Computers and Computer peripherals, to computer consumables and computer cleaning kits falling under SI. No. 20 of Part 'C of second schedule of the Act. Therefore, they submit that there is absolutely no justification to take view that the Government, which has been granting exemption to computer, computer peripherals, computer consumables namely: stationery, floppy disks, CD Roms, DAT tapes, printer ribbons, printer cartridges and cartridge tapes, computer cleaning kits and computer software, has consciously chosen to deny the exemption only to parts of computers and computer peripherals. According to the learned Counsel, the turnover of parts of Computer is too small when compared to the turnover pertaining to computer peripherals, computer consumables, computer cleaning kits and computer software. They also pointed out the fact that all the Assessing Authorities in the State, except one assessing authority relied upon by

the State in its statement of objections, have taken the view that the parts of Computer and Computer peripherals are also exempted from levy of TOT/RST and on that basis passed orders of assessment and the Commissioner also has issued the clarification Annexure-H clarifying that the parts of Computer and Computer peripherals are entitled for exemption, is a clear indication of recognition of the fact that the parts of Computer and Computer peripherals are treated, by legal fiction, as parts of Computer and Computer peripherals. In other words, it is their submission that the contemporaneous exposition given by the Assessing Authorities and the Commissioner who have been entrusted with the implementation of the provisions of the Act where parts of Computer and Computer peripherals were exempted from levy of tax in terms of the exemption Notifications, has to be given full weightage. They pointed out that except one assessing authority, though all the Assessing Authorities in the State have made orders of assessment giving exemption in respect of parts of Computer and Computer peripherals from levy of tax for the total turnover or resale of those goods under Section 6-B of the Act, none of the revisional authorities, who are conferred with the suomoto power under Section and 22-A(1) and 22-A(2) of the Act, have exercised the power conferred on them under the Act till the issue of Circular Annexure-D notifying that the parts of Computer and Computer peripherals were not exempted from levy of tax. This, they pointed out, obviously, all the Assessing Authorities and the Revisional authorities have clearly understood that the parts of Computer and Computer peripherals were exempted from levy of TOT/RST. It is also submitted by some of the Counsel appearing for the assessees in the connected matters that the Commissioner having issued Clarification Annexure-H dated 15'1 December 2004 clarifying that the parts of computers and computer peripherals are exempted from levy of TOT/RST payable by a dealer under Section 6-B of the Act, he had no power to withdraw the said Clarification by means of circular Annexure-J. The learned Counsel, in support of their submissions referred to above, relied upon the decision of the Supreme Court in the case of K.P. Varghese v. Income Tax Officer, Ernakulam and Anr. 1981 (SC2)GJX-0419-SC, Collector of Central Excise v. Parle Exports (P) Ltd : [1990]183ITR624(SC) , and also the division bench decision of this Court in the case of Sri Veerarajendra Corporation v. State of Karnataka (1985) 58 STC 0199,

Bangalore Wood Industries v. Assistant Commissioner of Commercial Taxes (Assessment), Hassan (1994) 092 STC 0603 W, the decision of this Court in the case of Om Shanti Silks and Anr. v. Assistant Commissioner of Commercial Taxes, Challakere (1998) 110 STC 0449. Fifthly, they submitted that since the Commissioner, by means of Clarification Annexure-H, had clarified that parts of Computer and Computer peripherals are exempted from payment of tax by a dealer under Section 6-B of the Act, though the said Clarification was withdrawn by means of another circular Annexure-J, it has to be held that at least, till the date of withdrawal of clarification Annexure-H by the Commissioner by means of circular Annexure-J, the Department is bound by the clarification Annexure-H, and therefore, it is not permissible to reopen the assessments already made. They pointed out that even if the Circular issued by the Commissioner is held was contrary to law on the ground that the parts of Computer and Computer peripherals are not exempted from levy of tax as contended on behalf of the State, since the Circular issued by the Commissioner is binding on the department, it is not permissible for the State to go back on that. In support of this submission they relied upon the decisions of the Supreme Court in the case of Ranadey Micronutrients v. CCE : 1996(87)ELT19(SC) , CCE v. Jayant Dalal Private Ltd : 1996(88)ELT638(SC) , Paper Products Ltd v. CCE : 1999ECR284(SC) , in the case of CCE v. Dhiren Chemical Industries : 2002ECR800(SC) , in the case of CCE v. Maruti Foam(P) Ltd : 2004(164)ELT394(SC) , in the case of Saciallied Products Ltd v. CCE : 2005(183)ELT225(SC) .

8. However, the learned Advocate General while strongly supporting the order impugned passed by the learned single Judge and countering each one of the contentions advanced by the learned Counsel for the assessees, submitted that since the assessees have an alternative remedy provided under the Act, the learned single Judge was fully justified in dismissing the writ petitions without considering the claim of the assessees on merits. In support of this submission he relied upon the decision of the Supreme Court in the case of Titaghur Paper Mills Co. Ltd and Anr. v. Orissa and Anr 1983 83 STC 315. He pointed out that since there is no reference either in the proposition notices issued to the assessees or in the Orders of re-assessment made by the Assessing Authorities that the proceedings for re-assessment were initiated under Section 12-A of the Act and

orders of re-assessment were made in the light of the instruction given in Circular Annexure-D, it is not possible to proceed on the assumption that the proposition notices were issued and the orders of re-assessment were made in the light of the instructions given in Circular Annexure-D and as such they do not have efficacious alternative remedy. He also pointed out that since the proviso given to Sub-section (1) of 3-A of the Act curtails the power of the Commissioner to issue any order or instructions or directions to the Assessing Authorities in respect of which power is conferred on him in Sub-section (1) of Section 3-A of the Act so as to interfere with the discretion of Appellate Authority in exercise of its appellate functions, the instructions contained in Circular Annexure-D cannot curtail the exercise of discretion either by the Assessing Authority or by the Appellate Authority. He further submitted that even if it is held that the writ petition filed by the assessees are held to be maintainable before this Court, on merits they are required to be dismissed, as parts of Computer and Computer peripherals are not exempted from levy of TOT/RST. Elaborating this submission, he pointed out that the words 'and their parts' employed in Sl. No. 20 of Part 'C' of second schedule of the Act either with reference to Computer and Computer peripheralshas to be read distinctively and if it is so read the parts of Computer and Computer peripherals cannot be treated, by means of a legal fiction, as Computer and Computer peripherals. It is his submission that the language in the exemption notification being clear and unambiguous and does not refer to parts of Computer and Computer peripherals for the purpose of extending benefit of exemption from levy of TOT/RST, it is not permissible for the Court, by means of legal fiction, to read into the Notifications parts of Computer and Computer peripherals as Computer and Computer peripherals. According to the learned Advocate General, Sl. No. 20 of Part 'C of second schedule of the Act is required to be bifurcated into two Clauses (a) Computer of all kinds namely, mainframe, mini, personal, micro computers and the like and (b) and their parts. He pointed out that in the exemption notifications reference is made to computers and peripherals as defined under Sl. No. 20 of Part 'C' of second schedule of the Act, with a view to restrict the Computer and Computer peripherals to which the benefit of exemption was extended and not with a view to include parts of Computer and Computer peripherals. He submitted that the exemption Notifications have to be strictly construed and if so construed it

must be held that the parts of Computer and Computer peripherals are not exempted from levy of tax. He further pointed out that the parts of Computers and Computer peripherals are required for the purpose of production of Computer and Computer peripherals and that being the position, the collection of tax by levying TOT/RST on parts of Computer and Computer peripherals is substantial and therefore, the State excluded the parts of Computer and Computer peripherals from exemption of levy of TOT/RST under Section 6-B of the Act. He also pointed out that though the Commissioner had issued Clarification Annexure-H on 15th December 2004, since on 16th December 2004, the Deputy Accountant General had raised an objection pointing out that parts of Computer and Computer peripherals are not entitled for the benefit of exemption from levy of tax, the Commissioner, after examining the correct legal position, issued circular Annexure-J withdrawing the Clarification Annexure-H. It is also his submission that the Commissioner, who has issued the clarification Annexure-J, in exercise of his powers under Section 8-A of the Act, has inherent or implied power to withdraw the clarification issued. In support of this submission, he relied upon the division bench decision of this Court in the case of Associated Mechanical Industries v. Commissioner of Commercial Taxes 61 STC 225, S.N. Gondakar v. Commissioner of Commercial Taxes in Karnataka 54 STC 190. In this connection, he also read to us the statement made at paragraph 17 of the statement of objections explaining the circumstances under which the Commissioner issued Clarification and later withdrew the same. He also pointed out that Circular Annexure-D does not suffer from any error as the Commissioner had only pointed out the correct legal position to bring out uniformity among the various Assessing Authorities in the State and indicated to them to take appropriate decision in the matter, in accordance with law. It is also his submission that since the Clarification Annexure-H was withdrawn by the Commissioner by means of circular Annexure-J, the assessees are not entitled to contend that the Clarification Annexure-H binds the Department and it enures to the benefit of the assesses whose assessments came to be completed prior to the issue of Clarification Annexure-H. He pointed out that at the worst, the Clarification Annexure-H can have the binding effect only in such cases where the assessments have taken place subsequent to 15th December 2004 and prior to the withdrawal of the said clarification by means

of circular Annexure-J. It is his submission that the Clarification Annexure-H cannot have any retrospective effect to bind the Department. He also pointed out that once the Clarification is withdrawn, the binding nature of the clarification no longer exists and therefore, the decision relied upon by the learned Counsel for the assessees, is not applicable to the facts of the present case. He submitted the Clarification Annexure-H having not been gazetted, it is not valid in law and the said clarification cannot be traced to Section 3A(2) of the Act. In support of this submission, he drew our attention the decision of this Court in the case of Sreejagadish Colour Company v. Commissioner of Commercial Taxes, Karnataka and Ors. 107 STC 522.

