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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7164 OF 2013

THE COMMERCIAL TAX OFFICER & ANR. ….Appellant(s)

Vs.

MOHAN BREWARIES AND DISTRILLERIES LIMITED ….Respondent(s)

WITH
C.A. No. 7165 OF 2013
AND
C.A. Nos. 4416-4419 OF 2014

JUDGMENT

Dinesh Maheshwari, J.

Preliminary and Brief Outline

1. The appeals in this batch, involving similar questions between the same parties, have been considered together and are taken up for disposal by this common judgment.

2. Civil Appeal Nos. 7164 of 2013 and 7165 of 2013, filed respectively by the revenue and the assessee, are directed against the final judgement and order dated 10.09.2004, passed by a Division Bench of the High Court of Judicature at Madras in W.P. No. 25081 of 2002, whereby the High Court has allowed the writ petition filed by the assessee while holding, *inter alia*, that

though the purchase turnover, with respect to the purchase of empty bottles from unregistered dealers under bought note, is exigible to purchase tax under Section 7-A of the Tamil Nadu General Sales Tax, 1959[1] but, the assessee is entitled for the benefit of Clarifications dated 09.11.1989 and 27.12.2000 issued by the revenue till the same were withdrawn prospectively by the Clarification dated 28.01.2002 and therefore, the revenue is not entitled to levy purchase tax for the said turnover of purchase of empty bottles for the assessment year 1996-97.

2.1. The assessee has filed another set of appeals in Civil Appeal Nos. 4416-4419 of 2014 against the order of the High Court dated 05.12.2013, passed in Tax Case (Revision) Nos. 1667,1669, 1857 of 2008 and 13 of 2009, wherein the High Court has held that the assessee is liable to pay purchase tax under Section 7-A of the Act for the assessment years 1986-87 to 1989-90 on the turnover of purchase of empty bottles from the unregistered dealers while following its aforesaid earlier order dated 10.09.2004.

3. Put in a nutshell, these matters involve the interpretation of Section 7-A of the Tamil Nadu Act, providing for levy of purchase tax under certain circumstances, with root questions as to whether purchase tax is leviable on the purchase turnover of empty bottles purchased by the assessee in the course of its business of manufacture and sale of Beer and Indian Made Foreign Liquor[2] and as to the operation and effect of the Clarifications dated 09.11.1989 issued by the Special Commissioner and Commissioner of

1 Hereinafter also referred to as 'the Tamil Nadu Act' or simply 'the Act'.
2 'IMFL' for short.

Commercial Taxes, Chennai[3] and dated 27.12.2000 issued by the Principal Commissioner and Commissioner of Commercial Taxes, Chennai[4]. On the sideways, a separate question is as to whether cash discount on the price offered by the assessee to the Tamil Nadu State Marketing Corporation Limited[5] is taxable in view of *Explanation* 2(iii) to Section 2(r) of the Act?

4. As noticed, the impugned order dated 05.12.2013 in Civil Appeal Nos. 4416-4419 of 2014 is essentially based on the previous order of the High Court dated 10.09.2004 which is in challenge by the revenue as also by the assessee in Civil Appeal Nos. 7164 of 2013 and 7165 of 2013. Hence, we propose to deal with the cross-appeals against the order dated 10.09.2004 in necessary details.

Civil Appeal Nos. 7164 and 7165 of 2013: Relevant Background

5. The assessee is a company incorporated under the Companies Act, 1956 and is engaged in the business of manufacture of Beer and IMFL products on the strength of license issued under the Tamil Nadu Indian Made Foreign Spirits (Manufacture) Rules, 1981 in its factory located at No. 7, Selva Street, M.M. Nagar, Valasaravakkam, Chennai – 600 087. It is an assessee on the file of the Commercial Tax Officer, Porur Assessment Circle.

5.1. The assessee, for the purpose of the said business of manufacture of Beer and IMFL, purchased empty bottles from unregistered dealers situated outside the State as well as from non-dealers for the bottling of Beer and IMFL. It has been the case of the assessee that the said bottles were recycled after

3 'SCCT' for short
4 'PCCT' for short
5 'TASMAC' for short

use by the consumers and were re-filled with Beer and IMFL. The cost of bottles was Rs. 35.69 per case as against the manufacturing cost of Beer of Rs. 109.93 per case, taking the cost of bottles to 32% of the manufacturing cost. With respect to IMFL, the cost of bottles was Rs. 60.40 per case as against the manufacturing cost of Rs. 217.06 per case, which had been 28% of the manufacturing cost. According to the assessee, these bottles purchased against bought notes were the bottles which were already used, filled and sold for a price and continued to be available for re-use and further trading.

5.2. It had also been the case of assessee that as per Rule 29 of the Tamil Nadu Brewery Rules,1983, the manufacturer had the option of filling the Beer either in bottles or casks or even kegs; that the entire Beer and IMFL manufactured by assessee was sold only to TASMAC, who had the exclusive privilege of supplying the liquor by wholesale for the entire State of Tamil Nadu. The assessee had also been offering cash discount for early settlement of bills by TASMAC.

6. For the assessment year 1996-97, the assessee was assessed on the files of the revenue on a total turnover of Rs. 2,52,33,32,932/- and Rs. 2,49,65,22,854/- respectively by the assessment order dated 21.10.1998. Thereafter, the Assessing Officer[6], by a notice dated 30.04.1999, proposed to levy purchase tax under Section 7-A of the Act on the purchase of empty bottles from unregistered dealers under bought note through salesman permits, on a sum of Rs. 24,78,20,465/- at the rate of 16% with surcharge, additional surcharge as also additional tax at the rate of 2.50%.

6 Hereinafter also referred to as 'the AO'

6.1. In his notice dated 30.04.1999, the AO, *inter alia*, observed that addition of sub-section (7) to Section 3 with effect from 22.05.1984 specifically treats the containers or packing materials as part of the goods sold or purchased; that there was no doubt that the bottles lost their identity as bottles, which were liable to tax at 10% before filling and they became integral part of the finished goods after filling and attracted liability under the charging Section 3(7) of the Act; and when the bottles became part of the goods, liability under Section 7-A of the Act was definite because, as a part of finished goods used in manufacture, it had not suffered the tax earlier. The AO also observed that in view of decision of this Court in ***Raj Sheel & Ors*. v*. State of Andhra Pradesh & Ors.:* (1989) 74 STC 379**, though the empty bottles were used as packing material and merged with the consideration of the main product, there was no separate sale of these empty bottles purchased from unregistered dealers and hence, such purchase of empty bottles was liable to tax under Section 7-A of the Act, as there was no subsequent taxable event on the sale of the packaging material.

6.2. In response to the said notice dated 30.04.1999, the assessee submitted its objections on 27.09.1999 to the effect that Section 7-A of the Act for levy of purchase tax was not attracted on the purchase of empty bottles for packing Beer and IMFL and, in any event, the proposed levy of purchase tax was illegal and unjustified in view of the Clarification dated 09.11.1989 issued by the SCCT, that was binding on the revenue as per Section 28-A of the Act. The assessee also placed reliance on the proceedings of the Appellate

Assistant Commissioner (CT), Chennai[7] with respect to the assessment years 1986-87 to 1988-89 holding that imposition of purchase tax on the purchase of empty bottles was illegal and unjustified. The mainstay of the assessee had been that the empty bottles purchased by it were neither consumed nor used in the manufacture of other goods; that the manufacture of Beer or IMFL was complete much prior to its bottling; that the bottling of Beer or IMFL did not complete the process of manufacture; and that it was also a clear trade practice to sell Beer even in barrels, which itself showed that manufacture of Beer had nothing to do with its subsequent bottling.

6.3. The PCCT, before passing final orders on the aforesaid notice dated 30.04.1999 by the AO, issued his Clarification dated 27.12.2000 that purchase of empty bottles could not be made liable to be charged under Section 7-A of the Act during the assessment years 1991-92,1993-94, 1994-95 and 1995-96 as the Clarification dated 09.11.1989 was in force at the relevant time.

6.4. However, the PCCT later on re-examined the issue in light of the decision of Tamil Nadu Taxation Special Tribunal, Chennai[8] in the case of ***Appollo Saline Pharmaceuticals (P) Limited v. State of Tamil Nadu:*** reported in **(2000) 120 STC 493**, and stated by his Clarification dated 28.01.2002, in modification of the earlier Clarifications, that the assessee was liable to tax under Section 7-A of the Act for the purchase of empty bottles from unregistered dealers that were used for packing of Beer/IMFL manufactured by it.

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7 Hereinafter also referred to as 'the Appellate Authority'
8 Hereinafter also referred to as 'the Tribunal'

6.5. Apart from the above, the AO, by his notice dated 05.02.2002, proposed to revise the earlier assessment for the assessment year 1996-97 by disallowing the exemption on cash discount allowed by the assessee to TASMAC and to levy tax on the said cash discount, with surcharge and additional surcharge @ 15% and 5% respectively as also the additional sales tax. In response to this notice dated 05.02.2002, the assessee, by its letter dated 18.03.2002, submitted that any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers is not to be included in the turnover. In this regard, the assessee placed reliance on *Explanation* 2(iii) to Section 2(r) of the Act.

6.6. After examining the objections of the assessee, the AO, by his order dated 27.03.2002, confirmed the proposal of levying purchase tax @ 16% under Section 7-A of the Act on the bottles purchased from unregistered dealers with surcharge and additional surcharge @ 15% and 5% respectively as also additional sales tax @ 2.5% and penalty, essentially on the grounds that empty bottles were purchased from unregistered dealers; that they had been used as raw materials in manufacture of Beer and IMFL products; and that they had not been sold separately. The AO, in support of his conclusion, relied upon the decision of the Division Bench of Madras High Court in ***Appollo Saline Pharmaceuticals (P) Limited v. Deputy Commercial Tax Officer and Anr.:*** **(2002) 125 STC 500,** which relied upon the decision of this Court in ***Premier Breweries v. State of Kerala*****: (1998) 108 STC 598**.

6.7. Further, while overruling the objections in respect of levy of tax on cash discount, the AO confirmed the proposal for disallowing the cash discount allowed to TASMAC while observing that discount was only for early settlement of bills of the Distilleries that was akin to discounting the bills with Banks/Financial Institutions; and though the nomenclature adopted was 'cash discount', it was nothing but a commission availed for easy payments which did not fall within the purview of discount and was not deductible.

7. Being aggrieved by the order so passed by the AO, the assessee preferred O.P. No.476 of 2002 before the Tribunal seeking quashing of the order dated 27.03.2002 and directions to the AO to give effect to the Clarifications dated 09.11.1989 and 27.12 .2000.

7.1. The Tribunal, by its order dated 26.06.2002, while dismissing O.P. No. 476 of 2002, observed that when the latest Clarification dated 28.01.2002 was issued on the basis of view taken by the Tribunal and confirmed by the High Court, the assessee was not entitled to question the proceedings of AO on the basis of the Clarifications issued earlier. It was also observed that the rule applicable for tax on the bottles could be extended to casks and kegs too and, by exclusion of casks and kegs, the tax applicable on bottles alone cannot be set aside or withdrawn. The Tribunal further observed that the decision of the jurisdictional High Court in ***Associated Pharmaceutical Industries Private Ltd. v. The State of Tamil Nadu:*** **(1986) 63 STC 316** was not applicable as the same was rendered prior to the amendment of Section 7-A(1)(a) of the Act by the Tamil Nadu Act No. 78 of 1986 effective from

01.01.1987; and with insertion of the word "use" by way of amendment, the meaning conveyed by the said section was different from the meaning conveyed earlier. Thus, while proceeding in tune with the Clarification dated 28.01.2002, the Tribunal refused to interfere with the order dated 27.03.2002.

8. Being aggrieved by the Tribunal's order dated 26.06.2002, the assessee filed the writ petition, being W.P. No. 25081 of 2002, before Madras High Court, seeking a writ of certiorarified mandamus for quashing the proceedings in question while directing the AO to pass fresh orders giving effect to the Clarifications/Circulars dated 09.11.1989 and 27.12.2000. The writ petition so filed by the assessee has been considered and disposed of by the High Court by its impugned order dated 10.09.2004.

8.1. The following three questions were considered by the High Court in its impugned order dated 10.09.2004: -

> "(i) Whether the purchase turnover of empty bottles purchased by the petitioner Company, who are engaged in the business of manufacturing Beer and IMFL products, from unregistered dealers for bottling Beer and IMFL manufactured by them, through the bought note to the extent of Rs. 24,78,20,465.00 is attracted for purchase tax under Section 7-A of the Tamil Nadu General Sales Tax Act (for brevity "the Act")?;
> (ii) Whether purchase tax is leviable on the purchase turnover of the empty bottles purchased by the petitioner Company to the extent of Rs. 24,78,20,465.00, under Section 7-A of the Act, in spite of the clarifications dated 9.11.1989 and 27.12.2000 issued in favour of the petitioner Company by the Special Commissioner of Commercial Taxes, Chennai, in view of Section 28A of the Act?; and
> (iii) Whether cash discount on the price offered by the petitioner Company to the TASMAC is taxable in view of explanation 2(iii) to Section 2(r) of the Act?"

