

Centuary Ecka Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Apr-06-1987

Reported in : [1987]67STC103(Raj)

Judge : S.S. Byas and; Navin Chandra Sharma, JJ.

Appeal No. : D.B. Civil Special Appeal No. 328 of 1985

Appellant : Centuary Ecka

Respondent : The State of Rajasthan

Advocate for Def. : K.C. Bhandari, Adv.

Advocate for Pet/Ap. : Bilam Chand Mehta, Adv.

Judgement :

Navin Chandra Sharma, J.

1. The appellant, M/s. Centuary Ecka, Jodhpur, is a duly registered partnership firm under the Indian Partnership Act, 1932, having its registered office at 182, Balniketan Road, Jodhpur, and its branch office at Pali. This firm is also registered as a dealer under the provisions of the Rajasthan Sales Tax Act, 1954 (hereinafter, for short, 'the Rajasthan Act') as well as under the Central Sales Tax Act, 1956 (hereinafter, for short, 'the Central Act'). This firm is doing business in purchasing and selling of packing materials, that is, waterproof paper (bituminised

paper), the PVC bags and poly propylene bags, etc., at Jodhpur as well as at Pali. During the financial year 1978-79, the appellant-firm effected sale of waterproof paper only worth Rs. 2,32,074.50 at its head office at Jodhpur and worth Rs. 25,757.10 at its branch office at Pali and it charged sales tax from the customers at 4 per cent treating them as packing material and deposited the tax amount accordingly with the State exchequer. During the same financial year, the appellant-firm effected sales of PVC bags worth Rs. 27,353 and of poly propylene bags worth Rs. 7,999.85 at Jodhpur and further effected sale of poly propylene bags worth Rs. 15,503.61 at its branch office at Pali and charged the sales tax at the same rate of 4 per cent and deposited the tax accordingly with the Government exchequer. The Assistant Commercial Taxes Officer, Jodhpur, made assessment under Section 10(3) of the Rajasthan Act for the financial years 1978-79 and 1979-80, on February 28, 1984 and after having gone through the books of account, purchases and sales vouchers, etc., maintained by the appellant-assessee, the turnover from the sale of waterproof paper (bituminised paper), PVC bags and poly propylene bags were assessed to sales tax at 4 per cent in accordance with the rate of tax prescribed for these goods by the State Government by its Notification No. F. 2(8)FD/Gr. 1V/75-9 dated July 1, 1975. However, on the basis of an audit report, the Assistant Commercial Taxes Officer, Jodhpur, on May 27, 1985, issued a notice under Section 12 of the Rajasthan Act fixing date of hearing as June 13, 1985, and stating that the turnover from the sale of waterproof paper, PVC bags and poly propylene bags during the financial years 1978-79 and 1979-80 should have been taxed respectively at 7 per cent and 8 per cent instead of 4 per cent and required the appellant-firm to show cause why the difference of tax calculated and leviable and interest under Section 11B of the Rajasthan Act may not be recovered. By these notices the Assistant Commercial Taxes Officer, Jodhpur, proposed to create an additional demand of Rs. 7,735 and Rs. 1,525 in respect of the difference of tax and of Rs. 7,889.36 and Rs. 1,650 in respect of interest of the sale effected during the financial year 1978-79 and for the financial year 1979-80, it proposed to create the additional demand of Rs. 4,434 in respect of difference of tax and of interest amounting to Rs. 3,725.12 under Section 11B of the Rajasthan Act. The appellant-firm submitted reply to the show cause notice dated May 27, 1985, issued under Section 12 of the Rajasthan Act,

contending that the waterproof paper was either a form of craft paper or bituminised packing material and further that PVC bags and poly propylene bags were polythene and alkathene packing materials as well as plastic packing materials and were covered under item No. 8(g) of the aforesaid State Government notification dated July 1, 1975. The butter paper was also packing material. Despite that the Assistant Commercial Taxes Officer (respondent No. 2) made the reassessment under Section 12 of the Rajasthan Act and issued demand notices exhibits 6 and 7 raising additional demand of tax with respect to the difference of sales tax paid and payable and also for interest. This additional levy and demand was challenged by the appellant by filing S. B. Civil Writ Petition No. 1828 of 1985 in this Court on August 13, 1985 which was dismissed summarily by a learned single Judge of this Court on October 7, 1985 and it is against the said order of dismissal of Writ Petition No. 1828 of 1985 that M/s. Centuary Ecka, Jodhpur, has filed the present special appeal under Section 18 of the Rajasthan High Court Ordinance, 1949, before the Bench of this Court.

2. The learned single Judge, who decided the writ petition, held that an appeal lay to the Deputy Commissioner (Appeals) against the reassessment order of the Assistant Commercial Taxes Officer under Section 13 of the Rajasthan Act. The question whether the goods under consideration were packing material within the meaning of item 8 of the State Government notification dated July 1, 1975 was a disputed question of fact which has to be decided by the assessing authorities and the petitioner had an alternative remedy by way of appeal to the Deputy Commissioner (Appeals) under the Rajasthan Act and, therefore, he did not consider it to be a case for interference under Article 226 of the Constitution. As regards the validity of the provisions contained in Sections 11B, 12, 13, 23, proviso to Section 23-B and Section 23-C, which was also challenged by the appellant in his writ petition, the learned single Judge held that the provisions contained in Sections 11B and 12 of the Rajasthan Act did not suffer from the vice of discrimination or arbitrariness. As regards the validity of Section 23, proviso to Section 23-B and Section 23-C, the learned single Judge held that the question did not arise in that case. He accordingly dismissed the writ petition filed by the appellant summarily on October 7, 1985.

3. Mr. Bilam Chand Mehta, strenuously contended before us that there was no disputed question of fact involved in the case. On the other hand, a pure question of law was involved as to whether the list of packing materials as given in item No. 8 of the list annexed to the State Government notification dated July, 1, 1975 was exhaustive or illustrative and in case this Court came to the conclusion that the list was exhaustive, then whether the bituminised waterproof paper, etc., were covered under the list of packing materials specified in sub-items (a) to (h) of item 8 of the list annexed to the said notification. In such circumstances, it was argued that the alternative remedy was no bar and was not an efficacious remedy in the instant case. It was next contended that the proceedings under Section 12 of the Rajasthan Act had been initiated by the assessing authority on the basis of some audit report made by the audit party. It was urged that the assessing authority had no jurisdiction to initiate the proceedings and to make the reassessment under Section 12 of the Rajasthan Act on a mere change of opinion and that it was legally estopped from initiating the proceedings on the well-settled principles of res judicata. Apart from that the appellant has also challenged the constitutional validity of Section 11B and Section 23 of the Rajasthan Act on the basis of the Supreme Court judgments. Similar other writ petitions have been admitted by this High Court. It was argued that the provisions contained in Section 11B and Section 23 of the Rajasthan Act suffered from the vice of discrimination and arbitrariness and were unconstitutional. On merits it was contended that the list of packing materials given in the State Government notification dated July 1, 1975 was illustrative and not exhaustive and even if the list is held to be exhaustive, the items under consideration were covered by it and were exigible to tax at 4 per cent.

4. Mr. K. C. Bhandari, appearing for the Revenue, contended in reply that the Rajasthan Act provides for a complete machinery and the appellant must have taken recourse to that machinery for redress of his grievances and the petition under Article 226 of the Constitution was not maintainable on account of there being alternative remedy available to him which was equally efficacious. It was also contended by Mr. Bhandari that it was a question of fact whether the goods in question fell within any item of packing material specified under item No. 8 of the State Government notification dated July 1, 1976 and it was also a technical

question and the learned single Judge was right in not going into the question in the extraordinary jurisdiction of this High Court under Article 226 of the Constitution. Mr. Bhandari proceeded further to argue that the list of goods mentioned as packing materials in the Government notification is exhaustive and not illustrative and the goods in question do not fall within any sub-items of item No. 8 of the list annexed to the said notification.