9. In the light of the rival contentions advanced by the learned Counsel appearing for the parties, the following questions would arise for my consideration:

1. Whether the writ petitions filed by the appellants were not maintainable before this Court on the ground that the appellants have alternative remedies provided under the Act?

2. Whether the impugned proposition notices Annexures-A, B and C dated 25th January 2005,18th January 2005 and 6th January 2005 issued to the appellants 1 to 3 respectively and the orders of reassessment made as per as Annexure-K and L dated 11th February 2005, and Annexure-M and L dated 11th February 2005, and Annexure-M and N dated 5th February 2005 respectively by the Assessing Authorities against the appellants, are liable to be quashed by this Court in exercise of its power under Articles 226 and 227 of the Constitution of India, in view of Circular Annexure-D dated 31st December 2004 issued by the Commissioner?

3. Whether the parts of Computer and Computer peripherals are exempted from levy of TOT/RST under Section 6-B of the Act in view of Notifications Annexure-E, F and G dated 18lh July 2000, 31st March 2001 and 30th March 2002, respectively?

4. Whether the Commissioner had no power to issue circular Annexure-J dated 23rd December 2004 withdrawing his earlier Clarification Annexure-H dated 15th

December 2004?

5. Even if it is held that the parts of Computer and Computer peripherals are not included in the exemption Notification, in view of the Clarification Annexure-H dated 15th December 2004 issued by the Commissioner, whether the Department is bound to give the benefit of exemption to the appellants?

10. Now, I will proceed to consider each one of the questions formulated for consideration.

Regarding Question 1:

As noticed by me earlier, the Learned Single Judge has dismissed the writ petitions on the ground that the assessees had filed writ petitions challenging the proposition notices issued under Section 12-A of the Act and therefore, it was open to them to file their objections before the Assessing Authorities and as such at that stage of the proceedings it was not appropriate for him to interfere with the impugned proposition notices. This is clear from the observation made in paragraph 10 of the order. It is true, as pointed out by the learned Single Judge, normally, this Court will not interfere in exercise of its power under Articles 226 and 227 of the Constitution of India either against the proposition notices issued by the Assessing Authorities or against the orders of assessment or reassessment as the parties aggrieved have an opportunity to file their objections and persuade the Assessing Authorities to withdraw the proposition notices issued and drop further proceedings and have right of appeal against the orders of assessment or reassessment made. However, it is well-settled that if the proposition notices issued or orders of assessment or reassessment made are in disregard of the principles of natural justice or the said proposition notices or the orders or assessment or reassessment, on the face of it without any investigation of facts or enquiry are illegal and void in law, it is open to the High Court, by using its judicial discretion, to interfere against such proposition notices or orders of assessment or reassessment, in exercise of its power under Articles 226 and 227 of the Constitution of India and quash the proposition notices issued. In the instant case, it is the grievance of the assessees is that the Assessing Authorities have issued the proposition notices in the light of the instructions issued by the Commissioner

in Circular Annexure-D wherein he, in unequivocal terms, has held that it is only the sale of Computer and Computer peripherals falling under Sl. No. 20 of Part 'C of second schedule of the Act are exempted from payment of TOT/RST by a Dealer under Section 6-B of the Act and TOT/RST on parts of Computer and Computer peripherals are not exempted, and in the light of the said view expressed by him he had directed the Assessing Authorities to reopen the assessments where the assessments have already been made in exercise of the power conferred on them under Section 12-A of the Act and proceed for assessment in respect of which the assessment orders have not been made. Sub-section (1) of Section 3A of the Act confers power on the State Government and on the Commissioner to issue such orders, instructions and directions to all officers and persons employed in execution of the Act as they may deem fit for the administration of the Act, and all such officers and persons are required to observe and follow such orders, instructions and directions that may be given by the State or the Commissioner, as the case may be. However, no doubt, the proviso given to Sub-section (1) of Section 3-A of the Act further provides that no such orders, instructions shall be issued by the Commissioner so as to interfere with the direction of any Appellate Authority, in exercise of its appellate functions. It is useful to extract Sub-section (1) of Section 3-A of the Act, which reads as follows:

3-A. Instructions to subordinate authorities: (1) The State Government and the Commissioner may from time to time, issue such orders, instructions and directions to all officers and persons employed in the execution of this Act as they may deem fit for the administration of this Act, and all such officers and persons shall observe and follow such orders, instructions and directions of the State Government and the Commissioner.

Provided that no such orders, instructions, or directions shall be issued so as to interfere with the discretion of any Appellate Authority in the exercise of its appellate functions.

11. From the reading of Sub-section (1) of Section 3-A of the Act, it is clear that a power is conferred on the Commissioner from time to time to issue such orders, instructions and directions to all officers and persons employed in the execution of

the Act as they may deem fit for the administration of the Act, and all such officers are required to observe and follow such orders, instructions and directions issued to them. Therefore, the instructions or the directions issued by the Commissioner, in exercise of the power conferred on him under Section 3-A(1) of the Act being statutory in nature and an obligation is being cast on the persons concerned to carry out the instructions, directions given by the Commissioner in his instructions, I am unable to accede to the submission of learned Advocate General that merely because the proviso imposes a bar on the power of the Commissioner to issue such instructions or directions not to interfere with the discretion of any appellate authority, the Assessing Authorities are not required to obey or can by out the instructions given by the Commissioner in Circular Annexure-D. As rightly pointed out by the Counsel for the assessees, the Commissioner has in unequivocal terms taken the view that the parts of Computer and Computer peripherals are not exempted from payment of TOT/RST by a dealer under Section 6-B of the Act. In addition to such unequivocal view expressed with regard to the liabilities of the assesses to pay TOT/RST on parts of Computer and Computer peripherals, he has also instructed the Assessing Authorities to reopen assessments which have already been made. In this connection, it is useful to refer to the instructions given at paragraph 3 of the Circular Annexure-D, which reads as hereunder:

3. In the circumstances the following instructions are issued.

(1) All the assessing authorities shall immediately take up assessment proceedings in all pending cases of dealers of parts of computers and computer peripherals, and proceed to levy turnover tax, resale tax and additional tax on turnovers relating to sale of parts of computers and computer peripherals during the above periods at the rates prescribed under Sections 6-B and 6-C.

(2) All the assessing authorities shall immediately initiate re-assessment proceedings under Section 12-A, in cases where assessments have been already completed allowing exemption from turnover tax, resale tax and additional tax on turnovers relating to sale of parts of computers and computer peripherals during the above period, which was not available as per the notifications mentioned above.

(3) All the revisional authorities shall immediately initiate revision proceedings in cases in which assessing authorities are unable to initiate re-assessment proceedings and also complete revision proceedings in cases which revision proceedings have already been initiated.

(4) All the assessing authorities shall immediately initiate provisional assessment proceedings for the current year in cases relating to dealers of parts of computers and computer peripherals, to levy and recover additional tax/resale tax, if such tax is not admitted and paid in monthly statements.

(5) All the inspecting authorities and audit authorities shall during their inspections and audits of the assessing offices shall verify and ensure compliance to the instructions issued in this circular.

(6) All the Joint Commissioners of Commercial Taxes (Administration) shall submit a consolidated report regarding compliance to this Circular furnishing the details of action taken, tax levied and tax recovered, by 31st January 2005;

The above instructions shall be followed scrupulously by all the officers concerned and any deviance shall be viewed seriously.

12. From the reading of the instructions given, it is clear that the Commissioner has instructed all the Assessing Authorities to proceed to assess and re-assess the assessees, who are dealing with the parts of Computer and Computer peripherals as they are liable for payment of TOT/RST under Section 6-B of the Act. He has further cautioned the Assessing Authorities that any deviation by them would be viewed seriously. Further, he has also directed the Revisional Authorities to immediately initiate revisional proceedings in cases in which the Assessing Authorities are unable to initiate reassessment proceedings. The Inspecting Authorities and Audit Authorities are also directed to verify and ensure compliance of the instructions issued in the Circular. All the Joint Commissioners of Commercial Taxes (Administration) are directed to submit a consolidated report regarding compliance of the instructions given in the Circular, furnishing the details of action taken, tax levied and tax recovered, by 31st January 2005. In Sub-clause (7) of the instructions the Commissioner has instructed the Assessing Authorities,