8.2. After taking into consideration the rival contentions and exhaustively dealing with the case law on the subject, the High Court, by applying the law laid down by this Court in ***Premier Breweries*** (supra) and ***Assistant Commissioner (Intelligence) v. Nandanam Construction Co.:*** **(1999) 115 STC 427**; and with reference to the amended Section 7-A of the Act and the object of this provision as explained by this Court in the case of ***The State of Tamil Nadu v. M.K. Kandaswami and Ors.:*** **(1975) 36 STC 191** i.e., to plug the leakage and prevent evasion of tax with respect to purchase of goods, rejected the contention of assessee that the turnover for the purchase of empty bottles did not attract levy of purchase tax under Section 7-A of the Act. The High Court held as follows:-

> "7.6. Hence, applying the law laid down by the Apex Court in (i) PREMIER BREWERIES v. STATE OF KERALA, [1998] 108 STC 598; and (ii) ASSISTANT COMMISSIONER (INTELLIGENCE) v. NANDANAM CONSTRUCTION CO., [1999] 115 STC 427, which was followed by this Court in APPOLLO SALINE PHARMACEUTICALS (P) LTD., v. DEPUTY COMMERCIAL TAX OFFICER & ANOTHER, [2002] 125 STC 500, and keeping in mind the object of Section 7-A of the Act, as amended, as observed in STATE OF TAMIL NADU v. M.K. KANDASWAMI & OTHERS, [1975] 36 STC 191, viz., to plug the leakage and prevent evasion of tax with respect to purchase of empty bottles purchased from unregistered dealers under the bought note, we reject the contention of Mr. C.Natarjan that the purchase turnover for the purchase of empty bottles from unregistered dealers under the bought note is not attracted for levy of purchase tax under Section 7-A of the Act."

8.3. However, with respect to the second question, the High Court, *inter alia*, observed that the Clarification dated 27.12.2000 gained statutory force in view of Section 28-A of the Act, which was inserted by the amendment with

effect from 06.11.1997. Further, while relying on various decisions including that of the Constitution Bench of this Court in the case of ***Collector of Central Excise, Vadodra*** **v.** ***Dhiren Chemical Industries*** **: (2002) 126 STC 122,** it was also observed that even though the Clarification dated 09.11.1989 was executive in nature, the same was binding on the authorities till the concessions given to the assessee under the Clarification were withdrawn prospectively with effect from 28.01.2002; and the revenue could not refuse the benefit of the Clarifications dated 9.11.1989 and 27.12.2000 in respect of purchase tax under Section 7-A of the Act for the assessment year 1996-97. The High Court answered this question in favour of the assessee as follows:-

> "8.6.10. It is, therefore, clear that even though the clarification dated 9.11.1989 is executive in nature, the same is binding on the authorities till the concessions given to the petitioner under the clarification were withdrawn, which could be done only prospectively, viz., in the instance case, with effect from 28.1.2002, and the revenue could not refuse the benefit of the clarifications dated 9.11.1989 and 27.12.2000 in respect of levy of purchase tax under Section 7-A of the Act for the impugned assessment year 1996-97.
> 8.7. For all these reasons, we are convinced that even though the purchase turnover with respect to the purchase of empty bottles from the unregistered dealers under bought note can be charged for purchase tax under Section 7-A of the Act, the petitioner is entitled for the benefit of the clarifications dated 9.11.1989 and 27.12.2000 till the same is withdrawn prospectively by the clarification dated 28.1.2002 and therefore, the impugned levy of purchase tax on the purchase turnover for the purchase of empty bottles from unregistered dealers under Section 7-A of the Act is illegal."

8.4. Lastly, with respect to the third question, the High Court, while relying on various decisions including that of this Court in ***Neyveli Lignite Corporation Ltd. v. Commercial Tax Officer, Cuddalore and Anr.:*** **(2001)**

124 STC 586, took the view that as per *Explanation* 2(iii) to Section 2(r) of the Act, cash or other discount on the price of goods sold cannot be included in the turnover for the levy of tax. Accordingly, this question was also answered in favour of the assessee and against the revenue as follows:-

> "9.4. In NEYVELI LIGNITE CORPORATION LTD. v. C.T.O., [2001] 124 STC 586, it was held that it is that sale consideration, whether in cash or otherwise, which is receivable in respect of sales made by the dealer which can possibly form part of the turnover of a dealer.
> 9.5. From the law as enunciated from the decisions referred supra, we are convinced that in view of explanation 2(iii) to Section 2(r) of the Act, the cash or other discount on the price of goods sold cannot be included in the turnover for levy of tax."

8.5. Therefore, the High Court, particularly in view of its answers to question Nos. (ii) and (iii) as above, allowed the writ petition filed by the assessee.

9. Being aggrieved by the order dated 10.09.2004 so passed by the High Court in W.P. 25081 of 2002, the revenue has filed the appeal by special leave, being Civil Appeal No. 7164 of 2013 questioning the grant of relief to the assessee. On the other hand, the assessee has also filed the appeal by special leave, being Civil Appeal No. 7165 of 2013, against this very order insofar as the High Court has decided the principal question relating to the applicability of Section 7-A of the Act against it.

Rival Submissions

The Assessee

10. As regards the question as to whether the purchase turnover of empty bottles purchased from unregistered dealers is exigible to purchase tax, the learned senior counsel for the assessee has submitted that the question of levy of purchase tax on this purchase turnover does not arise while making elaborate reference to the object and scheme of Section 7-A of the Tamil Nadu Act; to the process of bottling of Beer/IMLF after the same had been manufactured; and to the fact that the sale of liquor with bottles had only been to TASMAC within the State of Tamil Nadu with bottles being also taxed on such sales.

10.1 The learned senior counsel has referred to the history of insertion of Section 7-A to the Tamil Nadu Act w.e.f. 27.11.1969 and its various amendments from time to time with the submissions that the said provision was inserted with the main object to plug the leakage and to prevent evasion of tax. Further, with reference to the provisions contained in Section 7-A as applicable at the relevant time and sub-sections (1), (7) and (8) of Section 3 of the Act, the learned senior counsel has contended that the bottles were not disposed of "in any manner other than by way of sale in the State" but these were disposed of only by way of sale to TASMAC within the State of Tamil Nadu itself on payment of sales tax and hence, clause (b) of Section 7-A(1) does not apply. In support of these contentions, the learned senior counsel has relied upon the decision of this Court in the case of ***Hotel Balaji and Ors.*** **v.** ***State of Andhra Pradesh and Ors.*****: (1993) 88 STC 98,** more particularly on

the observations occurring in a few paragraphs of said decision in relation to the provisions contained in the Haryana General Sales Tax Act, 1973.[9]

10.1.1. The learned senior counsel has also contended that the revenue itself had accepted such factual and legal decision and has issued Clarifications/Circulars dated 09.11.1989 and 27.12.2000 realising that since the sale value of bottles is subject to tax at the time of sale of the contents, it has no liability to tax under Section 7-A of the Act.

10.2. Taking up clause (*a*) of sub-section (1) of Section 7-A of the Act, the learned senior counsel has submitted that the language used in the said clause (*a*) has been *'consumes or uses such goods in the manufacture of other goods for sale or otherwise'.* Thus, according to the learned counsel, what is to be seen is whether bottles were consumed or used in the manufacture of liquor; and as per the said language used in clause (*a*), it cannot apply to the present case either textually or contextually because Beer/IMFL was fully manufactured and such fully manufactured liquor was transferred to the bottling section; that bottles have got their own identity and they remained bottles at all stages, i.e., before being used for filling the liquor, after being used for this purpose, after liquor was consumed by the consumers, and even when these were cleaned and re-used by the assessee; and that the character and identity of bottles as bottles was never lost, they were capable of repeated use, and the assessee was cleaning and re-using such bottles. The learned senior counsel has referred to the Tamil Nadu Brewery Rules, 1983 and the Tamil Nadu Indian Made Foreign Spirits (Manufacture) Rules, 1981 to

9 Hereinafter also referred to as 'the Haryana Act'.

submit that it is manufactured Beer/IMFL, which is filled in bottles in a separate bottling section and, so far as the manufacture of Beer/IMFL is concerned, the same had already taken place before bottling and hence, bottles are not *'consumed or used in the manufacture'* of liquor for sale. The learned senior counsel has also referred to the decision of this Court in the case of ***State of Uttar Pradesh and Ors.*** **v.** ***Mohan Meakin Breweries Ltd. and Anr.:*** **(2011) 13 SCC 588** to submit and re-emphasize that process of bottling commences only after completion of manufacturing of Beer when bulk Beer is transferred from the brewery for bottling; and manufacturing of liquor and putting manufactured commodity into bottles being two different processes, it cannot be said that the bottles have been consumed or used in manufacture of other goods.

10.2.1. The learned senior counsel has emphatically contended that in the process of manufacture, conversion of one commodity into a different commodity remains the essential element and if the identity of goods is not changed with irreversible process, manufacture would not be deemed to have taken place. In this regard, the learned counsel has referred to various decisions including those in ***Mafatlal Industries Ltd.*** **v.** ***Nadiad Nagar Palika and Anr.:*** **(2000) 3 SCC 1,** ***HMM Limited and Anr.*** **v.** ***Administrator, Bangalore City Corporation, Bangalore and Anr.:*** **(1989) 4 SCC 640,** ***Punjab Aromatics*** **v.** ***State of Kerala*****: (2008) 11 SCC 482,** ***Collector of Central Excise, Bombay-II*** **v.** ***M/s. Kiran Spinning Mills:*** **(1988) 2 SCC 348,** ***Commissioner of Central Excise & Customs, Gujarat*** **v.** ***Pan Pipes***

Resplendents Ltd. **: (2006) 1 SCC 777,** ***Union of India*** **v.** ***Alembic Glass Industries Ltd.*****: (2010) 11 SCC 745,** ***Ganesh Trading Co., Karnal*** **v.** ***State of Haryana and Anr.*****: (1973) 32 STC 623,** ***Burmah Shell Oil Storage and Distributing Co. of India Ltd., Belgaum v. Belgaum Borough Municipality:*** **AIR 1963 SC 906,** and ***Kathiawar Industries Ltd*****. v.** ***Jaffrabad Municipality:*** **(1979) 4 SCC 56.**

10.2.2. Again, with reference to the decision in ***Hotel Balaji*** (supra), the learned senior counsel would contend that the provisions as contained in the Haryana Act carried the same language i.e., '*uses them in the State in the manufacture of goods*'; and per the enunciation in the said decision, the provision for levy of purchase tax would apply only to those cases where the purchased goods '*cease to exist as such goods for the reason that they are consumed in manufacture of different commodities'* or the purchased goods *'are put to an end by their consumption in the manufacture of other goods'*; and no such event having taken place where the goods in question (the bottles) had ceased to exist or had been put to an end by consumption in the manufacture of other goods, the question of levy of purchase tax does not arise.

10.2.3. The learned senior counsel has also submitted that during the period involved in the present case, i.e., from 01.04.1996 to 31.03.1997, the requirement for applicability of clause (*a*) of Section 7-A(1) was stated in the manner that dealer '*consumes or uses such goods in the manufacture of other goods for sale or otherwise'*; and the scope of clause (*a*) was subsequently

widened w.e.f. 06.11.1997 when new clause (*a*) was substituted by the Tamil Nadu General Sales Tax (Sixth Amendment) Act 1997 to read as '*consumes or uses such goods in* ***or for*** *the manufacture of other goods for sale or otherwise'* but, during the period relevant for the present case, the expression "or for" was not there in the statute. According to the learned counsel, when Beer/IMFL had already been manufactured before bottling, the bottles were neither consumed nor used in manufacture of the contents; and nothing turns upon the expressions "consumes" or "uses" inasmuch as in both the situations, such consumption or use was required to be *'in the manufacture of other goods'*, which is not the case here.

10.3. As regards the decisions referred to in the impugned orders, the learned senior counsel for the assessee has submitted that the said decisions do not operate against the contentions of the assessee.