5. We may mention that the State Government, by its Notification No. F. 5(21) FD/(CT)/71-3 dated March 27, 1971, exercising its powers under Section 5 of the Rajasthan Act, notified with immediate effect 3 per cent as the rate of tax payable by a dealer in respect of packing material, that is to say (i) gunny bags and hessian (ii) jute twine (iii) brown paper and other paper adapted for use in packing goods (iv) empty tins and empty barrels (v) wooden boxes (khokhas) and tin boxes (vi) empty bottles and corks (vii) polythene and alkathene packing materials and (viii) bituminised packing material. By an amending Notification No. F. 6(21) FD/CT/71-10 dated August 23, 1971, for the expression 'brown paper and other paper adapted for use in packing goods', appearing in item No. 1(iii) of the notification dated March 27, 1971, the expression 'craft paper' was substituted. Then by Notification No. F. 2(8) FD/Gr. IV/76-9 dated July 1, 1975, the State Government issued a fresh list providing the rate of tax payable by a dealer in respect of goods specified in column 2 of the list annexed thereto and providing the rate of tax payable thereon as specified in column No. 3 of the list. By this notification, packing materials which were entered at serial No. 1 of the notification dated March 27, 1971 were entered at serial No. 8 and the rate of tax was changed from 3 per cent to 4 per cent. There had been further amendments in the notification dated July 1, 1975 inasmuch as by Notification No. F. 4(3) FD/Gr. IV/79-3 dated March 6, 1979, at sub-item (g) of item No. 8 for the expression 'polythene and alkathene packing materials', the expression 'plastic packing materials' was substituted. There was a subsequent amendment including paper bags, paper labels, paper cuttings, tin seals, crown corks and pilfer-proof caps as packing materials exigible to tax at concessional rate. We are concerned in this case with the taxable turnover of the appellant for the financial years 1978-79 and 1979-80. It has already been stated above that up to March 4, 1979, the entry at item 8(g) of the list annexed to the notification dated July 1, 1975 was 'polythene

and alkathene packing materials' but with effect from March 6, 1979, for the above expression, the expression 'plastic packing materials' was substituted.

6. It would appear from the assessment order made by the assessing authority with respect to the financial year 1978-79, the taxable turnover from the sale of packing material was found to be Rs. 2,30,768.92 and after partial examination of the books of account, the assessing authority taxed the said taxable turnovers at 4 per cent treating them as packing material. On May 27, 1985, the respondent No. 2 issued and served two notices under Section 12 of the Rajasthan Act to the appellant enclosed as exhibits 2 and 3 to the writ petition. In notice exhibit 2 the respondent No. 2 stated that during the financial year 1978-79, the appellant had made sales to the tune of Rs. 27,353.95 of PVC bags and sale to the tune of Rs. 7,999.85 of poly propylene bags. It was also mentioned that sale to the tune of Rs. 15,503.51 of poly propylene bags was effected at the branch office at Pali. For these sales it was stated that tax has been realised only at the rate of 4 per cent while it was taxable at the rate of 7 per cent. It was further mentioned that the appellant had made sale of waterproof paper and butter paper to the tune of Rs. 2,32,074.60 at Jodhpur and of Rs. 25,757.10 through Pali branch for which tax had been paid at the rate of 4 per cent while the said goods did not fall within the category of packing material and was not liable to tax at 4 per cent but was liable to tax at 7 per cent. The respondent No. 2 proposed to create additional demands for the difference of tax and interest under Section 11B by the notice under Section 12 of the Rajasthan Act. It may be stated here that during the financial year 1979-80 the general rate of tax had increased from 7 per cent to 8 per cent. For the financial year 1979-80, therefore, the respondent No. 2 issued notice, exhibit 3, to the appellant under Section 12 of the Rajasthan Act creating a demand for the difference of tax with respect to the taxable turnover on the sale of butter paper to the tune of Rs. 19,665.65 and on the sale of waterproof paper to the tune of Rs. 85,604.76 at 8 per cent instead of 4 per cent to which the appellant was assessed on February 28, 1984 and proposed an additional demand of Rs. 4,434 on account of difference of tax paid and payable and also interest under Section 11B amounting to Rs. 3,725.12. The appellant was required to appear before the respondent No. 2 on June 13, 1985 to show cause against the proposed increase in the rate of tax payable by the appellant on the taxable

turnover of these goods. The appellant submitted a reply to these notices before the respondent No. 2 and copy of the reply has been filed as exhibit 4. In his reply the appellant stated that he had effected the sale of waterproof paper only and not of butter paper. He stated that waterproof paper is made of two layers of craft paper bituminised with each other. It was either a form of craft paper or bituminised packing material, and was, therefore, covered by sub-item (h) of item No. 8 in the list annexed to the notification dated July 1, 1975. With respect to the turnover from the sale of PVC bags and poly propylene bags, it was stated by the appellant that both were polythene and alkathene packing materials as well as plastic packing materials and the same were covered by sub-item (g) of item No. 8 of the notification dated July 1, 1976. Ultimately the respondent No. 2 made assessment under Section 12 of the Rajasthan Act on June 17, 1985 by his order, exhibit 6. In exhibit 6, the respondent No. 2 held that there was taxable turnover of waterproof paper at Jodhpur and through branch at Pali during financial year 1978-79 to the tune of Rs. 2,57,831.60 and he levied the difference of tax of 3 per cent and the tax amount came to Rs. 7,735. He also levied interest amounting to Rs. 7,889.36 under Section 11B of the Rajasthan Act. The taxable turnover of PVC bags was found to be Rs. 27,353.95 and that of poly propylene bags to the tune of Rs. 7,999.85 at Jodhpur and of Rs. 15,603 at Pali. For these taxable turnovers also, the respondent No. 2 assessed the difference of tax at 3 per cent and a demand for Rs. 1,525.80 for the difference of tax and Rs. 1,550.52 with respect to interest under Section 11B was created. For the financial year 1979-80, the taxable turnover from the sale of waterproof paper at Jodhpur and through branch office at Pali was determined as Rs. 91,199 and the difference of tax at 4 per cent was assessed at Rs. 3,648 and interest amounting to Rs. 3,064.32 under Section 11B of the Rajasthan Act was created. There was, further found, sale of butter paper in Jodhpur amounting to Rs. 19,665.66 and on its taxable turnover also difference of tax at 4 per cent amounting to Rs. 786.60 was levied and an amount of Rs. 660.80 was also imposed as interest under Section 11B of the Rajasthan Act. Thus a total demand of Rs. 26,860.40 was created against the appellant and a notice of demand, exhibit 7, was served upon him. Thus it would appear that the dispute relates to the rate of tax leviable on waterproof paper, PVC bags, poly propylene bags and butter paper and this dispute has to be decided on

the basis whether the aforesaid kind of paper and bags fall within any of the packing material specified in sub-items (a) to (h) of item No. 8 in the list annexed to the State Government notification dated July 1, 1976, referred to above and reproduced by the appellant in para No. 7 of his writ petition. The appellant's contention in reply filed by him before the respondent No. 2 (exhibit 4) has been that waterproof paper was either a form of craft paper or bituminised packing material and, therefore, it was covered either under sub-item (c) or under sub-item (h) of item No. 8 of the list. With regard to PVC bags and poly propylene bags, his contention has been that they fall within sub-item No. (g), that is, 'polythene and alkathene packing materials' of item No. 8 or that they were 'plastic packing materials' which expression had been substituted in sub-item (g) with effect from March 6, 1979 by Notification No. F. 4(3) FD/Gr. IV/79-3 dated March 5, 1979 of the State Government.

7. The first question is whether the list of packing materials contained in item No. 8 of the list annexed to the notification dated July 1, 1975 and incorporated in sub-items (a) to (h) is exhaustive or illustrative. Entry at item No. 8 of the list along with its sub-items existed in the notification as follows :

LIST-----	S. No.	Description of
goods	Rate	of tax(1) (2)
(3)-----		8. Packing material,
that is to say,- 4%(a) gunny bags and hessian,(b) jute twine,(c) craft paper and		
craft paper bags,(d) empty tins and empty barrels,(e) empty bottles and corks,(f)		
wooden boxes (khokhas) and tin boxes,(g) polythene and alkathene packing		
materials,	(h)	bituminised packing
material.-----		

8. Item No. 8 of the list which relates to packing material is immediately followed by the expression 'that is to say' and then are specified various packing materials in sub-items (a) to (h) of item No. 8 of the list. Stroud's Judicial Dictionary gives the meaning of the phrase 'that is to say' as under :

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

(i) it must not be contrary to the principal Clause 3

(ii) it must neither increase nor diminish it;

(iii) but where the principal clause is general in terms it may restrict it.

