by itself is not mandatory for the Punishing Authority. Inspite of the approval of the proposed punishment the Punishing Authority is competent to award lesser or no punishment. Approval of an act does not mean performance of the Act. Doing of an act and approval before or after the act are two distinct acts envisaged by law. Public Service Commission is only an advisory authority whose approval is required to act, while the State is infact the acting authority. No power has either been delegated by the State to the Public Service Commission to act on its behalf nor it is even remotely referred to during the course of arguments. Thus the impugned order cannot be sustained on the grounds, it was attempted to be sustained.

(4) Petitioner cannot be tried twice over on the same charges. Once the petitioner was found not guilty of the attributed charges by the Enquiry Officer, whose report was accepted by the Punishing Authority, he cannot be punished for the same charges is an enquiry though held prior in time than the one, when he was found not guilty of these very charges. It is the final decision which brings down the curtain on the charges attributed. State cannot be permitted to keep open its options on an enquiry held earlier on the charges and proceed with another enquiry on the same charges along with some new charges. Charges having been found not proved, the State cannot be permitted to pass two contradictory orders one holding the petitioner guilty and the other not guilty. The respondents cannot be permitted to approbate and reprobate with respect to the same charges in the same breath. It is well established that a person cannot be tried twice on the same charges.

(5) In view of the observations made above, the impugned order (copy Annexure P-16) cannot be sustained and the same is quashed. The writ petition is allowed. The petitioner is reinstated with all the consequential reliefs. No order as to costs.

J.S.T.

Before Hon'ble S. P. Kurdukar, C.J. & V. K. Bali, J.

M/S JINDAL STRIPS LIMITED THROUGH SHRI SHAM LAL GUPTA & ANOTHER,—*Petitioners.*

versus

STATE OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 1898 of 1992.

15th September, 1995.

Constitution of India, 1950—*Art.* 226—*Haryana General Sales Tax Act*, 1973—*S.* 4—*Central Sales Tax Act*, 1956—*Ss.* 6-A, 9(2)—*Central Sales Tax Rules*, 1956—*Rl.* 12(5), *Form 'B' Branch Transfer—Consignment Sales—Petition filed against assessment order alleging*

mala fides *against Chief Minister—Alternative remedy—Existence of alternative remedy for barring petition under Art. 226 is not of universal application—Matter remaining pending before High Court for 3 years and exhaustive oral and written arguments by parties advanced and coupled with the fact that huge amount of tax is sought to be imposed on the company and depositing of such tax being condition of hearing appeals on merits, the objection of alternative remedy stands repelled—Question whether Branch transfers are Inter State Sales or the Consignment Sales to its agents are Inter State Sales, matter remitted to the assessing authority for fresh decision—Assessment order quashed—Findings of* mala fides *cannot be returned merely on probabilities.*

Held, that whatever might have been the reason for admitting the matters to DB, the stark fact is that the matters have remained pending before this Court for a period of three years and elaborate exhaustive oral and written submissions have been made by the parties spanning over approximately a period of six months, actual hearings being for about 15 days. The matter could not be heard continuously as learned counsel for the parties were not available to argue the matter in one go. That apart, a huge tax has been imposed upon the petitioner Company by way of holding the branch transfers as consignment sales to be inter-state Sales. We are told that the tax imposed for a period of three successive years would be about twenty crores. Concededly, deposit of tax is a condition precedent for hearing the appeals on merits under the provisions of the Act, be it the State Act or the Central Act. We are quite conscious of the fact that it is permissible for the appellate authority to entertain an application for stay and grant the same during the pendency of the appeal but we are equally conscious of the fact that in majority of the cases such a stay is not granted and if granted, the same is conditional.

(Para 27)

Further held, that this petition should be dismissed as an alternative remedy is available to the petitioners, is thus repelled.

(Para 28)

Further held, that the findings of the assessing authority that inasmuch as the branch transfers were not permitted and the goods sent to various branches of the petitioners located in various parts of the country, could be used only at Hisar office, failing which the same shall have to be presumed as inter-state sales, can not stand scrutiny of law. Section 8(3)(b) as also Rule 12(1) of the Central Act have been reproduced in the earlier part of the judgment. Neither the provisions of Section 8 nor those of Rule 12 nor the provisions of the Registration Certificate in Form 'B', nor the declaration given in form 'C' require that the goods in question should be used in the manufacturing or process of goods for sale in a particular state only. In that be the language of the Statute, it can not be said by any stretch of imagination that petitioner Company misused the registration certificate.

(Para 36)

Further held, that clause (b) of section 3 is not applicable as no sale was effected by a transfer of documents of title, during their movement from one State to another.

(Para 37)

Further held, that when the goods have moved from one State to another, a question arises under Section 3(a) of the Central Act, as to whether such movement of goods had been occasioned by a sale in the course of inter-state trade or commerce and if it has been so occasioned, a liability under the Central Act would arise. If not, so such liability can possibly arise. We are also in agreement with the contention of the learned counsel that where the transfer of goods is claimed otherwise than by way of sale, the burden of proof would be discharged by the dealer if he has furnished to the assessing authority, within the prescribed time or within such further time as that authority might, for sufficient cause, permit a declaration duly filled and signed by the principal officer of the other place of business or his agent or principal, as the case may be, containing the prescribed particulars, in the prescribed form obtained from the prescribed authority, alongwith the evidence of despatch of such goods but such a burden is discharged, in considered view of this Court, in the assessing authority, on an inquiry made by it as envisaged under sub-section (2) of Section 6-A, is satisfied that the particulars furnished by the dealer under sub-section (1) are true than no tax liability would arise under the Central Act.

(Para 38)

Further held, that the assessing authority would have been well within its rights under provisions of Section 6-A of the Central Act to hold an enquiry. It would have well been within its rights again to ask the assessee to furnish all declaration forms and to examine the entries made therein and if the same were found to be incorrect or inconsistant or there was some over-lapping, the assessee should have been given further chance to prove that the goods sent through declaration forms were actually consignments to the agents and not inter-state sales. Nothing like that was, however, done and the orders were passed on the grounds which were not germain to the enquiry contemplated under the provisions of the Central Act and the Rules framed thereunder.

(Para 38)

Shanti Bhushan, Ashok Aggarwal, Sr. Advocates with Rajesh Bindal, Jayani and A. K. Mittal, Advocates, *for the Petitioner.*

H. L. Sibal, A.G. Haryana and Arun Nehra, Addl. A.G. Haryana, *for the Respondents.*

JUDGMENT

V. K. Bali, J.

(1) M/s Jindal Strips Limited, a public limited company, registered under the Indian Companies Act, through separate three writ petitions bearing Nos. 1898 and 5864 of 1992 and 5404 of 1993, takes strong exception to the assessment orders made under the Central Sales Tax Act, 1956 (hereinafter to be referred to as the Central Act) for the assessment year 1988-89, 1989-90 and 1990-91. Whereas, prayer in C.W.P. No. 1898 of 1992 is to issue a writ in the nature of certiorari to quash the show-cause notices, Annexures P-101 (dated December 10, 1991) and P-194, dated December 17, 1991) as also assessment order, Annexure P-194, dated December 18, 1991 passed by respondents 2 and 4, prayer in writ petitions 5864 of 1992 and 5404 of 1993 is to quash show cause notice, Annexure P-690, dated April 22, 1992 and the assessment order, Annexure P-715, dated May 1, 1992, passed by respondent No. 2. The Excise & Taxation Commissioner-cum-Assessing Authority and impugned orders, Annexure P-29, dated February 18, 1993 and demand notice, Annexure P-30, dated February 18, 1993, respectively, being illegal and arbitrary. We propose to dispose of all the three writ petitions by this common judgment as identical questions of law and fact are involved in all the matters. Shorn of un-necessary verbiage, the facts have, however, been extracted from Civil Writ Petition No. 1898 of 1992 with some additional facts that might be necessary from the other two writ petitions. Learned counsel for the parties have also raised common questions in relation to all the writ petitions. Some additional contentions have also been raised pertaining to Civil Writ Petitions 5864 of 1992 and 5404 of 1993. The additional contentions shall be separately dealt with.

(2) As mentioned above, petitioner No. 1 Jindal Strips Limited is a public limited Company duly registered under the Companies Act, 1956 and has its registered Head Office at Delhi Road, Hisar. Petitioner No. 2 is a share-holder of the Company having financial interest in the petitioner Company-Jindal Strips Ltd. and is stated to be materially affected by the impugned orders passed by respondent 2/4 thereby creating additional demand to the tune of Rs. 2.04,13,895/—*vide* orders dated December 18, 1991. Petitioner No. 1 is stated to be engaged in the business of manufacturing plain carbon, alloy and stainless steel strips, slabs, blooms, plates, oxygen and argon gases etc. for the last more than two decades. Its business turn-over increased manifold and the present turn-over for the year 1990-91 is about Rs. 1,88,60,30,533.81 whereas its turn-over for

the year 1971-72 was Rs. 24,05.097.00. The reason for substantial increase in the turn-over is stated to be that the Company is engaged in the manufacture of products which are import substitute and the petitioner Company is mother industry for so many other units in the country. It is duly registered under the Haryana General Sales Tax Act, 1973 (hereinafter referred to as the 'State Act') and the Central Act. The Company has been filing its sales tax returns, both under the State Act and the Central Act regularly and depositing the amount of tax whatever was found due under the provisions of the State Act and/or the Central Act. It is further the case of petitioner Company that its assessment under the State Act as well as the Central Act had already been completed upto March, 31 1988 when the present Chief Minister Shri Bhajan Lal took-over the affairs of Haryana State. The assessment of the Company had always been made till above periods by the concerned authorities in accordance with law. The Company claims to have a very clean track record as the management was very much conscious of the compliance of all laws including the Sales Tax Law by paying taxes honestly and timely. From the assessment orders for the last nine years, it would be clear that the stakes at the time of final assessment orders, had been very limited and if additional demand of a few thousands of rupees has been created in some years, then the refunds were also ordered in some years. The Company further claims itself to be a source of employment to thousands of workers and employees as also source of continuous revenue not only to the State but even to the Union of India in the shape of customs duty, excise duty, income tax and other taxes which run into Rs. 60 crores and which are on increase over the previous years. The Company expected contribution to the State as well as to the Union of India of an amount of Rs. 80 crores in the shape of revenue. To high-light its clean track record it is further pleaded that since the very inception of the Company in the year 1970-71 it had always been honest to its core in the matter of payment of any revenue or taxes either to the State or to the Centre and it is only for this reason that the Company had never been involved in any litigation relating to the evasion of any revenue. Similarly, the management of the Company had always been champion and in the forefront of granting all types of facilities to its workers and in the matter of imparting all possible advantages of employment, bonus and other facilities, not only to its higher management executives but even to the workers engaged at the lowest level. The growth rate of the Company had been increasing every year but, it is pleaded that hand some atrocities,

details whereof would be given here-in-after, not been committed by the present regime, the growth rate would have been much more. Since June, 1991, it is the case of the petitioner Company, the atrocities committed by the present regime have caused serious blows to the normal and smooth running of petitioner Company which are due to the political vendetta indulged by the present regime headed by Shri Bhajan Lal, against Shri O. P. Jindal, the Chairman and Managing Director of the petitioner Company for the reasons of his conceding to the popular demands of the electorates of Hisar constituency by Shri O. P. Jindal in the matter of contesting the Haryana Assembly Election from the Hisar Assembly segment constituency in the year 1991 in which Shri O. P. Jindal had successfully defeated a protege of Shri Bhajan Lal. By the time the present writ came to be filed, the case of the petitioner Company is that it had been booked in about 200 cases which are being contested by the management in one Court or the other and in fact much of its staff is on run for the whole day and that too every day in contesting or defending one or the other litigation coming into existence for the reasons of political vendetta caused and thrust upon the management of the petitioner Company by Shri Bhajan Lal. It is the case of the petitioner that Shri Bhajan Lal has not only used but misused each and every organ of the State machinery in trying to capitulate Shri O. P. Jindal in the political arena by disturbing his industrial clot to see that the said acts of omission and commission on the part of the Chief Minister would ultimately be writ large on the fate of the equity share-holders of the petitioner Company which are about 40,000.

(3) When the present Chief Minister assumed power in the month of June, 1991, assessment proceedings for the assessment year 1988-89, 1989-90 and 1990-91 were pending and in all the three assessments, the claim of deductions under the State Act as well as the Central Act were involved on the same patron, as was involved in the earlier assessment years also for which the assessments had already been framed and the matters in issue, in fact were identical in nature, except the difference of assessment year and the difference in the quantum of sales turnover which had been on increase in all the assessment years. In sum and substance, the matters were identical on facts as well as on law. Shri O. P. Jindal, Chairman and Managing Director of the Company, it is stated, had attracted the wrath of Shri Bhajan Lal in the Haryana Assembly election initiated and concluded in the period between April to June, 1991 as he filed nomination papers for contesting Hisar assembly segment election as a candidate of Haryana Vikas Party headed by Shri Bansi

Lal, ex-Chief Minister of Haryana, against the wishes and desires of Shri Bhajan Lal. The latter it is stated, made his displeasure known to every one by declaring that he would contest the Hisar election by proxy and got allotted the ticket to his protege Shri O. P. Mahajan, whom he had got elected as an independent candidate after getting defeated his own party candidate Shri Munna Mal in the assembly election in the year 1987. With a view to prop up its stand that Bhajan Lal had made the Hisar election as prestige issue, it is stated that he had made it known to every body which is also evident from the public speeches made by him during the election campaign as he put his most of the time in Hisar. Some of the public speeches, which were made during election campaign and which appeared in the press, have been enclosed with the writ as Annexures P-196-A to P-196-C. During the election process, it is further the case of petitioner Company, Shri Bhajan Lal had made it clear that if he loses the Hisar election, it would mean chopping of his nose. Shri O. P. Jindal was, however, elected in the said election after defeating Shri O. P. Mahajan with a big margin. It is then that Shri Bhajan Lal started implementing his threats immediately after coming into power by first putting the police machinery into action to see that the goods manufactured in the factory premises of petitioner Company did not move, which resulted in filing of various civil suits in which stay was granted. For willful violation of the stay orders by the officers of local Administration including the Superintendent of Police and the Deputy Commissioner, Hisar, attachment of salaries of these officers was ordered by the Court on August 7, 1991. Thereafter, Shri O. P. Jindal his son, senior Executives and employees of the Company besides his political supporters were involved in false criminal cases registered not only under the provisions of the Indian Penal Code but under the Arms Act as also dreaded provisions of Terrorists and Disruptive Activities (Prevention) Act. Shri O. P. Jindal however, it is the case of the petitioner, did not capitulate before the Chief Minister Shri Bhajan Lal even after the aforesaid atrocities and rather faced the same. Thus, the electricity supply to the concerns of Shri O. P. Jindal including the petitioner company was got disconnected by Shri Bhajan Lal by pressing the Haryana State Electricity Board whereby even the electricity generated by the captive power plants installed by the Company at the cost of crores of rupees was not allowed to be consumed. However, when the Chief Minister could not get the desired results even after getting the electricity supply of Shri O. P. Jindal's concern disconnected, due to the intervention of the Courts, Shri Bhajan

Lal pressed the Industries and Pollution Control Departments into service, who, by way of issuing series of notices, tried to get the factories closed. When, even this did not give the desired results, the Chief Minister brought the Sales Tax Department into forefront on coming to know that three assessments of the petitioner Company were pending in the said Department at Hisar by first raiding with large police force not only the factory premises of the petitioner Company but even the residential house of Shri O. P. Jindal and that too in his absence in a totally illegal manner. Shri R. S. Sharma-respondent No. 4 was, it is the case of the petitioner, especially brought in at Hissar as Deputy Excise & Taxation Commissioner to carry out the object when the earlier incumbent had refused to carry out the illegal objects of the Chief Minister. Thereafter, the truck union dispute was resorted to resulting into illegal detention of trucks carrying goods for and on behalf of the petitioner Company. This time also the Courts came to the rescue of the Company. It is further the case of the petitioner that the atrocities did not end there and thereafter for the desired results the Chief Minister pressed into service the antisocial elements who indulged in indiscriminate firing on the factories and residential areas of the employees of petitioner and they were even terrorised.

(4) The assessment proceedings for the year 1988-89 were initiated by respondents 2 and 4 for the first time on September 26, 1989 under the State Act. No separate statutory notice for initiating assessment proceedings under the Central Act was ever issued to the Company by respondents 2 and 4. By September 25, 1991 respondents 2 and 4 had done only the preliminary work of verifying the goods receipts ST 38 forms etc. as received from various sales tax check barriers which would be clear from various interim orders passed on the assessment file. During all this time the petitioner Company was never asked to submit any paper prior to issue of notice dated September 26, 1991. The assessment proceedings were started with full force only with the issuance of notice dated December 10, 1991 which was served upon the petitioner Company on December 16, 1991 after respondents 2 and 4 were given a fresh feed back by the Chief Minister not to cause un-necessary delay in completing the assessment proceedings. However, the petitioner Company always co-operated during the assessment proceedings and always supplied whatever information or documents were asked for by respondents 2 and 4 without any delay. The Deputy Excise &

Taxation Commissioner-respondent No. 2,—*vide* notice dated October 31, 1991, served upon the Company on November 11, 1991, required it to submit certain documents on November 13, 1991. The documents submitted by the petitioner company were the proforma A&B, affidavits from the principal/authorised persons of three branches of the Company, "F" forms, Balance sheets, etc. All the documents, so submitted. have been summarised in sub paras (i) to (iv) of para 12 of the writ petition.