10.3.1. The learned senior counsel would submit that in the case of ***M. K. Kandaswami*** (supra)**,** this Court had only analysed the scheme of Section 7-A of the Act, as then existing, and had pointed out that the said provision was itself a charging provision. As regards the decision in the case of ***Nandanam Construction Co.*** (supra), the learned counsel would contend that therein, the respondent was purchasing goods such as sand and bricks which were consumed in the construction of flats and hence, this Court held that when the goods ceased to exist in the original form or ceased to be available in the State for sale or purchase, the purchasing dealer of such goods would be liable to tax, if the seller is not or cannot be taxed. The decision in ***Premium Breweries***

(supra), has been distinguished by the learned counsel with the submissions that therein, contention of the dealer was that the cardboard cartons, in which the liquor bottles were packed, may not be taxed at the higher rate applicable to the sale of liquor because cardboard cartons were sold separately but such a contention was not accepted by this Court. Thus, according to the learned counsel, for different fact situation and different question being involved, the said decision has no application to the present case.

10.3.2. As regards the decision of Madras High Court in the case of ***Appollo Saline Pharmaceuticals*** (supra), the learned senior counsel has strenuously argued that the said decision is not correct in law and is even otherwise distinguishable. The learned counsel has pointed out that the goods in question in the said decision were the bottles carrying 'intravenous fluid'[10] which had different role in the process of manufacture of I.V. fluid as also in the peculiar process of intravenous route of administration, where the fluid is given from a bag connected to a thin tube inserted into the veins; and it is important to keep a check on the rate of flow and delivery by continuous monitoring. The learned counsel would submit that by its very nature, where the manufacture of I.V. fluid requires its particular packing, the said packing does not retain its identity and becomes a part of the composite unit called I.V. fluid; that packing of I.V. fluid in bottle is one time packing and after I.V. fluid is taken out, the packing becomes useless and is discarded; and that in the said decision itself, the entire I.V. fluid contained in bottle was considered to be a composite unit, which is not the case in relation to the bottles used as container of Beer/IMFL.

10 'I.V. fluid' for short

The learned senior counsel has further submitted that the phraseology considered in the matter of ***Appollo Saline Pharmaceuticals*** (supra) was '*in or for the manufacture*', which was the position obtainable after the amendment of Section 7-A of the Act w.e.f. 06.11.1997 whereby, the expression "or for" was inserted in clause (*a*) thereof but, that was not the position during the period involved in the present case. The learned counsel has also submitted that in the said matter, the High Court did not even consider the relevant decisions of this Court wherein the relevant expressions have been considered and interpreted by this Court including that in the case of ***Hotel Balaji*** (supra) wherein, according to the learned counsel, this Court had considered the provisions of Haryana Act which are in *pari materia* with the provisions of the Tamil Nadu Act in relation to the levy of purchase tax. The learned counsel has further submitted that in ***Appollo Saline Pharmaceuticals*** (supra), reference was only made to decision of this Court in the case of ***J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur and Ors.:*** **(1965) 16 STC 563** though the issue involved in the said matter was completely different and related to categories of goods to be included in the registration certificate which has no co-relation with levy of purchase tax, particularly in view of the language used in Section 7-A(1) (*a*) of the Act.

11. As regards the Clarifications/Circulars, the learned senior counsel has referred to the contents of the Clarifications dated 09.11.1989 and 27.12.2000 and has made the submissions that in the assessee's own case, after examining the relevant facts and legal position, the revenue had

specifically clarified that since the sale value of bottles is subject to tax at the time of sale of the contents, it had no liability to tax under Section 7-A of the Act; and such clarifications remain binding on the revenue, as rightly held by the High Court.

11.1. Further, with reference to the decisions of this Court in the cases of ***Commissioner of Income Tax, Kochi*** **v.** ***Trans Asian Shipping Services (P) Ltd.*****: (2016) 8 SCC 604,** ***Signode India Ltd.*** **v.** ***Commissioner of Central Excise & Customs-II*****: (2017) 4 SCC 613,** ***State of Tamil Nadu and Anr.*** **v.** ***India Cements Limited and Anr.*****: (2011) 13 SCC 247** and ***Commissioner of Central Excise, Bolpur*** **v.** ***Ratan Melting & Wire Industries:*** **(2008) 13 SCC 1,** the learned senior counsel has submitted that the law remains settled that the Circular granting benefit to the assessee is binding on the department. Thus, according to the learned counsel, the High Court has rightly applied the principles of such decisions while holding that the benefit of Clarifications dated 09.11.1989 and 27.12.2000 cannot be denied to the assessee.

11.2. While making reference to the Clarification dated 28.01.2002, which was issued after the Tribunal's decision in the case of ***Appollo Saline Pharmaceuticals,*** the learned senior counsel has contended that therein, the earlier Clarification dated 27.12.2000, clarifying that in the facts and circumstances of the present case, no purchase tax was payable under Section 7-A of the Act, was neither withdrawn nor cancelled and on the other hand, the expression used in the new Clarification, of modification, makes it clear that the new one was made effective only prospectively and hence,

cannot apply for the period in question. In this regard too, the learned senior counsel has referred to and relied upon various decisions including those in ***H.M. Bags Manufacturer*** **v.** ***CCE*****: 1997 (94) ELT 3** and ***Commissioner of Customs, Mumbai*** **v.** ***Ashish Bajpai*****: 2007 (217) ELT 163.**

The revenue

12. The learned Additional Advocate General appearing for the revenue has countered the submissions made on behalf of the assessee while again making elaborate reference to the object and scheme of Section 7-A of the Tamil Nadu Act as also its interpretation and application in various decisions.

12.1. It has been argued on behalf of the revenue that the amendment to Section 7-A of the Act and addition of the words "or uses" in clause (*a*) thereof had broaden the scope of this provision as also the jurisdiction of assessing authorities to levy purchase tax on any commodity, which had not suffered tax earlier and which has been used in the process of manufacturing any good to be sold. Therefore, the assessee is liable to pay purchase tax under Section 7-A of the Act because the bottles purchased from unregistered dealers were not taxed at the purchase point and charging of such purchase tax does not amount to double taxation.

12.2. The learned AAG has referred to the decision in ***M.K. Kandaswami*** (supra) to submit that therein, this Court has made it clear that Section 7-A of the Act is a charging section and has explained that Section 7-A of the Act deals with "taxable goods", that is, the kind of goods, the sale of which by a particular person or dealer may not be taxable in the hands of seller but

purchase of the same by a dealer in the course of his business may subsequently become taxable. Thus, Section 7-A of the Act creates a liability against a dealer on his purchase turnover of goods, the sale or purchase of which though generally liable to tax under the Act, have not suffered tax and which, after the purchase, have been dealt by him in any of the modes indicated in Section 7-A(1). The learned AAG has further argued, with reference to the decision in ***Premier Breweries*** (supra), that the calculation of taxable turnover cannot be accomplished without taking into consideration the purchase tax on the goods purchased; and this Court has held that the packed goods have to be seen as one whole for the purpose of calculating the turnover of the goods.

12.3. While relying on the decision of the High Court in ***Appollo Saline Pharmaceuticals*** (supra), the learned AAG has pointed out that therein, the Court has held that the turnover of bottles would be part of the turnover of the I.V. fluid because the bottles were not sold individually but as a composite unit of I.V. fluid packed in bottles. It has been contended that on similar lines and analogy, packaging of Beer/IMFL in glass bottles has to be seen as an inseparable composite unit, particularly when the containers are needed to make the goods marketable. Reference has also been made to the decision of this Court in ***J.K. Cotton*** (supra) wherein, it was held that the expression “in the manufacture of goods” in sub-section 8(3)(b) of the Central Sales Tax Act should encompass the entire process carried on by the dealer of converting raw materials into finished goods. It has also been contended that levy of sales

tax on the bottles sold with liquor has no bearing on the question of levy of purchase tax because such sales tax on bottles was leviable even if the bottles were purchased from registered dealers or in any other manner after payment of tax.

12.4. Further, while placing reliance on the Tamil Nadu Indian Made Foreign Spirits (Manufacture) Rules, 1981 the learned AAG has submitted that the use of bottle is imperative in the manufacture of Beer/IMFL as per the rules and guidelines because the product needs resting and proper storing before it is fit to be sold. In regard to Beer bottle, several of its unique characteristics have been recounted on behalf of revenue to submit that the same would identify it only as Beer bottle and nothing else, for example, (i) the thickness of the glass used in the Beer bottle; (ii) the colour of the glass of the bottle, which is a quality attached to specific brands; (iii) the grooves on the neck of the bottle, which are made only for an aluminium cap and not for any other covering, thereby making the bottle fit only for refilling of Beer; and (iv) the length, width, breadth, etc. of the bottle, which is specific to every Beer brand.

12.5. The learned AAG for revenue has further relied upon the interpretation of Section 6-A(ii)(*a*) of the Andhra Pradesh General Sales Tax Act, 1957[11] by the Constitution Bench of this Court in the case of ***Nandanam Construction Co.*** (supra) with the submissions that the said provision has been in *pari materia* with Section 7-A(1)(*a*) of the Tamil Nadu Act and this Court held that, when the goods cease to exist in the original form or cease to be available in the State for sale or purchase, the purchasing dealer of such

11 Hereinafter also referred to as 'the Andhra Pradesh Act'.

goods is liable to tax if the seller is not or cannot be taxed. The learned AAG has further relied upon the interpretation and application of Section 7 of the Madhya Pradesh General Sales Tax Act, 1959[12] by this Court in the case of ***Ganesh Prasad Dixit v. Commissioner of Sales Tax, Madhya Pradesh:*** **(1969) 24 STC 343** with the submissions that the said provision has also been in *pari materia* with Section 7-A(1)(*a*) of the Tamil Nadu Act and this Court held that the assessees were registered as dealers and when they had purchased taxable building materials in the course of their business for manufacturing goods for sale, purchase tax was payable by them.

13. As regards the questions relating to the Clarifications/Circulars, the learned AAG has submitted that Section 28-A of the Act empowering the Commissioner of Commercial Taxes to issue clarifications came into effect from 06.11.1997 and hence, during the relevant assessment year i.e. 1996-97, there was no statutory provision in the Act empowering the Commissioner to issue the clarification. Thus, according to the learned AAG, the earlier Clarification dated 09.11.1989 was reduced to a mere administrative circular which had no binding force on a Quasi-judicial Authority or a Court of Law and as a consequence, the Clarification dated 27.12.2000, which was issued in continuity with the earlier Clarification dated 09.11.1989, cannot be made applicable for the assessment year 1996-97.

13.1. The learned AAG has also relied upon the Constitution Bench decision in ***Ratan Melting & Wire Industries*** (supra) with the submission that while dealing with any matter, the Courts can declare law, fill any gaps in

12 Hereinafter also referred to as the 'Madhya Pradesh Act'.

legislation or give an interpretation to an already existing law; and the law so declared remains binding on all. Insofar as this matter is concerned, according to the learned AAG, the law came to be declared by this Court in ***Premier Breweries*** (supra) that the packed goods have to be seen as one whole for the purpose of calculating the turnover; and on similar lines, in ***Appollo Saline Pharmaceuticals*** (supra), the High Court held that an assessee paying purchase tax will not suffer any additional burden because any other manufacturer who had bought the bottles from registered dealers would also be including their cost in the turnover of final goods.

13.2. According to the learned AAG, a natural development of the decisions by the Courts had been that the Clarifications dated 09.11.1989 and 27.11.2000 became contrary to the law declared; and it had been in this background that the Clarification dated 28.01.2002 came to be issued. The learned AAG would submit that the interpretation given by the High Court of Madras in ***Appollo Saline Pharmaceuticals*** (supra), which is in line with the law declared by this Court in ***Premier Breweries*** (supra), gave clarity to the application of Section 7-A of the Act and hence, to give effect to the real meaning of Section 7-A of the Act, the Clarification dated 28.01.2002 ought to be considered applicable because the law as declared would apply across the board and not only prospectively.

14. We may notice another ground taken by the revenue in the petition seeking leave to appeal that the High Court has erred in holding that the so-

called ‘cash discount’ falls under the ambit of *Explanation* (2)(iii) of Section 2(r) of the Act and therefore, exemption is to be allowed thereupon.

The Points for Determination

15. In comprehension of what has been noticed hereinabove, the principal point calling for determination in these appeals is as to whether purchase tax under Section 7-A of the Act is leviable on the purchase turnover of empty bottles purchased by the assessee in the course of its business of manufacture and sale of Beer and IMFL. The second point, co-related with the principal one, is on the operation and effect of the Clarifications/Circulars dated 09.11.1989, 27.12.2000 and 28.01.2002 as issued by the department. Another point arising out of the impugned order dated 10.09.2004 is as to whether cash discount on the price offered by the assessee to the TASMAC is taxable in view of *Explanation* 2(iii) to Section 2(r) of the Act?