9. There has been a sharp cleavage of judicial opinion as to the correct answer to this question. In *Megh Raj v. Allah Rakhia* AIR 1947 PC 72, the words 'that is to say', with reference to a general category 'land' occurring in item 21 in List II of the Seventh Schedule of the Government of India Act, 1935, came up for construction and the Judicial Committee observed :

As to item 21, 'land', the governing word is followed by the rest of the item, which goes on to say, 'that is to say'. These words introduce the most general concept- 'rights in or over land'. 'Rights in land' must include general rights like full ownership or lease-hold or all such rights. 'Rights over land' would include easements or other collateral rights, whatever form they might take. Then follow words which are not words of limitation but of explanation or illustration, giving instances which may furnish a clue for particular matters; thus there are the words 'relation of landlord and tenant and collection of rents'. These words are appropriate to lands which are not agricultural equally with agricultural lands.

10. The Federal Court in *Bhola Prasad v. Emperor* AIR 1942 FC 17 had to consider the powers of the Provincial Legislature to legislate under entry No. 31 in List II of the Seventh Schedule of the Government of India Act, 1936, which set out ' 'intoxicating liquors and narcotic drugs', that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs'. Gwyer, C. J., speaking for the court, observed that :

A power to legislate 'with respect to intoxicating liquor' could but well be expressed in wider terms, and would in our opinion, unless the meaning of the words used is restricted or controlled by the context or by other provisions in the Act, undoubtedly include the power to prohibit intoxicating liquors throughout the province or in any specified part of the province.... But, it is said, the context does

in fact require a more restricted meaning to be given to the general words at the beginning of entry No. 31, inasmuch as 'intoxicating liquors and narcotic drugs' is followed by the words 'that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs'. In our opinion, these words are explanatory or illustrative words, and not words either of amplification or limitation.

11. The Federal Court stated that Indian Legislatures in their own sphere have plenary powers of legislation as large and of the same nature as those of the British Parliament itself. Every intendment ought therefore, to be made in favour of a legislature which is exercising the powers conferred on it. Its enactment ought not to be subjected to the minute scrutiny which may be appropriate to an examination of the bye-laws of a body exercising delegated powers, nor is the generality of its power to legislate on a particular subject to be cut down by the arbitrary introduction of far-fetched and impertinent limitations.

12. The cleavage in judicial decisions started while interpreting Section 14(vi) of the Central Act which mentioned :

(vi) Oil-seeds, that is to say, seeds yielding non-volatile oils used for human consumption, or in industry, or in the manufacture of varnishes, soaps and the like, or in lubrication and volatile oils used chiefly in medicines, perfumes, cosmetics and the like,

13. While the Orissa High Court in *State of Orissa v. Dinabandku Sahu & Sons* [1969] 24 STC 233, following the decision of the Kerala High Court in *Hamsa Haji v. Sales Tax Officer, Tirur* [1967] 20 STC 470 rejected the 'popular understanding theory' and construed Clause (vi) of Section 14 of the Central Act as a clause defining 'oil-seeds' wherein the words and expressions were held to be technical terms and the same were construed accordingly and held that 'oilseeds' are those seeds from which oil can be extracted for any of the purposes mentioned in the clause, the latter Division Bench of the Kerala High Court in *Deputy Commissioner of Agricultural Income-tax and Sales Tax v. Sreedhara Shenoy* [1973] 32 STC 181, agreeing with its earlier Division Bench decision in *State of Kerala v. Moidoo* [1972] 29 STC 373 and dissenting from the decision of the Orissa High Court in

State of Orissa v. Dinabandhu Sahu [1969] 24 STC 233 and its own decision in C.M. Hamsa Haji v. Sales Tax Officer, Tirur [1967] 20 STC 470, held that Section 14(vi) of the Central Act did not contain any definition clause and should be construed by applying the 'common parlance theory' and it was held that in common parlance, coriander and 'methi' were not oil-seeds in this Section 14(vi) of the Central Act and did not agree with the technical construction placed by the Orissa High Court and by applying 'common parlance theory' held these goods as oil-seeds. The Gujarat High Court in State of Gujarat v. Mahavir Oil Mills [1973] 32 STC 385 adopted a mid line approach. It did not adopt the Orissa view treating Clause (vi) of Section 14 of the Central Act as definition clause because their Lordships of the Gujarat High Court were dealing with entry 6, Part II, of Schedule B to the Bombay Sales Tax Act, 1959 limiting cotton-seeds, groundnut and coconut in shell and kernel from the different types and varieties of oil-seeds as specified in that entry. It also did not follow the Kerala view of treating the entry as being illustrative and then applying 'common parlance theory'. The Gujarat High Court held the entry under consideration before it as limiting or restricting the general term 'oil-seeds' and then, holding it as a restrictive entry, applied the common parlance theory in order to find out whether 'bhinda' (lady's finger) seeds were oil-seeds covered by entry 6, Part II, of Schedule B to the Bombay Sales Tax Act, 1959 and answered the question referred to them in the negative.

14. Then came the decision of their Lordships of the Supreme Court in the case of State of Tamil Nadu v. Pyare Lal Malholra reported in : 1983(13)ELT1582(SC) and following this decision of the Supreme Court, the subsequent case law has developed. In Pyarelal Malhotra's case [1970] 26 STC 416, the Madras High Court, while dismissing the writ petitions of the assessee against notice issued by the Commercial Tax Officer on the ground that they involved investigation of fact whether the iron and scrap, out of which the manufactured goods sought to be subjected to sales tax, had been made, were already taxed or not, yet held that the manufactured goods said to consist of 'steel rounds, flats, angles, plates, bars' or similar goods in other forms and shapes, could not be taxed again if the material out of which they were made had already been subjected to sales tax as iron and steel scrap as both were 'iron and steel' and fell within the purview of Section 14(iv) of the Central Act. Section 14 of the Central Act declared certain

goods enumerated therein to be 'of special importance in inter-State trade or commerce'. The list of goods given there at No. (iv), as it stood in 1968, was :

(iv) Iron and steel, that is to say,-

(a) pig iron and iron scrap;

(b) iron plates sold in the same form in which they are directly produced by the rolling mill;

(c) steel scrap, steel ingots, steel billets, steel bars and rods j

(d) (i) steel plates,(ii) steel sheets, solid in the same form in which(iii) sheet bars and tin bars, they are directly produced by the(iv) rolled steel sections, rolling mill.(v) tool alloy steel.

15. It may be mentioned that Section 15 of the Central Act had placed three restrictions upon State enactment imposing sales tax on the sale or purchase of goods declared to be 'of special importance in inter-State trade or commerce' and these restrictions at the relevant time were :

(a) rate of tax shall not exceed 3 per cent of the sale or purchase price thereof,

(b) such tax shall not be levied at more than one stage, and

(c) when a tax has been levied under the State enactment as intra-State sale or purchase of such goods and such goods are sold in the course of inter-State trade or commerce and tax has been paid under the Central Act in respect of sale thereof in the course of inter-State trade or commerce, the tax levied under the State enactment shall be reimbursed to the person making such sale in the course of inter-State trade or commerce.

16. Section 4 of the Tamil Nadu General Sales Tax Act, 1959 gave full effect to Section 16 of the Central Act. It may further be mentioned that by the Central Sales Tax (Amendment) Act 61 of 1972, Clause (iv) of Section 14 of the Central Act was redrafted and thereby 'iron and steel' were now divided into 16 different commercial commodities, from mere scrap iron and leftovers of processes of

manufacturing to 'wires, wheels, tyres, axles and wheel sets'. The case, therefore, before their Lordships of the Supreme Court in Pyare Lal Malhotra's case : 1983(13)ELT1582(SC) regarding interpretation to be placed upon Clause (iv) of Section 14 of the Act as it stood prior to its amendment by the Central Sales Tax (Amendment) Act 61 of 1972.