It is so pleaded and argued by Mr. Shanti Bhushan, learned senior counsel appearing on behalf of the petitioner Company that bare perusal of Section 6(A) read with Rule 12(5) would make it abundantly clear that for proving that the goods sent by a registered dealer (petitioner company in the present case) to its branches, and to its consignment agents, for effecting the sale of the same on consignment sale basis area, not inter-State sales, a declaration of form "F" duly issued by the office of the prescribed authority i.e. concerned Sales Tax Authority, where the branches are registered, as registered dealer and where the consignment agents are registered as registered dealers, and executed by the branches and consignment agents, hand-over to the consignor, is required to be submitted to the assessing authority. The submission of the said form "F" by the petitioner company, as many as 191 in number (44 relating to branch transfers and 147 relating to consignment despatches) along with proforma A&B, affidavits of the principal officers of the concerned branches, clearly discharged the burden upon the petitioner Company to prove that the goods worth Rs. 51,66,179.26 were sent by it to its aforesaid three branches for their consumption and/or sale and the goods worth Rs. 55,45.92,345.00 were sent by it to its different consignment agents for effecting the sale of the said goods on consignment sale basis. True copies of form "F" sent by M/s Jindal Steel Agency, Madras have been attached with the writ petition, details whereof have been given in Annexure P-295. Similarly, true copies of form "F" sent by M/s Orbit Steel India, Bombay, have been attached with the writ as Annexures P-77 to P-97. On the basis of these documents and goods receipts besides other documents and accounts, it is argued. the assessing authority should have finalised the assessment of the Company on November 13. 1991 itself holding therein that the branch transfers were genuine and admissible under law and that the despatches made by the petitioner to its various consignment agents were genuine and admissible under law. However, respondent 2/4 adjourned the proceedings for

November 20, 1991 for extraneous considerations. A bunch of documents, such as G.Rs., consignment despatch advice etc. showing that the material were directly sent by the job contractors of the Company from Delhi to consignment agents, have also been attached with the writ petition. The material that was sent to the job Contractors at Delhi required services of the transport companies available at Delhi. It is further pleaded that complete evidence in respect to branch transfers was also submitted which was ignored by respondent No. 2/4. Since no purchases were effected by the Company within the State of Haryana either on the strength of RC or without payment of tax, it was within its rights to transfer these goods to its branches and no further tax liability either under the State or Central Act would accrue on such transfers. The factum of transfer to the branches having been already accepted by respondent No. 2/4, there could be no sale much less inter state sale between the Head Office and the Branch Office of the same entity. Further, it is argued, respondent No. 2/4 miserably failed to point out the law under which the petitioner Company was not entitled to transfer the store goods in the same shape to its branches outside the State when none was purchase on the strength of RC in Haryana or without payment of tax. On November 20, 1991 as well the petitioner Company, as required by respondent No. 2/4, submitted 23 affidavits, one by the Company and 19 of the consignment agents in respect of the consignment sales for the year 1988-89 and three in respect of branch transfers. These affidavits, it is the case of the petitioner, were sworn in and declared by the principal officers/authorised persons of 21 consignment agents to the effect that they had received the said goods in the assessment year 1988-89 from the petitioner Company and the said goods have been accounted for and entered in their books and that the said goods had actually left the limits of Haryana and no part of the said goods had been sold or consumed in the State of Haryana and that they had effected the sale of the same on consignment basis. On receipt of the documents aforesaid, respondent No. 2/4, it is pleaded, should have held the branch transfers as genuine and made in the ordinary course of business, the burden of proof having been discharged by the petitioner Company conclusively. Respondent No. 2/4 should also have held, on the basis of the documents i.e. Form "F", affidavits of the petitioner Company, that the consignment sales worth Rs. 55,45,92,345 were genuine consignment sales admissible under law. However, respondent No. 2/4 instead of finalising the assessment holding as above, kept the assessment proceedings pending.

(5) It is pleaded that intention of respondent No. 2/4 came to light in the present case when they issued notice dated December 10,

1991 served on the petitioner Company on December 16, 1991 for its reply and appearance on December 17, 1991. In this notice, respondent No. 2/4 doubted the genuineness of the consignment sales worth Rs. 55,45,92,345 of the goods sent by the petitioner Company to its various agents outside the State of Haryana and goods transferred by the Company to its branches worth Rs. 51,66,179.26 outside the State of Haryana and called upon the Company to show cause as to why the said entire consignment sales and branch transfers be not rejected and tax be levied under the Central Act considering the consignment sales and branch transfers as inter-state sales. It is stated that from the contents of the notice it would be clear that respondent No. 2/4 sought the information which was otherwise available with them on the concerned assessment files of 1988-89 but they never cared to go through the file and even intentionally ignored the relevant documents brought to the pointed notice as they were not to frame the assessment in a legal way but in an illegal manner with a view to create illegal demand of Rs. 2 crores at the instructions of the Chief Minister. The impugned notice, Annexure P-101, was served upon the Company, as stated above, on December 16, 1991. By this notice, the petitioner was directed to file its reply on December 17, 1991, only a day after the notice was served, which was wholly unjustified and arbitrary as sufficient time ought to have been given to it to file its reply. However, despite the shortest possible time granted by respondent No. 2/4, the Company submitted its reply wherein the allegations of respondent No. 2/4 to the effect that the consignment sales/branch transfers made by it were not genuine were categorically denied and it was submitted that the Company had already placed all the requisite documents and records on the file to conclusively prove that the goods worth Rs. 55,45,92,345 were sent by it to its various consignment agents out side the State of Haryana for effecting sale of the same on consignment sale basis and that those agents had effected the sale of the same on consignment sale basis as also that the goods worth Rs. 51,66,179.26 were in fact sent by the petitioner Company to its branches outside the State of Haryana for their consumption/sales. It was further stated in the reply that the property in goods always vested in the petitioner Company which had all the rights of diversion of goods during their movement from Hisar to other places out side the State. Even if there were few similarities in the despatch and ultimate disposal of the goods, the same could not be the basis for the rejection of entire consignment sales of a particular consignment agent. However, despite all the pleadings and documents of the Company, as

referred to above, it is stated, the Company received yet another notice dated December 17, 1991 which was served upon it at 5.00 P.M. on December 17, 1991 calling upon it to submit its reply on December 18, 1991 in the morning at 9.00 A.M. In compliance of the directions contained in the notice aforesaid, the Company despite there being hardly any time available to it, submitted its reply in which all the alegations made by respondent No. 2/4 were denied. Along with the reply, the Company also submitted documents in support of its contention that the Branch transfers were genuine and were not inter-State sales and that the said two firms, namely, M/s Jindal Steel Agency, Madras and M/s Orbit Steel (India), Bombay were in existence in the relevant year 1988-89 and till date and that the goods worth Rs. 18,89,37,392 and Rs. 6,45,38,342 were sent by the petitioner Company to these concerns for effecting sales of the said goods on consignment sale basis. Despite this, it is pleaded, respondent 2/4, without perusing the documents and other evidence brought on records, without affording opportunity of cross-examination of witnesses to the petitioner Company and in violation of the principles of natural justice, passed the impugned order, Annexure P-194,—*vide* which an additional demand of Rs. 2,04,13,895 was created on the ground that the branch transfers worth Rs. 17,30,756 were not genuine and were liable to tax and that the transfers other than by way of sales (consignment sales) amounting to Rs. 18,89,37,392 to M/s Jindal Steel Agency, Madras and Rs. 6,45,38,342 to M/s Orbit Steel (India), Bombay were not genuine and were in the course of inter-State trade and commerce. It is the show-cause notices, Annexures P-101, P-103, assessment order, Annexure P-194 and demand notice, Annexure P-195, which have been challenged in this writ petition, as mentioned in the earlier part of the judgment.

(6) On the relevant facts as also the findings recorded in the impugned orders, as have been detailed above, it is apparent that the additional tax liability has been created on the petitioner Company on two grounds, (1) the transfer of store goods from Haryana to branches of the petitioner Company in other States amounting to mis-use of 'C' forms, on the basis of which the goods had been purchased by the Company as the Company had to use those goods, purchased on the strength of 'C' forms, only in its manufacturing unit in State of Haryana alone and was not entitled to use them in its manufacturing units in other States and (2) the consignment of goods to some of the agents of the petitioner Company otherwise than by way of sale have been treated to be inter State sales and subjected to Central Sales Tax *inter-alia* on the ground that it had

not been shown to the assessing authority that the agents had godown facilities at their places of business. It is true with regard to impugned orders in C.W.P. Nos. 5864 of 1992 and 5404 of 1993, there are some additional grounds taken in the subsequent orders, subject matter of challenge in other two writs (C.W.P. Nos. 5864 of 1992 and 5404 of 1993) and the same will be mentioned in the discussion to follow. While dealing with the Branch Transfers, the assessing authority observed as follows :

> ".....That the transfer of consumable items of store goods purchased on the strength of Registration Certificate under the CST Act, by the assessee to their unit in other States amount to mis-use of the Registration Certificate by the dealer inasmuch as those goods should have been consumed in the petitioner company's factory at Hisar only and not outside the State."

While dealing with the transfers by way of sales outside the State of Haryana i.e. consignment sales, the authority concerned observed as follows :

> "During the course of cross examination the dealer failed to give any convincing proof or documentary evidence conforming to the law in support of the following transactions during the year as these firms were stated to be not in existence.

(i) M/s Jindal Steel Agency, Madras	Rs. 18,89,37,392
(ii) M/s Orbit Steel (India), Ltd. Bombay.	Rs. 6,45,38,342
Total	Rs. 25,34,75,734"

After dealing with the defence of the petitioner Company regarding existence of the aforesaid two firms, in Madras and Bombay, the authority concerned went on to observe that "while examining the genuineness of the above two firms aspects of storage facility with them were also examined being an essential for functioning as an agent on some one's behalf. There is no denying the fact that consignee firm shall not be in a position to receive the goods in bulks in the absence of storage facilities for storing of goods received for

sales as transfers other than by way of sales (consignment sales). The dealer failed to give any proof regarding the godowns etc. owned or hired by the consignee firms at places of business in Madras and Bombay. The despatch of consignments as shown in the books are in bulk quantities so in the absence of storage facilities it shall not be possible to contain and keep this stock for effecting sales in future. In such circumstances, one can easily reach a conclusion that these transactions are not the transfers other than by way of sales (consignment sales) but sales during the course of inter state trade and commerce". It was further observed by the authority concerned that "in the case of Bombay firm the affidavit dated 9th June, 1990 and affidavit dated 20th January, 1991 by the representative of the firm the goods have been affirmed to be received from Hisar and despatched to Bombay from Hisar respectively but in the list of Forms "F" submitted by the firm showed the despatches of goods from New Delhi. Thus, there is a contradiction in the affirmations made in these affidavits in respect of place of movement of goods." The third reason given by the Authority while rejecting the plea of the Company is that "when the transfer facilities for all over India are available at Hisar (Place of business of the firm) but in this case the goods have been shown transported to Bombay from the transport companies not in existence at Hisar. Similarly, the transfer other than by way of sales (consignment sales) to M/s Jindal Steel Agency, Madras have been manipulated by not disclosing the station of despatch and also availing of the facilities of transport of the agency outside Hisar.

(7) The additional grounds, resulting, of course, to the same findings and to the same result, as have been noticed above, in other two writ petitions bearing Nos. 5864 of 1992 and 5404 of 1993, may be noticed at this stage. The Assessing Authority, in the impugned order, Annexure P-715 (In C.W.P. 5864 of 1992) while dealing with the branch transfers, which as claimed by the petitioner Company was to the tune of Rs. 6,90,47,200 insofar as the same pertained to finished goods, allowed in toto. The store goods worth Rs. 3,40,71.200 were opined to have been mostly purchased from outside the State of Haryana and shown as branch transfers and the same were held to be inter-state sales and not branch transfers. The Assessing Authority observed as follows :—

> "It does not appeal to senses that a concern like M/s Jindal Strips Ltd. Hisar, which is managed by highly skilled and qualified personnels will incur heavy un-necessary expenses

of transportation by directly bringing the goods from outside the State of Haryana, then incurring expenses on octroi, unloading, storing, maintaining and then again on loading, transportation and octroi etc. during the despatch to their branches outside the State of Haryana. It is also against the principles of the profit oriented trade. If these goods were actually meant for their branches then these goods could be directly purchased by the branches themselves, thus, saving the un necessary expenses incurred by Hisar office. The branches are also managed by qualified independent staff and know their requirements. Actually these goods were not transferred to branches but moved as inter state sales to various destinations and not to branches."

The other reason given while rejecting the branch transfers to the tune of Rs. 3,47,71.200 by the Assessing Authority was that there were anomalies and manipulations in information given and accounts produced which could not face the test of verification and probing, so assessment is framed on the basis of facts noted and verified as discussed above, not relying on the accounts produced by the dealer. In ultimate analysis, the Assessing Authority allowed deductions on account of finished goods transfers worth Rs. 3,42,76,000 whereas remaining were disallowed being inter-state sales to the tune of Rs. 3,47,71,000.

(8) While dealing with consignment sales, the Assessing Authority allowed deductions on account of genuine consignment sales worth Rs. 38,69.23,402 whereas remaining sales were held to be inter-state sales. The Assessing Authority observed that "on verification it was noted that full truck loads of goods moved from Hisar as a result of contract and same were delivered to the ultimate buyers by the same vehicles." For his afore stated finding, the authority relied upon the bills raised by the consignment agent which did not bear the RR/GR No., vehicle No., name of the transport Company or made of transportation inspite of the columns provided in their bill regarding RR and mode of despatch etc. It was observed that this information was not given deliberately on the bills because by giving this information the *modus operandi* of disguising the inter-state-sales as consignment sales would have become crystal clear. It was also observed that there was no mention of charges of loading, unloading, handling, storage, transportation, delivery and other

expenses incurred on the bills raised by the consignment agent denoting that there were no such expenses as the goods were delivered directly to the ultimate buyers from the Jindal Strips Ltd., Hisar. The raising of bills by the consignment agents were just manipulations to make one believe that these were consignment sales and not inter-state sales by making adjustment of dates and weights. Some examples for the opinion, as noted above, were given in the order. It was further observed by the Assessing Authority that there were similar cases with sales shown by other consignment agents and actually the goods were delivered as it is to the buyers by the same vehicle and in the same quantity which took delivery from Jindal Strips Ltd., Hisar but to disguise the inter-state sales as consignment sale, manipulations were done by just raising two bills. It was also observed that after making all sorts of manipulations, there were numerical similarities in the goods despatched by M/s Jindal Strips Ltd., Hisar and the goods shown as sold by the consignment agents to ultimate buyers, list of which was appended as Annexure-A. While dealing with the term of contract by an agent to its buyer, "All material supplied remains our property unless paid in full", the authority observed that when one was vested with the property in goods and if the property over the goods was of the so-called consignment agents, then how M/s Jindal Strips Ltd., Hisar, claimed that property in goods vested with it. It was also observed that the so-called consignment agents had charged tax under the Central Sales Tax Act on their bills for local sales which was a clear indication that there was inter-state sales of M/s Jindal Strips Ltd., Hisar. It was also observed that some of the consignment agents were themselves the buyers of the goods and example of Marudhar Industries, Bangalore, was given in this connection. It was also observed that none of the consignment agent had supplied authenticated copy of the Registration Certificate of their firm which might prove that the consignment agents were having approved godowns for storing the goods. In that connection also, some examples were given. In the ultimate analysis, it was held that sales worth Rs. 86,64,86,832 were inter-state sales out of the total claimed consignment sales and the said sales were taxed accordingly.

(9) Insofar as assessment order dated February 18, 1993, giving rise to Civil Writ Petition No. 5404 of 1993 is concerned, no additional grounds have been pointed out by learned counsel appearing for the parties in arriving at the conclusion with regard to branch transfers and the consignment sales.

(10) Civil Writ Petition No. 1898 of 1992 was admitted to D.B. Operation of the impugned order was stayed. Civil Writ Petition

No. 5864 of 1992 was admitted on August 10, 1992. However, when this petition came up for hearing before the Division Bench on May 19, 1992 and was adjourned to July 17, 1992, the stay as prayed for was declined. Concededly, against the orders declining stay, a Special Leave Petition came to be filed in the Supreme Court of India which was allowed. The third writ petition i.e. Civil Writ Petition No. 5404 of 1993 came to be admitted by this Court on July 22, 1993 in which too interim order of stay granted earlier was ordered to continue. On the facts, as have been fully detailed above, the obvious prayer of the petitioners is to quash impugned order dated December 18, 1991, Annexure P-194 (In C.W.P. 1898 of 1992) as also impugned order, Annexure P-715 dated May 1, 1992 (in C.W.P. 5864 of 1992) and impugned order, Annexure P-29, dated February 18, 1993 (in C.W.P. No. 5404 of 1993).