The Principal Point: Purchase Tax under S. 7-A of the Act over the Turnover in Question

16. Taking up the principal point for determination, we may usefully put in a nutshell the major aspects of the rival contentions. It is asserted on behalf of the assessee that purchase tax on the turnover in question is not leviable for two main reasons: One, that the bottles in question had not been consumed or used in the manufacture of liquor and they were only used as containers in which already manufactured liquor was bottled for carrying and sale; and secondly, the sale value of bottles has been subjected to tax at the

time of sale of its contents and therefore, there could arise no question of levy of purchase tax on these very bottles, which are meant for repeated use. *Per contra,* it is contended on behalf of the revenue that use of bottles is imperative in the manufacture of Beer/IMFL and their packaging in glass bottles has to be seen as an inseparable composite unit; and that levy of sales tax on the bottles sold with liquor has no bearing on the question at hand because such sales tax on bottles was leviable even if the bottles were purchased after payment of tax.

Statutory Provisions

17. Having regard to the subject-matter and the questions involved, appropriate it would be to take note of the relevant statutory provisions in the Tamil Nadu Act.

17.1. Sub-sections (1), (7) and (8) of Section 3 of the Tamil Nadu Act, being the principal charging provision for levy of sales tax, read at the relevant time as under:-

> "**3. Levy of taxes on sales or purchases of goods**
> (1) Every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year exceeds three lakhs of rupees and every casual trader or agent of a non-resident dealer, whatever be his turnover for the year, shall pay a tax for each year in accordance with the provisions of this Act.
> *** *** ***
> (7) Notwithstanding anything contained in sub-sections (2), (2A), (2B) or (3) but subject to sub-sections (1) and (8), where goods are sold or purchased together with the containers or packing materials the turnover of such goods shall include the price, cost or value of such containers or packing materials, and the packing charges, whether such price, cost or value or packing charges, are charged separately or not, and tax shall be levied thereon at the rate

applicable to the goods contained or packed as if such containers or packing materials were the parts of the goods sold or purchased.

(8) Where the sale or purchase of goods contained in any container or packed in any packing material is exempt from tax at the hands of the dealer, then the price, cost or value of such container or packing material and the charges for packing forming part of the turnover of the goods under sub-section (7) shall not be liable to tax.

Explanation: For the purposes of sub-sections (7) and (8), "containers" includes gunny bags, tins, bottles or any other containers."

17.2. As noticed, Section 7-A was inserted in the Tamil Nadu Act with effect from 27.11.1969. This provision has undergone several amendments from time to time but, for the present purpose, its sub-section (1), as examined by this Court in the judgment dated 15.07.1975 in the case of ***M.K. Kandaswami*** (supra) and then, as applicable to the present case pertaining to the assessment year 1996-97, may be noticed.

17.2.1. The relevant part of the provision contained in Section 7-A (1) of the Act, as interpreted in the case of ***M.K. Kandaswami*** (supra), was as under (at p. 195 of STC):-

"**Section 7-A. Levy of purchase tax:**

(1) Every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable under sections 3, 4 or 5, as the case may be, and either,—

(*a*) consumes such goods in the manufacture of other goods for sale or otherwise; or

(*b*) disposes of such goods in any manner other than by way of sale in the State; or

(*c*) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in sections 3, 4 or 5 as the case may be whatever be the quantum of such turnover in a year:

Provided that a dealer (other than a casual trader or agent of a non-resident dealer) purchasing goods (the sale of which is liable to tax under sub-section (1) of section 3) shall not be liable to pay tax under this sub-section, if his total turnover for a year is less than twenty-five thousand rupees.

*** *** ***"

17.2.2. A few significant amendments were made to the provision aforesaid by Tamil Nadu Act No. 78 of 1986 with effect from 01.01.1987 whereby, amongst other changes, the dimensions of its applicability were modified in the principal part and then, a significant change was made in clause (*a*) where, after the word "consumes", the words "or uses" were inserted. Then, some further amendments were made to this provision by Tamil Nadu Act No. 25 of 1993 with effect from 12.03.1993. With such amendments and modifications, Section 7-A (1) of the Act, as applicable to the present case, has been as under:-

"Section 7-A. Levy of purchase tax:

(1) Subject to the provisions of sub-section (1) of section 3, every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods, (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable under sections 3 or 4, as the case may be, not being a circumstance in which goods liable to tax under sub-section (2) of section 3 or section 4, were purchased at a point other than the taxable point specified in the First or the Second Schedule and either,

(*a*) consumes or uses such goods in the manufacture of other goods for sale or otherwise; or

(*b*) disposes of such goods in any manner other than by way of sale in the State; or

(*c*) despatches or carries them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall pay tax on the turnover

relating to the purchase as aforesaid at the rate mentioned in sections 3 or 4, as the case may be."

17.2.3. Another aspect of amendment to the provision aforesaid by Tamil Nadu Act No. 60 of 1997 w.e.f. 06.11.1997 may also be taken note of with a caveat that this amendment is not directly applicable to the present case pertaining to the assessment year 1996-97 but has its relevance in relation to one limb of submissions made before us. By this amendment, in clause (*a*) of Section 7-A (1) of the Act, after the expression "in", the words "or for" were inserted, resulting in further widening of the area of coverage of this provision.

17.3. For its relevance, we may extract in juxtaposition the progression of this clause (*a*) of Section 7-A (1) of the Act i.e., as originally enacted; as applicable to the present case after its amendment w.e.f. 01.01.1987; and as amended further w.e.f. 06.11.1997 as follows:-

Clause (*a*) of Section 7-A (1) as originally enacted	Clause (*a*) of Section 7-A (1) as applicable to the present case after its amendment w.e.f. 01.01.1987	Clause (*a*) of Section 7-A (1) as amended w.e.f. 06.11.1997
"(a) consumes such goods in the manufacture of other goods for sale or otherwise; or".	"(a) consumes **or uses** such goods in the manufacture of other goods for sale or otherwise; or".	"(a) consumes or uses such goods **in or for** the manufacture of other goods for sale or otherwise; or".

(emphasis in bold supplied)

Judicial Interpretations in the cited decisions

18. For dealing with the rival contentions, we may also take note of various facets of interpretation of Section 7-A (1) of the Act in the relevant cited decisions. It may, however, be observed that so far as the text of Section

7-A (1) applicable to the case at hand is concerned, there has not been any direct interpretation by this Court or the jurisdictional High Court (except the order impugned). In two of the cited decisions, one by this Court in the case of ***M.K. Kandaswami*** (supra)[13] and another by the High Court in the case of ***Associated Pharmaceutical Industries*** (supra)[14], Section 7-A (1) of the Tamil Nadu Act, as existing before its amendment by Tamil Nadu Act No. 78 of 1986 w.e.f. 01.01.1987, came up for consideration. The other cited decision in relation to Section 7-A (1) of the Tamil Nadu Act had been by the jurisdictional High Court in the case of ***Appollo Saline Pharmaceuticals*** (supra)[15] but that was rendered after further amendments to Section 7-A including that by Tamil Nadu Act No. 60 of 1997 w.e.f. 06.11.1997. Thus, the specific phraseology of Section 7-A (1) of the Tamil Nadu Act as applicable to the present case has not been dealt with by any of these decisions. Nevertheless, each of these decisions had come under reference in this case at every stage and, having regard to the questions involved, appropriate it would be to take note of the relevant *ratio decidendi* from these decisions.

19. As regards the decisions of jurisdictional High Court dealing with Section 7-A (1) of the Act, in the case of ***Associated Pharmaceutical Industries*** (supra), the assessee had purchased and used the bottles for manufacture and sale of medicines, drugs or syrups. It was held by the High Court that though without bottling, the drugs and syrups manufactured could not be sold but, that could not be a reason for holding that the process of

13 Decided on 15.07.1975
14 Decided on 18.01.1984
15 Decided on 14.09.2001

manufacture of drugs and syrups was not complete unless they were bottled or put in suitable containers and hence, it cannot be said that the bottles had been used up in the process of manufacture; and consequently, the purchase turnover of empty bottles could not be brought to charge under Section 7-A (1) (a) of the Act.[16]

20. The other decision concerning the provision contained in Section 7-A (1) of the Act but after yet another amendment to clause (*a*) had been by the Madras High Court in the case of ***Appollo Saline Pharmaceuticals*** (supra). Therein, the assessee was engaged in manufacturing and marketing of I.V. fluid and the turnover of the bottles containing I.V. fluid was included in the turnover relating to the fluid by reason of Section 3 (7) of the Act. The assessee was confronted with a demand for payment of purchase tax for the reason that the bottles in which I.V. fluid was packed and sold were those bottles which the assessee had purchased from unregistered dealers and therefore, those bottles had not been subjected to tax at the time of purchase. It was essentially contended before the Madras High Court on behalf of the assessee that if the goods in respect of which purchase tax was sought to be levied continued to be available for sale or purchase and were in fact sold, such goods cannot be brought to tax under Section 7-A of the Act.

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16 Another decision of the jurisdictional High Court, rendered prior to the amendment of Section 7-A of the Act w.e.f. 01.01.1987 and even before the decision in ***Associated Pharmaceutical Industries*** had been in the case of ***The State of Tamil Nadu v. Subbaraj & Co.:*** **(1981) 47 STC 30** (decided on 23.09.1980). In that case, the assessees had purchased raw bones and converted them into different derivatives like crushed bones, bone grist, bone-meal, fluff or horn hoof. As regards such process and the end-products, the High Court held that the purchased goods cannot be said to have been consumed in the process of manufacture of some other goods and, therefore, Section 7-A (1) was not attracted.

20.1. The High Court referred to the expansion of ambit and coverage of Section 7-A (1) of the Act and observed that after the amendments, recovery of purchase tax was permissible even in cases where goods which had not suffered tax at the time of purchase and are subsequently disposed of by the dealer in circumstances where value of turnover relating to those goods is also subject to tax by deeming the same as forming part of turnover of other taxable goods. The High Court observed that the inclusion of turnover relating to bottles in the total turnover of dealer and thereby, such turnover relating to bottles being also subjected to tax, did not enable the assessee to get out of the net of Section 7-A because the bottles were not sold as bottles but were sold as part of a composite unit namely, I.V. fluid packed in bottles. The High Court also observed that the amended Section 7-A of the Act referred to the consumption or use of goods in or for the manufacture of other goods; and having regard to the nature of goods and the need for a container to make those goods marketable, it was required to be held that the bottles were used in or for the manufacture of I.V. fluid. The High Court observed and held as under (at pp. 503-504 of STC):

> "**7.** The submissions made by counsel proceeded on the assumption that the sole object of section 7-A is to ensure recovery of tax on the sale or purchase of goods which tax is required to be paid but had not been paid to the State by reason of the circumstances in which the purchase was made and one of the parties to the transaction is a registered dealer. Though that apparently was the original purpose of the provision, the subsequent amendment to that section in the year 1987 by addition of the words used in section 7-A(1)(a) and enlarging it further by a further amendment with effect from November 6, 1997 would indicate that the object of the Legislature is not confined to mere recovery of tax, which was

not recovered by reason of the circumstances in which the purchase was made. After the amendment to section 7-A(1)(a) recovery of purchase tax is permissible even in cases where the goods which had not suffered tax, at the time of purchase are used by the dealer and are subsequently disposed of by the dealer in circumstances where the value of the turnover relating to those goods is also subject to tax by deeming the same as forming part of the turnover of other taxable goods.

8. It is no doubt true that the turnover of the bottles is, by reason of section 3(7), deemed to be part of the turnover of the assessee relating to the I.V. fluids and by reason of the inclusion of such turnover of the bottles in that turnover, the turnover relating to these bottles is also subjected to tax. Such inclusion of the turnover relating to bottles, however, does not enable the assessee to get out of the net of section 7-A as the bottles were not sold as bottles but as part of a composite unit, *viz*., I.V. fluids packed in bottles.

9. Section 7-A(1)(a) refers to the consumption or use of goods in or for the manufacture of other goods. Having regard to the nature of the goods and the need for a container in order to make those goods marketable, it must necessarily be held that the bottles used here were bottles used in or for the manufacture of the I.V. fluids, having regard to the law laid down by the apex Court in the case of *J.K. Cotton Spinning & Weaving Mills Co. Ltd.* v. *Sales Tax Officer, Kanpur* [1965] 16 STC 563. As set out in the head note to that decision it was held therein that the expression "in the manufacture of goods" in sub-section 8(3)(b) of the Central Sales Tax Act, should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would not be commercially expedient, goods required in the process would fall within the expression "in the manufacture of goods".”