17. His Lordship Beg, J., referred to the meaning given by Stroud's Judicial Dictionary to the expression 'that is to say' as already referred to above. The ratio decidendi of Pyare Lal Malhotra's case : 1983(13)ELT1582(SC) may be summarised as follows :

(a) Ordinarily the expression 'that is to say' is employed to make clear and fix the meaning of what is to be explained and 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.

(b) In unusual cases, depending upon the context of the words 'that is to say' this expression may be followed by illustrative instances.

(c) In *Megh Raj v. Allah Rakhia* AIR 1947 PC 72 the words 'that is to say', were interpreted widely because these words introduced the most general concept 'land' followed, inter alia, by the words 'rights in or over land' and thereafter followed words which were not words of limitation but of explanation or illustration, giving instance which may furnish a clue for particular matters and, therefore, the precise meaning of the words 'that is to say' varied with context. Apart from that in *Megh Raj's* case AIR 1947 PC 72 the object of using the words 'that is to say' was for the purpose of subject-matter of legislation and the object obviously was to lay down a wide power to legislate.

(d) In the context of single point sales tax subject to special conditions, when imposed on separate categories of specified goods, the expression 'that is to say' was apparently meant to exhaustively enumerate the kinds of goods on 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 list itself loses all meaning and would be without any purpose behind it.

(e) The ordinary meaning to be assigned to a taxable item in a list of specified items is that each item so specified is considered as a separately taxable item for purpose of single point taxation in a series of sales unless the contrary is shown. The more natural and normal interpretation which follows plainly from the fact of separate specification and numbering of each item, is that each item so specified forms a separate species for each series of sales although they may all belong to the same genus.

(f) Sales tax law is intended to tax sales of different commodities and not to tax the production or manufacture of particular substance out of which these commodities may have been made. As soon as separate commercial commodities are made or come into existence, they become separately taxable goods or entities for purposes of sales tax and so long as they retain their identity as goods of a particular type, they cannot be taxed again in a series of sales. In such cases, where one commercial commodity is transformed into another, it becomes separate commodity for purposes of sales tax. The object of a single point taxation is the commercial commodity of each variety and not the sale of the substance out of which it is to be made. In such cases, the use of expression 'that is to say' should not be given a wide scope of illustrative nature but should be construed as used to make clear and fix the meaning of what is to be explained or defined.

18. After the decision of their Lordships of the Supreme Court in *Pyare Lal Malholra's case* : 1983(13)ELT1582(SC) , various High Courts have consistently followed and adopted the ratio decidendi in *Pyare Lal Malholra's case* : 1983(13)ELT1582(SC) as is clear from the decisions in *Deputy Commissioner of Commercial Taxes v. K. Sowrirajan* [1977] 40 STC 369, *Deputy Commissioner (C.T.) v. P. Subramania Chettiar* [1977] 40 STC 439 of the Madras High' Court which as a result of the decision of the Supreme Court in *Pyare Lal Malholra's case* : 1983(13)ELT1582(SC) overruled its earlier decision in *State of Tamil Nadu v. Rallis India Ltd.* [1974] 34 STC 532, in *Khajan Singh v. Commissioner, Sales Tax* [1979] 43 STC 173, *Commissioner of Sales Tax, U.P. v. Bombay Machinery Co.* [1980] 46 STC 291 and *Commissioner, Sales Tax, U.P. v. Steel Engineering*

Corporation [1981] 48 STC 432 of the Allahabad High Court and Udata Narasimha Rao and Co. v. State of Andhra Pradesh .

19. Reference may also be made to the case of Joel v. Harvey 29 LTOS 75. In that case, a dealer had a corn dealer's 'stock in trade' consisting of 'corn, seeds, hay, straw, fixtures and utensils in business', was confined to these enumerated things and did not extend to hops and matting although such latter things would, but for the restrictive words, have come within stock-in-trade. There have been unusual cases, depending upon the context of the words 'that is to say' where wide interpretation has been given to the expression. In Graver v. Davis 30 LJ Ch 505 'a bequest of also the whole of my property and effects'; 'that is to say my box clothing and bedding, etc., etc.' was held to pass a reversionary interest in a residuary estate, and in like manner Wood V.C., held that the wide generality of my personal property was not cut down by being immediately followed by 'consisting of money and clothes' : Dean v. Gibson LR (3) Dq 713 (see also Bradley v. New Castle Pilots 23 LJQB 35). We may here refer to the word 'namely'. It is a Scottish word and has become obsolete. It means, 'by name, that is to say'. A difference in grammatical sense, in strictness exists between the words, 'namely' and 'including'. 'Namely' imports interpretation, i.e., indicates what is included in the previous term; but including imports some thing not included. If a videlicet is repugnant to what has gone before, it shall be rejected, but if it can be reconciled and made restrictive, it shall be so. Strictly and grammatically, the expression 'that is to say' imports interpretation which explains the meaning of the principal clause.

20. It would thus appear that whenever a statute or document is to be construed, it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in the English language as so applied [see Lion Insurance Co. v. Tucker (1883) 12 QBD 176 per Brett, M.R.]. The decision of their Lordships of the Supreme Court in Pyare Lal Malhotra's case : 1983(13)ELT1582(SC) did not lay down anything contrary to this. Their Lordships distinguished the decision in State of Madhya

Bharat v. Hiralal : [1966]2SCR752 on the ground that in that case the exemption from sales tax was to the metal used and not to the single point taxation of the commercial commodity. Their Lordships applied the decision in Devi Dass Gopal Krishnan's case : [1967]3SCR557 to the case before them because in Devi Dass Gopal Krishnan's case : [1967]3SCR557 , the law interpreted was with respect to levy of excise duty on goods subject to a manufacturing process so as to produce a new marketable commodity.

21. We may now come to a Bench decision of this Court in the case of Commercial Taxes Officer, Ajmer v. Sitaram Satish Chandra and Co. reported in 1986 RLW 369. In that case, the question which arose for consideration before the Division Bench of this Court was whether 'empty cable drums' would fall within the expression 'packing material' occurring in the notification issued by the State Government on March 27, 1971 and so would they be taxable at the concessional rate of 3 per cent and not at the general rate of 7 per cent. The relevant previous year was December 17, 1972 to October 25, 1973 and the assessment year 1973-74. The relevant item to be considered was packing material, that is to say, (iv) empty tins and empty barrels. The question was whether the rolling empty cable drums came within the expression 'empty barrels'. His Lordship Pana Chand Jain, J., agreeing with the decision of the Supreme Court in Pyare Lal Malhotra's case : 1983(13)ELT1582(SC) held that once the expression 'that is to say' is employed in a taxing statute indicating the article included therein in extenso which were to be subject-matter of single point tax in a series of sales, then a general or generic meaning would not be assigned to the expression which is followed by the words 'that is to say', but the item should be understood to consist of the varieties enumerated and the articles specified should be considered to be exhaustive and not illustrative. To this extent their Lordships in Sitaram Satish Chandra's case 1986 RLW 369 literally followed the decision of the Supreme Court in Pyare Lal Malhotra's case : 1983(13)ELT1582(SC) . It is neither necessary for us nor do we express any opinion whether there is a difference between the words 'empty barrels' and 'hollow barrels' for the purpose of this case although we feel that an empty thing is that which can have something within it and a hollow thing is a hole, a cavity or having an empty space within or below and that in a hollow barrel, articles cannot be contained within the barrel but outside it.

22. It is, therefore, no longer *res integra* that each item specified in the entry forms a separate species for each series of sales although they may all belong to the genus 'packing material' and the law is very well-settled by the decision of their Lordships of the Supreme Court in the case of *State of Tamil Nadu v. Pyare Lal Malhotra* : 1983(13)ELT1582(SC) .

23. We may state that the Board of Revenue, which was previously revisional authority under the Sales Tax Act had earlier in its decision reported in 1980 RRD 136 interpreted the words 'that is to say' as illustrative, but after the decision of their Lordships of the Supreme Court in *Pyare Lal Malhotra's case* : 1983(13)ELT1582(SC) , the larger Bench of the Board of Revenue in the case of *Assistant Commercial Taxes Officer v. Deepak Agency* 1984 RRD 466 held that the words 'that is to say' occurring after 'packing material' imply with items mentioned below the entry in the list appended to notification dated March 27, 1971 are exhaustive and not illustrative. No item can be substracted or added to the list.

24. That being the settled position of law, the next question which called for determination is whether waterproof paper, butter paper, PVC bags and poly propylene bags are goods of any type specified in sub-items (a) to (h) of item No. 8 of the Government Notification No. F. 2(8) FD/Gr. IV/76-9 dated July 1, 1976. Before dealing with this question, we may dispose of the contention advanced on behalf of the Revenue that the Rajasthan Act provides for a complete machinery for redress in it and that the appellant, instead of invoking extraordinary jurisdiction of the High Court under Article 226 of the Constitution, must have taken recourse to that machinery. It is settled law that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self-imposed limitation, a rule of policy and discretion rather than a rule of law. In the present case, a Bench of this Court not only had admitted this appeal on October 18, 1986 but passed expressly the following order on September 23, 1986 :

It appears to us that the points involved for decision on merits can be better decided after requiring the respondents to file their returns to the writ petition. We, therefore, direct the respondents to file their returns within three weeks. The

appeal be listed for orders and hearing on merits thereafter.

25. Thus a Bench of this Court on September 23, 1986 by an express order not only ordered for listing the appeal for hearing on merits but also directed the respondents to file their returns to the writ petition, which had been dismissed summarily by the learned single Judge. Respondent No. 2 (assessing authority) filed reply to the writ petition on October 17, 1986 as directed by the Bench and the petitioner filed a rejoinder thereto on December 3, 1986. Consequently the matter was heard by us at length on merits on December 6, 15 and 16, 1986 and in the light of the above background, we have decided to exercise the discretion to decide the matter involved in the writ petition on merits keeping in view the extraordinary circumstance that the availability of the alternative remedy has since become barred by limitation to the petitioner.

26. Mr. Bilam Chand Mehta, learned counsel for the appellant, urged before us that when the assessing authority had already assessed the appellant's turnover from the sale of PVC bags, poly propylene bags, bituminised waterproof paper and butter paper at 4 per cent, it; had no jurisdiction to issue a notice under Section 12 of the Rajasthan Act merely on account of change of opinion or the audit objection. On this basis, it was urged that reassessment made by the Assistant Commercial Taxes Officer, Jodhpur was without jurisdiction and in such cases this Court should interfere in writ petition even though alternative remedy was available to the appellant. The learned counsel for the appellant relied upon the decision of this Court in *Indian Hume Pipe Company Ltd. v. State of Rajasthan* ILR [1968] 18 Raj 188 in this respect. In *Indian Hume Pipe Company's* case ILR [1968] 18 Raj 188 the notices for reassessment and the orders of the reassessment under Section 12 of the Rajasthan Act were challenged on the grounds (1) that Shri Jai Kumar Jain who issued the two notices of reassessment and eventually reassessed the assessee under Section 12 of the Rajasthan Act was never invested with the jurisdiction to act as an assessing authority by any valid order under Rule 3 of the Rajasthan Sales Tax Rules, 1955; (2) that the notices of reassessment having been issued after a lapse of more than 4 years from the end of the respective assessment years, the respondent No. 2 had acted in excess of jurisdiction conferred on him by Section 12 of the Rajasthan Act; (3) that Section 12 of the

Rajasthan Act did not empower an assessing authority to reassess an assessee on the ground of under-assessment due to the assessment being made on the earlier occasion at a lower rate because that section empowered the assessing authority to reassess an assessee only when there had been escapement from assessment of any portion of the turnover or business of the assessee; and (4) that respondent No. 2 had merely changed his previous opinion formed at the time of first assessment that R. C. C. pipes were taxable at the general rate of 3J per cent and when they were obviously not considered to be cement pipes at that time so that they could be charged at the rate of 5 per cent. Dealing with the Revenue's objection regarding availability of alternative remedy his Lordship Kan Singh, J., speaking for the Bench, stated that when it was urged that there was total lack of jurisdiction in the officer, the availability of the alternative remedy should not stand in the way of the assessee seeking the aid of this Court in exercise of its extraordinary jurisdiction. Their Lordships had come to the conclusion that Shri Jai Kumar Jain was not properly empowered by the Commissioner under Rule 3 of the Rules to exercise his statutory powers as an assessing authority in respect of what was said to be Jaipur Circle-B. Thus in Indian Hume Pipe Company's case ILR [1968] 18 Raj 188 there was total lack of jurisdiction in Shri Jai Kumar Jain to issue notices under Section 12 of the Rajasthan Act and eventually to make reassessment as he was not properly empowered by the Commissioner under Rule 3 of the Rules to exercise the statutory powers as an assessing authority in respect of Jaipur Circle-B. In such circumstances, it was held that the availability of an alternative remedy could not stand in the way of entertainability of the writ petition under Article 226 of the Constitution. In the case before us, it is not under challenge that the respondent No. 2 had not been validly appointed or empowered to make reassessment under Section 12 of the Rajasthan Act.

27. What has been challenged by the appellant in the present case is that it was not a case of escapement of turnover or business from tax and that the respondent No. 2 had on a mere change of opinion, no jurisdiction to initiate proceedings under Section 12 of the Rajasthan Act. To the first part of the above challenge, answer was given in Indian Hume Pipe Company's case ILR [1968] 18 Raj 188 in this way that Section 12 of the Rajasthan Act empowered the assessing authority to reassess a turnover even if the escapement is on account of the tax

being computed at too low a rate in any year and this sufficiently answers the first part of the challenge made by the appellant regarding lack of jurisdiction. In Indian Hume Pipe Company's case ILR [1968] 18 Raj 188, it was also held that on the facts in that case, it could not be said that the reassessment proceedings had been initiated or commenced on account of a mere change of opinion.

28. Reference may be made to the decision of this Court in Akbarali Amanatali v. Assistant Commercial Taxes Officer, 'C' Ward, Pali 1976 RLW 648. In this case, His Lordship Sen, J. (as he then was), after review of case-law and distinguishing the decisions in Calcutta Discount Co. Ltd. v. Income-tax Officer, Companies, Calcutta : [1961]41ITR191(SC) , Sales Tax Officer, Ganjam v. Uttareswari Rice Mills [1972] 30 STC 567 and Deputy Commissioner of Agricultural Income-tax and Sales Tax, Quilon v. Dhanalakshmi Vilas Cashew Co. : (1970)3SCC273 , followed the ratio decidendi in Maharajadhiraj Sir Kameshwar Singh v. State of Bihar : [1959]37ITR388(SC) and an earlier decision of this Court in Bhanwarlal Binjaram v. Assistant Commercial Taxes Officer, Ward II, Circle 'A', Jodhpur reported in 1976 WLN (UC) 459 and held that the words 'for any reason' in Section 12 of the Rajasthan Act are wide enough and the powers of the Commercial Taxes Officer under that section are not circumscribed by any condition. Their Lordships laid down that the decision of the Division Bench in National Clinic v. Assistant Commercial Taxes Officer, Sri Ganganagar, referred to by His Lordship Kan Singh, J., in Indian Hume Pipe Company's case ILR [1968] 18 Raj 188, which laid down that there can be no reassessment under Section 12(1) of the Act on a mere change of opinion, in view of the decision of their Lordships of the Supreme Court in Maharajadhiraj Sir Kameshwar Singh's case : [1959]37ITR388(SC) did not lay down good law. In Rajasthan Felts Manufacturing Company v. State of Rajasthan [1980] 46 STC 274 also this Court, in view of the decisions of the Supreme Court in Maharajadhiraj Sir Kameshwar Singh's case : [1959]37ITR388(SC) and in State Bank of India v. Shri N. Sundara Money : (1976)ILLJ478SC held that the use of the words 'for any reason' which were of wide import dispenses with those conditions by which Section 34 of the Indian Income-tax Act, 1922, analogous to Section 147 of the Income-tax Act, 1961, is circumscribed. The decisions in Narayanappa v. Commissioner of Income-tax : [1967]63ITR219(SC) , Sheo Nath Singh v. Appellate Assistant Commissioner of Income-tax : [1971]82ITR147(SC) ,