(11) The cause of the petitioners has been seriously opposed. Two separate written statements, one on behalf of respondents 1, 2 and 4 and the other on behalf of Shri Bhajan Lal, Chief Minister-respondent No. 3, have been filed. Respondents 1, 2 and 4 in the written statement, while giving the back-ground of the petitioner Company, plead that the Company during the assessment year 1988-89 claimed deductions on account of transfers other than by way of sales (consignment sales) of Rs. 55,45,92,354. Out of the consignment sales of Rs. 55,45,92,345, consignment sales to the extent of Rs. 25,34,75,734 were disallowed on account of the fact that 'F' forms submitted by petitioner Company in respect of the consignment sales were not found genuine. In the 'F' forms submitted by the Company to claim deductions, the station from which the goods were actually despatched on consignment basis was shown as New Delhi where the Company has its Branch office. During the assessment proceedings the contention of the Company was that the goods had been sent to Delhi for job work only. On verification, it was found that the goods were not received back at Hisar after job work having been done. This led the assessing authority to dis-allow the claim of consignment sales to the petitioner company to the extent of Rs. 25,34,75,734 relating to M/s Jindal Steel Agency, Madras and M/s Orbit Steel (India), Bombay. On the point of consignment sale the petitioner company also submitted 'F' forms to claim deductions to the tune of Rs. 25,34,75,734 and in support of its claim, the Company stated that the goods were on consignment basis through the consignment agents M/s Jindal Steel Agency, Madras. The Company produced documents which showed that the goods worth

Rs. 18,89,37,392 and Rs. 6,45,38,342 were sent to M/s Jindal Steel Agency, Madras and M/s Orbit Steel (India) Bombay respectively. Form 'F' did not contain the name of station from which the goods were despatched in respect of goods purported to have been despatched to M/s Jindal Steel Agency, Madras whereas the station of despatch in respect of goods sent to M/s Orbit Steel (India), Bombay, the station of despatch of goods was indicated as New Delhi. The documentary evidence produced by the Company was not, thus found convincing as the firms named above were not in existence. It is further pleaded that the Company effected branch transfers to the extent of Rs. 53.90.500 and claimed deductions on account of these branch transfers. The said branch transfers were shown to be transfers amongst the branches to the branches at Raigarh (M.P.) and Vasind, District Thana (Maharashtra). Out of the total branch transfers of Rs. 53,90,599 the Company purchased store goods worth Rs. 21,20,10,907 for use in manufacture of finished goods at Hisar. Out of the store goods worth Rs. 21,20,10,907. store goods worth Rs. 17,30,356 were shown as transfers to the Branches at Raigarh (M.P.) and Vasind. District Thana. Since the store goods worth Rs. 17.30,356 were purchased by the petitioner Company for use in manufacture at Hisar, it was not entitled to transfer the same to the other branches outside the State of Haryana. Since the consumable items were consumed during the process of manufacture of finished goods at Hisar only. the Company was not entitled to any deductions on account of branch transfers to the extent of Rs. 17.30,356 which was in fact in the course of inter-state sales of trade and commerce within the meaning of Section 3(a) of the Central Act. Preliminary objection that an alternative remedy is available to the petitioners under the State Act by way of appeal under Section 39 has been raised. On merits, whereas the basic facts leadings to passing of impugned orders have been admitted, the allegations of the petitioners that orders are illegal, without jurisdiction or even for that matter against the principles of natural justice and actuated on account of *mala-fide*. have been stoutly denied. It is pleaded that mere submission of form 'F' by the petitioner Company along with proforma A&B affidavits of the principal officers would not *ipso facto* prove that the goods worth Rs. 17,30,356 sent by it to its branches for their consumption/or sales and the goods worth Rs. 55,45,92,345 were sent by it on consignment basis. The Company had purchased store goods worth Rs. 21,20,10,907 from within the State of Haryana and outside the State of Haryana for use in the manufacture of finished goods at Hisar only and out of the store goods, goods worth Rs. 17,30, 356 were shown as transfer to its branches at Raigarh (M.P.)

and Vasind, District Thana (Maharashtra) situated outside the State of Haryana. The Company was not. thus, entitled to transfer the store goods in the same shape to its branches outside the State. Likewise, out of the goods shown to have been disposed off otherwise then by way of sales to its agents outside the State of Haryana, bulk of goods have been sent for sale on consignment basis of M/s Jindal Steel Agency, Madras and M/s Orbit Steel (India), Bombay. The consigner and consignee, in their affidavits, submitted in the office have mentioned that the goods have been despatched from Hisar but the 'F' forms submitted by M/s Orbit Steel (India) Ltd., Bombay shows that the goods had been despatched from New Delhi and the appropriate column in respect of 'F' forms issued by M/s Jindal Strips Agency, Madras in blank i.e. the name of station from which the goods were despatched had not been mentioned. The transport facilities for carriage of goods all over India were available at Hisar. However, the documents submitted by the Company showed that the goods were despatched to M/s Jindal Steel Agency, Madras by a transport Company at Hisar which actually did not exist at Hisar. The Company had not produced any evidence regarding the two consignment agents i.e. Jindal Steel Agency, Madras and Orbit Steel (India), Bombay where they kept the goods transferred by petitioner Company, Hisar. In that way, the consignment sale amounting to Rs. 18.89 crores in respect of Orbit Steel (India), Bombay, Rs. 6.45 crores to M/s Jindal Strips Agency, Madras and branch transfers of store goods, worth Rs. 17,30.356 were not found genuine and proper and the same were subjected to tax according to law treating them as sales in the course of inter-state sales trade and commerce under Section 3(a) of the Central Act. It is further pleaded that on verification on the documents, submitted by the Company, it was found that it purchased raw material and consumable stores from within the State of Haryana and outside the State of Haryana on the strength of the registration certificate for the manufacture of goods at Hisar but consumable store goods were not used for the manufacture of goods at Hisar and were actually disposed off in the same form in which they were purchased in pursuance of pre-existing contract of sales in the course of inter-state trade or commerce. These goods had been transferred to its branches in other States and, therefore, the Company was not entitled to dispose off the goods in the manner they did and as such its claim was disallowed and was taxed under the Central Act treating them as inter-state sales within the meaning of Section 3(a) of the Central Act. It is stated that petitioner Company furnished requisite information in proforma A and B with

regard to branch transfers and form 'F' in respect of consignment sales and branch transfers along with list in form S.T. 17 showing such despatches supported with affidavits of the consigner and consignee. In scrutiny, it was found that the branch transfers worth Rs. 17,30, 356 on account of store goods was not allowable under the law. Secondly, consignment sales worth Rs. 25,34,74,734 were rightly dis-allowed as the dealer did not give correct evidence which was clear from the declaration in form 'F'. On the question raised by the petitioner Company that proper opportunity was not given to it, the reply given is that serving of a notice during the course of assessment proceedings is a normal procedure and the assessee had to be given show-cause notice. The reply given by the assessee is to be examined and hearing is to be afforded to the assessee during the assessment proceedings. The Company was served with a notice dated December 10, 1991 for December 17, 1991 to show-cause as to why the entire branch transfers/consignment sales may not be rejected and tax be levied under the Central Act being inter-state sales. The Company submitted its reply to the show-cause notice on December 17, 1991. Shri M. L. Gupta, Accounts Executive also appeared before the respondent No. 2 along with account books etc. and the case was adjourned to December 18, 1991. The Company was given another notice on December 17, 1991 as the examination of account books as well as the goods transferred to the branch offices and goods sent on consignment basis revealed that store goods worth Rs. 17.30,356.26 had been transferred to various branches out side the State of Haryana during the year 1988-89 after purchasing the same within the State of Haryana which was not admissible under law as also that consignment sale to M/s Jindal Steel Agency, Madras worth Rs. 18,89.37.392 and Rs. 6,45,38,342 to M/s Orbit Steel (India) Ltd. Bombay, during the course of inquiry, it was found that both the firms were not in existence. The Company was, thus, required to appear before respondent No. 2/4 on December 18, 1991 to show-cause as to why the transactions regarding branch transfers/ congnment sales be not treated as inter-state sales. The representative of the Company was heard on December 18, 1991 and documents produced by it were also scrutinized. Since the Company failed to give any convincing proof or documentary evidence conforming to law in support of the transactions to M/s Jindal Steel Agency, Madras and M/s Orbit Steel (India) Ltd. Bombay in respect of consignment sales and in respect of consumable items despatched to branches at Raigarh (M.P.) and Vasind. District Thana, tax was levied under the Central Act treating them as inter-state sales. It is further pleaded that the petitioner did not submit such information as was required to verify the genuineness of storage capacity or

rent certificate in respect of ware-house. Infact, it gave the information in a clever manner to show that the goods had been despatched as branch transfers/consignment sales which infact was not found on scrutiny of documents submitted by the Company. The Company miserably failed to prove the genuineness of branch transfers and consignment sales even when adequate opportunities were afforded on several occasions from October 26, 1989 to December 18, 1991. The allegations of *mala-fide* have also been stoutly denied. It is averred that respondent No. 3 has nothing to do with the assessment order and the same have been levelled only with a view to restraining respondent 2/4 from acting in accordance with law. With regard to various episodes, as have been detailed in the petition, by which the Company had to file cases in the Civil Courts and other matters, it is stated, pertain to respondent No. 3 alone, respondents 1, 2 and 4 have stated that they were not concerned with any of those and, in particular, detailed in paras (a) to (g).

(12) Shri Bhajan Lal-respondent No. 3, as mentioned above, has filed separate written statement. It is pleaded therein that petitioner had made false and *mala-fide* allegations against him. The whole attack of the petitioner is that the said respondent had directed/pressed the assessing authority to levy huge amount of sales tax against it. It is pleaded that it is the duty of the assessing authority to frame assessment according to law, and that the respondent had not directed/pressed anybody to take illegal action against Shri Jindal or his Company. The assessment, which had been made by the Deputy Excise and Taxation Commissioner (for short the DETC), has been made by him under the Haryana General Sales Tax Act, and the Central Sales Tax Act and he had nothing to do with it. He had not directed the assessing authority to make any assessment. The petitioners had remedy against the order by way of appeal upto the Tribunal and reference to the High Court and even to the Supreme Court. The allegations made against him in the stay application and the writ petition have been controverted on facts. It is pleaded that allegations made against him were *mala-fide* and *malicious* as he was a political opponent of Shri Jindal, who was making false allegations to escape the liability of tax. If Mr. Jindal had committed any offence under any law or had violated any law, the authorities of the State were competent to deal with and the remedies are equally available to a person in accordance with law. He never asked any authority to initiate any proceedings. It is further the case of Shri Bhajan Lal that it is wrong that the DETC was acting under his directions. He had put no pressure to

cripple the business of petitioner Company. The DETC was a statutory authority and could initiate action under the State Act. If he had given any notice to petitioner Company in respect of assessment of sales tax, it was a matter which could be explained by it to the authority, who would decide the matter according to law and if there was any grievance, he could take the matter in appeal. It is further pleaded that the respondent had put no pressure on Shri O. P. Jindal, Chairman of the petitioner Company to join hands with him after he was elected to the Haryana Vidhan Sabha as M.L.A. from Hissar. It is, however, admitted that Shri O. P. Jindal contested election on the ticket given by the Haryana Vikas Party. It is further pleaded that in democratic elections, any party would give ticket to anybody and even a person can contest elections without any ticket as an independent candidate. It is admitted that Shri O. P. Mahajan was defeated, who contested election on the Congress party ticket but that was irrelevant. The allegation that respondent proclaimed that he would teach a lesson to Shri O. P. Jindal or take action *mala-fide* against his Company, has been refuted. The DETC. being *quasi judicial* authority, discharges statutory duties in respect of assessment, had duty to do so. It was also his duty to find out if the Company was paying proper sales tax. The tax is revenue which is available to the State and it was the duty of the statutory authority to discharge its duties under the State Act in that connection. Reply to specific allegations of *mala-fides* given in the written statement shall be dealt with in the discussion to follow.

(13) Before the matter might proceed on merits and the contentions of learned counsel appearing for the parties might be noticed with regard to illegality or otherwise of the impugned orders, it would be appropriate to deal with the preliminary objection raised by Mr. H. L. Sibal, learned Advocate General appearing for the respondents, with regard to availability of an alternative remedy. It is being strenuously argued that Sales Tax Act, be it local or Central, provides a complete machinery and the authorities constituted under the Act have to decide the matter finally being sole arbitrators for deciding the question of fact and inasmuch as the Acts concerned do provide a statutory remedy of appeal, revision and reference, petitioners should not be permitted to vindicate their stand by straight-way challenging the orders of the Assessing Authority by writ petitions filed by them under Article 226 of the Constitution of India before this Court. For his afore stated contention, learned counsel relies upon *Titaghur Paper Mills Co. Ltd.* v. *State of Orissa and others* (1), *Assistant Collector of*

(1) A.I.R. 1983 S.C. 603.

Central Excise, Chandan Nagar, West Bengal v. *Dunlop India Ltd. and others* (2), *M/s K. B. Handicrafts Emporium* v. *State of Haryana and others* (3).

(14) Mr. Shanti Bhushan, learned Senior Advocate, appearing on behalf of the petitioners, however, controverts the contention of learned counsel for the respondents and besides placing reliance upon *L. Hirday Narain* v. *Income Tax Officer, Bareilly* (4), *Ram Chander Singh* v. *State of Punjab and others* (5), *Ram and Sham Company* v. *State of Haryana and others* (6), *M. G. Abrol, Additional Collector of Customs, Bombay* v. *M/s Shanti Chotelal and Co.* (7), *M/s Johurmal Murlidhar and Co.* v. *Agricultural Income Tax Officer, Assam and others* (8), *M/s Filterco and another* v. *Commissioner of Sales Tax, M.P. and another* (9) and *Century Spinning and Manufacturing Co. Ltd. and another* v. *The Ulhasnagar Municipal Counsel and another* (10), has also endeavoured to distinguish the judgments relied by learned counsel for the respondents.

(15) In *Titaghur Paper Mills Co.* v. *State of Orissa and another* (11), the apex Court held that a citizen has a right to prefer an appeal before the Prescribed Authority and further appeal to the Tribunal and thereafter to ask for a case to be stated upon a question of law for the opinion of the High Court. The Act, thus, provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution". It was further held that "it was well recognised that where a right or liability was created by a statute which give a special remedy for enforcing it, the remedy provided by that statute only must be availed of". The facts of the aforesaid case would reveal that two special leave petitions were directed

(2) A.I.R. 1985 S.C. 330.
(3) J.T. 1993 (4) S.C. 545.
(4) A.I.R. 1971 S.C. 33.
(5) A.I.R. 1968 Punjab 178.
(6) A.I.R. 1985 S.C. 1147.
(7) A.I.R. 1966 S.C. 197.
(8) A.I.R. 1970 S.C. 1980.
(9) A.I.R. 1986 S.C. 626.
(10) A.I.R. 1971 S.C. 1021.
(11) A.I.R. 1983 S.C. 603.

against an order of the Orissa High Court dated March 18, 1983 dismissing the writ petitions filed by the petitioners in limine challenging the two orders of assessment passed by the Assistant Sales Tax Officer Cuttack, dated February 16, 1983. By way of writ petitions, petitioners, in the said case, had challenged the validity of the order of assessment under the Central Sales Tax Act, 1956 for the assessment year 1980-81 passed by the Assistant Sales Tax Officer Cuttack, dated February 16, 1983. The contention raised before the High Court was that the impugned orders of assessment being a nullity, the petitioners were entitled to invoke the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution but the High Court was not satisfied that it was a case of inherent lack of jurisdiction. The High Court while dismissing the writs, observed thus :—

> "Having heard the learned counsel for the parties and having gone through the records, we are not inclined to interfere with the impugned order(s) in exercise with our extra-ordinary jurisdiction since there is a right of appeal against the same. It is contended on behalf of the petitioner that the impugned order being a nullity is entitled is invoke our extraordinary jurisdiction. We are not satisfied that this is a case of inherent lack of jurisdiction. There is no violation of principles of natural justice."

In support of the SLPs, the submissions advanced by learned counsel for the petitioners were resting purely on procedural irregularities or touch upon the merits of the assessments. Broadly, speaking, the contentions were that; (1) The learned Sales Tax Officer had no authority or jurisdiction while making an assessment under R. 15 of the Central Sales Tax (Orissa) Rules, 1957 to treat the gross turnover as returned by the petitioners to be their taxable income/turnover, (2) He was not justified in disallowing the claim for deduction of Rs. 6,74,99,084.65 representing sales to registered dealers and departments of Government as well as of Rs. 28,24,224.42 p. on account of tax collected from the purchasers from the gross turnover of sales in the course of inter-State trade and commerce amounting to Rs. 7,13,94,903.63 P., (3) He wrongly denied the petitioners the benefit of concessional rate of tax at 4 per cent merely because they failed to furnish the requisite declarations in form 'C', (4) of Section 12 of the Orissa Sales Tax Act, 1947 treat the gross turnover of inside sales amounting to Rs. 2,02,07,852.65 P. as returned by the petitioners to be their taxable turnover nor was he justified in disallowing their claim for deduction of Rs. 1,80,65,167.65 P.

representing the sales to registered dealers merely because they failed to produce the prescribed declarations from registered dealers, (5) and the learned Sales Tax Officer had acted in flagrant violation of the rules of natural justice as the petitioners were deprived of an opportunity to place their case for the assessment year in question."

(16) After noting the contentions of the petitioners, as reproduced above, the Supreme Court observed as follows :—

> "It is not for us to say whether or not the learned Sales Tax Officer was justified in proceeding to best judgment under R. 15 of the Central Sales Tax (Orissa). Rules, 1957 and under sub-section (4) of Section 12 of the Orissa Sales Tax Act, 1947 or whether he was justified in treating the gross turnover as returned by the petitioners to be their taxable turnover or whether he was wrong in disallowing the deductions claimed for the assessment year in question. In the very nature of things, these are the questions which the petitioners should raise in appeals preferred before the prescribed Appellate Authority under sub-section (1) of Section 23 of the Act."

It is, thus, clear from the facts of the case aforesaid that the petitions were dismissed in limine by the High Court which order was up-held by the Supreme Court and that the challenge to the impugned order was based on contentions, as noted above, which primarily were in the sole domain of the authorities constituted under the Act to determine. It is in this context that the Supreme Court, relying upon *Raleigh Investment Co. Ltd* v. *Governor General in Counsel* (1947) 74 Ind. App. 50 (A.I.R. 1947 P.C. 78), observed that where the Act provides for complete machinery which enables the assessee to effectivley raise in the Courts the question of validity of assessment should be denied alternative jurisdiction of the High Court to interfere. In paragraph 7, however, while relying upon its judgment in *K. S. Venkataraman and Co.* v. *State of Madras* (12), exception to an alternative remedy i.e. filing of writ in the High Court against the assessment order when the challenge was to the vires of the Act, was noticed by the Supreme Court. It was, however, held that no question of vires, in the facts of the said case, was

(12) A.I.R. 1966 S.C. 1989.

involved and on the other hand the challenge was only to the regularity of proceedings before the Sales Tax Officer as also the authority to treat the gross turnover to be taxable turnover. In paragraph 10, while dealing with another decision of the Supreme Court in *State of U.P.* v. *Mohammad Nooh* (13), it was observed that the said decision was clearly distinguishable as in that case there was total lack of jurisdiction and in the present case there was no suggestion that the Sales Tax Officer had no jurisdiction to make an assessment. It was also observed that in the facts of the case in hand it could not be contended that the Officer had acted in breach of the rules of natural justice as he was admittedly served with a notice of the proceedings and was afforded an opportunity to place his case.

(17) In *Assistant Collector of Central Excise* v. *Dunlop India Ltd. and others* (14), the apex Court, while relying upon number of judgments, held that "Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so in extricably mixed up and the prevention of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by pass the alternative remedy provided by statute. Surely, matters involving the revenue where statutory remedies are available are not such matters. The Supreme Court can take judicial notice of the fact that vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice needs to be strongly discouraged." All that we may mention at present with regard to this judgment of the Supreme Court is that the apex Court was dealing with a Special Leave petition against the orders of learned Single Judge as well as the Division Bench granting interim stay to the petitioner Company. The company was claiming benefit of exemption to the tune of Rs. 6.05 crores and filed a writ petition in the Calcutta High Court and sought an interim order restraining the central excise authorities from the levy and collection of excise duty. The learned Single Judge took the view that a *prima facie* case had been made out in favour of the Company and by an interim order allowed the benefit of the exemption to the tune of Rs. two

(13) A.I.R. 1958 S.C. 86.
(14) A.I.R. 1985 S.C. 330.

crores ninety three lakhs and eighty five thousand for which amount the Company was directed to furnish a bank guarantee, that is to say, the goods were directed to be released on the bank guarantee being furnished. An appeal was preferred by the Assistant Collector of Central Excise under clause 10 of the Letters Patent and a Division Bench of the Calcutta High Court confirmed the order of the learned Single Judge but made a slight modification in that the Collector of Central Excise was given the liberty to encash 30 per cent of the bank guarantee.

(18) In *M/s K. B. Handicrafts Emporium* v. *State of Haryana and others* (15), it was held that "the Court could not go into the questions of fact and the question as to whether a particular sale was an intra-state sale, an inter-state sale, an export sale within the meaning of Section 5(1) or a penultimate sale within the meaning of Section 5(3) or otherwise, was always a question of fact to be decided by the appropriate authority in the light of the principles enunciated by Courts". The facts of the case aforesaid would reveal that for the assessment year in question the Sales Tax Authorities of Haryana levied purchase tax on the purchase of raw materials made by the petitioner, following decision of the Punjab and Haryana High Court in *M/s Manohar & Company, Panipat and others* v. State of Haryana and others under section 9 of the Haryana General Sales Tax Act, 1973. However, the Assessing Authority computed the tax with reference to the purchase value of the goods exported against form H. The petitioners did not choose to file an appeal but directly approached the Supreme Court by way of writ petition on the ground that in view of the decision of the Punjab and Haryana High Court in Murli Manohar, there was no point in their pursuing the remedies under the Act in that State. It is significant to mention here that appeals carried against the decision of this Court in Murli Manohar's case were disposed of by the Supreme Court on October 25, 1990 and which were allowed thereby setting aside the judgment of the High Court. The matter was, thus, not covered by the decision rendered in *Murli Manohar's case* (supra) which case was decided by the Court on the basis of a judgment of the Supreme Court in *Goodyear India Ltd. and others* v. *State of Haryana* (16). However, the decision rendered in *Goodyear's case* (supra) came for

(15) J.T. 1993 S.C. 545.
(16) J.T. 1989 (4) S.C. 229.

re-consideration before the Supreme Court in *Hotel Balaji and others* v. *State of Andhra Pradesh and others* (17), and it was held therein that Goodyear's case does not lay down correct law. The Supreme Court, in paragraph 6 observed that "the facts in Murli Manohar were substantially similar to the facts of the case in hand". It is in the background of the facts, referred to above, that it was observed by the Supreme Court that in a petition under Article 32 of the Constitution, it was not to go into the facts. The question whether a particular sale was an intra-state sale, an inter-state sale, an export sale within the meaning of Section 5(1) or a penultimate sale within the meaning of Section 5(3) or otherwise, was always a question of fact to be decided by the appropriate authority in the light of the principles enunciated by Courts. All that requires, for the time being, to be mentioned is that the petitioner in the said case had filed a petition under Article 32 of the Constitution straight in the Supreme Court by contending basically that its case was squarely covered by the judgment rendered by the Punjab and Haryana High Court, which in turn was based upon a judgment of the Supreme Court.

(19) Mr. Shanti Bhushan, learned counsel appearing for the petitioners has joined serious issue with the learned counsel appearing for the respondents on the maintainability of this petition under Art. 226 of the Constitution admitting, however, that statute does provide an appeal, revision and reference. However, his contention is that in the facts and circumstances of this case, it is well within the jurisdiction of the High Court to interfere in exercise of its extraordinary jurisdiction vested in it under Art. 226 of the Constitution of India. He contends that the matter was admitted to be decided by a Division Bench of this Court way back in 1992 i.e. about three years ago. The first petition (No. 1898 of 1992) came to be instituted on February 1, 1992. Thereafter, two subsequent petitions were filed in this Court which were ordered to be heard along with earlier writ (C.W.P. 1898 of 1992). In the first and third petitions the additional liability as assessed by the assessing authority was stayed whereas in the second petition the order declining stay was set-aside by the Supreme Court thus, for all this while, there has been a complete and comprehensive stay operating in favour of the petitioners. It is being argued that it would be wholly in-iquitous at this stage to relegate the petitioners to an alternative remedy particularly when there are serious allegations of *mala-fide* against the

(17) J.T. 1992 (2) S.C. 182.

present Chief Minister Shri Bhajan Lal, who continues to hold the said office and the main allegation is that not only the impugned orders but various other orders affecting adversely the petitioners and Shri O. P. Jindal were passed by the authorities at the command and behest of the Chief Minister. It is further being argued that on the dint of statutory provisions and the settled law on the point by various judicial pronouncements rendered by the Supreme Court and various High Courts, the authorities clearly erred in holding the branch transfers and consignment sales as inter state sales. The position of law being clear, it would not be correct to relegate the petitioners to the appellate forum as, in the very nature of things and facts and circumstances of this case, it will be a remedy from cesure to cesure. (Sic ; ceasar to ceasar's wife) It is also being argued that there can not be any unexceptional and uniform formula of relegating a party to alternative remedy if the statute provides such remedy and the High Court under Article 226 of the Constitution would be well within its powers to interfere under the facts and circumstances of a given case. For his contentions, as noted above, learned counsel relies upon *L. Hirday Narain* v. *Income Tax Officer, Bareilly* (19), wherein the Supreme Court held that "when the High Court entertained a petition and gave hearing on merits, Petition could not thereafter be rejected on the ground that statutory remedy was not availed of." The facts of the said case reveal that Hirday Narain and his five sons were members of a Hindu undivided family. Till the assessment year 1950-51, the income received by Hirday Narain was assessed to tax as the income of a Hindu undivided family. On November 19, 1949 the property of Joint family was partitioned between Hirday Narain and his sons. In assessing the income for the assessment year 1951-52 the Income Tax Officer recorded on order that the property was partitioned but he still assessed the income received by Hirday Narain as income of a Hindu undivided family. In appeal, the Appellate Assistant Commissioner treated Rs. 18,520 earned between October 1, 1949 and November 18, 1949 as income of the former Hindu undivided family and directed that it be excluded from the assessment. Pursuant to that, the Income Tax Officer made two orders of assessment—(1) assessing Rs. 18,520 as income of the Hindu undivided family of Hirday Narain and his five sons ; and (2) assessing Rs. 1,06,156 also as income of a Hindu undivided family and liable to tax in the hands of Hirday Narain by the application

(19) A.I.R. 1971 S.C. 33.

of Section 16(3)(a)(ii) of the Indian Income Tax Act, 1922. Hirday Narain then applied for rectification of a mistake in the order of assessment which he claimed was apparent from the records but the Income Tax Officer declined to give the relief holding that for the period November 19, 1949 to September 30, 1950, Hirday Narain should have been assessed as an individual. Hirday Narain then moved a petition before the High Court of Allahabad under Article 226 of the Constitution challenging the order of the Income Tax Officer. A single Judge of the said High Court rejected the petition holding that at the stage of original assessment, the question that the income was not liable to be assessed under Section 16(3)(a)(ii) of the Income Tax Act, was not raised and that the assessee had not applied in revision to the Commissioner under Section 33-A of the Act. A Division Bench of the High Court confirmed that order in appeal, observing that the rectification under Section 35 of the Act was discretionary and if the income tax Officer thought that proceedings were substantivally fair, he was not bound to rectify the assessment on technical grounds. A Special Leave Petition then came to be filed by Hirday Narain in the Supreme Court. While dealing with the objection of alternative remedy, the Supreme Court, in paragraph 12 observed that "an order under Section 35 of the Income Tax Act is not appealable. It is true that a petition to revise the order could be moved before the Commissioner of Income Tax. But Hirday Narain moved a petition in the High Court of Allahabad and the High Court entertained that petition. If the High Court had not entertained his petition, Hirday Narain could have moved the Commissioner in revision because at the date on which the petition was moved the period prescribed by Section 33-A of the Act had not expired. We are unable to hold that because a revision application could have been moved for an order correcting the order of the Income Tax Officer under Section 35, but was not filed, the High Court would be justified in dismissing as not maintainable the petition, which was entertained and was heard on the merits."

(20) Division Bench of this Court in *Ram Chander Singh* v. *State of Punjab and others* (20), held that plea of availability of alternative remedy was not absolute bar to maintainability of writ petition and the plea had to be decided on facts and in circumstances of each case. "The facts of the case aforesaid reveal that nomination papers of the petitioner, in that case, for the office of Chairman

(20) A.I.R. 1968 Punjab 178.

of the Society were rejected. There were allegations of *mala fide* against the Registrar of the Co-operative Society and of undue influence of the Minister concerned of the State Government and the petitioner wanted adjudication by the High Court. The plea of the respondents in the said case that the writ should be dismissed as the petitioner had not availed of the statutory remedy available to him under the Act was rejected by observing that "in the circumstances of this case, I do not think there is any force in this contention. It has been authoritatively held that the plea of availability of alternative remedy is not an absolute bar to the maintainability of a writ petition and the said plea has to be decided on the facts and in the circumstances of each case where it is raised. In the circumstances of this case when the petitioner wanted this Court to try and adjudicate upon the charge of *mala-fides* against the Registrar and the Minister himself, it would have been wholly illusory for him to have resort to the remedy provided by Section 55 of the Act by going to the Registrar in appeal against the returning officer's impugned order. Nor would the remedy by way of revision to the State Government be anything but a farce if one of the main allegations which the petitioner intended to make was about undue influence having been exercised by the Minister himself against the interests of the petitioner." It was further observed that "the time for preferring an appeal under Section 55(2) of the Act having expired, we do not think it proper to refuse to grant the relief to which the petitioner is entitled in the case on the technical ground." It is significant to mention that while dealing with the allegations of *mala fides* the Division Bench observed that on the material placed before the Court it was not possible to hold that the Returning Officer excluded the petitioner from contest to contest the office of Chairman of the society on account of *mala fides* or interference by the Minister. It is how the matter was dealt with :—

> "Returning Officer is vehement not only in denying his *mala-fides* but in alleging that the charge levelled against him by the petitioner is itself vitiated by malice. I do not think that on the material placed before us, it is possible to hold that the returning Officer excluded the petitioner from the contest to the office of the Chairman on account of any *mala-fides* or interference by the Minister. The decision given by the returning Officer on the question of legality of the seconding of the nomination papers of the petitioner does appear to land some support to the insinuation made by the petitioner to the effect that for some

reason or the other the returning officer was inclined to exclude the petitioner from the contest. It is not necessary to finally pronounce on this matter."

(21) In *Ram and Shyam Company* v. *State of Haryana and others* (21), it was held by the Supreme Court that "ordinarily it is true that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Art. 226 where the party invoking the jurisdiction has an alternative, effective adequate remedy. More often it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. Where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Art. 226 and such a petition can not be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases can not be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits". The facts of the case aforesaid would reveal that the power to grant lease for winning minor minerals was exercised formally by the authority set up under the Rules but effectively and for all purposes by the Chief Minister of the State. It was in the circumstances aforesaid that it was held that an appeal to the State Government would be ineffective and a writ in such a case would be maintainable.

(22) In *Additional Collector of Customs* v. *M/s Shanti Lal Chhotelal and Company* (22), the Supreme Court, where order of confiscation and imposition of a large penalty under the Sea Customs Act was involved, held that "remedy by way of an appeal against such an order is not an effective remedy as no appeal could be filed unless the large penalty imposed upon the petitioner was first deposited." The firm in the said case had obtained an export licence from the Iron and Steel Controller permitting them to export from the port of Bombay 900 long tons of steel skull scrap. The firm had purchased scrap iron from various sources at rates varying from Rs. 95 to Rs. 207 per ton. After they brought the goods to the docks, the officer authorised by the Iron and Steel Controller and the

(21) A.I.R. 1985 S.C. 1147.
(22) A.I.R. 1966 S.C. 197.

representative of the Regional Joint Scrap Committee certified the goods as steel skull scrap fit for export under the said export licence and the necessary endorsements to that effect were made on the shipping bills in respect of the said goods. Thereafter the goods were taken to the customs authorities for the purpose of exporting the same. The customs authorities took the view that the part of the goods was not steel skull scrap and the matter was referred to the Iron and Steel Controller. By orders dated March 18, 1957, the Controller informed the customs authorities that the rejected buffers, plungers and casings were furnace rejects and formed part of skull scrap etc. By order dated March 26, 1957 the customs authorities seized the entire goods on board the ship under Section 178 of the Sea Customs Act but the said authorities allowed the goods to remain in the temporary custody of the shippers. They also retained the documents relating to the goods but later on released them on April 25, 1957 on the firm furnishing a bank guarantee for a sum of Rs. 49,995.75 on May 27, 1957 the customs authorities served a notice upon the firm to show-cause why the said goods should not be confiscated and penal action taken against them under Section 167(8) and (37) of the Act. The Additional Collector of Customs by order dated December 21, 1957, held that of the total quantity shipped 320 tons were unauthorised and directed confiscation thereof but imposed a fine of Rs. 49,995.95 in lieu of confiscation and a personal penalty of Rs. 35,000. A writ was filed under Article 226 of the Constitution in the Bombay High Court for quashing the orders aforesaid. The learned Single Judge, even though held against the petitioner but allowed limited relief by reducing personal penalty of Rs. 35,000 to Rs. 1,000. In an appeal that was carried to the Division Bench, the matter was determined in favour of the petitioner. The order of learned Single Judge was set-aside. It is against the said order of the Division Bench that the Customs Collector had filed S.L.P. in the Supreme Court. On the plea of alternative remedy raised by the Customs Collector, the apex Court observed as under :—

> "Lastly, it was argued that the High Court should not have exercised its jurisdiction under Article 226 of the constitution, as the respondents had an alternative effective remedy by way of appeal to higher Customs Authorities but the High Court rightly pointed out that the respondents had no effective remedy, for they could not file an appeal without depositing as a condition precedent the

Large amount of penalty imposed on them. That apart, the existence of an effective remedy does not oust the jurisdiction of the High Court but it is only one of the circumstances that the court should take into consideration in exercising its jurisdiction under Article 226 of the Constitution. In this case the High Court thought fit to exercise its jurisdiction under Art. 226 of the Constitution and we do not see any exceptional circumstances to interfere with its discretion."

(23) In *M/s Joharmal Murlidhar and Company* v. *Agricultural Income Tax Officer and others* (23), the Supreme Court, on the plea of alternative remedy, held that "that is undoubtedly a good ground for refusing to give the relief to the assessee but all the same, taking into consideration, the amounts involved and the simple nature of the proof required to be adduced by the assessee, we direct as follows :—

"The Assessing Officer shall issue a fresh notice to the assessee calling upon him to produce his income tax assessment orders for the relevant assessment years. The assessee shall produce those orders within a month of the receipt of the notice. If he produces those orders, the impugned assessment orders shall stand cancelled and the assessing Officer shall assess the assessee afresh. If the assessee fails to produce those orders, the impugned assessment orders shall stand and further steps may be taken on the basis of those orders."

(24) In *M/s Filterco and another* v. *Commissioner of Sales Tax and another* (24), where the High Court had dismissed the petition in limine, it was observed by the Supreme Court that "We are of the opinion that the High Court should have examined the merits of the case instead of dismissing the writ petition in limine in the manner it has done. The order passed by the Commissioner of Sales Tax was clearly binding on the assessing authority under Section 42B(2) and although technical it would have been open to the appellants to urge their contentions before the appellate authority namely, the Appellate Asistant Commissioner, that would be a mere exercise in futility when a superior officer, namely, the Commissioner, has already passed a well reasoned order in the exercise of his statutory

(23) A.I.R. 1970 S.C. 1080.

(24) A.I.R. 1986 S.C. 626.

jurisdiction under sub-section (1) of Section 42-B of the Act holding that 21 varieties of the compressed woolen felt manufactured by the appellants are not eligible for exemption under Entry 6 of the Schedule I of the Act. Further Section 38(3) of the Act requires. that a substantial portion of the tax has to be deposited before an appeal or revision can be filed. In such circumstances we consider that the High Court ought to have considered and pronounced upon the merits of the contentions raised by the parties and the summary dismissal of the writ petition was not justified. In such a situation, although we would have, ordinarily, set aside the judgment of the High Court and remitted the case to that Court for fresh disposal, we consider that in the present case it would be in the interests of both sides to have the matter finally decided by this Court at the present stage especially since we have had the benefit of elaborate and learned arguments addressed by the counsel appearing on both sides".

(25) In *Century Spinning & Manufacturing Company* v. *The Illshasnagar Municipal Council and others* (25), the Supreme Court held that "the High Court may, in exercise of its judicial discretion decline to exercise its extraordinary jurisdiction under Article 226. If the petitioner makes a claim which is frivolous, vexatious. or *prima facie* unjust, or may not appropriately be tried in a petition invoking extraordinary jurisdiction, the Court may decline to entertain the petition. But a party claiming to be aggrieved by the action of a public body or authority on the plea that action is unlawful, highhanded, arbitrary or unjust is entitled to a hearing of its petition on the merits." The matter in the said case pertained to octroi duty and the dismissal of the writ petition in limine without giving any reason was held improper by the apex Court.

(26) From the various judicial precedents, enumerated above. this Court is of the considered opinion that availability of an alternative remedy for non-entertainment of a petition under Article 226 of the Constitution cannot be of universal application. It is true that ordinarily when statute provides an alternative remedy, and particularly when there is complete machinery for adjudicating the rights of the parties. which by and large depend upon the facts, the High Court should refrain from entertaining the adjudicating upon the rights of the parties but to this principle. there are certain exceptions and a citizen, who can successfully cover his case in either of

(25) A.I.R. 1971 S.C. 1021.

the exceptions, cannot be shown the exit door of his entry to the High Court and be compelled to go before the authorities concerned. Some of the exceptions under which a petition may lie under Article 226 of the Constitution before the High Court without availing of an alternative remedy are when the very provisions of the statute are challenged being *ultra vires* of the Constitution or repugnant to the Act itself. Obviously, the authorities constituted under the Act having jurisdiction to entertain an appeal or revision, how-so-ever high in the hierarchy of the department, can not quash the provisions of the Act/statute being *ultra vires*. They are bound to follow the Act and the provisions contained therein. The other exception is when the highest authority under the Act has taken a particular view on question of law and the said view is known to all the subordinate authorities as also when a different or contrary view has not been expressed by the High Court or the Supreme Court. In such a event, the remedy of appeal or revision would be a remedy popularly known as from cesure to cesure or from pole to pole. Subordinate authorities are bound to follow the view expressed by the highest authority in the department constituted under the Act to deal with the appeal or revision, as the case may be. The third exception can be when the order, complained of, is wholly illegal and without jurisdiction. Such an order normally would be when it is totally contrary to the provisions of the statute or when there is no power with the authorities constituted under the Act to pass the order. Yet another exception can be when the orders are actuated on extraneous considerations or *mala-fides* of the highest dignitaries in the State and the allegations are not frivolous and on the contrary are shown, *prima facie*, to be in existence. Yet another exception can be when the alternative remedy is not equally efficacious. Yet another exception can be when the matter is not decided in limine and it is taken after several years for hearing and decided on merits and meanwhile the period of limitation prescribed under the Statute for filing an appeal has expired. The exceptions can be multiplied but the Court does not wish to be exhaustive in detailing all the exceptions. As mentioned above, by and large, it will be dependent upon the facts and circumstances of each case.

(27) Coming to the facts of the present case, it shall be seen that the first petition was admitted to DB and since subsequent two petitions were to be disposed of along with that (C.W.P. 1898 of 1992), all the petitions have come up for hearing before us. Ordinarily, a writ petition, after admission, is heard by a Single Bench but the admitting bench primarily thought it to be a case of importance either because of *mala-fides* alleged against the Chief Minister or

because of the law points involved in the case or because of both. Whatever might have been the reason for admitting the matters to DB, the stark fact is that the matters have remained pending before this Court for a period of three years and elaborate exhaustive oral and written submissions have been made by the parties spanning over approximately a period of six months, actual hearings being for about 15 days. The matter could not be heard continuously as learned counsel for the parties were not available to argue the matter in one go. That apart, a huge tax has been imposed upon the petitioner Company by way of holding the branch transfers as consignment sales to be inter-state sales. We are told that the tax imposed for a period of three successive years would be about twenty crores. Concededly, deposit of tax is a condition precedent for hearing the appeals on merits under the provisions of the Act, be it the State Act or the Central Act. We are quite conscious of the fact that it is permissible for the appellate authority to entertain an application for stay and grant the same during the pendency of the appeal but we are equally conscious of the fact that in majority of the cases such a stay is not granted and if granted, the same is conditional.

(28) On the main question as to whether the transactions in question were branch transfers or consignment sales or inter-state sales, we are, for the reasons to be recorded herein after, going to remit the case to the assessing authority on various grounds inclusive of that the principles of natural justice were not followed with a further direction to the authorities concerned to permit the petitioners to lead evidence. Such a course is convenient only before the assessing authority and for that reason too we do not at this stage wish to relegate the petitioner to the alternative remedy of appeal. The preliminary objection raised by Mr. Sibal, learned counsel appearing for the respondents, that this petition should be dismissed as an alternative remedy is available to the petitioners is thus repelled.

(29) While dealing with the branch transfers first, it would be apt to once again see the basic reasons on which the said transfers, so claimed by the Company, were held to be inter-state sales. The view of the Sales Tax Authority is that this was mis-use of S.T. Registration certificate by Jindal Strips Ltd., in so far as they had purchased the store goods on declaration given in Form 'C' that those goods would be used by them in the manufacture or processing of goods for sale. M/s Jindal Strips Ltd. instead of utilising those

goods in their factory in Haryana had taken the same for their factories in other State for being utilised in the manufacturing of goods in those States. Thus, according to the assessing authority, the goods were required to be used at Hisar only. The basic contention of learned counsel appearing for the petitioners is that neither Section 8 (3) (b) nor Rule 12(1) nor prescribed form of declaration in form 'C' contain any restriction of using the goods in the State only and, therefore, there was no misuse of Registration Certificate at all. Further, it is argued, that even if there had been a misuse of declaration in form 'C', on the basis of which the goods had been purchased by the petitioner company, it would not convert the consignment of those goods to its branches in other States into a sale so as to authorise the Sales Tax Authority to impose a tax on value of those goods under section 3(a) of the Central Act. The only option for the authority in a case of mis-use of declaration would be either a prosecution under section 10(d) or imposition of a penalty in lieu of prosecution under section 10-A of the Central Act, contends the learned counsel. Section 8 of the Central Act, insofar as the same is relevant, reads thus :—

"8(1).—Every dealer, who in the course of inter-State trade or commerce :—

(a) ———

(b) sells to a registered dealer, other than the Government goods of the description referred to in Sub-section (3), shall be liable to pay tax under this Act, which shall be (four per cent) of his turnover.

8(3)(b).—are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for reslae by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or.....

8(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-state trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner :—

(a) a declaration form duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority ; or

The form prescribed under Section 8(4) is form 'C' in terms of Rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules."

Rule 12 (1) reads as follows :—

"The declaration and the certificate referred to in sub-section (4) of Section 8 shall be in form 'C' and 'D' respectively."

On the basis of the provisions of Section 8 and Rule 12 (1), it is argued that whenever these goods were purchased by the petitioner Company in the course of inter-state trade or commerce, it had to give a declaration in form 'C' prescribed under Rule 12(1) in which it had to be certified that the goods purchased were for re-sale/use in manufacture/processing of goods for sale. It would, thus, be noticed that neither the provisions of Section 8 nor those of rule 12 nor the provisions of the Registration Certificate in Form 'B', nor the declaration given in form 'C' require that the goods in question should be used in the manufacturing process of goods for sale in a particular State only and insofar as the assessing authority records the use of all these goods in the manufacturing unit of the Company in other State as a mis-use of the Registration Certificate or declaration in form 'C', the authority has deliberately ignored the clearly established law on the subject, contends the learned counsel. Learned counsel relies upon various judgments of the Supreme Court and the High Courts to contend that it is permissible to an assessee who has given a declaration in form 'C' either to use the goods in its factory in one State or to use the goods in manufacture or processing in any other State. The basic reliance of the learned counsel is upon a judgment of Supreme Court in *Polestar Electronic (Pvt.) Ltd.* v. *Additional Commissioner, Sales Tax and another* (26). The facts of the case aforesaid would reveal that the assessees were registered dealers under the Bengal Finance (Sales Tax) Act, 1941, as applied to the Union Territory of Delhi. During the assessment periods 1971-72 and 1972-73 they held certificates of registration specifying the class or classes of goods intended for resale by them or for use by them as raw materials in the manufacture of goods for sale. The certificates of registration were in the form as it stood prior to its amendment on 29th March, 1973, and they did not specify that the

(26) 41 S.T.C. 409.

resale of the goods purchased or their use as raw materials in the manufacture of goods or the sale of manufactured goods should be inside Delhi. In certain cases the assessees purchased goods of the class specified in the certificate of registration as being intended for resale by them and furnished to the dealers selling the goods declarations in the prescribed form, as it stood prior to 29th March, 1973, stating that the goods were intended for resale and thereafter resold the goods, though not within the territory of Delhi while in certain other cases the assessee purchased goods of the class specified in the certificate of registration as being intended for use by them as raw materials in the manufacture of goods for sale and furnished to the dealers selling the goods declarations in the prescribed form as it stood prior to 29th March, 1973, stating that the goods were purchased by them for use as raw material in the manufacture of goods for sale and thereafter used the goods purchased as raw materials in the manufacture of goods, in some cases outside Delhi and in some others inside but in the latter, sold the goods so manufactured outside Delhi. The Delhi High Court, in another case i.e. *Fitwell Engineers* v. *Financial Commissioner of Delhi* (27), held that for the purposes of Section 5(2) (a) (ii) and the second proviso thereto, resale of the goods purchased was confined to resale inside Delhi and so also, use of the goods purchased as raw materials in the manufacture and sale of manufactured goods were required to be inside Delhi and, therefore, if the assessees resold the goods outside Delhi or used them as raw materials in manufacture outside Delhi, or even if the manufacture was inside Delhi, sold the goods manufactured outside Delhi, there was utilisation of the goods by the assessees for a purpose other than that for which they were purchased and hence the second proviso to Section 5(2) (a) (ii) was attracted and the price of the goods purchased was liable to be included in the taxable turnover of the assessees. The question was whether this view of the High Court approving the view of the taxing authorities was correct. By process of reasoning, the Supreme Court reversed the decision of Delhi High Court in Fitwell Engineers' case (supra) and held that :—

> "as the declarations given by the assessees stated the purpose of purchase of goods was to use as raw materials in the manufacture of goods for Sale and did not specify that the manufacture and sale would be inside the territory of Delhi, it could not be said that the assessees utilised the goods for 'any other purposes' if they used the goods as

(27) (1975) 35 S.T.C. 66.

raw materials in the manufacture outside Delhi or sold the goods manufactured out side Delhi. Even if they manufactured goods outside Delhi and sold the goods so manufactured outside Delhi, the use by them of the goods purchased would be for the purpose stated in the declarations and it would not be right to say that they utilised the goods for any other purpose. The assessees could not be saddled with liability to tax under the second proviso even during this period because they had literally complied with the statement of intention expressed in the declarations given by them to the selling dealers ,

(ii) ... ...

A statutory enactment must ordinarily be construed according to the plain natural meaning of its language and no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absured, unreasonable, unworkable or totally irreconsilable with the rest of the statute. This rule of literal construction is firmly established and it has received judicial recognition in numerous cases.

....

In construing a taxing statute "One must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law". If the legislature has failed to clarify its meaning by use of appropriate language, the benefit must go to the taxpayer. Even if there is any doubt as to interpretation, it must be resolved in favour of the subject.

....

When branches of the assessees resold the goods outside Delhi, it was really the assessees who resold the goods, for the branches were not distinct and independent from the assessees but were merely establishment of the assessees. It could not therefore be said that when the goods were resold by the branches, the resales were not by the assessees so as to attract the applicability of the second proviso. There is no inconsistency between Section 4 and the second proviso to Section 5(2) (a) (ii)".

(30) The counsel then relied upon *Assessing Authority-cum-Excise and Taxation Officer, Gurgaon and another* v. *East India Cotton Mfg. Co. Ltd.* (28). The business of the assessee in the said case mentioned in the certificate of registration was "textile manufacturing, sale, purchase, wholesale distribution; sale and purchase of yarn and waste and textile machinery" and the certificate of registration also specified *inter alia* the following classes of goods for the purpose of sub-section (1) of Section 8, namely, 'dyeing colours, and other chemicals for use in manufacture." The assessee purchased these goods in the course of inter-state trade and commerce on the basis of its certificate of registration and furnished to the selling traders declaration in form 'C' stating that these goods were purchased for use by the assessee in the manufacturing of goods for sale. On the strength of these declarations, the selling dealers were taxed in respect of the sale effected by them to the assessee at the rate of 3 per cent under Section 8(1)(b) of the Central Act. The goods purchased by the assessee were used partly for sizing, bleaching and dyeing of textiles belonging to the assessee and partly for sizing, bleaching and dyeing of textiles belonging to third sizing of textiles of belonging to the assessee and partly for parties on job-basis. The assessee was issued a show cause notice on the ground that it was misusing the certificate of registration of doing sizing, bleaching and dyeing for third parties on job-basis. The assessee, who ever a show required some information but the Excise and Taxation Officer formulated the case against the assessee in the following manner :—

> "The Company purchased goods from outside the State of Punjab (now Haryana) on submission of C forms for the purpose of use in manufacture of goods for sale. But instead of doing so, the Company used that purchases partly in manufacturing its own goods for sale and partly for doing job-work for other parties. The Company could not use the material concessionally purchased, for the job-work as that does not constitute 'sale' ".

When the plea of the assessee did not prevail with the authorities concerned that neither the terms and conditions of the certificate of registration nor the provisions of Section 8(3)(b) of the Central Act required that the goods purchased by it must be used by it in manufacture or processing of its own goods intended for sale by itself and that it would be sufficient compliance with the requirement of Section 8(3)(b) read with the certificate of registration even if the goods

(28) (1981) 48 S.T.C. 239.

purchased were used by the assessee in manufacture or processing of goods for a third party under a job-contract, so long as the manufactured or processed goods were intended for sale by such third party, the matter came up in a writ filed in the High Court but the petition was rejected on the ground that on a true interpretation of Section 8(3)(b), the goods purchased by the assessee against its certificate of registration could be used by it only in manufacture of textiles intended for sale by itself and if the goods purchased were used in the manufacture of textiles for a third party on the basis of a job-contract, it would amount to user of the goods purchased for a purpose different from the specified in Section 8(3)(b) and the assessee would be liable to be proceeded against under Section 10 and 10-A. The Division Bench, however, on the question of law, as mentioned above, decided the matter in favour of the assessee It is in these circumstances that the Assessing Authority carried an appeal before the Supreme Court. On the controversy that has been mentioned above, the Supreme Court framed the following question for determination :—

> "As to what is the scope and meaning of the expression 'for use ..... in the manufacture ..... of goods for sale' occurring in Section 8(3)(b) and in the declaration in form "C" and Rule 13. Does it mean that the goods manufactured by a registered dealer by using the goods purchased against his certificate of registration and the declaration in form C must be intended for sale by him or does it also include a case where goods are manufactured by a registered dealer for a third party under a job-contract and the manufactured goods are intended for sale by such third party ?

It was held that "the Division Bench of the High Court was right in holding that even if the assessee carried out the work of sizing, bleaching or dyeing of textiles for a third party on job-contract basis, its case would be covered by the terms of the second sub-clause of section 8(3)(b), provided that the textiles so seized, bleached and dyed by the assessee were intended for sale by such third party. If it is proved in any proceedings initiated under Section 10(d) or Section 10-A that the textile sized, bleached and dyed by the assessee for a third party on job-contract basis were not intended for sale by such third party, as would be evident if such textiles were in fact not sold by the third party but were used for its own purposes, the assessee would incur the penalty prescribed in those sections".

(31) The next judicial precedent relied upon by Mr. Shanti Bhushan, learned counsel for the petitioners, is *Indian Tobacco Co. Ltd. and another* v. *Assistant Commissioner of Commercial Taxes and Others* (29). The facts of the said case, insofar as the same are relevant, would reveal that for the purpose of packing the products the petitioner Company purchased large quantities of paper and boards inside the State as well as from outside the State of Bihar. The registration certificate granted to the Company under the Central Act in the prescribed form also mentions papers and boards for use by the Company in the packing of its materials. During the relevant year the Company purchased papers and boards from outside the State of Bihar under the declaration issued by it in the prescribed C form. On the count, the Company had to pay tax only at the rate of 10 per cent as provided under Section 8 of the Central Act. The company despatched some of the materials to its other factories and branches outside the State of Bihar for their consumption/use 'as inter-branch transfers' and it was not disputed that at those places also the said materials were used for actual packing of goods manufactured by those units of the company. The additional question that came for determination was as to whether the transfer of those goods which were purchased by the company at Munger amounted to any violation of its declaration ? It was held that the Munger branch of the Company, although having a separate registration certificate, can not be held to be a separate personality independent of its principal company or other offices and branches at different places in other States". The Orissa High Court has also expressed the same view in *Indian Aluminim Company Limited* v. *Sales Tax Officer Ward A Samblapur* (30), wherein it was held that "coming to the first contention of Dr. Pal, it depends upon a construction of Section 8(3)(b) of the Central Sales Tax Act and the certificate of registration issued in favour of the petitioner. According to Dr. Pal, the expression 'for use ..... in the manufacture ..... of goods for sale' occurring in section 8(3)(b) of the Act does not put any restriction on the dealer that the dealer himself within the State should produce the finished goods and, therefore, there was no justification in the stand of the Revenue that as the finished goods were produced beyond the State of Orissa, there had been a contravention of Section 10(d) of the Act. In support of this contention, he placed reliance upon the decision of the Supreme Court in the case of *J. K. Cotton*

(29) 58 S.T.C. 193.
(30) 90 S.T.C. 410.

Spinning and Weaving Mills Co. Ltd. v. *Sales Tax Officer* (31), as well as a decision of the Supreme Court in the case of Assessing *Authority-cum-Excise & Taxation Officer* v. *East India Cotton Mfg. Co. Ltd.* (32).

(32) The alternative plea raised with an endeavour to show that the branch transfers were not inter-state sales, learned counsel for the petitioners contends that in any event there was no sale involved in branch transfers. It is argued that even though there was absolutely no mis-use of declaration in form 'C' but assuming it to be there, the only power available to the authority was either to launch prosecution under Section 10(d) of the Central Act or to initiate proceedings for imposing of penalty in lieu of prosecution under section 10A of the Central Act. The sale, it is argued, can only be between two separate persons or juristic entities. The Company registered under the Companies Act is only a single juristic entity and there cannot be a sale by the Company to itself. Branches of the company are not distinct juristic entity in whose favour the transfer of property can be made. Definition of 'sale' as contained in Section 2(g) of the Central Act as also judicial precedents contained in *The K.C.P. Ltd.* v. *State of Andhra Pradesh* (33), *The Government Wood Works* v. *State of Kerala* (34), *The Sales Tax Officer, Navgaon and another* v. *Timer & Fuel Corporation* (35), have been relied upon for his afore-stated contention.

(33) Coming now to the second point of consignment transfers of goods to the agents in the other States, basically, it is the case of the petitioner Company that the assessee had been sending its goods and despatching them to the agents in other states under written contract. The agents sold those goods to other parties by way of local sales in those States on which they paid local sales tax. The rate at which those sales are levied to tax is also 4 per cent as is the tax on inter-State sale by the assessee to another registered dealer in another State. It is on account of the fact that goods in question,

(31) (1965) 16 S.T.C. 563.

(32) (1981) 48 S.T.C. 239.

(33) 88 S.T.C. 374 (A.P.).

(34) 69 S.T.C. 62.

(35) 31 S.T.C. 585.

namely "iron and Steel" are 'declared goods' under Section 14(iv) of the Central Act. Entry 92-B was added by an amendment of the Constitution with effect from February 2, 1983 by the Constitution 46th amendment Act, 1982 by virtue of which the authority is now conferred on the Parliament to impose tax on a mere inter-state consignment of goods even though such consignment did not involve a sale, the Parliament has so far not exercised its power and not imposed any consignment tax. Under Article 269(3) the Parliament has to formulate principles for determining when a (sale or purchase of, or consignment of, goods) takes place in the course of inter-state trade or commerce by law. Such law has been enacted by the Parliament under section 3 of the Central Act which reads thus :—

> "Section 3 : When it is a sale or purchase of goods said to take place in the course of inter-state trade or commerce— 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."

It is only clause (a) of Section 3 which would be relevant in the present case. It requires to be mentioned that the petitioners' basic contention is that the consignment sale to their agents did not occasion the movement of goods from one State to another. Clause (a) of Section 3 has been subject matter of many decisions by the Supreme Court, the leading decision being in *TISCO* v. *S. R. Sarkar* (36), wherein it was held that "a transaction of sale is subject to tax under the Central Sales Tax Act, 1956, on the completion of the sale, and a mere contract of sale is not a sale within the definition in Section 2(g). A sale being by the definition, transfer of property, becomes taxable under Section 3(a) if the movement of goods from one State to another is under a covenant or incident of the contract of sale, and the property in the goods passes to the purchaser otherwise than by transfer of documents of title when the goods are in movement from one State to another. In respect of an inter-state sale, the tax is leviable only once and the two clauses of Section 3

(36) 11 S.T.C. 655.

are mutually exclusive. A sale taxable falling within clause (a) of Section 3 will therefore be excluded from the purview of clause (b) of Section 3. The sale contemplated by clause (b) of Section 3 is one which is effected by transfer of documents of title to the goods during their movement from one State to another. Where the property in the goods has passed before the movement has commenced, the sale will not fall within clause (b) ; nor will the sale in which the property in the goods passes after the movement from one State to another has ceased be covered by the clause. Accordingly, a sale effected by transfer of documents of title after the commencement of movement and before its conclusion as denned by the two terminii set out in Explanation (I) and no other sale will be regarded as an inter-State sale under Section 3(b). Although, the definition of "sale" includes tansfer of goods on hire-purchase or other systems of payment by instalments, a mere contract of sale which does not result in transfer of property occasioning movement of goods from one State to another does not fall within the terms of Section 3(a). That transaction alone in which there is transfer of goods" on the hire purchase or other systems of payment by instalments is included in the definition of "sale". The facts of the case aforesaid reveal that the Company had its registered office in Bombay, its head sales office in Calcutta in the State of West Bengal and its factories in Jamshedpur in the State of Bihar. For the period of assessment July 1, 1957 to March 31, 1958 the Company submitted its return of taxable sales to the Commercial Tax Officer, Calcutta disclosing a gross taxable turnover of Rs. 9561.71 in respect of sales liable to Central sales tax in the State of West Bengal. The Commercial Tax Officer, however, directed the Company to submit a statement of sales from Jamshedpur for the period under assessment, "documents relating to which were transferred in West Bengal or of any other sales that might have taken place in West Bengal under Section 3(b) of the Central Act. However, the Company, by its letter dated September 30, 1959, informed the Tax Officer that the requisition for production of statement of sales made from Jamshedpur in the course of inter-state trade or commerce was without jurisdiction. However, by order dated October 21, 1959, the Tax Officer made a best judgment assessment on a gross turnover of inter-State sales and called upon the Company to pay tax under the Central Act. The orders aforesaid were challenged. The impugned orders made by the Tax officer of the Government of West Bengal assessing the petitioner to pay tax were set-aside. The other supporting decisions,

relied upon by Mr. Shanti Bhushan, learned counsel for the petitioners are *TELCO* v. *Asstt. Commissioner of Taxes and another* (37), *Balaonagas Hulas Chand and another* v. *State of Orissa* (38), *State of Tamil Nadu* v. *The Cement Distributors Pvt. Ltd. and others* (39), *South Punjab Electric Corpn. Ltd.* v. *The State of Haryana* (40). and *Union of India and another* v. *K. G. Khosla and Company and others* (41), and *Kelvinator of India Ltd.* v. *State of Haryana* (42).

(34) With a view to strengthen the argument, as has been noted above, learned counsel appearing for the petitioners also places reliance upon Section 6-A of the Central Act. which reads thus :—

"6-A :—Burden of Proof etc. in case of transfer and goods claimed otherwise than by way of sale :—

(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by the reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on the dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or in the prescribed form obtained from the prescribed principal as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, alongwith evidence of despatch of such goods.

(37) 1970 (3) S.C.R. 862.
(38) 33 S.T.C. 207.
(39) 36 S.T.C. 389.
(40) 37 S.T.C. 35.
(41) 43 S.T.C. 457.
(42) 32 S.T.C. 629.

(2) If the assessing authority is satisfied after making such enquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub section (1) are true, he may, at the time of or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration related shall be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale."

It is argued that the burden of proof is discharged by producing a declaration duly filled and signed by the principal officer of the other place of business where the goods have been consigned in the prescribed form obtained from the prescribed authority along with the evidence of despatch of such goods. In that event the assessing authority is merely to make an inquiry as to whether the particulars contained in the declaration furnished by a dealer are true. If he finds that those particulars were true, he was required to make an order to that effect and then there is a statutory conclusion that the movement of goods, to which the declaration relates, has not been occasioned by a sale. There are, thus, two ways in which the goods may be sold by a dealer in one State to another dealer in a different State. Either a contract of sale is first entered into and in pursuance of that contract of sale, goods are despatched from one State to another in which such sale to the dealer of the other State would attract tax under Central Act. On the other hand, the dealer in the first State, may despatch the goods either to his branch in the other State or to his agent in the other State with the instructions that on receipt of those goods, he may enter into contract with the dealers of the other states and sell those goods to them. If this method of operation is adopted, the liability to sales tax instead of arising under the Central Act, would arise under the local Sales Tax Act of the second State, where the goods have been sold either by the branch or by the selling agent, to levy appropriate local sales tax Rule 12(5) of the Central Sales Tax (Registration and Turnover) Rules, 1957 is set out below :—

"The declaration referred to in sub section (1) of Section 6A shall be in form 'F'.

Provided that a single declaration may cover transfer of goods, by a dealer, to any other place of his business or to his agent or principal, as the case may be, effected during a period of one calendar month ;

Provided further that if the space provided in form 'F' is not sufficient for making the entries, the particulars specified in form 'F' may be given in separate annexures attached to that form so long as it is indicated in the form that the annexures form part thereof and every such annexure is also signed by the person signing the declaration form

A perusal of form 'F' would show that the receiver of the goods in the second State has to give a certificate in form that the goods as per the details have been received by him and duly accounted for. The details 'relate to the description' of the goods, their quantity, value, number and date of invoice and challan or any other documents under which the goods were sent, the name of the railway or road transport company's office from where the goods were despatched. the number and date of the RR or GR, with trip sheet of lorry and the date on which delivery was taken by the transferee as also to certify that the statement in form are true to the best of his knowledge and belief. It is being argued that once the statutory form 'F' had been obtained from the transferee of the goods, and the same had been filed with the assessing authority alongwith the evidence of despatch of such goods, namely GRs and the despatch advice, there was a conclusive statutory presumption under section 6-A of the Act that the goods covered by form 'F' had moved from from one State to another otherwise than by way of a sale. In that situation, the question of levying any CST on such goods would not arise. It is further being argued that all the goods that were sent by the assessee to its selling agents in other States were covered by form 'F' declaration supplied by those agents and the GRs as also the despatch advices in respect thereof were also available. The authorities concerned. in the event of having been furnished form 'F', were permitted to hold a limited inquiry under sub-Section (2) of Section 6 A to see that the particulars contained in the declaration in form 'F' were correct. If the facts were correct, the statutory consequences mentioned in sub-section (2) flow. namely, that there had been no sale of goods in the course of inter-state trade or commerce. For this, reliance has been placed upon *C. P. K. Trading Co* v. *Additional Sales Tax officer* (43). *State of A. P.* v. *A. P Dairy Development Corpn. Ltd. (A.P.)* (44). *The Commissioner of Sales Tax* v. *Agra Food Products P. Ltd.* (45). *and Chuni Lal Parshadi Lal*

(43) 76 S.T.C. 211.
(44) 95 S.T.C. 478.
(45) (1984) 10 S.T.C. Allahabad 49.

v. *Commissioner of Sales Tax* (46). It is then argued that regularly maintained account books could not be ignored and the same had been produced before the assessing authority as it had itself observed that 'the account books perused and found to have been maintained in the normal course of business'. It is argued that the accounts regularly maintained have to be accepted as correct unless contrary is proved by the taxing authority. It is stated that the account books contained all relevant documents which clearly established that the goods had been sent to the agents without there being any earlier contract of sale. In support of the contention that such account books could not be disputed, reliance is placed upon *St. Teresa's Oil Mills* v. *State of Kerala* (47) and *Commissioner of Income Tax* v. *Padamchand Ramgopal* (48).

(35) Mr. Sibal, learned Advocate General, Haryana, without much disputing the proposition of law, as canvassed by learned counsel appearing for the petitioners, has taken us through various impugned orders with a view to justify the same. The only proposition of law sought to be controverted by learned counsel for the respondents is with regard to burden of proof and discharge thereof as per Section 6-A of the Central Act. It is his contention that while making an inquiry as envisaged under sub-section (2) of Section 6-A, the Assessing Authority would be well within its rights to find out that the particulars given in the declarations are true. If that inquiry is permissible, all possible steps could be taken by the concerned authority to find out as to whether it was an inter-state sale or mere consignment transfer to an agent. It is, thus, the case of respondent-department that the authorities concerned made inquiries as envisaged under sub-section (2) of Section 6-A of the Central Act and on the process of reasoning came to a definite conclusion that the transactions in question were inter state sales. The reasons so as to arrive at the conclusion aforesaid have been sought to be justified by learned Advocate General. It is further the case of respondent department that insofar as branch transfers are concerned, there were some items which could not possibly be consumed in any manufacturing process whatsoever and the said transactions were rightly held to be inter-state sales. Besides that, the main

(46) 62 S.T.C. 112.
(47) 76 I.T.R. 365.
(48) 76 I.T.R. 719.

stress of the learned counsel for the respondents has been on availability of an alternative remedy as also that the allegations of *mala fide* against the Chief Minister Shri Bhajan Lal are totally unfounded.