20.2. The High Court also found that it was not the case of assessee that the fluids manufactured by it could be sold in the market without the aid of bottles. Thus, while reiterating that the bottling of I.V. fluid was necessary to make it marketable, the High Court held that the bottles were clearly the goods

which were used in or for the manufacture of fluid. The projection on the part of assessee that it would be subjected to additional burden of tax was also rejected while observing as under (at pp. 504-505 of STC) :

> "**11.** The assessee by reason of this demand for purchase tax has not suffered any additional burden **as any other manufacturer of I.V. fluids who sells the fluids in bottles by purchasing bottles from another registered dealer on which sales tax was paid, would also still be required to include the turnover of those bottles in the turnover of the I.V. fluids.** Section 7-A, as submitted by the learned counsel, was intended to plug loss of revenue. We were initially troubled when the facts of the case were presented before us as though the assessee was being burdened with tax twice over. A closure *(sic)* examination of the case, however, demonstrated that no such additional burden is cast on the assessee. On the other hand, not levying the tax would only amount to the assessee gaining an advantage, which the law did not intend to provide."
>
> (emphasis in bold supplied)

21. Turning over to the cited decisions of this Court, it may be observed that the 3-Judge Bench decision of this Court in the case of ***M.K. Kandaswami*** (supra) has a material bearing and is of utmost significance because the root purpose as also the sweep of this provision for levy of purchase tax have been succinctly explained by this Court while illuminating several of its basic and essential ingredients.

21.1. In the case of ***M. K. Kandaswami*** (supra), the respondent dealers had purchased a variety of goods, namely, arecanuts, gingelly seeds, turmeric, grams, castor seeds and butter in such circumstances where their sales were not liable to tax in the hands of the respective sellers although the goods were such, whose sale or purchase was generally liable to tax under the Act.

Against the respondent dealers, either pre-assessment proceedings had been initiated or assessments had been made under Section 7-A of the Act on the purchase turnover of these goods on the assertions by revenue that the gingelly seeds and castor seeds were crushed into oil and the butter was converted into ghee by the respective dealers and by such action, the goods in question were consumed in the manufacture of other goods for sale; and hence, this action was covered under clause (*a*) of Section 7-A (1). It was also asserted that the other goods namely, arecanuts, turmeric and gram, were transported by the respective dealers outside the State for sale on consignment basis and thereby, those cases were covered by clause (*b*) or clause (*c*) of Section 7-A (1). In the backdrop of these facts, when Section 7-A came up for interpretation in the writ petitions under Article 226 of the Constitution of India, the High Court found the phraseology of Section 7-A to be rather carrying contradiction in terms and the language being far from clear as to its intention.

21.2. However, this Court did not approve the perspective of High Court and explained the true meaning as also the sweep of the respective expressions in sub-section (1) of Section 7-A of the Act by breaking it up into different ingredients as follows (at pp. 195-196 of STC):

> **"**On analysis, sub-section (1) breaks up into these ingredients:
>
> (1) The person who purchases the goods is a dealer;
>
> (2) The purchase is made by him in the course of his business;
>
> (3) Such purchase is either from "a registered dealer or from any other person";

(4) The goods purchased are "goods, the sale or purchase of which is liable to tax under this Act";

(5) Such purchase is "in circumstances in which no tax is payable under section 3, 4 or 5, as the case may be"; and

(6) The dealer either-

(*a*) consumes such goods in the manufacture of other goods for sale or otherwise or

(*b*) despatches all such goods in any manner other than by way of sale in the State or

(*c*) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce.

Section 7-A(1) can be invoked if the above ingredients are cumulatively satisfied…..

*** *** ***"

(emphasis in bold supplied)

21.3. This Court, while applying Section 7-A to the given fact situations, pointed out that this section was at once a charging as also a remedial provision in the following words (at p. 198 of STC):

> **"**It may be remembered that section 7-A is at once a charging as well as a remedial provision. Its main object is to plug leakage and prevent evasion of tax. In interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book, should be eschewed. If more than one construction is possible, that which preserves its workability and efficacy is to be preferred to the one which would render it otiose or sterile. The view taken by the High Court is repugnant to this cardinal canon of interpretation."

21.4. This Court further referred to the decision in the case of ***Ganesh Prasad Dixit*** (supra) and observed that Section 7 of the Madhya Pradesh Act, as considered therein, though not carrying exact language as that of Section 7-A of the Tamil Nadu Act but their substance and object were the same. This Court also noticed that in ***Ganesh Prasad Dixit,*** it was held that the appellants

(building contractors), who were purchasing building materials which were taxable under the Act and had been using them in the course of their business, had consumed the materials otherwise than in the manufacture of goods for sale and for a profit motive and hence, purchase price was taxable on the plain reading of words of Section 7 of the Madhya Pradesh Act. Taking note of such exposition, this Court observed in ***M. K. Kandaswami*** that the *ratio decidendi* of ***Ganesh Prasad Dixit*** was apposite guide for construing Section 7-A of the Tamil Nadu Act in the following (at p. 199 of STC) :

> **"**The impugned section 7-A is based on section 7 of the Madhya Pradesh Act. Although the language of these two provisions is not completely identical, yet their substance and object are the same. Instead of the longish phrase, "the goods, the sale or purchase of which is liable to tax under this Act" employed in section 7-A of the Madras Act, section 7 of the Madhya Pradesh Act conveys the very connotation by using the convenient, terse expression "taxable goods". **The *ratio decidendi* of *Ganesh Prasad* is, therefore, an apposite guide for construing section 7-A.** Unfortunately, that decision, it seems, was not brought to the notice of the learned Judges of the High Court."[17]
>
> (emphasis in bold supplied)

21.5. A similar provision like Section 7-A of Tamil Nadu Act was also contained in Section 5-A of the Kerala General Sales Tax Act, 1963[18] and validity thereof was challenged before the High Court. The High Court upheld the validity of Section 5-A while explaining the scheme thereof and, in ***M. K. Kandaswami,*** this Court noted with approval the decision of Kerala High Court and further said that the said Section 5-A of the Kerala Act was in *pari materia* with the Section 7-A of the Act.

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17 We shall be referring to the decision in ***Ganesh Prasad Dixit*** in necessary details hereafter a little later.

18 Hereinafter also referred to as 'the Kerala Act'

22. Moving on to the other cited decisions, as noticed, the High Court has followed the Constitution Bench decision of this Court in the case of ***Nandanam Construction Co.*** (supra) and the same decision has been strongly relied upon by the learned Additional Advocate General for revenue before us. On the other hand, learned counsel for the assessee has emphatically relied upon the decision of this Court in ***Hotel Balaji*** (supra) and particularly on the interpretation put by this Court on the provisions contained in the Haryana Act with the submissions that the said provisions had been in *pari materia* with Section 7-A of the Tamil Nadu Act. We may, therefore, delve into these two decisions in necessary details.

23. The matter involved in the case of ***Nandanam Construction Co.*** (supra) was laid before the Constitution Bench in view of the conflict in two 3-Judge Bench decisions of this Court, in ***Ganesh Prasad Dixit*** (supra) on one hand and ***CST v. Pio Food Packers:*** **1980 (Supp) SCC 174** on the other.

23.1. For proper comprehension of the ratio of ***Nandanam Construction Co.*** (supra), pertinent it shall be to first take note of the decisions in ***Ganesh Prasad Dixit*** and ***Pio Food Packers*** (supra) and the area of conflict therein.

23.1.1. As noticed hereinbefore, in the case of ***Ganesh Prasad Dixit***, the appellant, a firm of building contractors and registered as dealer under the Madhya Pradesh Act, was assessed to tax with respect of goods purchased by it for use in its construction business. As regards the issue relating to the imposition of purchase tax under Section 7 of the Madhya Pradesh Act, a 3-

Judge Bench of this Court examined the relevant part of Section 7 of the Madhya Pradesh Act that read as under (at pp. 346-347 of STC):-

> "Every dealer who in the course of his business purchases any taxable goods, in circumstances in which no tax under section 6 is payable on the sale price of such goods and either consumes such goods in the manufacture of other goods for sale or otherwise or disposes of such goods in any manner other than by way of sale in the State or despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods under section 6……"

This Court observed that even though the phraseology used in Section 7 of the Act was a bit intricate, the meaning was fairly simple, giving out the eventualities where purchase tax would be payable i.e., when a dealer buys taxable goods in the course of his business and (*1*) either consumes such goods in the manufacture of other goods for sale; or (*2*) consumes such goods otherwise; or (*3*) disposes of such goods in any manner other than by way of sale in the State; or (*4*) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce. This Court held the said appellant liable to pay the purchase tax as it was registered as dealer and had purchased building materials, which were taxable under the Act, in the course of its business; and had consumed the materials otherwise than in the manufacture of goods for sale and for a profit-motive. This Court also examined another contention on behalf of the appellant that the expression "or otherwise" was intended to denote alternative to the

expression “sale” immediately preceding and, therefore, the price paid for buying goods consumed in the manufacture of other goods intended to be sold or otherwise disposed of was taxable. This Court did not accept this contention while deducing the intention of Legislature that the consumption of goods renders the price paid for their purchase taxable, if the goods are used in the manufacture of other goods for sale or if the goods are consumed otherwise. The relevant observations and interpretation by this Court in ***Ganesh Prasad Dixit*** could be usefully noticed as under (at pp. 348-349 of STC) :-

> **“**Counsel for the appellants urged that in the cases of *H. Abdul Bakshi and Bros*. and *L.M.S. Sadak Thamby & Co.*, the assessees were carrying on the business of selling goods manufactured by them and for the purpose of manufacturing those goods certain other goods were purchased and consumed in the process of manufacture, but here the goods are not consumed in producing another commodity for sale, and on that account the two cases are distinguishable. The answer to that argument must be sought in the terms of section 7. **The phraseology used in that section is somewhat involved, but the meaning of the section is fairly plain. Where no sales tax is payable under section 6 on the sale price of the goods, purchase tax is payable by a dealer who buys taxable goods in the course of his business, and (*1*) either consumes such goods in the manufacture of other goods for sale, or (*2*) consumes such goods otherwise, or (*3*) disposes of such goods in any manner other than by way of sale in the State, or (*4*) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce.** The assessees are registered as dealers and they have purchased building materials in the course of their business; the building materials are taxable under the Act, and the appellants have consumed the materials otherwise than in the manufacture of goods for sale and for a profit-motive. On the plain words of section 7 the purchase price is taxable.
>
> Mr Chagla for the appellants urged that the expression “or otherwise” is intended to denote a conjunctive introducing specific alternative to the words “for sale” immediately

> preceding. The clause in which it occurs means, says Mr Chagla, that by section 7 the price paid for buying goods consumed in the manufacture of other goods, intended to be sold or otherwise disposed of, alone is taxable. We do not think that that is a reasonable interpretation of the expression "either consumes such goods in the manufacture of other goods for sale or otherwise". **It is intended by the Legislature that consumption of goods renders the price paid for their purchase taxable, if the goods are used in the manufacture of other goods for sale or if the goods are consumed otherwise**."
>
> (emphasis in bold supplied)

23.1.2. However, in ***Pio Food Packers*** (supra), a note discordant to the above extracted enunciation came to be stated by another 3-Judge Bench of this Court. In that case, the respondent was carrying on the business of manufacturing and selling canned fruit apart from other products. In its return for the year 1973-74, the respondent claimed that the turnover representing the purchase of pineapple fruit was not liable to purchase tax under Section 5-A of the Kerala Act for the reason that the pineapple fruit was converted into pineapple slices, pineapple jam, pineapple squash and pineapple juice but by way of such conversion of pineapple fruit into its products, no new commodity was created and therefore, it was erroneous to say that there was a consumption of pineapple fruit "in the manufacture" of those goods. This Court observed as regards the connotations of "manufacture" that '*it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place'*. As regards the process/es involved in the said matter, the Court accepted the submissions of assessee that the pineapple slices

continued to possess the same identity as the original pineapple fruit and there was no consumption of the original pineapple fruit for the purpose of manufacture. It was also contended on behalf of the revenue that even if no manufacturing process was involved, the case fell within Section 5-A(1)(*a*) of Kerala Act, as the same was speaking not only of goods consumed in the manufacture of other goods for sale but also of goods consumed otherwise. The Court did not accept this contention of revenue while observing that on true construction, the clause in question was only speaking of goods consumed in the manufacture of other goods for sale or of goods consumed in the manufacture of other goods for purposes other than sale. The Court, *inter alia*, observed, held and concluded as follows (at pp. 66-67 of STC):-

> "…..Although a degree of processing is involved in preparing pineapple slices from the original fruit, the commodity continues to possess its original identity, notwithstanding the removal of inedible portions, the slicing and thereafter canning it on adding sugar to preserve it. It is contended for the revenue that pineapple slices have a higher price in the market than the original fruit and that implies that the slices constitute a different commercial commodity. The higher price, it seems to us, is occasioned only because of the labour put into making the fruit more readily consumable and because of the can employed to contain it. It is not as if the higher price is claimed because it is a different commercial commodity. It is said that pineapple slices appeal to a different sector of the trade and that when a customer asks for a can of pineapple slices he has in mind something very different from fresh pineapple fruit. Here again, the distinction in the mind of the consumer arises not from any difference in the essential identity of the two, but is derived from the mere form in which the fruit is desired.
>
> The learned counsel for the revenue contends that even if no manufacturing process is involved, the case still falls within section 5A(1)(a) of the Kerala General Sales Tax Act, because the statutory provision speaks not only of goods consumed in the manufacture of other goods for sale but also