Revisional Authorities, Inspecting Authorities and Audit Officers and all Joint Commissioners to scrupulously follow the instructions given by him and also has cautioned that any deviation by them in not following the instructions, would be viewed seriously. When the Administrative head of the Department, who is conferred with the powers of giving instructions, has issued instructions/directions which are required to be followed by them and when he warns them that any default or failure on their part in not following the instructions scrupulously would be viewed seriously, can it be expected that they would exercise their discretion conferred on them under Section 12-A of the Act independently while proceeding to consider the returns submitted by the assessees or while exercising their power of reassessment under Section 12-A of the Act? Merely because, the proviso given to Sub-section (1) of Section 3-A of the Act, prohibits the Commissioner to give any instructions which interferes with the power of the Appellate Authority, in our view, it is not possible to even remotely think that the concerned authorities will go against the instructions given by the Commissioner in Circular Annexure-D and give scope for any disciplinary proceedings against them. It is necessary to point out that going against the instructions would result in revenue loss to the State, and therefore, no Officer can afford, apart from the fact that he is obliged under Section 3-A(1) of the Act, to carry out the instructions of the Commissioner, to go against the instructions of the Commissioner, which may attract disciplinary proceedings resulting in his removal from service. Under these circumstances, in the light of the clear unequivocal instructions/directions given by the Commissioner as stated above, in my view, filing objections before the Assessing Authorities would be an empty formality. Such a remedy available to the assessees cannot be considered, in the eye of law, as an effective alternative remedy. Though the proviso given to Sub-section (1) of Section 3A of the Act prohibits the Commissioner from issue of any instructions which interferes with the discretion of the Appellate Authority, once such instructions are given, it is not reasonable to expect that even such appellate authorities who are subordinate to the Commissioner, would go against the instructions given by the Commissioner and take a view different to the one expressed by the Commissioner in his instructions Circular Annexure-D. The mandate of the proviso is to the Commissioner not to give any instructions which would interfere with the discretion to be exercised by

the Assessing Authorities. It is also necessary to point out that to file an appeal against the order of assessment or reassessment made, the assessees will have to deposit 50 per cent of the tax assessed. Further, in the instant case, so far as the 1sl appellant is concerned, just before the passing of the impugned order, the Assessing Authorities have made re-assessment and in the case of appellants 2 and 3, subsequent to the dismissal of the writ petitions they had passed order of reassessment, which have been produced as Annexure-K and L, and Annexure-M and N. The order of re-assessment would indicate, as a matter of fact that though there is no reference to the Instructions contained in Circular Annexure-D, in my opinion, there cannot be any doubt that the Assessing Authorities have proceeded to make orders of re-assessment only on account of dictation of the Commissioner given in his communication Circular Annexure-D and they have failed to independently apply their mind as to whether an order of reassessment should be made or not. Therefore, I am of the view that the view taken by the learned Single Judge, having regard to the facts and circumstances of the case that it is not appropriate for him to interfere against the impugned proposition notices, was not justified. In my view, I am also supported by the judgment of the Supreme Court in the case of Filter and Co. (Supra) wherein the Supreme Court, fairly under similar circumstances, has taken the view that the writ petitions filed are maintainable and the High Court could examine the case on merits. In the said case the assessees challenged the order passed by the Commissioner wherein the Commissioner had taken the view that the expression 'cloth' will take in non-woven material inclusive of 'felt', pliability being an essential attribute of 'cloth' and only those varieties of felt manufactured by the appellants satisfied the test of pliability can be legitimately classified as 'cloth'. The writ petition filed by the assessees in these cases came to be dismissed by the High Court on the ground that the order passed by the Commissioner would not be binding on the appellate authorities under the Act, and it is open to the appellate authority to examine the questions afresh and if the assessees are aggrieved by the decision of the Appellate Authority, a reference can be made to the High Court, and such remedy being available to the assessees, it was not necessary for the High Court to invoke its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. The Supreme Court, while disagreeing with the view expressed by the High Court, has observed

as follows:

We are of the opinion that the High Court should have examined the merits of the case instead of dismissing the writ petition in limine in the manner it has done. The order passed by the Commissioner of Sales Tax was clearly binding on the assessing authority under Section 42-B(2) and although technically it would have been open to the appellants to urge their contentions before the appellate authority, namely, the Appellate Assistant Commissioner, that would be a mere exercise in futility when a superior officer; namely, the Commissioner, has already passed a well-considered order in the exercise of his statutory jurisdiction under Sub-section (1) of Section 42-B of the Act holding that 21 varieties of the compressed woolen felt manufactured by the appellants are not eligible for exemption under entry 6 of Schedule I of the Act. Further Section 38(3) of the Act requires that a substantial portion of the tax has to be deposited before an appeal or revision can be filed. In such circumstances we consider that the High Court ought to have considered and pronounced upon the merits of the contentions raised by the parties and the summary dismissal of the writ petition was not justified. In such a situation, although we would have, ordinarily, set aside the judgment of the High Court and remitted the case to that Court for fresh disposal, we consider that in the present case it would be in the interests of both sides to have the matter finally decided by this Court at the present stage itself especially since we have had the benefit of elaborate and learned arguments addressed by the counsel appearing on both sides.

13. In the case of Good age Rubber Works v. State of U.P. and Ors. 2004 137 STC 253, the division bench of the Allahabad High Court has taken similar view. This is clear from the observation made at paragraph 5 of the judgment, which reads as hereunder:

5. Learned Standing Counsel has raised the question of maintainability of the writ petition, as only a notice has been challenged in the present case. Learned Counsel for the petitioner submits that the writ petition is maintainable and the alternative remedy is wholly illusory in the facts of the present case as the authorities under the act are bound by the circular issued by the Commissioner of

Sales Tax. This matter has been considered by a Division Bench of this Court reported in (2002) 128 STC 476:2002 UPTC 262 (P.N.C. Construction Company Limited v. State of U.P.). It has been held that it is the well-settled legal position that where the proceeding is wholly without jurisdiction, the High Court can entertain the writ petition and pass appropriate orders. Therefore, we do not find any substance in the contention of learned Standing Counsel. The submission on the other hand is that the impugned notice is wholly without jurisdiction, as the Tribunal has set the matter at rest and the Commissioner of Sales Tax cannot take a different view on the question of law. Moreover the said circular is binding on the sales tax authority and it is not expected that the sales tax authorities will go beyond the circular of the Commissioner of Sales Tax. The plea that the petitioner has an alternative remedy by way of replying to show cause notice and filing of appeal, etc., has no substance on the face of the circular issued by the Commissioner of Sales Tax. It is well-settled that alternative remedy is not an absolute bar to a writ petition. The petitioner has placed reliance on a number of materials filed as annexures-5 to 10 to the writ petition. It has been submitted that the Industries Department treated the rubber roller as rubber product. The U.P. Financial Corporation which is financing the rubber product units are treating rubber roller as rubber product. The Rubber Board, Government of India, has also treated it as rubber product. The reliance was placed upon the handbook issued by Government of India, Director General of Technical Development, Ministry of Industries, New Delhi, for the said proposition. It was further submitted that in common parlance rubber roller manufactured by the petitioner was always treated as rubber product and that is why as far as back in the year 1981 the department itself granted recognition certificate to the petitioner. At this time there is no occasion to amend or modify the said recognition certificate merely because the department is of the opinion that rubber roller is not rubber product.

14. In the case of Pizzeria Fast Foods Restaurant (Madras) Pvt. Ltd. v. Commissioner of Commercial Taxes Chennai and Ors. 2005 140 STC 97 the Division Bench of Madras High Court also has expressed similar view, after referring to the similar observation made by the High Court of Andhra Pradesh in the case of Sri Rajarajeshwari Parboiled Rice Industry v. Commercial Tax Officer (1999) 115 STC 99 (AP) and Filterco (Supra) and the decision of this High Court in

the case of Arif Transport v. Commercial Tax Officer (1999) 116 STC 207. It is useful to refer to the observation made at paragraph 23 of the judgment, which reads as hereunder:

23. ... In the above decision, this Court was concerned with a circular issued by the Central Board of Direct Taxes which sought to bring contracts for rendering professional services within the purview of Section 194C of the Income-Tax Act, 1961 requiring deduction of Income-Tax source. The circular expanded the scope of Section 194C. The Counsel for the department had submitted that the correctness of the circular could be canvassed before the assessing authorities. Alternatively, the assessing authorities could be directed to dispose off the assessment without reference to the circular. This Court held that such a direction of disposal would not do any real or effective justice to the parties who have approached the Court, and the threat imposed by such circulars was real and substantial and had the consequence and effect of a constrained influence on the authorities functioning under the Act. This Court further held that having regard to the authority which issued the circular and the source of power, the threat could not be completely erased except by quashing and setting aside the circular.

15. Further, in the case of HIMMATLAL (SUPRA) the Supreme Court has laid down that the Supreme Court will not issue a prerogative writ when an adequate alternative remedy is available will not apply where a party came to the Court with an allegation that his fundamental right had been infringed and sought relief under Article 226 of the Constitution of India. In the course of the judgment, at paragraph 9, it is observed as hereunder:

There it was held that the principle that a Court will not issue a prerogative writ when an adequate alternative remedy was available could not apply where a party came to the Court with an allegation that his fundamental right had been infringed and sought relief under Article 226 of the Constitution of India. Moreover, the remedy provided by the Act is of an onerous and burdensome character. Before the appellate can avail of it he has to deposit the whole amount of the tax. Such a provision can hardly be described as an adequate alternative remedy.