(36) We have heard elaborate arguments advanced by learned counsel for the parties. Insofar as two basic contentions of learned counsel representing the petitioners on the law dealing with branch transfers and consignment to agents. are concerned, we are quite in agreement with the same. The finding of the assessing authority that inasmuch as the branch transfers were not permitted and the goods sent to various branches of the petitioners located in various parts of the country, could be used only at Hisar office, failing which the same shall have to be presumed as inter-state sales, can not stand scrutiny of law. Section 8(3)(b) as also Rule 12(1) of the Central Act have been reproduced in the earlier part of the judgment. Neither the provisions of Section 8 nor those of Rule 12 nor the provisions of the Registration Certificate in form 'B', nor the declaration given in form 'C' require that the goods in question should be used in the manufacturing or process of goods for sale in a particular State only. If that be the language of the Statute, it can not be said by any stretch of imagination that petitioner Company misused the registration certificate. The leading case cited by learned counsel for the petitioners in *Polestar Electronic (Pvt.) Ltd.* (Supra) over-whelmingly demonstrates the issue in question. The assessees in the said case were registered dealers under the Bengal Finance (Sales Tax) Act, 1941 and they held certificates of registration specifying the class-or-classes of goods intended for resale by them or for use by them as raw materials in the manufacture of goods for sale. The certificates of registration were in the form as it stood prior to its amendment and they did not specify that the resale of the goods purchased or their use as raw materials in the manufacture of goods or the sale of manufactured goods should be inside Delhi. In certain cases the assessees purchased goods of the class specified in the certificate of registration as being intended for resale by them and furnished to the dealers selling the goods declarations in the prescribed form, stating that the goods were intended for resale and thereafter resold the goods, though not within the territory of Delhi while in certain other cases the assessees purchased goods of the class specified in the certificates of registration as being intended for use by them as raw materials in the manufacture of goods for sale and furnished to the dealers selling the goods declarations in the prescribed form, stating that the goods were purchased by them for use as raw materials in the manufacture of goods for

sale and thereafter used the goods purchased as raw materials in the manufacture of goods, in some cases outside Delhi and in some others inside Delhi but in the latter, sold the goods so manufactured outside Delhi. It was held by the Supreme Court that "as the declarations given by the assessees stated the purpose of purchase of goods was to use as raw materials in the manufacture of goods for and did not specify that the manufacture and sale would be inside the territory of Delhi, it could not be said that the assessees utilised the goods for 'any other purpose' if they used the goods as raw materials in the manufacture outside Delhi or sold the goods manufactured out side Delhi". It was further held that "even if they manufactured the goods outside Delhi and sold the goods so manufactured outside Delhi, the use by them of the goods purchased would be for the purpose stated in the declarations and it would not be right to say that they utilised the goods for any other purpose." It was further held that "when branches of the assessees resold the goods outside Delhi, it was really the assessees who resold the goods, for the branches were not distinct and independent from the assessees but were merely establishments of the assessees. It could not therefore be said that when the goods were resold by the branches, the resales were not by the assessees so as to attract the applicability of the second proviso". This has been the consistent view of the Supreme Court and various High Courts in the judgments, mention whereof has been made in the preceding paragraphs of this judgment and, therefore, there is no need to further elaborate on the issue. Once we are accepting the first contention of learned counsel, the alternative plea that in any event there was no sale involved in the branch transfers, needs no further comments.

(37) Insofar as consignment transfer of goods to the agents in other States, is concerned, positive case of the petitioners is that the Company had been sending its goods and despatching them to the agents in other States under written contract, who thereafter sold those goods to other parties by way of local sales in those States on which they paid local sales tax for which they were assessed to local Sales Tax under the Sales Tax Acts of the States concerned. The rate, at which the said sales are levied tax is also 4 per cent is the tax on inter-State sales by the assessees to another registered dealer. This is because the goods in question, namely, "Iron and Steel" are 'declared goods' under Section 14(iv) of the Central Act. Under Article 269(3) it is the Parliament which has to formulate principles for determining when a sale or purchase of, or consignment of, goods

takes place in the course of inter-state trade or commerce, by law. Such a situation has been covered under Section 3 of the Central Act which, insofar as it is relevant, reads thus :—

> "3—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) XX XX"

Admittedly, clause (b) of Section 3 is not applicable as no sale was effected by a transfer of documents of title, during their movement from one State to another. Clause (a) of Section 3 has been subject of many decisions of the Supreme Court and the leading decision of the Supreme Court is in *TISCO* v. *S. R. Sarkar* (49), wherein it has been held that "sale of goods would be deemed to be in the course of inter-state trade or commerce so as to be liable to be taxed under the Central Sales Tax Act only when there is a contract of sale entered into by the assessee with a buyer before the goods are despatched by the assessee to the other State and that the movement or despatch of goods from one State to another is under a covenant or incident of contract of sale with the buyer". The extract of the judgment has already been reproduced in preceding paragraph of this judgment. The apex Court, in another case *TEICO* v. *Assistant Commissioner of Commercial Taxes* (50), further held as to what was necessary for a contract of sale to occasion the movement of goods from one state to another so as to constitute the sale into a sale in the course of interestate trade or commerce so as to be subjected to the Central Sales Tax under the Central Act. The question in that case as to whether the sales of vehicles by TEICO to its dealers in other States were inter-state sales under section 3(a) of the Central Act as having occasioned the movement of goods from the Company's works at Jamshedpur in the State of Bihar to other states outside the State of Bihar. At page 867 of the Supreme Court report, the basic clauses of the agreement have been mentioned and the same read as follows :—

> "A new form of dealership agreement (Ex.1) was introducted by the appellant after the promulgation of the Control

(49) 11 S.T.C. 665.
(50) (1970) 3 S.C.R. 862.

Order. Clause 1(a) of this agreement provided that "the Company agrees to sell and supply from its works at Jamshedpur in the State of Bihar or from its depots and stockyards outside the State of Bihar to the dealer" the vehicles which shall be allotted to the dealer by the Company at its discretion for resale in accordance with the provisions of the agreement. Clause 11(b) is reproduced below :—

"The dealer shall mail to the Company on the 15th of each month, or so that the Company will be in receipt thereof by the 20th of each month, his firm order for purchases to be effected during the next succeedings month and his estimated requirements of the said vehicles for the two months following the next succeeding month, for the said vehicles."

On the basis of the clause reproduced above, it was sought to be made out by the department that since the dealer was required to mail to the company on the 15th of each month his firm orders for purchases to be effected during the next succeeding month and his estimated requirement of the said vehicles for the months following the next succeeding month the vehicles in question must be deemed to have been moved from Jamshedpur to the State of the dealer as a result of this contract of sale contained in the dealership agreement. While dealing with this clause, the Supreme Court rejected the contention of the department by holding that "unless a specific vehicle had been appropriated to a contract with a particular dealer before those vehicles were despatched from Jamshedpur the requirement of Section 3(a) would not be fulfilled." It was further held by the Supreme Court that "if an assessing authority had to record findings by rejecting the case of the assessee, *it had to do so by examining each transaction separately and not by a compendious view.* (Emphasis supplied). The matter was dealt by the Supreme Court by observing as follows :—

"Another serious infirmity in the order of the Assistant Commissioner was (a matter which even the Advocate General quite fairly had to concede) that instead of looking into each transaction in order to find out whether a completed contract of sale had taken place which could be brought to tax only if the movement of vehicles from Jamshedpur had been occasioned under a convenent or incident of that

contract, the Assistant Commissioner based his order on mere generalities. It has been suggested that all the transactions were of similar nature and the appellant's representative had himself submitted that a specimen transaction alone need be examined. In our judgment this was a wholly wrong procedure to follow and the Assistant Commissioner, on whom the duty lay of assessing the tax in accordance with law, was bound to examine each individual transaction and then decide whether it constituted an inter state sale exigible to tax under the provisions of the Act."

The judgments reported in *Kelvinator of India Ltd.* v. *The State of Haryana* (51), and others, mention whereof has been made in the earlier part of the judgment, do support the contention of learned counsel.

(38) From the relevant Sections, as have been noticed above and the judgments that have been relied upon by learned counsel appearing for the petitioners, it is thus clear that when the goods have moved from one State to another, a question arises under Section 3(a) of the Central Act, as to whether such movement of goods had been occasioned by a sale in the course of inter-state trade or commerce and if it has been so occasioned, a liability under the Central Act would arise. If not, no such liability can possibly arise. We are also in agreement with the contention of the learned counsel that where the transfer of goods is claimed otherwise than by way of sale, the burden of proof would be discharged by the dealer if he has furnished to the assessing authority, within the prescribed time or within such further time as that authority might, for sufficient cause, permit a declaration duly filled and signed by the principal officer of the other place of business or his agent or principal, as the case may be, containing the prescribed particulars, in the prescribed form obtained from the prescribed authority, alongwith the evidence of despatch of such goods but such a burden is discharged, in considered view of this Court if the assessing authority, on an inquiry made by it as envisaged under sub-Section (2) of Section 6-A, is satisfied that the particulars furnished by the dealer under sub-Section (1) are true then no tax liability would arise under the Central Act. In *C. P. K.*

(51) 32 S.T.C. 629.

Trading Company v. *Additional Sales Tax Officer* (52), it has been held that "in the instant case, it is common ground that the appellant/dealer, produced the sale particulars of the declarations (F forms). As stated by us in *Vijayamohini Mills case* (1989) 75 S.T.C. (Ker) ; (1989), 1 K.L.T., 515, even after the production of F forms, it is open to the assessing authority to make further enquiry to satisfy himself that the particulars contained in the declaration (F forms), are "true". It is only then, the Assessing authority is enjoined to pass an order in the matter. A plain reading of Section 6A(2) of the Central Sales Tax Act points out that in cases where the dealer exercises the option of furnishing the declaration (F forms), the only further requirement is that the assessing authority should be satisfied, after making such enquiry as he may deem necessary, that the particulars contained in the declaration furnished by the dealer are "true". The scope of frontiers of enquiry, by the assessing authority under section 6A(2) of the Central Sales Tax Act is limited to this extent, namely, to verify whether the particulars contained in the declaration (F forms) furnished by the dealer are "true". It means the assessing authority can conduct an enquiry to find out whether the particulars in the declaration furnished are correct, or dependable, or in accord and with facts or accurate or genuine. That alone is the scope of the enquiry contemplated by Section 6A(2) of the Act. On the conclusion of such an enquiry, he should record a definite finding, one way or the other." The position of law on the crucial issues, being what has been held above, decks are now clear to scrutinise the orders of the Assessing Authority and to see as to whether the same have been passed in accordance with law or that such orders have been based on considerations which are not germain to the inquiry contemplated under the law. In the impugned order, Annexure P-194, dated December, 18, 1991, (pertaining to C.W.P. 1898 of 1992) while dealing with branch transfers, the assessing authority observed that "the dealer had submitted that the store goods worth Rs. 1,24,073.78 were purchased from within the State (after payment of tax) and the balance store goods worth Rs. 16,06,282.42 were purchased from outside the state by them as these were required in their branches in other states. The written reply by the dealer is not tenable because the store goods being consumable items are consumed during the process of manufacture of finished goods at Hisar only. The

(52) 76 S.T.C. 211.

finished goods may be transferred to other branches and not the consumable items purchased for its own use on the strength of Registration Certificate within the State as well as outside the State. Such type of transactions tentamount to the misuse of registration certificates by the dealer" In view of the matter as discussed by us in the preceding paras of the judgment, the reasons given by the assessing authority for considering the branch transfers as inter-state sales, are totally incorrect. It appears that the assessing authority had not at all seen the relevant provisions of law or, perhaps, the same were not even shown to him. While dealing with transfer other than by way of sales outside Haryana (consignment sales), the Assessing Authority observed that "in para 2 of the written reply dated December 18, 1991, the dealer had mentioned the detail of copies of documents furnished by him from various authorities as evidence regarding the existing of above firms in Madras and Bombay". It requires to be mentioned here that earlier, the Assessing Authority had observed that "the dealer failed to give any convincing proof or documentary evidence conforming to the law in support of the following transactions during the year as these firms were stated to be not in existence :—

Sr. No.	Name of the consignee	Amount
1.	M/s Jindal Steel Agency, Madras	Rs. 18.89,37 392
2.	M/s Orbit Steel (India) Ltd., Bombay	Rs. 6,45,38,342
	Total	Rs. 25.34,75,734

It is in that connection that in reply, the petitioner Company had mentioned the details of copies of documents furnished from various authorities regarding existence of firms in Bombay and Madras. The assessing authority held that "the copies of documents have been examined and supporting evidence produced by the dealer is accepted in respect of the existence of these firms". "However, it was further observed that while examining the genuineness of the above firms, aspects of storage facility with them were also examined being an essential for functioning as an agent on some on's behalf and that the consignee firms failed to give any proof regarding the godowns etc. owned or hired by them at places of business in Madras and

Bombay". It was further observed "that in the case of Bombay firm the affidavits by the representative of the said firm show that the goods had been received from Hisar and despatched to Bombay from Hisar respectively but in the list of form F submitted by the firm showed the despatches of goods from New Delhi and, thus, there was a contradiction in the affirmation made in the affidavits in respect of place of movement of goods." It was lastly observed that "when transfer facilities for all over India were available at Hisar (Place of business of the firm), the goods in this case were shown to have been transported to Bombay from the transport companies not in existence at Hisar." We are afraid, none of the reasons given by the Assessing Authority were such that could detract from the plea of the petitioners that such transfers were only consignments to agents in various States located in the country as also to its agents in Madras and Bombay. The assessing authority, in view of the law pertaining to the subject and which has been thread-bare discussed above, was required to take into consideration the declaration forms submitted either by the petitioner Company or by its agents. If the particulars furnished in the forms were found to be correct, there was no necessity at all for the assessing authority to further go into the matter. However, we may hasten to add that the assessing authority would have been well within its rights under provisions of Section 6-A of the Central Act to hold an inquiry. It would have well been within its rights again to ask the assessee to furnish all declaration forms and to examine the entries made therein and if the same were found to be incorrect or inconsistent or there was some over-lapping, the assessee should have been given further chance to prove that the goods sent through declaration forms were actually consignments to the agents and not inter-state sales. Nothing like that was, however, done and the orders were passed on the grounds which were not germane to the inquiry contemplated under the provisions of the Central Act and the Rules framed thereunder. It requires to be mentioned here that petitioner Company was issued notice on December 10 1991 to substantiate its version that the transactions entitled the dealer for deductions from the turn-over. It was on December 17, 1991 that the petitioner Company had filed the reply showing its inability to substantiate the claim, as, according to it, notice dated December 10, 1991 did not specify the objection in detail. It is thereafter that the case was examined on December 17, 1991 in pursuance and in consideration of the further reply filed by the petitioner Company and it is on December 18, 1991 that the impugned orders were passed, giving rise to C.W.P. No. 1898

of 1992. Insofar as the other two assessment orders are concerned, it shall again be seen that date fixed for showing cause by the petitioner Company was May 1, 1992 and the petitioner Company had filed its reply alongwith voluminous documents on the date fixed i.e. May 1, 1992. It is on that very day that the impugned orders, Annexure P-715, giving rise to C.W.P. No. 5864 of 1992, were passed. Similarly, notice was issued to the assessee on February 18, 1993 and the date, when the matter was fixed before the assessing authority, was February 18, 1993. It is on that date that the petitioner filed its reply and it is on that date that the impugned orders, Annexure P-29, giving rise to C.W.P. No. 5404 of 1993, were passed.

(39) The manner in which the assessing authority really proceeded in the matter further strengthens our view that the factors that were relevant in these matters for the purpose of determining various transactions as branch transfers or the consignments to agents or that the same were inter state sales, were not at all looked into. The assessing authority, in the impugned orders dated May 1, 1992 (giving rise to C.W.P. 5864 of 1992) has been little more elaborate and the reasons other than the one given in the impugned orders dated December 18, 1991 have also been mentioned. While considering branch transfers, it was observed that "it does not appeal to senses that a concern like M/s Jindal Strips Ltd., Hisar, which is managed by highly skilled and qualified personnel will incur heavy-un-necessary expenses of transportation by directly bringing the goods from outside the State of Haryana, then incurring expenses on octroi, unloading, storing, maintaining and then again on loading, transportation and octroi, etc. during the despatch to their branches outside the state of Haryana". It was further observed that "if the goods were actually meant for their branches, then these goods could be directly purchased by the branches themselves, thus, saving the un-necessary expenses incurred by Hisar Office." It was also observed that "there were anomalies and manipulations in information given and accounts produced which could not face the test of verification and probing so assessment is framed on the basis of facts noted and verified as discussed above in details not relying on the accounts produced by the dealer. We are afraid, these were again not the grounds on which the assessing authority ought to have proceeded. The real issue before the assessing authority was as to whether the items sent to branches were such which could be consumed by the said branches in the manufacturing process. On the grounds state in the impugned orders, the transactions i.e. the branch transfers could not be held to be inter-state sales. Each doubtful item ought to have been considered to answer the crucial

test i.e. whether such item was consumable in manufacturing process. On the grounds stated by the assessing authority we would have very easily set-aside the orders and straight way allowed these writ petitions but we, in the process of arguments, were shown voluminous documents and the items, subject matter of branch transfers, including Air Conditioners, Refrigerators and alike and it is being strenuously argued by the Advocate General, Haryana, opposing the writ petitions on behalf of the respondents, that such items could not possibly be consumed in manufacturing process. As to whether the Air Conditioner, Refrigerators or other items, shown by the learned Advocate General, Haryana, could be consumed in the manufacturing process or not, is a question of a fact and we have already opined that the assessing authority, far from examining the real issue before it, held the branch transfers to be inter-state sales on the grounds which are un-sustainable.