> goods consumed otherwise. There is a fallacy in the submission. **The clause, truly read, speaks of goods consumed in the manufacture of other goods for sale or goods consumed in the manufacture of other goods for purposes other than sale**.
>
> In the result, we hold that when pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans there is no consumption of the original pineapple fruit for the purpose of manufacture. The case does not fall within section 5A(1)(a) of the Kerala General Sales Tax Act. The High Court is right in the view taken by it."
>
> (emphasis in bold supplied)

23.2. Thus, there had been a subtle but significant divergence in the aforesaid two decisions inasmuch as in ***Ganesh Prasad Dixit,*** a 3-Judge Bench of this Court construed the operation of expression "or otherwise" in the manner that consumption/use of goods in question would render price paid for their purchase taxable, (i) if the goods were consumed in the manufacture of other goods for sale; or (ii) if the goods were consumed otherwise. However, in ***Pio Food Packers,*** another 3-Judge Bench of this Court construed the similar provision carrying the expression "or otherwise" to mean that the same was speaking, (i) of goods consumed in the manufacture of other goods for sale; or (ii) of goods consumed in the manufacture of other goods for purposes other than sale. In other words, while ***Ganesh Prasad Dixit*** gave out the interpretation that the expression "or otherwise" was providing alternative to the action of "manufacture" whereas ***Pio Food Packers*** held, in relation to similar provision in other statute, that this expression "or otherwise" provided alternative to the action of "sale". This divergence of the views in ***Ganesh Prasad Dixit*** and ***Pio Food Packers*** led to the matter being placed before the Constitution Bench.

23.3. Keeping the aforesaid background in mind, we may now revert to the decision in ***Nandanam Construction Co.*** wherein***,*** the Constitution Bench of this Court resolved the divergence while approving the view in ***Ganesh Prasad Dixit.***

23.3.1. In ***Nandanam Construction Co.*** (supra), the background factual aspects had been that the respondents, who were engaged in building of flats and houses, had bought the material such as sand, bricks and granite from unregistered dealers and without payment of sales tax. The Assistant Commissioner of Commercial Taxes called upon the respondents to produce their books of accounts while proposing to hold them liable for purchase tax under Section 6-A of Andhra Pradesh Act. On the proposed action being challenged, the High Court held that in order to attract Section 6-A of the Andhra Pradesh Act, there ought to be consumption of the original goods for the purpose of manufacture of other goods for sale or for purposes other than sale; and in the absence of such consumption, the respondents were not liable to purchase tax. For this proposition, the High Court relied on the decision in ***Pio Food Packers*** (supra). In the appeal before this Court, the contention of revenue was that the said Section 6-A of the Andhra Pradesh Act was applicable to 'consumption of original goods in the manufacture of the other goods for sale or consumption of original goods otherwise'. On the other hand, it was contended on behalf of the respondents that the view taken in ***Pio Food Packers****,* as followed in ***CST*** **v.** ***Thomas Stephen & Co. Ltd.:*** **(1988) 2 SCC**

264 must be accepted and at any rate, if two views were possible, the assessee should be given the benefit of doubt.

23.3.2. The Constitution Bench of this Court took note of Section 6-A of the Andhra Pradesh Act that read as under (in para 3 at p. 429 of STC):

> "6-A. *Levy of tax on turnover relating to purchase of certain goods*. —Every dealer, who in the course of business—
> (i) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a registered dealer in circumstances in which no tax is payable under section 5 or under section 6, as the case may be, or
> (ii) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a person other than a registered dealer, and
> (*a*) either consumes such goods in the manufacture of other goods for sale or otherwise, or
> (*b*) disposes of such goods in any manner other than by way of sale in the State, or
> (*c*) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,
> shall pay tax on the turnover relating to purchase aforesaid at the same rate at which but for the existence of the aforementioned circumstances, the tax would have been leviable on such goods under section 5 or section 6."

23.3.3. While dealing with the contentions of the parties and finding that sub-clause (*a*) of clause (ii) of Section 6-A was applicable, the Constitution Bench pointed out that the object of the said provision was to levy purchase tax on goods consumed either for the purpose of manufacture of other goods for sale or consumed otherwise. The Constitution Bench did not approve the view expressed in ***Pio Food Packers*** to that extent while pointing out that the intention of the Legislature was to bring to purchase tax in either event of consumption of goods in the manufacture of goods for sale or consumption of goods in any other manner. The Constitution Bench also indicated the logic

that once the goods were utilized in construction of buildings, they ceased to exist or ceased to be available in the original form for sale or purchase so as to attract the tax. The Constitution Bench observed and held as under (at p. 431 of STC):

> **"10.** We are concerned in this case only with clause (*a*) of sub-section (*ii*) of section 6-A, that is, either consumption of such goods in the manufacture of other goods for sale or otherwise. Clause (*ii*) of section 6-A of the Act postulates levy of tax on purchase of goods from a person other than a registered dealer for consumption or disposal or despatch of goods outside the State. So the scheme of clause (*ii*) of section 6-A of the Act is that when the goods cease to exist in the original form or cease to be available in the State for sale or purchase, the purchasing dealer of such goods is liable to tax if the seller is not or cannot be taxed. **To our mind, it appears that the object of section 6-A(*ii*)(*a*) of the Act is to levy purchase tax on goods consumed either for the purpose of manufacture of other goods for sale or consumed otherwise. If the view in *Pio Food Packers* [1980] 46 STC 63 (SC) ; [1980] 3 SCR 1271, is accepted the result would be that the expression "otherwise" will qualify the expression "sale" and not the expression "manufacture", which appears to us to be erroneous on a plain construction of the provision. The intention of the legislature, it appears to us, is to bring to purchase tax in either event of consumption of goods in the manufacture of goods for sale or consumption of goods in any other manner.** Once the goods are utilised in the construction of buildings the goods cease to exist or cease to be available in that form for sale or purchase so as to attract the tax and, therefore, the correct meaning to be attributed to the said provision would be that tax will be attracted when such goods are consumed in the manufacture of other goods or are consumed otherwise. Therefore, while agreeing with the view in *Ganesh Prasad Dixit* [1969] 24 STC 343 (SC) ; [1969] 3 SCR 490, on this aspect, we overrule to this extent the view expressed in *Pio Food Packers* [1980] 46 STC 63 (SC) ; [1980] 3 SCR 1271."
>
> (emphasis in bold supplied)

24. Having taken note of the enunciation by the Constitution Bench of this Court which has been strongly relied upon by the revenue, we may also take note of the counter reliance placed by the learned senior counsel for the assessee on the decision of this Court in ***Hotel Balaji*** (supra).

24.1 The discussion in the lead judgment in ***Hotel Balaji*** makes it clear that different provisions for levy of purchase tax in various State Sales Tax enactments, like those contained in Gujarat Sales Tax Act, 1969, Uttar Pradesh Sales Tax Act, Andhra Pradesh General Sales Tax Act, 1957 and Haryana Sales Tax Act[19] amongst others, came up for consideration before this Court in the wake of challenge to the constitutional validity thereof. In the referred paragraphs, this Court took note of the original and amended provisions relating to purchase tax, as contained in Section 9 of the Haryana Act as follows (at pp. 137-139 of STC):

> "… Section 9 of the Haryana Act, before it was amended by Haryana General Sales Tax (Amendment and Validation) Act, 1983, read as follows:
>
> "9. Where a dealer liable to pay tax under this Act purchases goods other than those specified in Schedule B from any source in the State and—
>
> (a) uses them in the State in the manufacture of, —
>
> (i) goods specified in Schedule B or
>
> (ii) any other goods
>
> and disposes of the manufactured goods in any manner otherwise than by way of sale whether within the State or in the course of inter-State trade or commerce or within the meaning of sub-section (1) of section 5 of the Central Sales Tax Act, 1956, in the course of export out of the territory of India,
>
> (b) exports them,

19 For brevity and continuity, such State enactments have been referred herein with reference to the names of respective States.

in the circumstances in which no tax is payable under any other provision of this Act, there shall be levied, subject to the provisions of section 17, a tax on the purchase of such goods at such rate as may be notified under section 15."

*** *** ***

After it was amended by the aforesaid amendment Act, sub-sections (1) and (2) of section 9 read as follows:

"9. *Liability to pay purchase tax*.— (1) Where a dealer liable to pay tax under this Act,—

(a) purchases goods, other than those specified in Schedule B, from any source in the State and uses them in the State in the manufacture of goods specified in Schedule B; or

(b) purchases goods, other than those specified in Schedule B, from any source in the State and uses them in the State in the manufacture of any other goods and either disposes of the manufactured goods in any manner otherwise than by way of sale in the State or despatches the manufactured goods to a place outside the state in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export outside the territory of India within the meaning of sub-section (1) of section 5 of the Central Sales Tax Act, 1956; or

(c) purchases goods, other than those specified in Schedule B, from any source in the State and exports them,

in the circumstances in which no tax is payable under any other provision of the Act, there shall be levied, subject to the provisions of section 17 a tax on the purchases of such goods at such rate as may be notified under section 15.

(2) Notwithstanding anything contained in this Act or the Rules made thereunder, if the goods leviable to tax under this section are exported in the same condition in which they were purchased, the tax shall be levied, charged and paid at the station of despatch or at any other station before the goods leave the State and the tax so levied, charged and paid shall be provisional and the same shall be adjustable towards the tax due from the dealer on such purchase as a result of assessment or reassessment made in accordance with the provisions of this Act and the rules made thereunder on the production of proof regarding the payment thereof in the State."

24.2. While interpreting the said provision in Section 9 of the Haryana Act, this Court said as follows (at pp. 141-142 and 145-146 of STC):-

> "The crucial question, therefore, is what is the basis of taxation in either of the above provisions? …… Let us first deal with section 9 of the Haryana Act (as amended in 1983). Properly analysed, the following are the ingredients of the section : (i) a dealer liable to pay tax under the Act purchases goods (other than those specified in Schedule B) from any source in the State and (ii) uses them in the State in the manufacture of any other goods and (iii) either disposes of the manufactured goods in any manner otherwise than by way of sale in the State *or* despatches the manufactured goods to a place outside the State in any manner otherwise than by way of sale in the course of a inter-State trade or commerce *or* in the course of export outside the territory of India within the meaning of sub-section (1) of section 5 of the Central Sales Tax Act, 1956. If all the above three ingredients are satisfied, the dealer becomes liable to pay tax *on the purchase* of such goods at such rate, as may be notified under section 15.
>
> Now, what does the above analysis signify? **The section applies only in those cases where (*a*) the goods are purchased (for convenience sake, I may refer to them as raw material) by a dealer liable to pay tax under the Act in the State, (*b*) the goods so purchased cease to exist as such goods for the reason they are consumed in the manufacture of different commodities and (*c*) such manufactured commodities are either disposed of within the State otherwise than by way of sale or despatched to a place outside the State otherwise than by way of an inter-State sale or export sale.** It is evident that if such manufactured goods are not sold within the State of Haryana, but yet disposed of within the State, no tax is payable on such disposition; similarly, where manufactured goods are despatched out of State as a result of an inter-State sale *(sic)* or export sale, no tax is payable on such sale. Similarly again where such manufactured goods are taken out of State to manufacturers' own depots or to the depots of his agents, no tax is payable on such removal…..
>
> *** *** ***
>
> …… To repeat, the scheme of section 9 of Haryana Act is to levy the tax on purchase of raw material and not to forego it

> where the goods manufactured out of them are disposed of (or despatched, as the case may be) in a manner not yielding any revenue to the State nor serving the interests of nation and its economy, as explained hereinbefore. **The purchased goods are put an end to by their consumption in manufacture of other goods and yet the manufactured goods are dealt with in a manner as to deprive the State of any revenue; in such cases, there is no reason why the State should forego its tax revenue on purchase of raw material**."
>
> (emphasis in bold supplied)

Deducing the applicable principles

25. Having taken note of the relevant statutory provisions as also enunciations in the cited decisions, necessary now it is to cull out the principles to be applied to the present case.

26. Before proceeding further, we may usefully refer to the well-recognised doctrine of "*pari materia"* whereby and whereunder, reference to the decisions dealing with other statutes on the same subject is regarded as a permissible aid to the construction of provisions in a statute. Suffice would be, in this regard, to refer to the decision in ***Ahmedabad (P) Primary Teachers' Assn. v. Administrative Officer:*** **(2004) 1 SCC 755** wherein this Court applied the doctrine of "*pari materia"* with reference to the relevant observations in *Principles of Statutory Interpretation* by Justice G.P. Singh as follows (at page 760 of SCC):-

> "12….On the doctrine of "*pari materia*", reference to other statutes dealing with the same subject or forming part of the same system is a permissible aid to the construction of provisions in a statute. See the following observations contained in *Principles of Statutory Interpretation* by G.P. Singh (8th Edn.), Syn. 4, at pp. 235 to 239:
>
> "*Statutes in pari materia*

> It has already been seen that a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context permits reference to other statutes in pari materia i.e. statutes dealing with the same subject-matter or forming part of the same system. Viscount Simonds in a passage already noticed conceived it to be a right and duty to construe every word of a statute in its context and he used the word context in its widest sense including 'other statutes in pari materia'. As stated by Lord Mansfield 'where there are different statutes in pari materia though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other'.
>
> * * *
>
> The application of this rule of construction has the merit of avoiding any apparent contradiction between a series of statutes dealing with the same subject; it allows the use of an earlier statute to throw light on the meaning of a phrase used in a later statute in the same context; it permits the raising of a presumption, in the absence of any context indicating a contrary intention, that the same meaning attaches to the same words in a later statute as in an earlier statute if the words are used in similar connection in the two statutes; and it enables the use of a later statute as parliamentary exposition of the meaning of ambiguous expressions in an earlier statute."

26.1. We may, however, usefully add a caveat in regard to the application of the doctrine of *pari materia,* as entered in the same classic *Principles of Statutory Interpretation* by Justice G.P. Singh[20] as follows:

> "It is settled law that words used in a particular statute cannot be used to interpret the same word in a different statute especially when the two statutes are not *pari materia* ….."

27. Keeping the aforementioned principles in view and having regard to the questions of construction involved in the present case, it appears

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20 14th Edition- at p. 330

appropriate to recapitulate the texts of the relevant provisions concerning purchase tax as occurring in different State enactments which have come in reference in the present case; and for proper appreciation, it would be useful to put the relevant texts in juxtaposition to notice their similarities and akin features as also the dissimilarities and distinctive features. The material parts of the relevant provisions read as under:-

Tamil Nadu Act	*Section 7-A. Levy of purchase tax:* (1) Subject to the provisions of sub-section (1) of section 3, **every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods, (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable under sections 3 or 4, as the case may be, not being a circumstance in which goods liable to tax under sub-section (2) of section 3 or section 4, were purchased at a point other than the taxable point specified in the First or the Second Schedule and either,** **(*a*) consumes or uses such goods in the manufacture of other goods for sale or otherwise; or** (*b*) disposes of such goods in any manner other than by way of sale in the State; or (*c*) despatches or carries them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall pay tax on the turnover relating to the purchase as aforesaid at the rate mentioned in sections 3 or 4, as the case may be.
Andhra Pradesh Act	6-A. *Levy of tax on turnover relating to purchase of certain goods*.— **Every dealer, who in the course of business—** **(i) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a registered dealer in circumstances in which no tax is payable under section 5 or under section 6, as the case may be, or** **(ii) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a person other than a registered dealer, and** **(*a*) either consumes such goods in the manufacture of other goods for sale or otherwise, or** **(*b*) disposes of such goods in any manner other than by way of sale in the State, or** **(*c*) despatches them to a place outside the State except as a direct result of sale or purchase** in the course of inter-State trade or commerce, shall pay tax on the turnover relating to purchase aforesaid at the same rate at which but for the existence of the aforementioned circumstances, the tax would have been leviable on such goods under section 5 or

	section 6
Madhya Pradesh Act	Section 7 Every dealer who in the course of his business purchases any taxable goods, in circumstances in which no tax under section 6 is payable on the sale price of such goods **and <u>either consumes such goods in the manufacture of other goods for sale or otherwise</u>** or disposes of such goods in any manner other than by way of sale in the State or despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods under section 6……
Haryana Act	9. *Liability to pay purchase tax*.— (1) Where a dealer liable to pay tax under this Act,— (a) purchases goods, other than those specified in Schedule B, from any source in the State **<u>and uses them in the State in the manufacture of goods specified in Schedule B; or</u>** **(b) purchases goods, other than those specified in Schedule B, from any source in the State and <u>uses them in the State in the manufacture of any other goods</u> and either disposes of the manufactured goods in any manner otherwise than by way of sale in the State or despatches the manufactured goods to a place outside the state in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export outside the territory of India** within the meaning of sub-section (1) of section 5 of the Central Sales Tax Act, 1956; or (c) purchases goods, other than those specified in Schedule B, from any source in the State and exports them, in the circumstances in which no tax is payable under any other provision of the Act, there shall be levied, subject to the provisions of section 17 a tax on the purchases of such goods at such rate as may be notified under section 15.

(emphasis in bold and underlines supplied)

28. As noticed, so far as the text of Section 7-A (1) applicable to the case at hand is concerned, there has not been any direct interpretation by this Court or the jurisdictional High Court (except the order impugned). We may also usefully reiterate that so far decision of Madras High Court in the case of ***Associated Pharmaceuticals Industries*** (supra) is concerned, the same was rendered before the relevant amendments to Section 7-A of the Act and particularly when the expression “or uses” was not there in clause (*a*) of

Section 7-A (1). Only the expression “consumes” was considered therein and the High Court held that the bottles were not consumed in manufacture of drugs or syrups. So far the decision of Madras High Court in the case of ***Appollo Saline Pharmaceuticals*** (supra) is concerned, as noticed, the same was rendered after further amendment to Section 7-A whereby, the expression “or for” was added to clause (*a*), which expression was not there in the provision applicable to the present case. This apart, the activity examined in the case of ***Appollo Saline Pharmaceuticals*** had been of the sale of I.V. fluid packed in bottles. We shall refer to this decision a little later while dealing with the second limb of contentions on the part of the assessee about the effect of charging sales tax on bottles at the time of sale by the assessee, at the rate applicable to its contents but cannot take any assistance from the same for the purpose of deducing the basic ingredients of Section 7-A of the Tamil Nadu Act, as in force during the assessment year in question. Having said so, we may look at the principles available in the decisions of this Court dealing with either Section 7-A of the Tamil Nadu Act as earlier existing or the provisions in other enactments dealing with the same subject of the levy of purchase tax.

29. Now reverting to the cited decisions of this Court, we may at once observe that so far the decision in ***Hotel Balaji*** (supra) is concerned, reliance on the above extracted paragraphs on behalf of assessee has been entirely misplaced because the provision of purchase tax in the Haryana Act, as interpreted in ***Hotel Balaji,*** cannot be said to be in *pari materia* with Section 7-A of the Tamil Nadu Act inasmuch as, in the phraseology of Section 9 of the

Haryana Act, the expression “or otherwise”, qualifying the action of “manufacture” (as available in Tamil Nadu Act) had not been there. To be more specific, the referred observations in ***Hotel Balaji*** cannot apply to the Tamil Nadu Act for the simple reason that in Section 9 of the Haryana Act, levy of purchase tax was envisaged in the event either of use of goods in question in manufacture of the goods specified in Schedule B; or use of goods in questions in the manufacture of any other goods and their disposal/despatch in the manner specified; or export of the goods in question. Significantly, neither in clause (*a*) nor in clause (*b*) of the said Section 9 of the Haryana Act, the Legislature had provided for any alternative to, or expansion of, the activity of “manufacture” by using any expression like “otherwise”, as seen in other enactments on the same subject. Of course, the expression “otherwise” has occurred in clause (*b*) of Section 9 of the Haryana Act at two places, but only in relation to the mode of disposal and despatch respectively. For want of the expression “or otherwise” at the relevant place, so as to cover the activity not only of manufacture but of its consumption or use in any other manner, the provision in Haryana Act stands at fundamentally different footing and this decision in ***Hotel Balaji*** is of no assistance in interpretation of Section 7-A of the Tamil Nadu Act.

29.1. It needs hardly any re-emphasis that the scope and ambit of the provisions of purchase tax in different State enactments had been different on material particulars; and it is apparent that for difference in phraseology, interpretation of one particular State Sales Tax Act cannot be *ipso facto*

imported for interpreting another enactment. Learned senior counsel for the assessee has endeavoured to persuade us that the observations made in ***Hotel Balaji*** (supra) in relation to Haryana Act may apply to the present case too but, we are afraid, the submissions cannot be accepted because of a fundamental difference in the ambit and scope of the Haryana Act compared to the ambit and scope of Tamil Nadu Act with which we are concerned in these appeals. We may, therefore move on to the other decisions of this Court for the purpose of interpretation of Section 7-A of the Act and for finding out the principles to be applied to the present case.

30. As noticed, the 3-Judge Bench decision of this Court in the case of ***M. K. Kandaswami*** (supra) was rendered in relation to the provision of Section 7-A of the Tamil Nadu Act, as existing at the relevant time. The later amendment of this provision (w.e.f. 01.01.1987), with which we are concerned in this case, has only enlarged its width by insertion of the expression "or uses" after the expression "consumes" and thereby, not only consumption but even use in the manner envisaged by the provision would provide coverage thereunder. Therefore, when the later amendment has not altered the basics of Section 7-A of the Act and had only enlarged its scope, the principles applicable to the present case could be culled out from the enunciation in ***M. K. Kandaswami,*** with necessary variation, rather enlargement.

31. As held in ***M. K. Kandaswami*** (supra)***,*** Section 7-A of the Act is a charging as well as a remedial provision, its main object being to plug leakage and prevent evasion of tax; and in interpreting such a provision, a construction

which would defeat its purpose or render it otiose should be eschewed. As regards workability of Section 7-A of the Act, this Court catalogued its ingredients in a point-wise break up and pointed out that it would apply only if all such ingredients are cumulatively satisfied. We have extracted the analysis so made by this Court hereinbefore[21]. The same analysis shall apply to the provision of Section 7-A with which we are concerned in the present case with necessary variation and with major difference that in point No. 6(a), the expression "or uses" shall also get added because of the amendment above-noted. Therefore, applying the analysis in ***M.K. Kandaswami*** with necessary modification, Section 7-A (1), as existing in the statute during the period relevant for the present case, would become applicable if the following basic ingredients are cumulatively satisfied: -

(1) The person who purchases the goods is a dealer and is covered under Section 3(1) of the Act;

(2) the purchase is made by him in the course of his business;

(3) such purchase is either from a registered dealer or from any other person;

(4) the goods purchased are those goods whose sale or purchase is liable to tax under the Act;

(5) such purchase is in circumstances in which no tax is payable under Section 3 or 4, as the case may be (but not being the excepted circumstance with reference to the point of purchase); and

21 Vide paragraph 19.2. *ibid.*

(6) the dealer either-

(*a*) consumes or uses such goods in the manufacture of other goods for sale or otherwise, or

(*b*) disposes of such goods in any manner other than by way of sale in the State, or

(*c*) despatches or carries them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce.

32. The analysis as above fairly gives insight as to the ambit and scope of Section 7-A (1) of the Act but it is the expression "or otherwise", as occurring in clause (*a*) of this provision [point No. 6(a) *ibid.*] that, perforce, calls for yet deeper exploration to understand the range of coverage of this provision. However, this exploration does not require any lengthy discussion for the directly applicable dictum of the Constitution Bench in the case of ***Nandanam Construction Co.*** (supra).

33. As noticed, the relevant clauses in Section 6-A of the Andhra Pradesh Act had been more or less similar to those contained in Section 7-A of the Tamil Nadu Act and while construing the same in ***Nandanam Construction Co.*** (supra), the Constitution Bench specifically held that the object of the said provision was to levy purchase tax on goods consumed either for the purpose of manufacture of other goods for sale or consumed otherwise.[22] Be it noted that the additional expression "or uses" was not there

22 *vide* paragraph 23.3.3 *ibid.*

in the said Section 6-A of the Andhra Pradesh Act either. In other words, the phraseology examined by the Constitution Bench in ***Nandanam Construction Co.*** was akin to that of Section 7-A of the Tamil Nadu Act as existing earlier and as examined in ***M.K. Kandaswami***. Further, noticeably, in ***M.K. Kandaswami,*** the 3-Judge Bench held that the decision in ***Ganesh Prasad Dixit,*** wherein the provision contained in Section 7 of the Madhya Pradesh Act had been interpreted by this Court, was apposite guide for construing Section 7-A of the Tamil Nadu Act; and then, in ***Nandanam Construction Co.,*** the Constitution Bench approved the enunciation in ***Ganesh Prasad Dixit*** as regards the interpretation of the expression "or otherwise" while making it absolutely clear that this expression "or otherwise" provided alternative to the expression "manufacture" and not to the expression "sale"; and the converse interpretation as regards this expression "or otherwise" in ***Pio Food Packers*** was overruled. The provision in Section 7 of the Madhya Pradesh Act had also been similar to the original Section 7-A of the Tamil Nadu Act.

33.1. As noticed, by the amendment with effect from 01.01.1987, the scope of Section 7-A (1) has only been enlarged with addition of the expression "or uses". Looking to the expressions of Section 7-A (1) of the Tamil Nadu Act, as existing earlier and as existing after the amendment, we are clearly of the view that the enunciation by the Constitution Bench in ***Nandanam Construction Co.,*** read with the approved interpretation in ***Ganesh Prasad Dixit,*** would equally apply to the amended provision with necessary modulation after its expansion.

34. When the principles laid down by the Constitution Bench in ***Nandanam Construction Co.*** coupled with the approved interpretation in ***Ganesh Prasad Dixit*** are read with the analysis in ***M.K. Kandaswami*** and are applied to the amended Section 7-A of the Tamil Nadu Act with which we are concerned in this case, the end-product of synthesis is that the expression "or otherwise" qualifies, and provides alternative to, the action of "manufacture"; and therefore, consumption of the goods in question for manufacture or otherwise as also use of the goods in question for manufacture or otherwise are the acts/actions covered under clause (*a*) of sub-section (1) of Section 7-A of the Tamil Nadu Act.

34.1. In other words, when we apply the principles laid down by the Constitution Bench in ***Nandanam Construction Co.*** to the phraseology of clause (*a*) of sub-section (1) of Section 7-A of the Tamil Nadu Act, four eventualities are covered thereunder, with reference to the treatment of the goods in question (which had been purchased by the dealer in the circumstances where sales tax had not been paid at the time of their purchase), viz.,

(i) when they are consumed in manufacture of other goods for sale; or

(ii) when they are consumed otherwise; or

(iii) when they are used in manufacture of other goods for sale; or

(iv) when they are used otherwise.

Application of the relevant principles to the case at hand

35. Put in a nutshell, with the discussion foregoing, we have found that for applicability of Section 7-A (1) of the Act, as existing in the statute during the period relevant for the present case, basic ingredients (compiled in paragraph 31 hereinbefore) ought to be cumulatively satisfied; and for coverage of any case under clause (*a*) of sub-section (1) of Section 7-A of the Act, one or more of the eventualities envisaged therein (catalogued in paragraph 34.1. hereinabove) ought to exist. Having thus deduced the necessary ingredients/elements and relevant principles, we may now embark upon the enquiry as to whether purchase tax under Section 7-A of the Act is leviable over the turnover in question.

36. As noticed, for the purpose of its business of manufacture and sale of Beer and IMFL, the assessee had purchased empty bottles from unregistered dealers situated outside the State as well as from non-dealers for the bottling of Beer and IMFL. The assessee would assert that purchase tax on the turnover in question is not leviable for the reason the said empty bottles were recycled after use by the consumers and were re-filled with Beer/IMFL; and that the said bottles had not been consumed or used in the manufacture of liquor and they were only used as containers in which already manufactured liquor was bottled for carrying and sale. The counter stand of revenue is that use of the said bottles is imperative in the manufacture of Beer/IMFL and packaging of Beer/IMFL in glass bottles has to be seen as an inseparable composite unit; and therefore, purchase tax on the turnover of purchase of

such empty bottles is leviable, for being covered by Section 7-A (1) (a) of the Act.

36.1. The assessee has urged another contention that the sale value of bottles has been subjected to tax at the time of sale of its contents and therefore, there could arise no question of levy of purchase tax on these very bottles, which are meant for repeated use. To this, the stand of revenue is that levy of sales tax on the bottles sold with liquor is of no bearing because such sales tax on bottles is leviable when they are sold as containers of liquor, even if the empty bottles were purchased after payment of tax.

37. Taking up the first limb of submissions with reference to the activity in question, when we examine the ingredients for applicability of Section 7-A (1) of the Act, it is not in dispute that: (1) the assessee, who has purchased the goods in question (the empty bottles), is a dealer and is covered under Section 3 (1) of the Act; (2) the said purchase has been made by the assessee in the course of its business; (3) such purchase has been from unregistered dealers situated outside the State as well as from non-dealers; (4) sale or purchase of the goods purchased (the empty bottles) is liable to tax under the Act; and (5) such purchase has been in circumstances in which no tax is payable under Section 3 or 4 and has not been in any excepted circumstance with reference to the point of purchase. These indisputable features unfailingly lead to the position that ingredients (1) to (5) of Section 7-A (1) of the Act, as mentioned in paragraph 31 hereinbefore, are satisfied.

37.1. However, as noticed, for applicability of Section 7-A (1) of the Act, all the six ingredients need to be cumulatively satisfied. The ingredient (6) has three alternatives viz., the dealer has either (*a*) consumed or used the goods in question in the manufacture of other goods for sale or otherwise, or (*b*) has disposed of such goods in any manner other than by way of sale in the State, or (*c*) has despatched or carried them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce. It is not in dispute that clauses (*b*) or (*c*) of this ingredient are not attracted in this case, for the entire manufactured Beer/IMFL, after bottling, having been sold by the assessee only to the Tamil Nadu State Marketing Corporation Limited (TASMAC) within the State of Tamil Nadu.

38. With the filtration foregoing, we have reached to the core of this matter i.e., as to whether the activity in question falls within the ambit of clause (*a*) of Section 7-A (1) of the Act? As already noticed, as per the language used, this provision comes in operation when the dealer *'consumes or uses such goods in the manufacture of other goods for sale or otherwise'.* Hence, the activity in question would be so covered if any one of the four elements of clause (*a*) exists, i.e., (i) if the goods in question are consumed in manufacture of other goods for sale; or (ii) if they are consumed otherwise; or (iii) if they are used in manufacture of other goods for sale; or (iv) if they are used otherwise.

39. In view of their intrinsic connectivity, we may first examine the elements (i) and (iii) and shall examine the other elements a little later. Now, in order to examine as to whether any of these elements (i) or (iii) exists or not,

we may look at the meaning and connotation of the expressions “consume”, “use” and “manufacture” employed in clause (*a*) of sub-section (1) of Section 7-A of the Act with a little reference to the etymology related with these expressions as also to the semantics related with the preposition “in”.

39.1. As per Concise Oxford English Dictionary[23], one of the meaning assigned to the verb “consume”[24] is ‘*eat, drink or ingest. – use up.- (especially of a fire) completely destroy*’. The noun derived from this verb is “consumption”, which has been assigned one of the meanings in the same dictionary[25] as ‘*the action or process of consuming. – an amount consumed*’.

39.1.1. Similarly, as per Black’s Law Dictionary[26], the word “consume” signifies, amongst others, ‘*to destroy the substance of esp. by fire; to use up or wear out gradually, as by burning or eating*’; ‘*to use up (time, resources, etc.), whether fruitfully or fruitlessly*’; and ‘*to eat or drink; to devour*’. The word “consumption” has been defined therein[27] being ‘*the act of destroying a thing by using it; the use of a thing in a way that exhaust it’*.

39.2. The expression “use”, which is used as verb as also as noun, has been assigned variegated meanings in Concise Oxford English Dictionary[28], which include, as regards its verb form to mean, ‘*take, hold or deploy as a means of achieving something*’; and in its noun form to mean ‘*the action of using or state of being used*’.

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23 Twelfth South Asian Edition, p. 307
24 Derived from latin *consumere* (*con* – ‘altogether’ + *sumere* – ‘take out’)
25 *ibid*., p. 307
26 Tenth Edition., p. 382
27 *ibid*., p. 384
28 *ibid.,* p. 1593

39.2.1. Similarly, in Black's Law Dictionary[29], the expression "use" is defined, *inter alia*, to mean in its noun form as being '*the application or employment of something*'; and in its verb form '*to employ for the accomplishment of a purpose*'.

39.3. Both the expressions "consumes" and "uses", denoting particular form of action, have been employed in clause (*a*) of Section 7-A (1) of the Act as verbs, which do form the main part of the predicate of the sentence. These verbs co-relate with the word "manufacture". Now, so far the word "manufacture"[30] is concerned, which too is used in the language as verb as also as noun, is defined in Concise Oxford English Dictionary[31] in its verb form to carry the meaning, amongst others, as to '*make (something) on a large scale using machinery*' and its noun form to mean '*the process of manufacturing'*.

39.3.1. In Black's Law Dictionary[32], the word "manufacture" is defined, *inter alia*, to mean '*a thing that is made or built by a human being (or by a machine), as distinguished from something that is a product of nature; esp., any material form produced by a machine from an unshaped composition of matter*'.

39.3.2. In P. Ramanatha Aiyar's Advanced Law Lexicon[33], a vast variety of usages of this expression "manufacture" have been specified, the relevant parts whereof may be extracted as under:-

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29 *ibid.,* pp. 1775 and 1776
30 Derived from latin *manufactum* – 'made by hand'
31 *ibid.,* p. 871
32 *ibid.,* p. 1109
33 Fifth Edition, Volume 3. P. 3144.

> "'MANUFACTURE' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use….
> Conversion of raw materials into a finished product, e.g. converting iron ore into steel plate.
> Manufacture is : (1) The application, to material, of labour or skill, whereby the original article is changed to a new, different, and useful article, provided the process is of a kind popularly regarded as manufacture, or (2) the product of such process.
> "Whatever is made by human labour, either directly or through the instrumentality of machinery." (*Abott L. Dict.*)
> *** *** ***
> Every alteration in an article does not confer on it a new character as a manufacture. To constitute a new and different article and a manufactured article, it must be so changed as to have a positive and specific use in its new state.
> *** *** ***"

39.4. As noticed, the co-relation of verbs "consumes" and "uses" with "manufacture" is framed in clause (*a*) of sub-section (1) of Section 7-A of the Act with the use of "in". The word "in" is used in the language mostly as preposition and adverb[34]. As regards the aspects relevant on the phraseology of Section 7-A of the Act, out of the several meanings assigned to this word "in" in the same Concise Oxford English Dictionary[35], the relevant could be usefully noticed as being of *'expressing the situation of being enclosed or surrounded by something; expressing motion that results in being within or surrounded by something; and expressing inclusion or involvement'.* Thus, one of the relevant usage of the preposition "in" is to indicate something to be an integral part of an activity. Understood this way, it is clear that the two phrases, i.e.,

34 The word "in" is also used as suffix and prefix in various expressions with which we are not concerned in the present case
35 *ibid.,* p. 717

"consumes in manufacture" or "uses in manufacture" denote that the goods in question have been either consumed or used as an integral part of the activity of manufacture.

39.4.1. For yet further and finer comprehension of the language employed in the provision in question, we may usefully refer to its later amendment w.e.f. 06.11.1997 whereby, even the prepositions were widened to read "in or for". The word "for" is essentially used as preposition but in various phraseologies, it is also used as conjunction and, amongst several meanings, it has also been assigned the meaning *'having as a purpose or function'* in the same Concise Oxford English Dictionary.[36] Thus, employing the preposition "for", *inter alia,* signifies the use of something towards a particular purpose, even without becoming an integral part of the activity leading to the purpose.

39.4.2. We need not enter deeply into the nitty-gritty of semantics but this much is clear that with the said later amendment and modification of prepositions to "in or for", coverage is provided in the provision not only to the activity of use of the particular goods in the manufacture but also to the activity when the particular goods are merely used for the manufacture. However, as noticed, this amendment with insertion of the expressions "or for" is not applicable to the present case. Therefore, for the present purpose, it shall have to be examined if the goods in question (empty bottles) have either been consumed or been used as an integral part of the activity of manufacture of other goods for sale.

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36 *ibid.,* p. 555.

40. As noticed, several of the meanings of the expressions “consume” and “consumption” denote using up a particular thing in a way that results in complete exhaustion of that thing. On the other hand, the expression “use” denotes the application or deployment of a particular thing as a means of achieving something or for accomplishment of a purpose. Undoubtedly, the word “use” is of wider import than “consumption”[37].

40.1. In regard to the expressions in question, we may usefully recount that the earlier existing Entry 52 of List II of the Seventh Schedule to the Constitution of India[38] provided for “*Taxes on the entry of goods into a local area for consumption, use or sale therein*”. While taking up interpretation of the State enactment made under the said Entry 52, this Court dealt with the matter in the case of ***Mafatlal Industries Ltd.*** (supra), where cloth pieces of particular length were brought within the octroi limits of the Municipality concerned and were cut into smaller pieces of different sizes. This action was held by this Court not amounting to use or consumption of the cloth within the octroi limits. In that context, this Court took note of the relevant entry as also the relevant provision of the State enactment and said,-

> “**14**…..we hold that mere physical entry of goods into the octroi limits would not attract levy of octroi unless goods are brought in for use or consumption or sale. