

**Dhiraj Lal Mehta Vs. Commissioner of Commercial Taxes and ors.**

**Dhiraj Lal Mehta Vs. Commissioner of Commercial Taxes and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/861006](http://sooperkanoon.com/861006)

**Court :** Kolkata

**Decided On :** Sep-18-1962

**Reported in :** AIR1963Cal442

**Judge :** P.B. Mukharji, J.

**Acts :** [Constitution of India](#) - Articles 226, 269 and 286; ;[Central Sales Tax Act, 1956](#) - Sections 3 and 4; ;Bengal Finance Sales Tax Act, 1941 - Section 5(2); ;Sale of Goods Act - Sections 23(2) and 39(1)

**Appeal No. :** Civil Revn. No. 3482 of 1960

**Appellant :** Dhiraj Lal Mehta

**Respondent :** Commissioner of Commercial Taxes and ors.

**Advocate for Def. :** J. Majumdar and ;P.K. Banerjee, Advs. for Respondents (Nos. 1 to 3)

**Advocate for Pet/Ap. :** K.C. Mukherjee, Adv. and ;Arun Kumar Dutta, Sr. Adv.

**Judgement :**

ORDER

P.B. Mukharji, J.

1. This application under Article 226 of the Constitution raises the vexed constitutional and legal problem of Inter State trade and commerce. The disputed tax is levied by the State of West Bengal under the Bengal Finance (Sales Tax) Act 1941 upon the goods of the petitioner which were being sent from Calcutta to Jamshedpur under certain contracts or more accurately called Purchase Orders to the Kaiser Engineers Overseas Corporation who are agents of the Tata Iron and Steel Co. Ltd. for the express purpose and object of the expansion of the Tata's existing Steel Plant facilities at Jamshedpur, India. The tax is said to be illegal and unconstitutional being violative of the constitutional freedom of inter State commerce.

2. The petitioner is one Dhiraj Lal Mehta said to be carrying on business under the name and Style of 'Bengal Hardware Mart' at 69/A, Netaji Kubhas Road, Calcutta. He is a registered dealer both under the Central Sales Tax Act as well as under the Bengal Sales Tax Act as re-seller of pipes etc. but not as a manufacturer. In fact the petitioner himself states that he carries on business in pipe, pipe fittings hardware merchant and as general order suppliers. He does not state that he is a manufacturer or fabricator of goods. The first Purchase Order which the petitioner received from Kaiser Engineering Overseas Corporation is dated the 27th June, 1956 being Order No. 5566-5521 for Rs. 1,18,650/- which was enhanced to Rs. 1,22,262-8-0 due to increase in prices. The other Purchase Order is No. 5577,26-12618 and dated the 16th September, 1957.

3. So far as the sales to the Tatas are concerned and which are the subject-matter of controversy in this application the amounts involved may be divided into' five items, namely:

(1) Rs. 37,305. 28 nP ... sales to Tata before 1-11-56

(2) Rs. 218,042 . 09 nP ... sales to Tata during 1-11-56 to 1-7-57

(3) Rs. 48,932 . 18 nP ... sales to Tata carried over from the Sambat year 2012

(4) Rs. 32,728. 59 nP ... sales to Tata after 1-7-57

(5) Rs. 6,524 . 18 nP ... cost of rejected goods. The total of these amounts comes up to Rs. 3,41,532.38 nP. as the value of sales to Tatas by the petitioner in the accounting period. The reason for classifying these amounts and periods of time are not very material except to say that many of the taxes are in connection with sales before the Central Sales Tax Act came into operation. That Central Sales Tax Act was passed on the 21st December, 1956 and came into effect on the 15th January, 1957. It is necessary to add that Section 6 of the Central Sales Tax Act came into force on 1-7-1957. It is with reference to this last date that the above divisions of the periods of time have been made.

4. The order against which the present Rule has been obtained is an order of the 28th July, 1960, confirming in review the order of the 10th June, 1959. Both the Commissioner of Commercial Taxes as well as Commercial Tax Officer are respondents to this petition along with the State of West Bengal. The main question on this application is whether these taxes are legal and constitutional.

5. Before discussing the material terms and conditions of the contracts in this case it will be appropriate at this stage to state briefly the effect of the orders complained of and the reasons for such impugned orders. The order of the 10th June, 1959 states that the petitioner claims under Section 5(2)(a)(v) relief for the sum of Rs. 3,41,532.22 nP. out of Rs. 4,04,028-7-6 which was passed in assessment for the 4 quarters ending on Aso Badi 30, 2013. That claim covers goods valued at Rs. 3,41,532.32 nP. supplied to M/s. Kaiser Overseas Engineers. The order proceeds to state that from information available these supplies were delivered at Calcutta according to the terms and conditions accompanying the purchase orders of M/s. Kaiser Overseas Engineers. Therefore the order proceeds to say that the assessment for 4 quarters required to be reviewed and modified by disallowing Rs. 3,41,532.32 nP. from the claim under Section 5(2)(a)(v). The order therefore was to issue notice in Form IX fixing a date. Finally the order dated the 27th July, 1960 against which this Rule is directed was made. This order disallowed the petitioner-dealer's claim under Section 5(2)(a)(v) to the extent of Rs. 3,41,532.32 nP. out of the total claim, of Rs. 4,04,028-7-6 previously admitted. In disallowing this petitioner's claim of Rs. 3,41,532.32 nP. the impugned order gives the following reasons: 'According to the item No. 10 of the annexure 'B' to the purchase orders lead with the purchase orders, the goods were to be delivered to the purchaser or his authorised representatives as instructed by the Calcutta Purchase Office at the delivery point specified therein. The delivery point had been specified to be 'F. O. B. Calcutta'. It was also stipulated that until delivered to the purchaser at the delivery point specified the risk of the goods remained with the sellers and thereafter to pass to the buyer. Therefore, the property in the goods. passed to the buyer as soon as these were delivered to the carrying contractors at Calcutta according to the instruction of the purchaser. Hence the sale was completed at Calcutta. Although the goods were thereafter taken out of the State of West Bengal by or on behalf of the purchasers the sale did not subsist during such movement and the seller had nothing to do after he had performed his part of the contract by completing delivery within the State of West Bengal in terms of the contract. The movement was done entirely under the initiation and control of the purchaser. Hence these sales were intra State and liable to the taxes under the Bengal Finance (Sales Tax) Act, 1941.

I was told that the purchasers had issued 'C' Forms to cover these sales as being inter-State. But 'C' Forms are not evidence of actual movement out of the State by or on behalf of the sellers. These are only instruments for affording benefit of a concessional rate of taxes provided the movement out of the State by the dealer (seller) is proved independently.'

6. It is this order and its reasons which are challenged in this petition. Before proceeding to discuss the arguments for and against this order, it may be useful to refer to a short point of fact, and that is that although most of the contracts are, as indicated, by the Commercial Tax Officer to be 'F.O.B. Calcutta' there is

one contract, i.e., the first contract contained in the Purchase Order No. 5566-5521 dated the 27th June, 1956 where the delivery point was 'F.O.B. Jamshedpur'.

7. To appreciate the challenge and the arguments for and against the order complained of it is essential to refer to the facts, terms and conditions of the contract in this case. The main facts are--(1) that the orders were placed in Calcutta; (2) that the goods were to be produced or obtained in and from Calcutta; and (3) that the delivery was to be made to a lorry in Calcutta but the lorry was to be appointed and fixed up by the purchaser. The proverbial question arises in this case whether the sale occasioned the movement or whether the movement followed independently after the sale.

8. It will be necessary now to examine a little more closely the actual terms and conditions of these contracts. The purchase order which represents the contracts in this case, has certain special features. It describes the Kaiser Engineers Overseas Corporation as agent for the Tata Iron and Steel Co. Ltd. It is addressed to the petitioner in Calcutta. It directs:

'Unless otherwise specified herein invoice: The Tata Iron and Steel Co. Ltd. For each purchase order and Mail with original bill of lading and number of copies specified.

To

Kaiser Engineers Overseas Corp.

Jamshedpur, India.'

This is followed by the main operative clause of the contract which proceeds to say:

'Please enter our order and furnish the merchandise specified below in accordance with all terms and conditions of this purchase order including Annexures 'B' and 'C' attached hereto.'

9. I shall presently indicate what these annexures are because their terms are vital and important in this case. But before I do so it will be relevant to refer to a few more features of this purchase order. It has a clause

'Ship to: The Tata Iron and Steel Co. Ltd., a/c Kaiser Engineers Overseas Corporation, Tisco Work site, Jamshedpur, India. Lorry (Contact our Calcutta Office).'

In the first purchase order No. 5566-5521 dated 27-6-56 the delivery point is said to be 'F.O.B. Jamshedpur' and in the other contracts or purchase orders the delivery point is said to be 'F.O.B. Calcutta.' The goods involved are pipes and their fittings of specific sizes and diameters at specific prices and in some cases directions that the item should be fabricated from plate in accordance with the British standard 10, Part I Table 'C' and other directions. It has been said that this does not mean that the petitioner was actually manufacturing these goods or fabricating them because they were not registered as manufacturers but merely as general order suppliers and dealers and stockists. The next relevant clause is contained in a note to this effect: 'Inform us promptly if unable to supply goods as ordered, do not change route without authority. Delivery is said to be 'Job site within seven weeks after receipt of order.' There are two directions under the heading 'Note' in this purchase order. They are:

'(1) Post original and 4 copies of invoices to the attention of so and so.....' (2) Post Railroad Receipts or any shipping documents for the attention of.....so and so.....'

This is followed by certain marking instructions. These instructions are not the same in Purchase Order No. 5566-5521 dated 27-6-56 and the Purchase Order No. 5577.26-12618 dated 16-9-57. In the first Purchase Order the marking instructions are: '1. Mark each package -- Tata Iron Steel Co. Ltd. A/C. Kaiser Engineers Overseas Corpn. TISCO Worksite, Jamshedpur, India. '2. Mark each package or place of equipment with the Purchase Order number and Item numbers.'

'3. Included or attached must be original and 3 copies of packing list Chalan, stating Purchase Order number, Item numbers and marked for the attention of.....so and so.....'

In conclusion there is the 'Notice' saying:

'If the foregoing instructions are not strictly adhered to, settlement of your invoice may be delayed.'

These instructions are in Purchase Order No. 5566-5521 dated 27-6-1956. But among the different instructions in the other Purchase Order dated 16-9-57 'F.O.B. Cal' there are instructions such as these:

'1. Ship via: Lorry -- Delivery to public carrier as instructed by our Calcutta Office. Challans should be marked 'Delivered to public carrier.' and

'2. Central Sales Tax -- Our Registration Number under the [Central Sales Tax Act, 1956](#) is S.G.--1/C dated 28-6-57, Declaration Form Serial No. 261264 of 16-9-57 is enclosed.

This Registration Number and date must be shown on original challan for examination by the Check Post Officer at Barakar, if demanded.' This gives briefly and in main outline the relevant clauses in the Purchase Orders.

10. Next comes the important document called 'Purchase Order Terms and Conditions'. They are printed as Annexure 'B' to the Purchase Orders. As these terms and conditions are part of the Purchase Orders, it is also essential to notice the nature of these terms and conditions so far as they are relevant to the point under determination. A broad analysis shows the following characteristic features of these terms and conditions.

11. Clause (1) mentions Kaiser Engineers Overseas Corporation as having entered into a contract to perform Engineering Contractor services for the Tata Iron and Steel Co. Ltd. for the expansion of Tata's existing steel plant facilities at Jamshedpur, India. It recites the provision that purchase of materials, equipment and supplies required under that contract will be made by Kaiser Engineers Overseas Corporation as agent for and in the name and on behalf of Tata as principal, and that all payments for the said purchases will be made by Tata. Therefore, Clause (1) says that the Tata Iron and Steel Co. Ltd. is the purchaser and the 'seller' means the person, firm or Corporation from whom the merchandise has been ordered. The result of this Clause (1) is that although Kaiser Engineering Overseas Corporation are placing the Order called 'Purchase Order', they are really doing so only as agent for the principal, the Tatas, who are really the 'purchasers'. Clause (4) casts, an obligation on the seller to properly pack all merchandise covered by the order for safe shipment to the purchaser and shall fully comply with all shipping and other instructions.

12. Clause (5) contains a warranty by the seller for transportation costs included in the price that they will not exceed actual transportation costs paid by the seller. It also provides:

'Seller shall be accountable for any additional transportation costs arising from seller's failure for any reason whatsoever to make delivery to the point specified or to follow shipping and other instructions specified on the face of this order, or in the attachments hereto'.

13. Clause (6) provides that if the goods covered are standard stock merchandise then the purchaser, at his option, may cancel at any time any unshipped portion of the order by written or telegraphic notice. If the order covers goods manufactured or fabricated to purchaser's specifications especially prepared by seller for purchaser, then at any time prior to delivery of all merchandises covered hereby, purchaser, at his option, may cancel the order, in whole or in part, by written or telegraphic notice to seller and in that event certain provisions shall govern and control their relationship.

14. Clause (7) deals with the right of inspection and testing both during manufacture as well as within a reasonable time after arrival at the ultimate destination notwithstanding any prior inspection. It gives the purchaser the right to reject the goods.

15. But the main clause of these terms and conditions over which the controversy arises in this application is Clause (10) which reads as follows:

'Seller shall assume liability for and pay any and all loss or damages to the merchandise covered by this order resulting from any cause whatsoever until delivered to Purchaser at the delivery point specified. Upon completion of delivery of such merchandise to Purchaser at such delivery point properly packaged and consigned to Purchaser in accordance with the provisions of Annexure 'C' hereto or purchaser's designated consignee any loss or damage to such merchandise thereafter shall be borne by Purchaser.'

16. No other clauses in the terms and conditions need be recounted for they are not relevant for the purposes of this application. It is on the basis of Clause (10) of these conditions that the State of West Bengal contends that the sale took place within the State of West Bengal when the goods were loaded into the lorry selected by the purchaser and such lorry was not only in Calcutta but was appointed and chosen by the purchaser or by his agent the Kaiser Engineering Overseas Corporation. According to the State of West Bengal the sale was complete within this State and what the purchaser or his agent did to transport it across the border to Jamshedpur, cannot alter the impact of the said sales tax. Mr. Banerjee the learned Advocate for the State also contends that Clause (10) as quoted above means that title to the goods completely passed to the purchaser in Calcutta and that there is no responsibility on the part of the seller.

17. Mr. Mukherjee on behalf of the petitioner on the other hand contends that Clause (10) of these conditions do not at all relate to passing of title. It deals with the taking of risk and responsibility for loss or damage and for that purpose Clause (10) provides that the responsibility and the risk for the loss or damage after the seller has delivered to the purchaser at the delivery point specified shall be entirely with the purchaser. He contends that it is a mode of distributing the responsibility so far as transport or transshipment of the goods was concerned. His main argument on behalf of the petitioner is that this is inter state trade because the sale in this case has occasioned the movement of goods from the State of West Bengal to the State of Bihar. Naturally, therefore, he relies on the well-known decisions in Mohan Lal Hargovind V. State of Madhya Pradesh : [1955]2SCR509 ; State of Travancore Cochin V. Bombay Co. Ltd., 1952 SCR 1112: (AIR 1952 SC 366); State of Travancore and Cochin v. Shanmugha Vilas Cashew Nut Factory : [1954]1SCR53 ; E. Narasimham and Son v. State of Orissa : [1962]1SCR314 , Bengal Immunity Co. Ltd. v. State of Bihar : [1955]2SCR603 and specially the observations at pages 784-785 (of SCR): (at p. 734 of AIR) to the effect:

'A sale could be said to be in the course of inter state trade only if two conditions concur: (1) a sale of goods, and (2) a transport of those goods from one State to another under the contract of sale. Unless both these conditions are satisfied, there can be no sale in the course of inter state trade.'

18. Finally, Mr. Mukherjee for the petitioner has relied on the decision of the Supreme Court in Civil Appeal No. 255 of 1961, Cement Marketing Co. of India (Pvt.) Ltd v. State of Mysore delivered on the 28th August, 1962 and as yet unreported now reported in : [1963]3SCR777 and specially on the observations of Kapur, J. in that case relating to the tests for inter state sales. These observations are as follows:

'Thus the tests which have been laid down to bring a sale within inter state sales are that the transaction must involve movement of goods across the border (Mohanlal Hargovind's case) : [1955]2SCR509 ; transactions are 'inter state in which as a direct result of such sales the goods are actually delivered for consumption in another State; Ram Narain and Sons Ltd. v. Assistant Commissioner of Sales Tax : [1955]2SCR483 ; a contract of sale must involve transport of goods from one State to another under the contract of sale: Bengal Immunity Co. case : [1955]2SCR603 . In the case of sales in the course of export, or import the test laid down was a series of integrated activities commencing from an agreement of sale and ending with the delivery of goods to a common carrier for export by land or by sea; The Bombay Co. Ltd. case, 1952 SCR 1112: (AIR 1952 SC 366). \* \* \* \* \* This Court again accepted these tests in E. Narasimham's case : [1962]1SCR314 . In Section 3 of the Central Sales Tax Act, (Act 74 of 1956) the legislature has accepted the principle governing inter-state sales as laid down in Mohan Lal Hargovind's case : [1955]2SCR509 .'

19. Kapur, J. in the Cement case, Civil Appeal No. 255 of 1961, D/- 28-8-1962: : [1963]3SCR777 above also referred to the observations of Shah, J. in Tata Iron and Steel Co. Ltd., Bombay v. S. R. Sarkar : [1961]1SCR379 in explaining what sales are covered by Section 3(a) of the Central Sales Tax Act in the following terms:

'Clause (a) of Section 3 covers sales, other than those included in Clause (b), in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State.'

20. On the strength of these decisions and authorities the petitioner contends that the movement of goods in this case from West Bengal to Jamshedpur was a part of the incident of the contract for sale and whether the property in the goods passes in either State or in one or both really did not matter. In : [1961]1SCR379 , the Supreme Court in construing Section 3 of the Central Sales Tax Act, by majority decides that a sale becomes taxable under S. 3(a) if the movement of goods from one State to another is the result of a covenant or incident of the contract of sale and the property in the goods passes to the purchaser otherwise than by transfer of title when the goods are in movement from one State to another. It is said that in respect of an inter state sale the tax is leviable only once and the two clauses of Section 3 are mutually exclusive so that the sale taxable as falling within Clause (a) of Section 3 will be excluded from the purview of Clause (b) of Section 3. Mr. Banerjee appearing on behalf of the State contends that most of the sales in this application are under the law prevailing before the passing of the Central Sales Tax Act and therefore, the interpretation of Section 3 of the Central Sales Tax Act should not be used to interpret inter state trade under Article 286 of the Constitution before passing of the Central Sales Tax Act. For this purpose he also relies on : [1961]1SCR379 and specially the observation made there at page 72 of the Report in : [1961]1SCR379 , namely,

'In interpreting these definition clauses, it would be inappropriate to requisition in aid the observations made in ascertaining the true nature and incidents without the assistance of any definition clause of 'sales outside the State' and 'sales in the course of import or export' and 'sales in the course of inter-state trade or commerce' used in Article 286.'

21. Before proceeding to determine the impact of these authorities on the facts of the present case before me it will be necessary to complete the reference to some other cases cited at the Bar. Reference was made to the case of *Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. Commercial Tax Officer* : [1961]1SCR902 . The case was concerned mainly with the meaning of the expression 'In the course of export' under Article 286(1)(b) of the Constitution before the Amendment. The point arose there in connection with the sale of Aviation spirit for foreign bound Aircraft. After explaining the theory of 'integrated activities' it is said at page 323 of the Report that every sale or purchase preceding the export, is not necessarily to be regarded as in the course of export. It must be inextricably bound up with the export, and a sale or purchase unconnected with the ultimate export as an integral part thereof is not within the exemption. The law on this point is now well settled by the Supreme Court. The question, however, remains in every case for determination whether the movement of the goods from one State to another is inextricably connected with inter state trade or whether the movement can be separated as not being under the sale. That is a question of fact as in this case to be determined. It will not be necessary to refer to the case of *State of Mysore v. Mysore Spinning and* . : AIR1958SC1002 as that is discussed in *Burmah Shell's case* : [1961]1SCR902 quoted above.

22. Reference is also made by Mr. Mukherjee, learned Counsel for the petitioner to the decision of the Supreme Court in *Commissioner of Sales-tax Eastern Division, Nagpur v. Husenali Adamji and Co.* : AIR1959SC887 . The ratio of that decision was concerned with the proper construction of the particular clauses of the contract in that case. It was held there that the contract was for sale of unascertained goods and consequently the property in them could not, under Section 18 of the Sale of Goods Act, pass unless and until the goods were ascertained. On proper construction of the contract in that case the Supreme Court came to the finding that as a whole the intention of the parties clearly was that A would send the logs by rail from the different stations in the Central Provinces to Ambernath where Wimco's factory Manager would inspect, measure and accept the same if in his opinion they were of the description and quality agreed upon.

A, therefore, gave in advance its assent to Wimco's appropriation of the goods at Ambernath. Hence the property in the logs passed to the buyer at Ambernath. The sales in question did not take place in the Central Provinces and Berar and consequently were not 'sales' within the meaning of the Act (Central Provinces and Berar Sales Tax Act), and, therefore, not liable to tax. I do not consider that case to be relevant on the points in issue before me, because neither in terms of fact nor in terms of the different clauses of the contract in that case has it any similarity of the problem presented by this petition. Again the case of Indian Standard Wagon Co. Ltd. v. Commercial Tax Officers : AIR1960Cal424 , presents a different state of facts. There a Division Bench of this Court observed at page 428:

'In the present case the goods were delivered in West Bengal for purposes of consumption in several States. It is plain, therefore, that the sale is not an Explanation-sale and the situs of the sale cannot be fixed by recourse to the Explanation. The fiction introduced by the Explanation does not come into play. The Explanation, therefore, does not make the sale a sale outside West Bengal.'

The Division Bench there was considering the Explanation of Article 286(1)(a) of the Constitution before the Amendment in 1956. Mr. Mukherjee also relied on the decision of the Kerala High. Court in M. Sudarsanan Iyengar and Sons v. State of Kerala : AIR1962Ker66 . There the main question for determination was whether F.O.R. sales occasioned the movement of the goods from the State of Kerala to the State of Madras and whether on that ground they could be considered as sales in course of inter state trade or commerce.

This case is relevant on a point which was argued for the Government but did not find support from the Court. The relevant observations of the Division Bench of the Kerala High Court in that case occur at page 67 and are as follows:

'According to the Government Pleader, in these F.O.R. contracts the title to the goods passed Within the State of Kerala and the obligations of the seller were at an end with the delivery of the goods to the common carrier within this State and the sales should not hence be considered as sales occasioning the movement of the goods from this State to the State of Madras, or, in other words, as sales in the course of inter state trade or commerce. We are not prepared to agree.

The connection between the F.O.R. sales at a railway station in this State for a destination outside this State and the movement that follows the delivery to common carrier is so intimate and real that we cannot but hold that the movement is occasioned, caused, or brought about by the sale, and that the sales should be considered as sales in the course of inter-state trade or commerce. The position appears to us to be beyond controversy and we think, it unnecessary to deal with all the decisions cited before us.'

23. No doubt these cases can be distinguished as Mr. Banerjee for the State tried to distinguish, on the ground that in none of these cases the Courts had to consider a contract such as the present one before me and specially with a condition like Clause (10).

24. The State of West Bengal in this application relied on a number of other decisions of which I will only notice the most relevant and outstanding ones. One is the decision of a Division Bench of the Madras High Court in Ashok Leyland Ltd., Ennore, Madras v. State of Madras : AIR1957Mad263 . In that case the assessee was a firm with its factory at Ennore, within the State of Madras, where it assembled motor cars, and with an elaborate organisation spread over several States for the sale of those cars and their accessories. The assessee appointed a 'dealer' for each territorial unit, and the contract which the assessee entered into with that dealer, defined with precision the territorial area, within which dealer had to carry on his selling operations. The assessee sold its goods to the dealer, and the dealer in his turn sold the goods to his customers within his territorial unit. The dealer was subject to specified contractual obligations if he sold his goods to anyone resident outside his territorial unit. It was held as a fact that despite the form of the contract between the assessee and the dealer, the jural relationship between them was that of seller and buyer. The dealer sent his drivers to the assessee's factory at Ennore, where those drivers took charge of the goods, cars and their accessories sold to their employer, the dealer. It was thus a case of delivery of goods ex-factory, a

delivery within the State of Madras. There the Madras High Court held that the sales fell outside the purview of the ban imposed by Article 286(2) of the Constitution. There the argument was advanced that, though the goods sold were delivered to the dealer as the buyer of those goods, and delivery was effected within the State of Madras, as such delivery was for immediate transport of the goods sold outside the States, the sale must be held to have been in the course of inter-state trade, within the meaning of Article 286(2) of the Constitution. The Division Bench of the Madras High Court rejected that contention and followed their previous decision in the Indian Coffee Board, Batlagundu v. State of Madras : AIR1956Mad449 . But even in that case there was a small part of the claim which the learned Judges pointed out at page 265 came within inter state trade and commerce because

'Since in this case the delivery arranged by the assessee was an integral part of the transaction of sale itself it would be a case of 'consignment' for which the contract provided -- those sales would certainly fall within the scope of inter state trade or commerce for which Article 286(2) of the Constitution provided.'

Here again the question depends on the question of fact and the interpretation of the facts on the point whether the transport was a part of the contract for sale or whether the transport was made after the completion of the sale independently of the contract. The question is, whether the transport or the movement under the contract is a part of its incident, i.e., an inseparable incident or whether it is de hors or outside the contract. Similarly, in the Coffee Board case, AIR 1956 Mad 449 to which reference has already been made, the facts are clearly distinguishable. There the Indian Coffee Board, instead of itself exporting the coffee, sold it to the registered exporters for being exported to foreign purchasers and completed the sale by delivery of coffee in the State of Madras. It was, therefore, held to be a sale which was taxable under the Madras General Sales Tax Act. The fact that the contract with the exporter provided for retransfer of ownership from the registered exporter to the Board, if the former defaulted in performance of the conditions of the contract to export the coffee, was held not to affect the transfer of ownership from the Board to the registered exporter.

25. Mr. Banerjee for the State naturally tried to make full use of this doctrine, namely that even though the purpose of the contract is impressed with export the Court found in favour of the local State tax. He naturally emphasized that in that case the contract provided expressly that if the registered exporter failed to export coffee within the time allowed by the Board, it could call upon him either to pay damages at a certain rate and/or even to deliver back to the Board the coffee at the market rate that prevailed then. In dealing with this distinction the relevant observations of the Madras High Court appear in the Coffee Board case, AIR 1956 Mad 449 at page 451 as follows:

'That the registered dealer was under an obligation, statutory or contractual to use the goods he bought in a specified manner did not make the transaction between him and the Board anytheless a sale. That sale was itself not a sale in the course of export to attract the exemption granted by Article 286(1)(b) of the Constitution.

Though the registered dealer eventually exported the goods, it was as his goods that he exported them. It was he who entered into the contract of sale with the buyer abroad. It was only that transaction with the purchaser abroad that could be brought within the scope of Article 286(1)(b) of the Constitution and not the earlier purchase by the exporter himself from the Board.' 'Reliance was also placed by Mr. Banerjee appearing for the State of West Bengal on the decision of the Division Bench of the Orissa High Court in S.R. Agrawalla and Brothers v. Collector of Sales-tax, Orissa : AIR1958Ori87 . All that the Orissa case decides is that where it is clear on facts the site for the sale was at a place within the State and the books of accounts of the dealer themselves show clearly that it was a sale out and out to a buyer within the said State, the provisions of Article 286(2) are not attracted, and the fact that the buyer sells the goods to outside millers cannot convert the sale by the dealer to the buyer into a sale in course of the inter-State trade. It was held there that the sale to the millers outside the State of Orissa had nothing to do with the sale by the dealer to Messrs. Paluram Dhandhanania; and it was also found as a fact that the sale having been completed at Baragarhit it could not be held that it had itself occasioned the export and thus assumed the complexion of inter-State trade at its

inception. The more significant finding occurs at page 92 where the learned Judge observes:

'Besides, the sale to outsiders was the result of a separate contract with the outsider millers, and accordingly, it cannot be said that the sale by the dealer to M/s. Paluram Dhandhanian and Co. was in course of the inter-State trade.'

Here, of course, there are no separate contracts for sale. There is no scope for argument in the present case before me that the petitioner first sold to Kaiser Engineers Overseas Corporation and thereafter the said Kaiser Engineers Overseas Corporation entered into a separate contract with the Tatas. Here, indeed, as the facts show, there is only one contract and that contract is between the petitioner and the Kaiser Engineers Overseas Corporation acting as agent for their disclosed principal, the Tatas.

26. This disposes of the main authorities cited before me in course of the arguments at the Bar. Before discussing the constitutional position it will be convenient to make a reference to certain relevant sections of the Sale of Goods Act and the Bengal Finance (Sales Tax) Act, 1941 on this point of sale of goods.

27. The Bengal Finance (Sales Tax) Act, 1941 has for its preamble 'An Act to impose a general tax on the sale of goods in Bengal'; it also says in the Preamble:--

'Whereas it is necessary to make an addition to the revenues of Bengal, and for that purpose to impose a general tax on the sale of goods in Bengal.'

The purpose, therefore, of this Bengal Finance (Sales Tax) Act is to impose a general tax on 'sale of goods in Bengal.' Section 2(g) of the Bengal Finance (Sales Tax) Act, 1941 as amended by the amending Act of 1954 defines 'sales' in these terms: 'sale' means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods involved in the execution of a contract, but does not include a mortgage, hypothecation, charge or pledge.'

This definition emphasises the aspect of the 'transfer of property in goods' in a sale. There are two explanations added to this Section 2(g) of the Bengal Finance (Sales Tax) Act, 1941 which I shall pass by because they are not relevant for the present purpose. Section 5 of this Act makes the tax payable by a dealer on his taxable turnover. It defines the expression 'taxable turnover.' Section 5(2) of this Act speaks of certain deductions to be made from the taxable turnover which is related to the sale of goods. The relevant part of such exemption for the purpose of this application is in Section 5(2)(a)(v), which provides for the exemption of 'sales of goods which are shown to the satisfaction of the Commissioner to have been despatched by, or on behalf of the dealer to an address outside West Bengal.'

From this brief analysis of the Bengal Finance Sales Tax) Act, 1941 I draw the following conclusions, namely, (1) that the tax is a tax on the sale of goods, (2) that the sale of goods means transfer of property in goods and (3) that one of the exempted sales from taxation is the sale which is shown to the satisfaction of the Commissioner to have been despatched by or on behalf of the dealer to an address outside West Bengal. Here, there is no question and no dispute that the goods we're despatched by or on behalf of the petitioner to an address outside West Bengal, because the packing and instructions make it quite clear that the goods were addressed to Tata Iron Steel Co. Ltd. A/c. Kaiser Engineers Overseas Corporation, TISCO Worksite, Jamshedpur, India, Prima facie, therefore, there is no reason why this sale of goods under the present contract should not be exempt under Section 5(2)(a)(v) of the Bengal Finance (Sales Tax) Act, 1941.

28. A question also has arisen whether the goods under the contract are specific and ascertained goods. 'Specific goods' is defined in Section 2(4) of the Sale of Goods Act to mean goods identified and agreed upon at the time a contract of sale is made. Mr. Banerjee for the State of West Bengal contends that the goods under this contract are specific goods, because they were identified by standard specification and size. Mr. Mukherjee for the petitioner, on the other hand, has contended that the goods under the contract are not specific goods but future goods and relied on the definition of 'future goods' in Section 2(6) of the Sale of

Goods Act which says that 'future goods' mean goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. Mr. Mukherjee may have some difficulty on this definition, because the records do not show that the goods were to be manufactured or produced or acquired by the seller. It is thus possible, so far as the records are there, that as a general order supplier the petitioner keeps this standard stock of this standard size and specification. I have already said that the petitioner does not manufacture or produce these goods. The term 'ascertained goods' although used in Section 58 of the Sale of Goods Act is not defined by that Act. Sir Dinshah Mulla's Commentary on the Sale of Goods Act, Second Edition, edited by Sir B. L. Mitter at page 92 suggests 'ascertained' probably means 'identified in accordance with the agreement after the time a contract of sale is made' and in support of such proposition cites the authority of Atkin, L. J. In re. Wait (1927) 1 Ch. 606, at p. 630; Prem Singh v. Deb Singh Mr. Banerjee for the State also relies on Section 23 of the Sale of Goods Act which provides that--

'Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.' On the strength of this statutory provision Mr. Banerjee ably contends that here in pursuance of the contract the petitioner delivered goods to the carrier named by the buyer for transmission to the buyer without any reservation of the right of disposal. Therefore, under Section 23(2) of the Sale of Goods Act the seller must be deemed to have unconditionally appropriated the goods to the contract. In other words, Mr. Banerjee for the State contends that there has been a complete sale when the petitioner in Calcutta delivered these goods to the lorry in Calcutta as selected by the buyer of Jamshedpur, because delivery to the carrier makes appropriation to the contract even of unascertained goods complete for the simple reason that by the time the goods were delivered they were fully ascertained, packed, marked and sealed. This is an argument of great strength.

29. One more section of the Sale of Goods Act is material and that is Section 39, Sub-section (1) of this section provides that--

'Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.'

Therefore, it is contended on behalf of the State of West Bengal that delivery to the public carrier in this case under special instruction from the buyer of Jamshedpur makes the sale complete in Calcutta and the delivery by the petitioner to the public carrier in Calcutta is by statute prima facie delivery of the goods to the buyer at Jamshedpur.

30. The combined effect of sections 23(2) and 39(1) of the Sale of Goods Act certainly is that in the one case delivery to the carrier is unconditional appropriation of the goods to the contract by the seller and in the other case delivery to the carrier is prima facie delivery of the goods to the buyer. If these two tests are applied then it must follow that the petitioner's delivery of these goods to the public carrier, a lorry in Calcutta, made the appropriation by the petitioner to the contract complete in Calcutta and such delivery is prima facie delivery to the buyer in Calcutta. That legal position must, I think, be accepted. It certainly fortifies a good deal the case of the State to tax the sale on, the present facts. But the essential question to my mind in inter-State trade is whether the trade is such that the sale of goods requires movement of the goods from one State to another. Many are the 'tests, many more are the interpretations and great statutory and judicial battles have been fought to define inter-State trade. The controversy has led to the Constitution (Sixth Amendment) Act. The tests (1) where the contract is made, (2) where the contract is performed, (3) where the goods are produced and (4) where the title to the goods passes are all relevant tests which in my view may or may not, either separately or by combination, be conclusive to determine the basic question of what is an inter-State trade. This unfortunate expression 'inter-State trade' was borrowed from American constitutional

jurisprudence and engrafted into the Indian constitution. It is a phrase that bears the scars of many judicial battles and legal controversies. Article 286(2) of the Constitution before the amendment provided --

'Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce:

\* \* \* \*

Now the expression 'inter-State trade or commerce' does not necessarily mean what it says. It is not confined to mean trade or commerce between the States as such between a Seller State and purchaser-State. It is inter-State trade where goods sold or purchased under contracts of sale move from one State to another. Trade movement of goods from one State to another is the insignia of inter-State trade though the trade is very often between individuals, firm, companies and corporations.