16. Similar is the view expressed by the Supreme Court in the case of Kailashnath and Anr. (Supra) at paragraph 9 of the judgment. Further, in the case of Bhopal, Sugar Industries Ltd. (Supra) at paragraph 5 of the judgment while laying down that though the jurisdiction of the High Court under Article 226 of the Constitution of India is extensive, but normally the High Court does not exercise that jurisdiction by entertaining petitions against the order of taxing authorities, when the statute under which tax is sought to be levied provides a remedy by way of an appeal or other proceeding to a party aggrieved and thereby by-pass the statutory machinery, the Supreme Court has held that it is open to the High Court to interfere against the orders of the taxing authorities where a taxing authority has committed a serious error of procedure which has affected the validity of its conclusion or even where the taxing authority threatens to recover tax on an interpretation of statute which is erroneous. It is useful to extract the observation made by the Supreme Court, which reads as hereunder:. It is true that the jurisdiction of the High Court under Article. Under Article 226 of the Constitution of India is extensive, but normally the High Court does not exercise that jurisdiction by entertaining petitions against the order of taxing authorities, when the statute under which tax is sought to be levied provides a remedy by way of an appeal or other proceeding to a party aggrieved and thereby by-pass the statutory machinery. That is not to say that the High Court will never entertain a petition against the order of the taxing officer. The High Court has undoubtedly jurisdiction to decide whether a statute under which a tax is sought to be levied is within the legislative competence of the Legislature enacting it or whether the state defies constitutional restrictions or infringes any fundamental rights, or whether the taxing authority has arrogated to himself power which he does not possess, or has committed a serious error of procedure which has affected the validity of his conclusion or even where the taxing authority threatens to recover tax on an interpretation of the statute which is erroneous. The High Court may also in appropriate cases determine the eligibility to tax of transactions the nature of which is admitted, but the High Court normally does not proceed to ascertain the nature of a transaction which is alleged to be taxable. The High Court leaves it to the tax payer to obtain an adjudication from the taxing authorities in the first instance.

17. In the light of the discussion made above and also in the light of the judgment of the Supreme Court and the High Courts referred to above, I am of the view that the decision for the Supreme Court in the case of Maruti Foam (P) Ltd (Supra) and in the case of Ranadey Micronutrients (Supra), relied upon by the learned Advocate General is of no assistance to him as the observation made in the said judgments purely turned on the facts of those cases and that the directions given by the Commissioner in Circular similar to Circular Annexure-D, had not come up of consideration before the Supreme Court in the said decisions. Further, it is also necessary to point out that the question that would arise for consideration in these appeals are purely questions of law which does not require investigation of factual aspects. As noticed by me earlier, apart from the contention of the assessees that the parts of Computer and Computer peripherals are not liable for payment of tax by a dealer under Section 6-B of the Act, it is also their grievance that the order of re-assessment are passed by the Assessing Authorities on account of the dictation of the Commissioner in his instructions Circular Annexure-D. Therefore, as observed by me earlier, the order passed by the learned single Judge taking the view that it is not appropriate for him to interfere at the stage of issue of proposition notices, is not correct and calls for interference in this appeal. Accordingly question No. 1 is answered. Normally, under these circumstances, I would have remitted the matter for consideration of the grievance of the appellants on merits to the learned Single Judge. However, since we have heard the learned Counsel appearing for the parties on merits of the contentions urged and large number of writ petitions where similar contentions are raised are placed before me for disposal, I am of the view, it is desirable to consider the contentions urged on merits of the grievance made by the parties. This will avoid multiplicity of proceedings.

Regarding Question 2:

While answering the first question, I have extracted the instructions given by the Commissioner in Circular Annexure-D. I have also taken the view while considering question No. 1 that the instructions given by the Commissioner, are required to be obeyed by the Assessing Authorities. The Assessing Authorities, while considering the returns filed by the assessees, it cannot be disputed, are

discharging quasi-judicial functions. Section 12-A of the Act confers power on the Assessing Authority to assess or re-assess to best of its judgment the tax payable by the dealer in respect of such turnover, after issuing a notice to the dealer and after making such enquiry, as it may consider necessary. In the instant case, the question that had arisen for my consideration is as to whether the exemption was wrongly allowed in respect of parts of Computer and Computer peripherals. If the Assessing Authority is satisfied that while making assessment, exemption have been wrongly allowed, it is empowered to reopen the assessment and proceed to make orders of reassessment. The satisfaction that the exemption was wrongly allowed should be to the satisfaction of the assessing authority and none else whosoever higher in position that authority may be. This is clear from the scheme of the Act. If the order of assessment made is prejudicial to the interest of revenue, it is open to the revisional authorities to invoke their suomoto jurisdiction conferred on them under Section 22-A(1) and 22-A(2) of the Act. In the instant case none of the authorities had exercised their revisional jurisdiction either under Section 22-A(1) or under 22-A(2) o f the Act. The power conferred on the Commissioner under Section 3-A(1) of the Act, does not imply in it power to give directions/instructions to proceed to finalise the assessment orders in a particular manner. The undisputed facts disclose that almost all the Assessing Authorities in the State except the one referred to at paragraph 24 of the statement of objections, have consistently, from the year 1997-98 till the date of issue of instructions in Circular Annexure-D, have taken the view that the parts of Computer and Computer peripherals are exempted from payment of TOT/RST by a dealer under Section-68 of the Act. Though Section 21 of the Act confers suomoto powers on the Joint Commissioner, on his own motion to call for and examine the record of any order passed of proceeding recorded under the provisions of the Act by any officer not above the rank of a Deputy Commissioner, for the purpose of satisfying himself as to the legality or propriety of such order or as to the regularity of such proceeding in so far as it is prejudicial to the interests of the revenue and pass such order with respect thereto as he thinks fit, no steps have been taken by the Joint Commissioner to revise the Order of assessment made by the Assessing Authorities. Further, though Sub-section (2) of 22-A of the Act confers power on the Commissioner, on his own motion to call for and

examine the record of any proceeding under this Act, and if he considers that any order passed therein by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment or directing a fresh assessment, such revisional power has not been exercised by him. Instead he proceeded to give instructions/directions in the purported exercise of power conferred on him under Sub-section (1) of Section 3-A of the Act to all the Assessing Authorities, Joint Commissioners, Inspecting Authorities, etc., to proceed to make the assessment/re-assessment on the ground that the parts of Computer and Computer peripherals are not exempted from payment of TOT/RST by a dealer under Section 6-B of the Act. When a suomoto revisional power is reserved on the Commissioner, instead of exercising that power he abdicates that power and directs the Assessing Authorities to make an order of reassessment in the way he intends them to do. In other words, by giving instructions/ directions in instructions Circular Annexure-D, he interferes with the discretion conferred on the Assessing Authorities in the matter of making an order of assessment or re-assessment. Order of reassessment cannot be made by an assessing authority under Section 12-A of the Act unless the Assessing Authority is satisfied that the exemption has been wrongly granted. As noticed by me earlier, it is for the Assessing Authority to apply its mind and to satisfy itself as to whether exemption has been wrongly granted to all the assessees who sought exemption including the appellants. The sequence of events in the present case disclose that the Assessing Authorities, who had granted the exemption, proceeded to issue proposition notices under Section 12-A of the Act only in the light of instructions given in Circular Annexure-D. Merely because, there is no reference in Circular Annexure-D and in the proposition notices issued to the assessees or in the orders of reassessment made, to the instructions given in Circular Annexure-D, it is not possible to take the view that the Assessing Authorities have not acted on account of the dictation of the Commissioner given to them in Circular Annexure-D. Therefore, I am of the

view that the proposition notices issued to the assessees and the subsequent order or assessment made against the assessees are liable to be quashed on the short ground that they were compelled to initiate the proceedings under Section 12-A of the Act and pass orders of reassessment on account of dictation of the Commissioner given as per his instructions Circular Annexure-D. Accordingly Question No. 2 is answered.

Regarding Question 3:

The substantial question that has arisen for consideration in this appeal is, whether the parts of Computer and Computer peripherals are exempted from levy of TOT/RST under Section 6-B of the Act? Before I proceed to consider the said question, it is desirable to refer to Sl. No. 20 of Part 'C of second schedule of the Act as it stood prior to the amendment made by means of Act No. 3 of 1998 with effect from 1st April 1998 and also after the amendment; and also the relevant portion of three exemption Notifications Annexure-E, F and G

18. Sl. No. 20 of Part 'C' of second schedule of the Act, before the amendment read as hereunder:

20. (i) Computers, micro-computers, micro processors, computer peripherals and parts and accessories thereof.

(ii) Computer stationery.

19. Subsequent to the amendment, Sl. No. 20 of Part 'C' of the second schedule, read as follows:

20. (i) Computers of all kinds namely-

mainframe, mini, personal, micro computers and the like and their parts (ii) Peripherals, that is to say.-

(a) all kinds of printers and their parts, namely:-

Dot matrix, ink jet, laser, line, line matrix and the like

(b) Terminals, scanners, multimedia kits, plotters, modem and their parts

(iii) Computer consumables namely.-

stationery, floppy disks, CD ROMs, DAT tapes, printer ribbons, printer cartridges and cartridge tapes

(iv) Computer Cleaning Kit

(v) Computer Software

Notification Annexure-E, reads as follows:

In exercise of the powers conferred by Section 8-A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby exempts with immediate effect, the turnover tax payable under Section 6-B of the said Act on the turnover relating to the following, namely:-

1. Computer, computer peripherals, computer consumables and computer cleaning kit falling under Sl. No. 20 of Part 'C' of the Second schedule.

2. xxx xxx

Notification Annexure-F, reads as follows:

In exercise of the powers conferred by Section 8-A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby exempts with effect from the First day of April 2001, the turnover tax payable by a dealer under Section 6-B of the said Act on the turnover relating to the following goods, namely.-

1 to 8 xxx xxx

9. Computers, computer peripherals, computer consumables and computer cleaning kits falling under serial number 20 of Part 'C' of Second Schedule.

Notification Annexure-G, reads as follows:

In exercise of the powers conferred by Section 8-A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby exempts with effect from the First day of April 2002, the resale tax payable by a dealer under Section 6-B of the said Act on the turnovers relating to the following goods, namely.-

1 to 9. xxx xxx xxx

10. Computers, computer peripherals, computer consumables and computer cleaning kits falling under Serial No. 20 of Part 'C' of second schedule.