Chhugamal Raj pal v. S.P. Chaliha : [1971]79ITR603(SC) and Income-tax Officer v. Lakhmani Mewal Das : [1976]103ITR437(SC) , which dealt with the expression 'reason to believe' in the Income-tax Act and not the words for 'any reason' as in the Rajasthan Act, will not help the appellant. In Sales Tax Officer, Ganjam v. Uttareswari Rice Mills [1972] 30 STC 567, their Lordships of the Supreme Court were no doubt dealing with Section 12(8) of the Orissa Sales Tax Act, 1947 wherein the opening words 'if for any reason' were the same as in Section 12(1) of the Rajasthan Act, but the difference lay in the fact that form VI appended to the Rules framed under the Orissa Act, which had been prepared in pursuance of Rule 23, used the words 'whereas I have reason to believe'. Under the Orissa Sales Tax Act, therefore, the words 'if for any reason' and 'whereas I have reason to believe' were used more or less in the same sense and the expressions were interchangeable. His Lordship Khanna, J., speaking for the court, observed that there was nothing in the language of Section 12(8) of the Orissa Act which either expressly or by necessary implication postulated the recording of reasons in the notice which is issued to the dealer under the provisions of law. To hold that reasons which led to the issue of the notice should be incorporated in the notice and that failure to do so would invalidate the notice would be tantamount to reading something in the statute which, in fact, was not there. His Lordship referred to the decision of their Lordships of the Judicial Committee in Commissioner of Income-tax v. Mahaliram Ramjidas [1940] 8 ITR 442 which dealt with the provisions of Section 34 of the Indian Income-tax Act, 1922, as it then existed, before its amendment by the Amendment Act of 1939. Before its amendment by the Amendment Act of 1939, Section 34 of the Indian Income-tax Act, 1922 also used the words 'if for any reason'. Their Lordships of the Judicial Committee observed:

The section, although it is part of a taxing Act, imposes no charge on the subject, and deals merely with the machinery of assessment. In interpreting provisions of this kind, the rule is that the construction should be preferred which makes the machinery workable, *ut res valeat potius quam pereat*.

29. So far as the decision of their Lordships of the Supreme Court in Indian 6-Eastern Newspapers Society, New Delhi v. Commissioner of Income-tax, New

Delhi : [1979]119ITR996(SC) is concerned, their Lordships were dealing with the provisions in Section 147(b) of the Income-tax Act, 1961 which used the words 'the Income-tax Officer has in consequence of information in his possession reason to believe' and interpreting the word 'information', it was held that when Section 147(b) of the Income-tax Act is read as referring to 'information' as to law, what is contemplated is information as to the law created by a formal source. His Lordship Pathak, J. (as he then was), observed in para 7 of the reported judgment :

In so far as the word 'information' means instruction or knowledge concerning facts or particulars, there is little difficulty. By its inherent nature, a fact has concrete existence. It influences the determination of an issue by the mere circumstance of its relevance. It requires no further authority to make it significant. Its quintessential value lies in its definitive vitality.

But when 'information' is regarded as meaning instruction or knowledge as to law the position is more complex.... Law may be statutory law or, what is popularly described as, Judge-made law....

In that view, therefore, when Section 147(b) of the Income-tax Act is read as referring to 'information' as to law, what is contemplated is information as to the law created by a formal source. It is law, we must remember, which because it issues from a competent legislature or a competent judicial or quasi-judicial authority, influences the course of the assessment and decides any one or more of those matters which determine the assessee's tax liability.

30. In *Indian & Eastern Newspapers Society's case* AIR 1979 SC 1960, in the course of auditing the income-tax records pertaining to the assessee for the assessment years 1960-61 to 1963-64, the internal audit party of the income-tax department expressed the view that the money realised by the assessee on account of the occupation of its conference hall and rooms should not have been assessed as income from business and should have been assessed under the head 'Income from property'. The Income-tax Officer treated the contents of the report as 'information' in his possession for the purpose of Section 147(b) of the Income-tax Act, 1961. In the case before the Supreme Court, the internal audit party of the Income-tax department, expressed the view that the receipts from the

occupation of the conference hall and rooms did not attract Section 10 of the Act and that the assessment should have been made under Section 9. That part alone of the note of an audit party which mentioned the law which escaped the notice of the Income-tax Officer constituted 'information' within the meaning of Section 147(b); the part which embodied the opinion of the audit party in regard to the application or interpretation of the law could not be taken into account by the Income-tax Officer. In every case, the Income-tax Officer, it was observed, must determine for himself what was the effect and consequence of the law mentioned in the audit note and whether in consequence of the law which had now come to his notice, he can reasonably believe that income had escaped assessment.

31. In the instant case, there was no opinion of the audit party on the legal question whether the entry in various items of packing material specified in the list appended to the notification of the State Government was exhaustive or illustrative. It had only pointed out that during the financial years 1978-79 and 1979-80, the rate of tax on butter paper, waterproof paper, PVC bags and poly propylene bags, was 7 per cent and 8 per cent respectively and not 4 per cent as assessed. That was stated to be so because in the sub-items (a) to (h) of item No. 8 of the list appended to the notification dated July 1, 1975, there were not mentioned 'butter paper', 'waterproof paper', 'PVC bags' or 'poly propylene bags' on its face as such. No opinion had been expressed by the audit party that 'waterproof paper' could not be regarded as craft paper bags or bituminised packing material. Rest of the items like butter paper, PVC bags and poly propylene bags did find no mention in the various sub-items of item No. 8. There was no entry like 'plastic packing materials' below item No. 8 at any time before March 5, 1979 and, therefore, with respect to the period of assessment from 1st April, 1978 to 4th March, 1979, PVC bags and poly propylene bags were not covered by any sub-item of item No. 8 of the list. It was only by Notification No. F. 4(3) FD/Gr. IV/79-3 dated March 6, 1979 that the expression 'polythene and alkathene packing material' appearing in sub-item (g) of item No. 8 was substituted by the expression 'plastic packing materials'. There was no opinion of the audit party that 'PVC bags' or poly propylene bags, were or were not 'plastic packing materials'. They were matters to be decided by the assessing authority during the course of reassessment after having given notice to the assessee under Section 12 of the

Rajasthan Act read with Rule 55A of the Rules framed under the Rajasthan Act. The reason for reassessment ex facie cannot be said to be without any reason or simply based on whims or caprice or merely on a change of opinion. It is clear from the assessment order dated February 29, 1984 that originally the assessing authority had made assessment for the accounting years April 1, 1978 to March 31, 1979 and April 1, 1979 to March 31, 1980 on November 30, 1983 as best judgment assessment under Section 10(4) of the Rajasthan Act. On the filing of application by the assessee under Section 10 of the Rajasthan Act, the best judgment assessment was resorted by the assessing authority and without any examination whether the above items of goods fell within any specific sub-item of item No. 8 of the list, it taxed the taxable turnover from the sales of butter paper, waterproof paper, PVC bags and poly propylene bags at 4 per cent in a four line order which reads as follows :

4 per cent se kar yogya bikri rupye (3,21,021.26 + 2,30,768.92) rupye 5,51,790.18

Vyavasayi dwara dono varsho men ukta bikri kar yogya saaman packing material ki ki hai jis par lekha pustako se bad ashik janch kar 4 per cent se rupye 22,071.60 vasooli yogya hai.

32. When it was brought to the notice of the assessing authority that aforesaid various categories of commercial goods do not fall within the categorised list of packing materials liable to tax at the concessional rate of tax at 4 per cent and were, therefore, taxable at the rate of 7 per cent for the accounting year April 1, 1978 to March 31, 1979 and at the rate of 8 per cent for the accounting year April 1, 1979 to March 31, 1980 that the respondent No. 2 gave notices, exhibit 2 and exhibit 3, to the appellant that the tax had been assessed at too low a rate in the above years. The reopening was not based on any legal opinion about merits of the case having been furnished by the audit party. Only entry No. 8 of the list brought to the notice and it was mentioned that the above items of goods were not specified in the list which as such are ex facie not specified. Apart from that, as already stated, Section 12 of the Rajasthan Act, like Section 147(b) of the Income-tax Act, 1961 does not contain words like 'the Income-tax Officer has in consequence of 'information' in his possession reason to believe', but contains

entirely a different phraseology 'if for any reason, the whole or any part of the business of a dealer...has been assessed at too low a rate in any year'. All that is required for the applicability of Section 12(1) of the Rajasthan Act is that there should prima facie be a reason and not merely whim or caprice. Prima facie reason to reassess was very much there and it cannot, therefore, be contended that there was total lack of jurisdiction in the respondent No. 2 to serve upon the notices exhibit 2 and exhibit 3 under Section 12(1) of the Rajasthan Act and eventually to make the reassessment. In *Atul Glass Industries v. Assessing Authority, Faridabad* [1983] 63 STC 144, the Punjab and Haryana High Court held that Section 11(6) of the Punjab General Sales Tax Act was a machinery provision and not a taxing one. Writ petition was held to be maintainable by the Supreme Court in *Himmatlal Harilal Mehta* [1954] 5 STC 116 because in that case the petitioner had come to the court with an allegation that his fundamental right had been infringed. In *Epari Chinna-krishna Murty v. Sales Tax Officer, Ganjam Circle I* [1957] 8 STC 862, the Orissa High Court held that powers under Section 12(7) of the Orissa Sales Tax Act, 1947, which are more or less analogous to Section 12(1) of the Rajasthan Act, were very wide. It was also not a case where tax was being levied without due legal authority of law as was the case in *Kailash Nath v. State of U.P.* [1957] 8 STC 368 (SC). In *Mdharaj Kumar Kamal Singh v. Commissioner of Income-tax* : [1959]35ITR1(SC) , Gajendragadkar, J., observed at page 262 :

We see no justification for holding that cases of income escaping assessment must always be cases where income has not been assessed owing to inadvertence or oversight or owing to the fact that no return has been submitted. In our opinion, even in a case where a return has been submitted, if the Income-tax Officer erroneously fails to tax a part of assessable income, it is a case where the said part of the income has escaped assessment.

33. Section 12(1) authorised reassessment even in cases where any part of the business of a dealer has been assessed at too low a rate in any year.

34. His Lordship R.S. Pathak, J. (as he then was), in *Allahabad Milling Company Pvt. Ltd. v. Sales Tax Officer II, Allahabad* , while dealing with Section 21 of the U.

P. Sales Tax Act, 1948, which contained the words 'reason to believe' held that the assessing authority must have, as Das Gupta, J., observed in the majority judgment of the Supreme Court in *Calcutta Discount Co. Ltd. v. Income-tax Officer* : [1961]41ITR191(SC) some prima facie grounds for thinking that there had been some non-disclosure of material facts and employing the language of Shah, J., in the same case, 'the belief must be held in good faith: it cannot be merely a pretence'. In Section 21 of the U.P. Sales Tax Act, 1948, the words used in Section 21 were 'has reason to believe' and not the words 'for any reason'. Even on the test of prima facie grounds and belief in good faith, there were reasonable grounds for the respondent No. 2 to prima facie form an opinion that there was under-assessment of tax. Whether in fact there was an under-assessment in fact or not was to be decided at the time of making actual reassessment for the two accounting years. In *Beharilal Shyamsunder v. Sales Tax Officer, Cuttack* [1966] 17 STC 608 (SC), the challenge was on the ground that the imposition of tax was without authority of law or ultra vires the Sales Tax Act and the Rules which question was foreign to the jurisdiction of the appellate and revisional authorities under the Sales Tax Act and, therefore, a writ was maintainable. Jurisdictional facts can always be varied, altered, affirmed or reversed by the appellate and revisional authorities under the Act despite the fact that the assessing authority has, on reassessment, held the items of goods in controversy taxable at 7 per cent and 8 per cent respectively for the two accounting years. Wide and comprehensive meaning was given to the expression 'for any reason' by the Kerala High Court in *K.K. Ismail v. State of Kerala* [1979] 43 STC 123.

35. In *Kota Box Manufacturing Co. v. State of Rajasthan* [1984] 65 STC 207, the appellant had filed a writ petition before this Court and the question raised before the learned single Judge related to the meaning of 'packing material' for which the assessing authority had issued notice under Section 12 of the Rajasthan Act to the petitioner-appellant. The learned single Judge refused to entertain the writ petition on the ground that the petitioner had got ample opportunity to appear before the assessing authority and to raise all the contentions before him and that there was a complete machinery of appeal and revision under the Rajasthan Act and refused to interfere under Article 226 of the Constitution on this ground. The assessee filed an appeal before the Division Bench of this Court under Section 18 of the High

Court Ordinance against the judgment of the learned single Judge of the court dismissing the writ petition. The Division Bench of this Court, following the decision of the Supreme Court in *Maharajadhiraj Sir Kameshwar Singh v. State of Bihar* : [1959]37ITR388(SC) and of this Court in *Bhanwarlal Binjaram v. Assistant Commercial Taxes Officer, Jodhpur* 1976 WLN (UC) 459 held that the view of the learned single Judge was based on just and proper reason and called for no interference in special appeal as there was no patent lack of jurisdiction of the assessing authority in issuing notice under Section 12 of the Rajasthan Act.

36. Now while Mr. K. C. Bhandari, appearing for the Revenue, has contended that waterproof paper, poly propylene bags, PVC bags and butter paper did not fall within any sub-items (a) to (h) of item No. 8 of the list annexed to the notification of the State Government dated July 1, 1976, Mr. Bilam Chand Mehta, urged that so far as waterproof paper is concerned, it was made of two layers of craft paper, bituminised with each other and it was covered either within sub-item (c) or sub-item (h) of the above-mentioned list. So far as PVC bags and poly propylene bags are concerned they were either covered by sub-item (g) of the list as it stood up to March 4, 1979 (i.e., polythene and alkathene packing materials) or by sub-item (g) as substituted with effect from March 6, 1979 by the expression 'plastic packing materials' by State Government Notification No. F. 4(3) FD/Gr. IV/79-3 dated March 5, 1979. For butter paper it has been pleaded on behalf of the petitioner that it was also a packing material.

37. We may first deal with butter paper. 'Butter paper', according to Webster's Third International Dictionary (Volume I), is a grease-proof paper, that is used for wrapping butter or lard. Butter paper is not mentioned in any of the sub-items (a) to (h) of item No. 8 of the list which, as already held above, is exhaustive and not illustrative. We, therefore, outrightly hold that as 'butter paper' was not specified in any of the sub-items (a) to (h) of item No. 8 of the list, it was liable to be taxed at the general rate of tax of 7 per cent during the accounting year April 1, 1978 to March 31, 1979 and 8 per cent during the accounting year April 1, 1979 to March 31, 1980 and not at the concessional rate of tax at 4 per cent shown in column No. 3 of the State Government notification dated July 1, 1975.