31. The reason behind the constitutional jurisprudence of inter-State trade and commerce is not far to seek. In a kind of political union or federalism of any type where different States unite and form parts of one Sovereign State and Government, economic unity demands that no discriminatory impediments should be placed on the free flow of trade and commerce between the different parts of the united territory and Government. The recognition of free flow of trade and commerce is both explicit and implicit in the Indian Constitution. Part XIII of the Indian Constitution deals with this subject of trade, commerce and industry within the territory of India. In that Part Article 301 declares that the trade, commerce and intercourse throughout the territory of India shall be free subject to the other provisions of this Part of the Constitution, (2) Article 302 gives power to Parliament by law to impose such restrictions on this system as may be required in the public interest, (3) Article 303 provides a bar that notwithstanding anything contained in Article 302 neither Parliament nor state legislatures shall have the power to make any law giving or authorising to give any preference to one State over another or making or authorising the making of any discrimination between one State and another by virtue of any entry relating to any trade or commerce in any of the lists in the Seventh Schedule of the Constitution; this, however, is subject to a rider, namely, that it will not prevent Parliament from making such a law giving such preference if it is necessary to do so for the purpose of dealing with the 'situation' arising from the scarcity of goods in any part of the territory of India; (4) Article 304 is a State charter for the State legislature by law to impose on goods imported from other States of the Union territory any tax to which similar goods manufactured or produced in the State are subject, the idea being that there should be no discrimination between the goods so imported and goods so manufactured or produced, and to impose such reasonable restriction on the freedom of trade or commerce as may be required in the public interest; but in that event the Bill for the purpose shall not be introduced or moved in the legislature of the State without the previous sanction of the President; (5) Article 305 saves certain existing laws from the operation of Articles 301 and 303. The controversy whether Articles 301 and 304(b) cover a state tax law or not may now be said to have been set at rest by the decision of the majority of the Supreme Court in *Atiabari Tea Co. Ltd. v. State of Assam*, AIR 4961 SC 232 holding that all taxes which directly and immediately restrict freedom of trade and commerce come within the ambit of Article 301 and, therefore, a State Act imposing such a tax must satisfy the requirements of Article 304(b) as to (1) reasonableness, (2) public interest and (3) Presidential assent

32. Article 286 of the Constitution does not appear in Part XIII of the Constitution but in Part XII of the Constitution dealing with, inter alia, miscellaneous financial provisions. Article 286(1) of the Constitution lays down:

'No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place:

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.'

This was followed, before the amendment, by an Explanation which attempted to say that for purpose of sales or purchases outside the State, a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State. The Explanation has now been omitted by amendment but as a relic of history it indicates to-day only this that in the concept of inter-State trade or commerce the place where the title to the goods passes may not be decisive even as an express constitutional proposition.

33. The constitutional doctrine of free inter-State trade and commerce must not be understood to mean that inter-State trade and commerce is a privileged activity immune from all taxation. What the Constitution prohibits is multiple taxation of inter-State sale transactions, discrimination between States in imposing tax on such transactions and discriminatory taxes on goods imported into and exported out of the State. But non-discriminatory taxes on inter-State commerce are not within the constitutional prohibition for an absolutely unqualified immunity of all inter-State trade or commerce will create artificial and unhealthy channels of trade and will lead to economic waste in transportation by encouraging persons to make their purchases tax-free out of the State.

34. The judicial and constitutional struggle over the question of the freedom of inter-State trade and commerce has passed through four major stages in the constitutional history of India. The first stage represents what may be called the age of 'territorial nexus' theory. This originated from Section 297(1)(a) of the old Government of India Act, 1935, the immediate predecessor of the present Indian Constitution. At that time the provinces in India levied tax on sale of goods even though only one or two ingredients of sale had taken place within their respective territories. This was done on the theory of territorial nexus. The leading case on the point is the *Tata Iron and Steel Co. Ltd. v. State of Bihar* where the Supreme Court recognised that a State could levy sales tax on a transaction even where all the ingredients of the sale had not taken place within it, provided, of course, there was sufficient territorial nexus between it and the sale. The presence of goods in that case in the State of Bihar at the date of the agreement for sale or production or manufacture of goods in that State was held to provide a sufficient territorial nexus for that State to levy a tax on such a transaction of sale. Assam and Bengal followed the test of the actual existence of the goods at the time of the contract of sale as the test of taxability. Bihar made the production or manufacture of the goods in the province as an additional test. The Central Provinces and Berar of that time cast the net wider and made the test broader by saying that the test of taxability was that the goods could be taxed if they were actually found in the province at any time after the contract of sale or purchase in respect thereof. The net result of this theory of territorial nexus was multiple taxation of the same transaction by different provinces. The second stage may be called the stage of 'outside consumption' theory. The leading case on this point for this stage is the *State of Bombay v. United Motors (India) Ltd* : [1953]4SCR1069 where the Supreme Court observed:

'On the construction we have placed upon that Explanation (of Article 286 of the Constitution) sales or purchases effected in Bombay in respect of goods in Bombay but delivered for consumption outside Bombay are not taxable.' The ratio of the decision in this case was that Article 286 was held to prevent the exporting State from imposing sales tax on goods sent to another State, although the Supreme Court made an exception by interpreting Article 286 to permit the importing State to tax a transaction of sale or purchase even though it took place in the course of inter-State trade or commerce and even though the person to be taxed was resident outside its territory, provided, of course, that the goods were delivered in the importing State for the purpose of consumption therein. The 'outside consumption' theory created practical administrative difficulties in business and commerce because it made the dealer in the exporting State amenable to the sales tax law of the importing State. It encouraged importing States to levy tax on those sale transactions where the goods were delivered in their respective areas for the purposes of consumption therein and thus leading to the assessment and collection of taxes from selling dealers outside the importing