20. On a careful consideration of the rival contentions very elaborately and effectively put forward by the learned Counsel for the assessees and by the learned Advocate General and also the decisions cited by them referred to by me earlier, while I find considerable force in the contention of the learned Counsel appearing for the assessees that the parts of Computer and Computer peripherals are exempted from payment of TOT/RST by a dealer under Section 6-B of the Act, 1 am unable to accede to the submission of the learned Advocate General that they are not exempted from payment of tax, for the reasons more than one. Firstly, I am of the view that the definition of Computers and peripherals within its fold, by means of a legal fiction, embraces parts of Computer and Computer peripherals. Part 'C of the Second Schedule of the Act sets out various items of goods in respect of which single point tax is leviable on the first or earliest of successive dealers in the State under Section 5(3)(a) of the Act. The Schedule has been further bifurcated to several parts. Under SI. No. 20 of Part 'C1 of second schedule of the Act, computer peripherals, computer cleaning kits, computer software are the items provided in respect of which tax is leviable under Section 5(3) of the Act. In otherwords, the legislature intends to levy sales-tax under Section 5(3) of the Act in respect of various types of Computers and Computer peripherals, computer consumables, computer cleaning kits and computer software. Section 6-B of the Act provides for levy of resale tax on every registered dealer and every dealer who is liable to get himself registered under Sub-sections (1) and (2) of Section 10. Sl. No. 20(i) refers to various types of computers in respect of which tax is leviable. After the words 'Computer of all kinds' the word 'namely' is used, setting out the

various types of computers like mainframe, mini, personal, micro computers and the like. The words 'and the like' is indicative of the fact that various types of computers similar to mainframe, mini, personal and micro-computers. There cannot be any dispute on this position. Immediately after the description of various types of computers, the words 'and the like' and the words 'and their parts' are referred to. The question is, the words 'and their parts' following the words 'and the like' are to be read conjunctively as contended by the learned Counsel for the assesses, or distinctively as contended by the learned Advocate General and they should be excluded from the definition of Computer? In my view, it is not possible to read the words 'and their parts' distinctively as it follows the words 'and the like'. It is necessary to point out that the items mentioned in Sl. No. 20 are made liable for sales tax under Section 5(3) of the Act. Under these circumstances, if the legislature intended to notify various types of computers specifically referred to in Sl. No. 20 of Part 'C of second schedule of the Act, and also the types of computers which are similar to the various types of computers referred to in Sl. No. 20(i) of Part 'C' of second schedule and in addition to that if the legislature intended that its parts also should be read as computer, it is reasonable to take the view, by legal fiction, the legislature, for the purpose of levy of tax under the Act, wanted parts of computers also to be treated as computers. It cannot be denied, computer is produced by assembling various parts or configuration. Therefore, for the purpose of levy of tax, if the legislature, by means of legal fiction or definition, intended to treat the parts of computers as computers, we do not find anything wrong in that. In the context the words, 'and their parts' occurring immediately after specific reference to 'main frame, mini, personal, micro computers and the like' should be understood that the parts of computers are also treated as computers by legislative intendment. In Webster's Encyclopaedic Unabridged Dictionary of the English Language, the word 'namely' has been stated as 'that is to say, explicitly, specifically, to wit: an item of legislation, namely certain bill; In World Book Dictionary, the word 'namely' has been stated as 'that is to say, to wit'. Therefore, the word 'namely' ordinarily imports of what is comprised in the preceding clause; and it ordinarily serves of equating what follows with the clause described before. In the case of Bhola Prasad v. Emperor AIR 1942 FC 17 referred to by the Supreme Court in the case of Bombay Education Society

(Supra), the words 'that is to say' have been described as 'explanatory or illustrative words and not words either of amplification or limitation'. In the case of Bombay Education Society (Supra), the Supreme Court while considering what is the meaning that is required to be given to the word 'namely' employed in the circular issued by the State of Bombay directing that no primary or secondary school shall, from the date of the order, admit to a class where English is used as a medium of instruction any pupil other than a pupil belonging to a section of citizens the language of which is English wherein it is explained by stating 'namely', Anglo-Indians and citizens of non-Asiatic descent, has observed that ordinarily the word 'namely' imports enumeration of what is comprised in the preceding clause and it ordinarily serves the purpose of equating what follows with the clause described before. Further, the word 'namely' has also been explained in the said decision and also in the Oxford English Dictionary as 'that is to say'. In this connection, it is useful to refer to the observation made by the Court at paragraph 12 of the judgment, which reads as hereunder:

12. Re(1) : As already indicated Barnes High School is a recognized Anglo-Indian School which has all along been imparting education through the medium of English. It receives aid out of State funds. The daughter of Major Pinto and the son of Dr. Gujar are citizens of India and they claim admission to Barnes High School in exercise of the fundamental right said to have been guaranteed to them by Article 29(2) of the Constitution. The School has declined to admit either of them in view of the circular order of the State of Bombay. The provisions of the circular order, issued by the State of Bombay on the 6th January, 1954, have already been summarised above.

The operative portion of the Order, set forth in Clause 5 thereof, clearly forbids all Primary or Secondary Schools, where English is used as a medium of instruction, to admit to any class any pupil other than a pupil belonging to a section of citizens, the language of which is English namely Anglo-Indians and citizens of non-Asiatic descent. The learned Attorney-General contends that this clause does not limit admission only to Anglo-Indians and citizens of non-Asiatic descent, but permits admission of pupils belonging to any other section of citizens the language of which is English.

He points out that one of the meaning of the word 'namely' as given in Oxford English Dictionary, Volume VIIIp. 16 is 'that is to say' and lie then refers us to the decision of the Federal Court in - 'Bhola Prasad v. Emperor', AIR 1942 FC 17 at p. 20 (A), where it was stated that the words 'that is to say' were explanatory or illustrative words and not words either of amplification or limitation. It should, however, be remembered that those observations were made in connection with one of the Legislative heads, namely entry No. 31 of the Provincial Legislative List. The fundamental proposition enunciated in - 'The Queen v. Burah', (1878) 3 AC 889 (B) was that Indian Legislatures within their own sphere had plenary powers of legislation as large and of same nature as those of Parliament itself.

In that view of the matter every entry in the legislative list had to be given the widest connotation and it was in that context that the words 'that is to say', relied upon by the learned Attorney-General, were interpreted in that way by the Federal Court. To do otherwise would have been to cut down the generality of the legislative head itself. The same reason cannot apply to the construction of the Government Order in the present case for the considerations that applied in the case before the Federal Court have no application here. Ordinarily the word 'namely' imports enumeration of what is comprised in the preceding clause. In other words it ordinarily serves the purpose of equating what follows with the clause described before.

There is good deal of force, therefore, in the argument that the order restricts admission only to Anglo-Indians and citizens of non-Asiatic descent whose language in English. This interpretation finds support from the decision mentioned in Clause 4 to withdraw all special and interim concessions in respect of admission to Schools referred to in Clause 4. Facilities to linguistic minorities provided for in the circular order, therefore, may be read as contemplating facilities to be given only to the Anglo-Indians and citizens of non-Asiatic descent.

(emphasis supplied)

21. Further, the Supreme Court in the case of P. L. MALHOTRA (SUPRA) after referring to the definition given in Stroud's Judicial Dictionary 4th edition Volume 5, has observed that the words 'that is to say' is employed and to make clear and fix

the meaning of what is to be explained or defined; and such words are not used, as a rule, to amplify a meaning while removing a possible doubt for which purpose the word 'includes' is generally employed. It is useful to refer to the observation made at paragraph 7 of the judgment, which reads as hereunder:

7. What we have inferred above also appears to us to he the significance and effect of the use of words 'that is to say' in accordance with their normal connotation and effect. Thus, in Stand's Judicial Dictionary, 4th Edn. Vol. 5, at page 2753 we find:

That is to say.- (1) 'That is to say' is the commencement of an ancillary clause which explains the meaning of the principal clause. It has the following properties:

(1) it must not be contrary to the principal clause;

(2) it must neither increase nor dimes it; (3) but where the principal clause is general in terms it may restrict it; see this explained with many examples, Stukeley v. Butler Bob, 1971.

The quotation, given above, from STroud's Judicial Dictionary shows that, ordinarily, the expression 'that is to say' is employed to make clear and fix the meaning of what is to be explained or defined. Such words are not used, as a rule, to amplify a meaning while removing a possible doubt for which purpose the word 'includes' is generally employed. In unusual cases, depending upon the context of the words 'that is to say', this expression may be followed by illustrative instances. In Megh Raj v. Allah Rakha, the words 'that is to say', with reference to a general category 'land' were held to introduce 'the most general concept' when followed, inter alia, by the words 'right in or over land'. We think that the precise meaning of the word 'that is to say' must vary with the context. Where, as in Megh Raj's case (supra), the amplitude of legislative power to enact provisions with regard to 'land' and rights over it was meant to be indicated, the expression was given a wide scope because it came after the word 'land' and then followed 'rights over land as an explanation of 'land'. Both were wide classes. The object of using them for subject-matter of legislation, was obviously, to lay down a wide power to legislate. But, in the context of single point sales tax, subject to special conditions when

imposed on separate categories of specified goods, the expression was apparently meant to exhaustively enumerate the kinds of goods in a given list. The purpose of an enumeration in a statute dealing with sales tax at a single point in a series of sales would, very naturally, be to indicate the types of goods each of which would constitute a separate class for a series of sales. Otherwise, the listing itself loses all meaning and would be without any purpose behind it..

22. Therefore, I have no hesitation to take the view that the parts of computers, by legal fiction, are treated as computers under Sl. No. 20(i) of Part 'C' of the second schedule of the Act.

23. Now, the next question is, whether the same thing can be said even in respect of parts of peripherals? 'Peripherals' have been bifurcated into two parts. Clause (a) and Clause (b). After the word 'peripheral' the words 'that is to say' follows. Under Clause (a) it is stated, 'all kinds of printers and their parts namely, dot-matrix, ink jet, laser, line, line matrix and the like'. From the reading of Clause (a) of Sl. No. 20(ii) of Part 'C' of second schedule of the Act, it does not give scope for any doubt that 'peripherals' means all kinds of printers and their parts. This is clear from the words 'that is to say'. The words 'that is to say' explains what is meant by peripherals and in that under Clause (a) all kinds of printers and its parts are treated as peripherals. Further, reference also is made to various types of printers. Similar is the position under Clause (b) of Sl. No. 20(ii) of Part 'C' of second schedule of the Act. Terminals, scanners, multimedia kits, plotters, modem and their parts are treated as peripherals. It is because the words 'that is to say' refers to various types of peripherals referred to under Clause (b) of Sl. No. 20(ii) of Part 'C of the second schedule which includes their parts. The words 'and their parts' following specific types of peripherals following the words 'that is to say', in my considered view, does not give scope to doubt the contention of the learned Counsel for the assessees that the parts of peripherals are also, by legal fiction, made as peripherals under Sl. No. 20(ii) of Part 'C' of the second schedule of the Act. Further, the object of providing what is meant by 'computer' and what is meant by 'peripheral', by virtue of definition provided in Sl. No. 20 of Part 'C' of second schedule of the Act appears to me, of two fold. First, to bring all the items referred to by specification within the tax-net, and second, to make it clear that the items

other than the one referred to therein are not within the taxnet, in part 'C' of the second schedule. It is necessary to point out that the rate of tax levied varies from goods to goods as set out in detail on various parts of the second schedule. Further, it is also necessary to point out that there is no 'semi-colon' or 'comma' in between the words 'and the like' and 'and their parts' in Sl. No. 20 of Part 'C' of second schedule of the Act or in between the words 'all kinds of printers' and 'and their parts' and also in between the words 'terminals, scanners, multimedia kits, plotters, modem' and 'and their parts' as set out in Sl. No. 20 of Part 'C' of second schedule of the Act. Normally, when two phrases or words are separated by a semicolon or a comma, they are required to be read distinctively unless the context otherwise compels reading of them conjointly. As noticed by me earlier, the reading of words 'and their parts' or the words 'and the like jointly, with reference to computers or peripherals, does not lead to any absurd consequences or coining of the sentences if they are read conjointly. From the language employed and the phrase coined, I am of the view that the words 'and the parts' employed with reference to computer and computer peripherals, has to be read conjointly with the words preceding the words 'and their parts' and if so read, there cannot be any doubt that the parts of Computers and Computer peripherals are also required to be treated as computer and computer peripherals and other items mentioned in Sl. No. 20 of Part 'C' of the second schedule of the Act. Therefore, if the parts of Computer and Computer peripherals are treated as computers and computer peripherals, there cannot be any doubt that the parts of Computer and Computer peripherals are also exempted from levy of TOT/RST. Now, the other question is, even if the parts of Computer and Computer peripherals are not to be treated as Computers and Computer peripherals, whether in the light of the language employed in the exemption Notifications Annexure-E, F and G, parts of Computer and Computer peripherals are also exempted from levy of TOT/RST under Section 6-B of the Act? The reading of exemption Notifications Annexure-E, F and G, in the context, make it clear that it intended to give exemption to all the items of computers and their peripherals and their parts. This is clear from the fact that the Notification Annexure-E grants exemption to computers, computer peripherals, computer consumables and computer cleaning kits falling under Sl. No. 20 of Part 'C' of second schedule. Same is the language employed in

Notifications Annexure-F and G In the context, it should be understood that the exemption notifications intend to exempt all the items referred to in Sl. No. 20 of Part 'C' of second schedule and if the intention was not to grant exemption for all the items referred to in Sl. No. 20 of Part 'C of second schedule of the Act, in the exemption notification referred to above, the language would not have been to the effect that 'falling under Sl. No. 20 of Part 'C' of the second schedule.' The words 'falling under Sl. No. 20 of Part 'C' of the second schedule' make it clear that all the items referred to in Sl. No. 20 of Part 'C of the second schedule are exempted from levy of TOT/RST. Sl. No. 20 of Part 'C' of the second schedule while comprises of 5 main headings, it also comprises of many sub-items. If the Government intended to exclude parts of Computer and Computer peripherals, the same would have been made clear by stating Computers and Computer peripherals falling under Sl. No. 20 of Part 'C' of the second schedule, excluding parts of Computer and Computer peripherals. Therefore, the legislative incorporation, in my view, can be conveniently applied to the exemption Notifications by bringing within its fold all the items of computers, computer peripherals, computer consumables, computer cleaning kits and computer software and their parts. In this connection, it is useful to refer to Section 20 of the Karnataka State General Clauses Act, 1899, which reads as hereunder:

20. Construction of notifications, etc., issued under enactments.- Where, by any enactment, a power to issue any notification, order, scheme, rule form, or bye-law is conferred, then expressions used in the notification, order, scheme, rule, form or bye-law, if it is made after the commencement of this Act, shall unless there is anything repugnant in the subject or context, have the same respective meanings as in the enactment conferring the power.

24. From the reading of Section 20 of the General Clauses Act, it is clear that where by any Act or Regulation a power to issue any notification, order, scheme, rule, form or bye-law is conferred then the expressions used shall, unless there is anything repugnant to the subject or context has the same respective meaning as in the Act or Regulation conferring the power. Therefore, since the exemption notifications Annexure-E, F and G have been issued from time to time by the State in exercise of the power conferred on it under Section 8-A of the Act, the items

mentioned in the exemption Notifications, must be understood and read with reference to the items mentioned in Sl. No. 20 of Part 'C of second schedule of the Act. There is nothing in the context that compels any one to read it differently. Therefore, looked at from any angle, I am of the considered view that the exemption Notifications Annexure-E, F and G, exempts levy of TOT/RST on parts of Computer and Computer peripherals under Section 6-B of the Act. In this connection, it is useful to refer to the decision of the Supreme Court in the case of Krishi Utpadan Mandisamiti, Kanpur (Supra) wherein the question that came up for consideration before the Supreme Court was whether legume, whole grain, when notified as 'specified agricultural produce' within the meaning of the expression of Section 2(t) of the U.P. Krishi Utpadan Mandi Adhiniyam Act, 1964 would also comprehend its split folds of parts, commercially called 'dal' so as to enable the Market Committee to levy market fee under Section 17 of the Mandi Adhiniyam Act on the transaction of sale of 'dal' of legumes specified in the Schedule to the mandi Adhiniyam Act. The Court, on consideration of the definition of 'agriculture produce', took the view that it would mean not only those items of produce of agriculture as specified in the schedule, but will also include the admixture of two or more of such items as also may such item in its processed form. It is useful to refer to the observation made in the course of judgment at page 30, which reads as hereunder:. Analysing the definition of the expression 'agricultural produce ', it would mean not only those items of produce of agriculture as are specified in the Schedule, but will also include the admixture of two or more of such items as also any such item in its process form. Let us rewrite the definition by substituting one of the items in the Schedule to make explicit what is implicit therein. 'Agricultural produce' means a produce of agriculture such as gram as specified in the Schedule and would also include gram in its processed form. Therefore, not only gram is an agricultural produce but gram in its processed form is equally an agricultural produce. When it is said in the definition 'such items of produce of agriculture as are specified in the Schedule' it means that not only all those items of agricultural produce which are set out in the Schedule will constitute agricultural produce but also the admixture of two or more such items of produce of agriculture as set out in the Schedule as well as any such items of agricultural produce in the processed form. Suppose a producer sells neither gram nor peas each by itself but

mixes gram and peas, according to the contention canvassed on behalf of the Respondents, this mixture would be not an agricultural produce. The contention can be negatived by referring to the definition which says agricultural produce means such items of produce of agriculture (omitting the words which are not necessary for the present purpose) as are specified in the Schedule such as gram or peas as also Admixture of two or more of such items, i.e., admixture of gram and peas. A further step can be taken as flowing from the definition itself. Agricultural produce means such items of agricultural produce, namely, gram as specified in the Schedule and it shall include any such items, i.e., gram in its processed form. Even the respondents did not contend, on the contrary it was the sheet anchor of their submission, i.e. split legume is obtained by a manufacturing process of whole grain of legumes, 'saboot', as it is now described, and that dal, i.e. the whole grain split into two folds is its processed form acquired by manufacturing process. Even on their own submission dal of legume enumerated in the Schedule is an agricultural produce.