38. As to PVC bags and poly propylene bags, it may be stated that 'PVC and poly propylene packing materials' were not mentioned in any of the sub-items of item No. 8 of the list including in sub-item (g) thereof at any time before March 6, 1979. The goods specified in sub-item (g) during the period April 1, 1978 to March 4, 1979, were 'polythene and alkathene packing materials' and not 'PVC and poly propylene bags or packing material'. It is clear that 'polythene and alkathene' are scientific or technical terms. There is no material on the record whatsoever to show that 'polyvinyl chloride (or PVC)' and 'poly propylene' scientifically and technically contain the same plastic or resins material and is processed by the same method as polythene or alkathene plastic or resins material. In the absence of any material on the record, it cannot be held that 'polythene and alkathene' are same chemical products as polyvinyl chloride and poly propylene products. It may be mentioned that in order to bring within its ambit all plastic made packing materials, it was only on March 5, 1979 that the State Government amended sub-item (g) of item No. 8 of the list by substituting the words 'plastic packing materials' in sub-item (g) for the expression 'polythene and alkathene packing materials' existing during the period from March 27, 1971 to March 4, 1979. With effect from March 5, 1979, wide and generic term 'plastic material' was used which is comprehensive enough to include processed polyvinyl chloride and other polyvinyl derivative resins and plastic materials. Mr. K. C. Bhandari urged on behalf of the Revenue that it is true with effect from March 5, 1979, the expression 'plastic packing materials' has been substituted in sub-item (g) of item No. 8 of the list, but there is nothing to show that polyvinyl chloride (PVC) and poly propylene bags are made from plastic. Suffice it to state that it is elementary that anything prepared, polymerised and co-polymerised (for example polythene, polyterahaloethylenes, polyvinyl chloride and other polyvinyl derivatives) are plastics. This fact finds ample support from Tariff item No. ISA-Plastic in Central Excise Tariff (Cen-Cus Publications) (Budget Edition 1985-86) by D. N. Kohli, Satyasheel and I. D. Grover at page 11/231 and page 11/225. The notification dated 17th March, 1985 published at page 11/225 mentioned at its item No. 7 'poly propylene' in the exempted list of artificial or synthetic resins and plastic materials. Thus there is no room for any doubt that PVC bags and poly propylene bags are plastic packing materials and fall within the purview of sub-item (g) of item No. 8 of the list

appended to the State Government notification with effect from March 5, 1979 but not during any period prior to that. Apart from that, it is well-settled that in determining the meaning or connotations of words and expressions describing an item or commodity, the turnover of which is taxed in a sales tax enactment, if there is one principle, it is this that the words or expressions must be construed in the sense in which they are understood in the trade, by the dealer and the consumer. It is they who are concerned with it, and it is the sense in which they are understood in that constitutes definitive index of the legislative intentions when the statute was enacted. Reference may be made in this connection to the judgment of their Lordships of the Supreme Court in *Porritts 6- Spencer (Asia) Ltd. v. State of Haryana* [1978] 42 STC 433. In its commercial sense also, PVC bags and poly propylene bags are understood by the traders dealing in them and the consumer as plastic packing materials. Consequently the turnover of the appellant during the periods March 5, 1979 to March 31, 1979 and April 1, 1979 to March 31, 1980 from PVC bags and poly propylene bags were liable to be taxed at the concessional rate of 4 per cent and not at general rate of 7 per cent and 8 per cent respectively as has been done by the respondent No. 2 in his reassessment order.

39. The next item of goods to be considered is waterproof paper. According to the appellant, waterproof paper is bituminised packing material. According to him, waterproof paper is made of two layers of craft papers, bituminised with each other. In *Standard Packing v. Union of India* : 1985(20)ELT314(AP) , the Andhra Pradesh High Court held that bituminised waterproof paper was merely craft paper bonded together with bitumin and no manufacturing process was involved on account of the fact that two craft sheets were pasted together with bitumin. To the same effect is the decision of the Madras High Court in *Kwallty Coated Products v. Government of India* 1980 ELT 689. As a matter of fact, waterproof paper is nothing but craft paper subjected to various processes and treatment. The base paper is craft paper. Bituminised waterproof paper is obtained by the bonding together the layers of craft papers with bitumin. It is with a view to make the craft paper strong and durable to be used for wrapping and packaging that bitumin is applied to it as a bonding agent. Bituminised packing material is clearly specified in sub-item (h) of item No. 8 of the list appended to the State Government notification dated July 1, 1975 and its turnover was liable to be taxed at the

concessional rate of 4 per cent during both the accounting years and not at the general rate of 7 per cent and 8 per cent applied by the respondent No. 2.

40. Thus we hold that waterproof paper is bituminised packing material falling within sub-item (h) of item No. 8 of the list appended to the Notification No. F. 2(8) FD/Gr. IV/75-9 dated July 1, 1975 and its turnover was liable to sales tax at the concessional rate of 4 per cent during both the accounting years in question. PVC bags and poly propylene bags were correctly taxed at the general rate of 7 per cent with respect to the turnover for the period from 1st April, 1978 to 4th March, 1979 but the turnover during the period from March 5, 1979 to March 31, 1979 was liable to sales tax at the concessional rate of 4 per cent and not at the general rate of 7 per cent because with effect from March 5, 1979, these goods squarely fell within the category of 'plastic packing materials' which category was substituted in place of 'polythene and alkathene packing material' in sub-item (g) of item No. 8 of the list with effect from March 6, 1979. It may be mentioned here that there was no turnover of PVC bags and poly propylene bags made by the appellant during the accounting year April 1, 1979 to March 31, 1980. As to the turnover from butter paper, we hold that it was rightly taxed at the general rate of 7 per cent and 8 per cent respectively during the two accounting years under consideration. Thus this appeal deserves to be partly allowed to this extent.

41. Then we are left with the last of the contentions advanced before us by Mr. Bilam Chand Mehta which is to the effect that the provisions relating to levy of interest contained in Section 11B and provisos to Sections 23-B and 23-C of the Rajasthan Act are ultra vires on grounds (k), (n) and (o) mentioned at pages 24, 26 and 26 of the writ petition. The decision of their Lordships of the Supreme Court in *Khazan Chand v. State of Jammu and Kashmir* : [1984]2SCR858 is sufficient answer to this contention of Mr. Mehta and levy of interest under Section 11B of the Rajasthan Act is intra vires. His Lordship Madon, J., observed:

Payment of interest in case of default in payment of tax is a means of compelling an assessee to pay the tax due by the prescribed date. It is a mode of recovery of tax and well within the legislative power of the State.... It neither lies in the defaulter's mouth to protest against the rate of interest charged to him nor is it

open to him to dictate to the State the methods which it should adopt for recovering the amount of tax due by him.... The graduated rates of interest provided by Sub-section (2) of Section 8 of the J & K General Sales Tax Act, 1962 cannot be characterised as arbitrary or unreasonable.... We fail to see on what principle the Hindu Law rule of damdupat can be made applicable to a sales tax legislation. The recovery provisions of the Act are meant for speedy and prompt collection of revenue.

42. Reference may also be made to the decision in *Haji Lal Mohd. Biri Works v. State of U.P.* : [1974]1SCR25 which says that the liability to pay interest is automatic and arises by operation of law and that of the Delhi High Court in *Ram Body Builders v. Sales Tax Officer* [1984] 56 STC 118. Question as to what rate of interest could be charged in relation to the period from April 1, 1978 to March 31, 1979 may be agitated before the assessing authority who is competent to decide it.

43. Resultantly, we partly allow this special appeal and modify the order of the learned single Judge dated October 7, 1985 in this manner that the reassessment order under Section 12 of the Rajasthan Sales Tax Act, 1964, dated June 17, 1985 of the non-petitioner No. 2 (assessing authority) is quashed to the extent he has levied difference of tax at the rate of 3 per cent on the turnover of waterproof paper amounting in all to Rs. 2,67,381.60 effected at the head office at Jodhpur and branch office at Pali during the accounting year April 1, 1978 to March 31, 1979 and at 4 per cent on the turnover amounting in all to Rs. 91,199 from the said goods during the accounting year April 1, 1979 to March 31, 1980 effected at Jodhpur head office and Pali branch office. We further quash the said reassessment order to the extent the non-petitioner No. 2 has levied the difference of tax at the rate of 3 per cent on the turnover from PVC bags and poly propylene bags effected on or after March 6, 1979 and till March 31, 1979 and direct by a writ of prohibition to the non-petitioner No. 2 not to recover the difference of tax under his said reassessment order to the extent the same have been quashed by this order. The non-petitioner is also restrained from recovering interest under Section 11B of the Rajasthan Sales Tax Act, 1954 on the amount of difference of tax which stands quashed by this order. In the circumstances of the case, we shall leave the

parties to bear their own costs throughout.

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