State. With a view to get over this situation the third stage is reached which may be called the stage of 'immunity of inter-State sales' theory. The leading case on this point for this stage is 1955-2 SCR 603 : ((S) AIR 1955 SC 66r). The broad ratio of that decision is that no State could tax a transaction of sale or purchase taking place in the course of inter-State trade or commerce and it certainly must be taken to have overruled or negated the doctrine laid in the United Motors' case : [1953]4SCR1069 is so far as it permitted the importing State to tax the transaction of sale or purchase only on the ground that the goods were delivered there for consumption. The Bengal Immunity case : [1955]2SCR603 is regarded as the charter for immunity of inter-State sales from taxation. Its result was that the sales tax imposed by the importing States on inter-State sales by non-resident dealers became unauthorised. Individual States were faced with large claims for recovery of the amounts realised and they were almost on the point of seriously destroying the economic stability of the State. This gave rise to an emergency and the President had to promulgate Ordinance III of 1956 followed by the Sales Tax Laws Validation Act (VII of 1956) under the power conferred on Parliament under Article 286(2) of the Constitution beginning with the well known formula 'notwithstanding any judgment of any Court'. 'What this Validation Act did was to legalise the levy and collection of taxes already made by the authorised States between the specified period from April 1, 1951 to September 6, 1955. The Validation Act also kept alive the sales tax laws of the different States in respect of inter-State sales which had taken place during that period so as to enable them to initiate assessment proceedings on such sales. In short, the net result was to confirm the rule laid down in the United Motor's case : [1953]4SCR1069 for the period from 1st April, 1951 till 6th September, 1955. The observations of the Supreme Court in Sundara Ramiar and Co. v. State of Andhra Pradesh, 1958 SCR 1422 : (AIR 1958 SC 408) may be seen in this connection. But the difficulties created by the Bengal Immunity decision : [1955]2SCR603 were not all legalistic. That decision had larger repercussions: first, by creating a privileged position for the inter-State buyer who was unable to make his purchase inter-State free of sales tax leading to diversion of trade into artificial channels and great economic waste, and secondly, by adversely affecting the basic financial resources of the State; the third and the last stage is reached as a result of these difficulties created by the decision in the Bengal Immunity case : [1955]2SCR603 . This third stage is the stage of the amendment of the Constitution by the Constitution (Sixth Amendment) Act, 1956 and the enactment of the Central Sales Tax Act. These constitutional and statutory loopholes were covered by the Tax Enquiry Commission's recommendations contained in Vol. III of their report published in 1953-54.

35. The Constitution (Sixth Amendment) Act, 1956 came in to make a number of radical changes: in the first place, it alters the Seventh Schedule to the Constitution by (1) inserting in the Union List a new entry called 92-A reading --

'Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.'

and (2) by substituting the previous entry 54 of the said list with the new entry 54 reading --

'Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92-A of List I.'

Secondly, the Constitution (Sixth Amendment) Act, 1956 amends Article 269 by inserting Sub-clause (g) in Clause (1) after Sub-clause (f) thereof and the new amendment reads --

'(g) taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce'.

and by inserting a new Clause (3) after Clause (2) reading --

'(3) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.'

Thirdly, the Constitution (Sixth Amendment) Act amends and alters Article 286 of the Constitution by (1) omitting the Explanation after Clause (1), and (2) by substituting new Clause (2) and (3) in place of the old Clauses (2) and (3) reading as follows:

'(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Clause (1).

(3) any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in interstate trade or commerce, be subjected to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.'

Prior to the Constitution (Sixth Amendment) Act, 1956 the Explanation to Article 286(1) of the Constitution had defined an outside sale, but Parliament has now been given power under Article 269(3) to make law formulating principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce. This enlargement of Parliament's legislative competence has at least this merit to recommend it that the definition of the principles for inter-State trade or commerce could be amended more easily without an amendment of the Constitution, as was the case previously. Its demerit, however, is the actual language in which Sub-clause (3) of Article 269 is framed saying that Parliament may by law formulate principles. If the law-making is limited only to 'principles' it is certainly a very great constitutional and legal innovation in the history of constitutional jurisprudence because it is always difficult to see the actual practical limits of the so-called 'principles'.

36. To complete the account of this last stage it is only necessary to add that the Central Sales Tax Act was passed by Parliament in 1956 and its preamble proclaims three main objectives: (1) formulation of principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside the State or in the course of import into or export from India, (2) provision for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade and commerce and (3) declaration that certain goods are to be of special importance in inter-State trade or commerce and specifying the restrictions and conditions to which State laws imposing taxes on the sale and purchase of such goods of special importance shall be subject. Section 3 of the Central Sales Tax Act defines what is a sale or purchase in the course of inter-State trade or commerce in these terms :-

'A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.'

Two Explanations are added to that section: one relating to the case when goods are delivered to a carrier or other bailee for transmission and in that case it is expressly said that for the purposes of Clause (b) above of Section 3 the movement shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. The other Explanation is that where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State. Section 4 defines when a sale or purchase is said to take place outside a State and what is a sale or purchase of goods within the State. Section 4 provides:-

'(i) Subject to the provision contained in Section 3, when a sale or purchase of goods is determined in accordance with Sub-section (2) to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States.

(2) A sale or purchase of goods shall be deemed to take place inside a State if the goods are within the State --

(a) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation'. An Explanation is added at the end saying that where there is a single contract for sale or purchase of goods situated at more places than one, the provisions of this sub-section shall apply as if there were separate contracts in respect of the goods at each of such places.

37. It follows from this outline that Section 3 of the Central Sales Tax Act defines an inter-State sale and according to that section those sales which occasion the movement of goods from one State to another or are affected by transfer of documents of title to the goods during their movement from one State to another are regarded as inter-State. These sales are subject to taxation by the Union Government by reason of the amended Entry 92A of List I of Seventh Schedule of the Constitution. It follows that mere contemplation of movement at the time of sale without there being an actual movement or movements after the completion of sale will not make the sale an inter-State sale. Therefore, if the delivery of goods is given to the buyer and title passes to him within the State, the subsequent export out of the State by him does not render the previous sale interstate, because the movement is after the sale and the sale itself really does not occasion the movement of goods. That was why in Ashok Leyland's case : AIR1957Mad263 quoted above, it is said that it will be an inter-State transaction if the nonresident buyer comes into the exporting State and takes delivery of the goods there even with the intention of exporting the goods outside the State and even if in fact he does export during the course of business; and that was also the decision of the Orissa High Court in : AIR1958Ori87 already quoted which says that purchases within the State even with the intention of exporting outside the State would not convert the sale to the buyer within the State into a sale in the course of inter-State trade.

38. It is said in the unreported decision of the Supreme Court in the Cement case Civil Appeal No. 255 of 1961 D/- 28-8-1962 : : [1963]3SCR777 that by Section 3 of the Central Sales Tax Act the legislature has accepted the principles governing inter-State sales as laid down in Mohanlal Hargovind's case : [1955]2SCR509 . The Central Sales

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**