25. In the case of Prestige Engineering (India) Ltd. (Supra) the question that came up for consideration before the Supreme Court was, as to what is the true meaning and purport of Notification issued by the Central Government under Rule 8(1) of the Central Excise Rules, 1944 which exempted goods falling under item 68 of the first schedule to the Central Excises and Salt Act, 1944 manufactured in a factory as a job work from exemption duty of excise leviable thereon as is in excess of the duty calculated on the basis of the amount charged for the job work. While considering the said question, after referring to cleavage of opinion expressed by various High Courts and various benches of Customs, Excise and Gold Appellate Tribunal, the Supreme Court held that once an expression is defined in the Act, that expression wherever it occurs in the Act, Rules or Notifications issued thereunder should be understood in the same sense. The observation made by the Supreme Court at paragraph 16 of the judgment, which reads as hereunder:

16. in our opinion, while the Calcutta and Gujarat High Courts have by and large understood the Notification correctly, their reasoning is vitiated by their omission to understand the expression 'manufacture' in the sense it is defined in the heart. Both the High Courts have understood the expression 'manufacture' in its ordinary

/ normal sense (as pointed out by this Court in Delhi Cloth and General Mills Limited). Indeed, they have not even referred to the definition in Section 2(f) of the Act. Once an expression is defined in the Act, that expression wherever it occurs in the Act, Rules or Notifications issued thereunder, should be understood in the same sense. Indubitably, the definition of 'manufacture' in Section 2(f) endows a wider content to the expression; several processes which would not ordinarily be understood as amounting to manufacturing or specifically included within its ambit. Clauses (i) and (ii) of the definition make this aspect clear beyond any doubt. In this connection, it must be remembered that even the unamended definition of 'manufacture' included within the ambit of the definition several processes and activities which would not otherwise have amounted to manufacture. The unamended definition contended as many as eight Sub-clauses. Sub-clause (iv), for example, stated that in relation to goods comprised in Item No. 18-A of the First Schedule, the expression 'manufacture' includes sizing, beaming, warping, wrapping, winding and reeling or any one or more of these processes are the conversion of any form or the said goods into another forms of such goods. (Item 18-A of the First Schedule pertained to 'cotton yarn-all sorts ').

26. In the case of Steel Authority of India Ltd. (supra) the Supreme Court took the view, while considering the question as to what is the meaning that is required to be given to the exemption notification issued under Rule 8(1) of the Central Excise Rules 1944 by the Central Government exempting levy of excise duty in respect of 'tar' falling under item 11 (5) of the first schedule to the Central Excise and Salt Act, 1944, that the meaning of 'tar1 has to be gathered from the tariff description given in Clause 5 of Tariff Item No. 11, and therefore, 'tar' will include everything which has been included in the extended definition. It is useful to refer to the observation made at paragraph 4 of the judgment, which reads as hereunder:

4. The Exemption Notification exempts 'tar' falling under Item 11 of the First Schedule to the Central Excises and Salt Act, 1944. The meaning of 'tar' has to be gathered from the tariff description given in Clause 5 of Tariff item No. 11. An inclusive definition has been given to 'tar' which includes 'partially distilled tars and blends of pitch will creosote oils or with other coal tar distillation products'. Therefore, 'tar' will include everything which has been included in the extended

definition. Having regard to the wording of the Notification and wording of the tariff item No. 11, we have no doubt that the product of the assessee (PCM) qualifies for the benefit of the Exemption Notification.

27. From the principle enunciated by the Supreme Court in the decisions referred to above, it is clear that the language employed in the exemption Notifications and items in respect of which exemption has been given, has to be understood in the context in which exemption Notifications' came to be issued. No doubt, it is the submission of the learned Advocate General that the exemption Notifications have to be strictly construed. While it is true that the exemption Notification has to be strictly construed, if there is any doubt that if the language employed in exemption Notification admits of two views and is not clear and ambiguous, in my view, the view, which is beneficial to the assessee, will have to be taken. In my view, I am also supported by the decision of the Supreme Court in the case of Poulose and Mathen v. Collector of Central Excise : 1997(90)ELT264(SC) , wherein the Supreme Court has taken the view that where two opinions are possible, the assessee should be given the benefit of doubt and that opinion which is in his favour should be given effect to. It is useful to refer to the observation made at paragraph 15 of the judgment, which reads as hereunder:

One aspect deserves to be noticed in this context. The earlier tariff advice No. 83/81 on the basis of which trade notice No. 220/81 was issued by the Co/lector of Central Excise and Customs is binding on the department. It should be given effect to. There is no material record to show that this has been rescinded or departed from, and even so, to what extent. Even assuming that the later tariff advice No. 6/85 has taken a different view - about which there is no positive material - the facts point out that the concerned department itself was having considerable doubts about the matter. The position was not free from doubt. It was far from clear. In such a case, where two opinions are possible, the assesses should be given the benefit of doubt and that opinion which is in its favour should be given effect to.

28. Further, in the instant case, as noticed by me earlier, the computers, computer peripherals, computer consumables, computer cleaning kits and computer

software, are exempted from levy of TOT/ RST. Under these circumstances, even assuming for the sake of argument that the exemption Notifications do not clearly specify as to whether they are exempted from TOT/RST, it is not possible to take the view, in the background in which exemption Notifications came to be issued, that the State would have picked up only computer parts and parts of computer peripherals for levy of tax. Obviously the intention of the State in granting exemption is to promote Information Technology Industry in the State by attracting large number of investors into the State and setting up of Information Technology industries and provide job opportunities to large number of youth. When that being the object of exemption Notifications issued under Section 8-A of the Act and various items referred to in Sl. No. 20 of Part 'C of the second schedule, have been granted exemption, even if it is assumed that the things are not made clear in the exemption Notifications, it is fair and reasonable to place the construction which is beneficial to the assessee by exempting levy of tax on parts of Computer and Computer peripherals. It is also necessary to point out that though the understanding of the Assessing Authorities is not conclusive or final, in the instant case all the Assessing Authorities excepting the one, have taken the view ever since the year 1997-98 that the parts of Computer and Computer peripherals are exempted from levy of tax. Further, the revisional authorities also have not exercised the suomoto power conferred on them under Section 21 and 22-A(2) of the Act thereby impliedly approving the decisions of the Assessing Authorities. All these indicate that the Assessing/Revisional Authorities and the Commissioner, till the objection was raised by the Deputy Accountant General, have understood that the exemption Notifications as exempting parts of Computer and Computer peripherals from levy of TOT/RST under Section 6-B of the Act. The Commissioner also, in his Circular Annexure-H, has clarified that the parts of Computer and Computer peripherals are exempted from levy of TOT/RST under Section 6-B of the Act. The contemporaneous interpretation placed by the Assessing Authorities and also the clarification issued by the Commissioner supports the view taken by me that the parts of Computer and Computer peripherals are exempted from levy of TOT/ RST. It is not in dispute that it is only after the objections raised by the Deputy Accountant General, the matter was re-examined and the Clarification Annexure-H came to be withdrawn by means of

circular Annexure-J and Circular Annexure-D came to be issued. Therefore, I am of the view that it is fair and reasonable to take the view that the said items are exempted from tax, especially in the background that almost all the assessing authorities in the State excepting one, from the year 1997-98 have taken the view that till the issue of Circular Annexure-D, the parts of Computer and Computer peripherals were exempted from levy of TOT/RST under Section 6-B of the Act. The Supreme Court in the case of K.P. Varghese v. Income Tax Officer, Ernakulam and Anr. : [1981]131ITR597(SC) , while considering the binding nature on the circulars issued by the Central Board of Direct Taxes on the department, has also observed that the Rule of construction by reference to contemporanea expositio is well established rule on interpreting statute by reference to exposition it has received from contemporary authorities, though it must give way where a language of the statute is plain and unambiguous. It is useful to refer to the observation made by the Court, which reads as hereunder:

These two circulars of the CBDT are, as we shall presently point out, binding on the tax department in administering or executing the provision enacted in Sub-section (2), but quite apart from their binding character, they are clearly in the nature of contemporanea expositio furnishing legitimate aid in the construction of Sub-section (2). The rule of construction by reference to contemporanea expositio is a well-established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. This rule has been succinctly and felicitously expressed in Crawford on Statutory Construction, 1940 Edn., where it is stated in paragraph 219 that 'administrative construction (i.e., contemporaneous construction placed by administrative or executive officers charged with executing a statute generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although non-controlling, is nevertheless entitled to considerable weight, it is highly persuasive. ' The validity of this rule was also recognized in Baleshwar Bagarti v. Bhagirathi Dass (1908) 1LR 35 Cal 701, 713, where Mookerjee J. stated the rule in these terms:

It is a well-settled principle of interpretation that Courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it.And this statement of the rule was quoted with approval by this Court in Deshbandhu Gupta and Co. v. Delhi Stock Exchange Association Ltd. : [1979]3SCR373 . It is clear from these two circulars that the CBDT, which is the highest authority entrusted with the execution of the provisions of the Act, understood sub-section (2) as limited to cases where the consideration for the transfer has been understated by the assessee and this must be regarded as a strong circumstances supporting the construction which we are placing on that sub-section.

29. Further, in the case of Bangalore Wood Industries (Supra) the division bench of this Court, after referring to the observation made by the Supreme Court in the case of K.P. Varghese, has observed that 'the understanding of law at the earliest point of time of its enactment cannot be ignored. ' What applies to the statute, in my view, must be applied to the contents of the circular also.

30. Therefore, in the light of the discussion made above, I am of the considered view that the parts of Computer and Computer peripherals are exempted from levy of TOT/RST under Section 6-B of the Act. Accordingly question No. 3 is anwered.