(40) While dealing with the consignment sales, it was observed by the assessing authority that "deduction for consignment sales had been examined in detail and deduction on account of genuine consignment sales worth Rs. 38,69,23,402 was allowed whereas the remaining sales were inter-state sales on the ground that on verification it was found that full truck loads of goods moved from Hisar was a result of prior contract and the same were delivered to the ultimate buyers by the same vehicles. The bills raised by the consignment agents did not bear the RR/GR No., vehicle No., name of the transport company, or mode of transportation inspite of the columns provided in their bills regarding RR and mode of despatch etc. This information was not given deliberately on the bills because by giving this information the *modus-operandi* of disguising the inter-state sales as consignment sales could become crystal clear." It was further observed that "simultaneously there were no mention of charges of loading, unloading, handing, storage, transportation delivery and other expenses incurred on the bills raised by the consignment agent denoting that there were no such expenses as the goods were delivered directly to the ultimate buyers from M/s Jindal Strips Ltd., Hisar." It was further observed that "similar were the cases with sales shown by other consignment agents. Actually, the goods were delivered as it is to the buyers by the same vehicle and in the same quantity which took delivery of goods from Jindal Strips Ltd., Hisar, but to disguise the inter-state sale as consignment sale, manipulations were done by just raising two bills, examples whereof were given in the assessment order. In case of M/s Swastic Sales Corporation, Ahmedabad and other consignment agents as well, some such

examples were given and in the ultimate analysis, it was observed that "the given examples of the numerical similarties also prove that there was a prior contract of sales and the goods moved in pursuance of the pre-existing contract of sale." There are some other reasons as well given in the impugned order which we do not wish to detail as, in our view, the crucial question for determination insofar as consignment to agents is concerned, was as to whether the goods had moved in other States to the agents in pursuance of a prior contract. It is true that a conclusion has been drawn from various examples given in the impugned order that the despatches were made as a result and in pursuance of pre-existing contract of sale and it is also true that in some of the declaration forms either submitted by the petitioner Company or its agents, the particulars required to be menioned were not found to be correct, but, in this case as well the assessee was not given a fair opportunity to prove that with regard to discrepancies in the declaration forms it was in a position to prove that transactions were mere consignments to its agents and not inter-state sales and in fact and reality the goods occasioned movement from Hisar to other States without there being a pre-existing contract. There are thousands of items on which there is a dispute on facts and this Court is ill-equipped to go into these items and give a verdict independently thereon.

(41) The reasons detailed by the Assessing Authority in the impugned orders dated December 18, 1991 (giving rise to C.W.P. 1898 of 1992) are such that on the basis thereof a finding, one way or the other, can not be recorded. So is true of the impugned order dated May 1, 1992 (giving rise to C.W.P. 5864 of 1992). It may be relevant to determine the controversy in issue between the parties, but as referred above, proper opportunity was not given to the petitioner to prove its case. Insofar as impugned order dated February 16, 1993 (giving rise to C.W.P. No. 5404 of 1993) is concerned, learned counsel for the parties have not drawn our attention to any additional grounds. In these circumstances, we are perhaps left with no option but for to set aside the impugned orders, Annexure P-194 (in C.W.P. No. 1898 of 1992), Annexure P-715 (in C.W.P. No. 5864 of 1992) and Annexure P 29 (in C.W.P. No. 5404 of 1993) and remit the case to the assessing authority to re-open the whole issue and decide the controversy involved in view of the law laid down by us as it pertains to branch transfers and consignments to agents. We direct that the assessing authority would keep in view the proposition of law as enunciated above and would deal with each item suspect of either being inter-state sale, branch transfer or consignment to agents and on the para-meters of law laid down by us, hold it to be either

branch transfers, consignment to agents or an inter-state sale, as the case may be. We further direct that the matter shall be dealt by the highest taxing authority in the District other than the District of Hisar. This is being ordered only with a view to dispel the doubts that Mr. Jindal has entertained with regard to the assessing authorities and, in particular, Shri R. S. Sharma, to whom, it is being argued, a residential plot at Karnal has been given for passing the impugned orders. on the max-im that not only that justice should be done but it also must appear to have been done and without, the court as such, entertaining doubt against the integrity of the officers concerned.

(42) Insofar as *mala-fides* against the Chief Minister are concerned, the out cry of Mr. O. P. Jindal. Chairman of the petitioner Company is that ever since Shri Bhajan Lal has assumed the office of Chief Minister of Haryana, he on account of having defeated a protage of the Chief Minister, has left no stone un-turned to ruin him financially and otherwise too by involving him, his family members and other associates in various criminal cases. It is stated that for over two decades the petitioner Company has been in business and at no given point of time its credentials were suspect of evading tax nor any such orders were passed and it is for the first time that huge liability of over twenty crores has been fastened upon it on account of grudge entertained by the Chief Minister against Shri O. P. Jindal. It is also pleaded and being argued by Mr. Shanti Bhushan, learned counsel appearing for the petitioners, that practically on all fronts, the Company, its office bearers and Mr. O. P. Jindal are being proceeded against. It is stated that on June 26, 1991 Shri Bhajan Lal took over as Chief Minister, Haryana. On June 30. 1991 movement of trucks belonging and attached with the petitioner Company was obstructed by the Government backed truck union and local administration. On July 2, 1991 civil suits were filed and injunctions granted by the civil Courts at Hisar regarding movement of the trucks. On July 8, 1991 Haryana State Electricity Board disconnected the electricity line,—*vide* which electricity generated by DC sets of the petitioner Company was not allowed to be used by it. The Company, thus, had to file civil suit and injuction was granted by the Civil Court. On July 16, 1991 water supply to the industrial unit, residential colonies of the staff members and labourers of the petitioner Company was disconnected whereupon civil suit was filed in which as well injunction was granted by the civil Court, at Hisar. On July 18, 1991 movement of trucks of political supporter of Mr. O. P. Jindal was obstructed whereupon civil suit was filed and

injunction granted by the civil Court against the government backed truck union and the local administration including the Deputy Commissioner and Superintendent of Police and other police officials. On July 28, 1991 the Municipal Committee, Hisar issued notice directing the petitioner Company to deposit octroi amount within 24 hours in violation of the orders passed by the High Court in Civil Revision in which 60 days time was granted to deposit the amount. On July 30, 1991, H.S.E.B. directed the petitioner Company to change the meter equipment of the parallel operation system of the electricity within two days. Petitioner had to again file a civil suit. On August 2, 1991 the government backed truck union and the local administration violated the injunction order granted by the Court, thus, resulting into filing of a contempt petition. On August 7, 1991 the Court issued show-cause notice to D.C., S.P. and other police officials as to why their salaries should not be attached. On August 7, 1991 three F.I.Rs. came to be registered under various provisions of the Indian Penal Code and TADA against Shri O. P. Jindal, his sons and employees. On August 9, 1991, 29 employees of the Company were arrested from the factory premises. On August 10, 1991 orders under Section 144 Cr.P.C. were passed by the District Magistrate, Hisar, prohibiting the assembly and movement of trucks. On August 13, 1991, anticipatory bail application moved by Shri O. P. Jindal and his sons was accepted by the High Court. On August 13, 1991 a Criminal Writ Petition was filed for quashing of F.I.R. aforesaid. On August 20, 1991, 29 employees of the petitioner Company, who were arrested on August 9, 1991, were granted bail by the Court. On September 2, 1991 the Haryana State Pollution Control Board issued notice to the petitioner Company for its closure under Air Pollution Act. A civil suit was filed. On September 16, 1991 the Pollution Board issued notice to the petitioner Company under Water Pollution Act for the closure of industrial unit. Again a civil suit was filed. On October 3, 1991 the business and residential premises of Shri O. P. Jindal were raided by the sales tax authorities. Thereafter history has been given with regard to passing of impugned orders and as to how the same were challenged in this Court by way of Civil Writ Petitions under Articles 226 of the Constitution. A Writ Petition was filed on August 29, 1992 against the State, police officials and the Chief Minister in the matter of obstruction of trucks and stay was granted by this Court. For violation of the orders of the Court, a contempt petition was also filed. On February 20, 1993 there was firing by the police force as well as anti-social elements on the office of the Janta Truck Union, Hisar. On February 26, 1993 seven trucks carrying goods of the Company were detained by anti-social elements with the help of the police. There is also mention

of some other criminal complaints and firing by anti-social elements on March 25, 1993.

(43) From the array of parties, it shall be seen that only R. S. Sharma, Deputy Excise & Taxation Commissioner, Hisar and Bhajan Lal, Chief Minister, Haryana, have been arrayed as respondents. In the written statement filed on behalf of respondents 1, 2 and 4 the allegations that the impugned orders were passed at the instance of the Chief Minister, have been denied. In the written statement filed by respondent No. 3-Shri Bhajan Lal it is pleaded that false and *mala-fide* allegations have been made that no directions were given by the respondent to the assessing authority to frame the petitioner Company in a tax net. It is stated that it is the duty of the assessing authority to frame assessment according to law and the petitioners had remedy against the order by way of appeal upto Tribunal and reference to the High Court. It is further stated that since Shri Jindal is a political opponent of the respondent, he was making false allegations to escape the liability of tax. If he had committed any offence under any law or had violated any law, the authorities of the State were competent to deal with and the remedies are equally available to a person concerned in accordance with law. Specific allegations made against the Chief Minister on various counts by the administration or the truck unions proceeding against the petitioner Company or its Chairman and his friends at his instances, have been denied.

(44) In none of the petitions, the authorities, be it under the Electricity Board, police department or the Pollution Board and others have been arrayed as party-respondents. As mentioned above, it is only Shri R. S. Sharma, DETC, Hisar and Shri Bhajan Lal, who have been arrayed as party-respondents. From the very nature of things, it is a case of drawing inference of *mala-fides* by particularly stating that series of action (s) immediately after the Chief Minister assumed the office, could not be a mere coincidence. There is, in other words, no direct evidence of *mala-fide* and from the circumstances referred to above, it has been argued that *mala-fides* have been proved beyond shadow of doubt.

(45) We are afraid that no findings of *mala-fides* can be returned on mere probabilities and the Court has to see if the chain of circumstances is so complete and strong that no other conclusion but for *mala-fides* is required to be recorded. A finding that a particular

action or order was taken or passed on extraneous considerations can, thus, he returned only if all other hypothesis are excluded as proving of *mala-fides* is like a criminal charge and the same has to be proved beyond shadow of doubt. The apex Court in *A. Pariakaruppan* v. *State of Tamil Nadu* (53), held that "mere probabilities can not form the basis of a plea of *mala-fides*." The allegations of *mala fides* in the aforesaid case were sought to be spelled out from the fact that a number of students, who had faired very poorly in the written examination, had secured very high marks in the interview. It was urged on behalf of the petitioners in the said case that the interview marks were allotted on collateral considerations and that the selection committees were tools in the hands of the Government and the Government manipulated the marks in such a way so as to facilitate the selection of those students in whom the members of the party in power were interested. The allegations, as mentioned above, were denied by the respondents. While elaborating their arguments on the plea of *mala-fides*, learned counsel for the petitioners had invited the attention of the Supreme Court to be marks lists which clearly showed that the marks given at the interview were-by and large-in inverse proportion to the marks obtained by the candidates at the University examination. It was further argued that the marks lists on their face would show that the interview marks were manipulated. The Supreme Court, on the aforesaid contention of the petitioners, observed as follows :—

> "While there is some basis for these criticisms there is no sufficient material before us from which we could conclude that there was any manipulation in preparing the gradation list. It is true that numerous students whose performance in the University examination was none too satisfactory nor their past records creditable had secured very high marks at the interview. It is also true that a large number of students who had secured very high marks in the University examination and whose performance in the earlier classes was very good had secured very low marks at the interview. This circumstances is undoubtedly disturbing but the courts can not uphold the plea of *mala-fides* on the basis of mere probabilities. We can not believe that any responsible Government would stoop to manipulating marks".

(53) A.I.R. 1971 S.C. 2303.

(46) In *E. P. Royappa* v. *State of Tamil Nadu and another* (54), it was held that "the burden of establishing *mala-fides* is very heavy on the person who alleges it. The allegations of *mala-fides* are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility." The impugned order in the aforesaid report was a transfer order of the petitioner therein, who was Chief Secretary of the State and the allegations of *mala fides* were made against the Chief Minister. After taking into consideration the facts of the case, it was further held that "these and a few other circumstances do create suspicion but suspicion cannot taken the place of proof and, as pointed out above, proof needed here is high degree of proof. We can not say that evidence generating judicial certitude in upholding the plea of *mala fides* has been placed before us in the present case. We must, therefore, reject this contention of the petitioner as well."

(47) In *M. Sankaranarayanan* v. *State of Karnataka and others* (55), the Supreme Court further held that "it may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of *mala fide* from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix can not remain in the realm of insinuation, surmise or conjecture. There was no sufficient material from which a reasonable inference of malice in fact for passing the impugned order of transfer can be drawn." In the case aforesaid, the impugned order was again a transfer order and the allegations of the petitioner therein were that the same was actuated on account of *mala fides* as the suggestions of the Chief Secretary in the matter of posting of senior bureaucrats had not been accepted by the Chief Minister of the State as the petitioner was not agreeable to oblige the Chief Minister by accepting all his suggestions and putting up notes to that effect he had incurred the displeasure of the Chief Minister.

(48) Mr. Shanti Bhushan, learned counsel appearing for the petitioners, has however strenuously argued that from the chain of circumstances and various proceedings initiated against the petitioner Company, Mr. O. P. Jindal and others, an irresistible conclusion of *mala fides* against the Chief Minister can well be drawn. He

(54) A.I.R. 1974 S.C. 555.
(55) (1993) 1 S.C.C. 54.

contends that in considering the allegations of *mala fides,* each allegation by itself should not be taken separately but all the allegations together have to be seen to find out whether such allegations have been made out and whether such allegations, if established, are sufficient to prove malice or ill will on the part of the Chief Minister. He relies upon a judgment of the Supreme Court in *The State* of *Haryana and others* v. *Rajendra Sareen* (56). There can not be any quarrel with the proposition of law as canvassed by learned counsel for the petitioners. However, the case in hand is not the one where there may be number of different types of allegations and as fully detailed above, the only allegation is that the Chief Minister has proceeded against the petitioner Company, Shri O. P. Jindal and others and involved them in multifarious litigation on all possible fronts with a view to wreak vengenance on account of Mr. O. P. Jindal having defeated the protege of Mr. Bhajan Lal in the assembly elections. It is true that the Company is actually involved in litigation on many fronts, civil, criminal revenue and others but can the Court, on the material available before it, return a positive finding that all these cases, the Company had to institute or defend, were for the reason that the authorities dealing with various matters were directed by the Chief Minister? We are afraid, it is not possible to record such a finding. The Chief Minister has categorically denied that various authorities proceeded against the petitioner Company and others to their prejudice on the orders issued by him or at his behest. None of the officers/officials dealing with various matters have been arrayed as party-respondents. The various proceedings, mention whereof has been made above, are still pending. The petitioner Company may have obtained interim orders, as is being sought to be projected, but concededly till date no final decision has been given in any of the matters from which it might be gathered that the proceedings, subject matter of court cases, were un-warranted or un-justified. No occasion, thus, arises for such authorities/officers to affirm or deny the allegations made by the petitioners. Any adverse comments in the very nature of things would certainly amount to condemning a number of officers without hearing them. That apart, it does not appear plausible to this Court that all the officers were pliable and amenable to the directions issued by the Chief Minister. The integrity of such large number of officers can not be doubted and it would not be proper to condemn them and that too without hearing them. Mr. O. P. Jindal may be sure that what has been done to him and to the petitioner Company is at the

(56) A.I.R. 1972 S.C. 1004.

instance of the Chief Minister but his allegations do not go beyond creating suspicion and it is settled law that suspicion, however strong it may be, can not take the place of proof. The plea of *maia fides,* thus, deserves to be rejected and is hereby rejected.

(49) For the reasons recorded above, these writ petitions are partly allowed. The impugned orders, Annexure P-194 (in C.W.P. 1898 of 1992), Annexure P-715 (in C.W.P. 5864 of 1992) and Annexure P-29 (in C.W.P. 5404 of 1993) are set-aside. All these matters are remitted to the Assessing Authority to re-open the whole issue and decide the controversy involved in view of the law laid down by us, both with regard to branch transfers and consignment to agents. The Assissing Authority would decide the aforesaid contentious issues between the parties keeping in view the proposition of law as enunciated above and would deal with each item suspect of either being inter-state sale, branch transfer or consignment to agents on the para-meters of law laid down by us. The matter, as mentioned above, would be dealt by the highest taxing authority in the District other than the District of Hisar. Parties are, however, left to bear their own costs.

R.N.R.

Before Hon'ble R. S. Mongia & K. K. Srivastava, JJ.

RAM KUMAR & OTHERS,—*Petitioners.*

versus

STATE OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 9766 of 1995.

November 8, 1995.

Constitution of India, 1950—*Arts.* 226/227—*Daily wagers claiming parity of emoluments with regular employees—Work discharged identical to duties of regular employees—Not entitled to same emoluments—Cannot compare a daily wage employee to a regular employee—Daily wager not subject to disciplinary control.*

Held, that so far as the service conditions of daily wage employees are concerned, they cannot be compared with the regular incumbents. A daily wage employee is not subject to disciplinary control of the employer inasmuch as he may come for work on a particular day or may not come and still the employer would have no right to take any disciplinary action against such an employee who may be absent for a day or for a longer period. He is not required to take any leave from the employer for a particular day