Regarding Question 4:

The undisputed facts disclose that the Commissioner, by means of his Clarification Annexure-H clarified that the parts of Computer and Computer peripherals are exempted from payment of TOT/RST by a dealer under Section 6-B of the Act. However, the said clarification came to be withdrawn by means of circular Annexure-J. It is well-settled that when an authority has the power to issue circular or notification, the said authority has the power to withdraw the said notification or circular. This is also clear from Section 21 of the Karnataka General Clauses Act. The clarification was sought by the 4th Appellant by means of its application dated 26th November 2004. Therefore, the order of assessment by various Assessing Authorities were not made in the light of the clarification issued by the Commissioner in his circular Annexure-H. The Supreme Court in the case of Associated Mechanical Industries (Supra), relied upon by the learned Advocate

General, also has taken the view that an authority which has the power to issue a circular has the power to withdraw the same. It is useful to refer to the observations made at paragraph 37 of the Judgment, which reads as follows:

37. The power to issue a direction comprehends in itself the power to withdraw the same. In that view, it was open to the commissioner to withdraw all the earlier directions issued by him and direct his subordinates to decide each matter on its own merits. We are not concerned with the soundness and aptness of the decision taken by the Commissioner for withdrawing all his earlier directions and circulars issued by him. In S.N. Gondakar v. Commissioner of Commercial Taxes in Karnataka, Bangalore (1983) 54 STC 190 a Division Bench of this Court has recognised that such withdrawal made by the Commissioner was valid. We are bound by that decision. Even otherwise, we do not see any justification to hold that the same requires reconsideration....

31. Therefore, I do not find any merit in the submission made by some of the learned Counsel appearing for the assessees in the connected matters that the Commissioner had no authority in law to withdraw the Clarification Annexure-H issued by him, by means of Circular Annexure-J. According question No. 4 is answered.

Regarding Question No. 5

The only question that remains to be adverted to is, even if it is held that the parts of Computer and Computer peripherals are not included in the exemption Notifications, in view of clarification Annexure-H, whether the Department is bound to give the benefit of exemption to the assessees? No doubt, it is the contention of the Counsel for the assessees that in view of the Clarification Annexure-H issued by the Commissioner taking the view that the parts of Computer and Computer peripherals are exempted from levy of TOT/RST payable by a dealer under Section 6-B of the Act, said clarification is binding on all the Assessing Authorities and the department heads, till the said clarification is withdrawn by means of circular Annexure-J. In my considered view, since the Clarification Annexure-H came to be withdrawn within eight days i.e., on 23rd December 2004 from the date of issue of earlier clarification Annexure-H, it is not permissible for the assessees

to rely upon the Circular Annexure-H to contend that the said clarification is binding on the department, except in respect of assessments, if any, that were made during the period between 15th December 2004 and 23rd December 2004. The Assessing Authorities who granted exemptions while making the order of assessment granting exemption did not have the benefit of Clarification Annexure-H. In our view, the decision of the Supreme Court in the case of Navnit Lal (Supra), Dhiren Chemical Industries (Supra), and Maruti Foam (Supra) relied upon by the Counsel for the assessees, have no application to the facts of the present case. While it is true that the Supreme Court in the decisions referred to above has taken the view that the circulars issued, in exercise of the statutory powers conferred by the Central Board of Direct Taxes, in respect of the taxes levied under the Income Tax Act and the Circular issued by the Central Board of Excise, Customs, are binding on the respective departments, it has further laid down that it would be binding so long as the circulars are in operation. This is clear from the observation made by the Supreme Court in the case of INDIAN OIL CORPORATION (SUPRA) wherein it is stated that 'when a circular remains in operation, the Revenue is bound by it'. Therefore, the binding effect of the said circular, would be, so long as it is in operation and it holds the field. Therefore, the Commissioner who has issued the clarification, if he realises the mistake committed by him in issuing the clarification and withdraws die clarification, in my considered view, the binding effect of the clarification should be held as having been wiped out. Otherwise, if the clarification issued by the Commissioner, notwithstanding the fact it is withdrawn within a short time from the date of issue of clarification is to bind the department, it would have a serious adverse effect on the revenue of the State. In the instant case, as noticed by me earlier, the Clarification Annexure-H was withdrawn on 23rd December 2004 by means of circular Annexure-J. Therefore, the said clarification was in operation only for a period of 7 days. Therefore, the clarification would be binding on the department only for a period of 7 days and it cannot be held binding on the department in respect of the assessments already made prior to the issue of Circular Annexure-H. Further, it is necessary to point out that if the Assessing Authorities have made a mistake and wrongly granted exemption, Section 12-A of the Act confers power on them to reopen the assessments and proceed to make fresh orders of

assessment. When the law reserves the power to the Assessing Authorities under Section 12-A of the Act to reopen the assessments with regard to the wrong exemption granted, it is not permissible for the assessees to contend that the State is bound by the order of assessment made by large number of Assessing Authorities granting exemption and under those circumstances it must be held that the clarification made by the Commissioner binds the departments. In my view, none of the decisions relied upon by the Counsel for the assessees, referred to above, is applicable to the facts of the present case as in those cases the Court proceeded on the basis that the clarification/circular issued, were in operation and were not withdrawn and it was not the case that the clarifications were there only for a short period of about 7 days. Therefore, in facts and circumstances of the present case, I am unable to accede to the submission of learned Counsel for the assessees that the Clarification Annexure-H issued by the Commissioner, must be held to bind the department till it was withdrawn by means of circular Annexure-J. Accordingly Question No. 5 is answered.

32. In the light of the discussion made above, I make the following:

ORDER

1. Order dated 10th February 2005 made in writ petition Nos.5158-61 of 2005 is hereby set aside;

2. It is hereby declared that the dealers are not liable to pay TOT/RST on the parts of Computer and Computer peripherals, as they are exempted by virtue of Notifications Annexure-E dated 18th July 2000; Annexure-F dated 31st March 2001 and Annexure-G dated 30'' March 2002.

3. The proposition Notices Annexures-A, B and C dated 25th January 2005,18th January 2005 and 6th January 2005 issued to the appellants 1 to 3 respectively and orders of reassessment Annexure-K and L dated 11th February 2005, and Annexure-M and N dated 5th February 2005 in respect of appellants 1 and 2 respectively are hereby quashed.

4. The Circular Annexure-D dated 31st December 2004 also is hereby quashed.

In terms stated above this appeal is allowed and disposed of. However, no order is made as to costs.

H.G. Ramesh J.

1. I have gone through the judgment in draft proposed by my learned brother P. Vishwanatha Shetty J., I am in respectful agreement with the conclusion reached by my learned brother on all aspects except his view that Section 3-A of the Karnataka Sales Tax Act, 1957 ('the Act' for short) does not empower the Commissioner to issue the Circular-Annexure-D ('the Circular' for short) to the extent he has issued instructions to the authorities to bring to tax the escaped turnover consequent to his clarification referred to therein.

2. To examine the scope of the power of the Commissioner under Section 3-A of the Act, the Section requires to be noticed:

3-A. Instructions to subordinate authorities.-

(1) The State Government and the Commissioner may from time to time, issue such orders, instructions and directions to all officers and persons employed in the execution of this Act as they may deem fit for the administration of this Act, and all such officers and persons shall observe and follow such orders, instructions and directions of the State Government and the Commissioner:

Provided that no such orders, instructions, or directions shall be issued so as to interfere with the discretion of any Appellate Authority in the exercise of its appellate functions.(2) Without prejudice to the generality of the foregoing power, the Commissioner may, on his own motion or on an application by a registered dealer liable to pay tax under the Act, if he considers it necessary or expedient so to do, for the purpose of maintaining uniformity in the work of assessments and collection of revenue, clarify the rate of tax payable under this Act in respect of goods liable to tax under the Act, and all officers and persons employed in the execution of this Act shall observe and follow such clarification.

Provided that no such application shall be entertained unless it is accompanied by proof of payment of such fee, paid in such manner, as may be prescribed.

(3) All officers and persons employed in the execution of this Act, shall observe and follow such administrative instructions as may be issued to him for his guidance by the Additional Commissioner or Joint Commissioner within whose jurisdiction he performs his functions.

By the Circular, the Commissioner has clarified that parts of Computer and Computer peripherals are exigible to tax under Section 6-B and 6-C of the Act and has consequently directed the concerned authorities to bring it to tax. As could be seen from Sub-section (2) above, the Commissioner is empowered to issue such a clarification. However, if his clarification is contrary to law, it is liable to be set aside. Similarly, under Sub-section (1) referred to above, the Commissioner is empowered to issue orders, instructions and directions from time to time to all Officers and persons employed in the execution of the Act so as not to interfere with the discretion of any Appellate Authority in the exercise of its appellate functions. In exercise of the said power, he can instruct the Officers to pass appropriate orders in the light of his clarification issued under Section 3A(2) of the Act.

3. In view of the above, I am of opinion that Section 3-A confers power on the Commissioner to issue the Circular, which is produced as Annexure-D. The terms of the circular also in no way offend the proviso to Sub-section (1) of Section 3A of the Act as the directions do not interfere with the discretion of any appellate authority in the exercise of its appellate functions. Hence, issuance of the Circular cannot be said to be without authority of law.

4. If a certain turnover liable to tax was not brought to tax, it is open to the Commissioner in exercise of his power under Section 3(1) of the Act to instruct the concerned authorities (excluding the appellate authorities) to bring it to tax in accordance with the provisions of the Act.

5. It is relevant herein to state that the correctness of the clarification as to exigibility to tax of the goods referred to therein and the legality of the consequential direction to the concerned authorities to bring it to tax are altogether different aspects of the matter. In other- words, power to issue clarification/instruction and its correctness or legality are two different aspects. If

the clarification/instruction given by the Commissioner is contrary to law, it is liable to be set aside. As in this case, the clarification given in the Circular is not current in law and consequently his instruction to bring it to tax is also bad in law.

6. As stated above, on all other aspects, I am in respectful agreement with the conclusion reached by my learned brother. Accordingly, the appeal is allowed in terms stated by my learned brother.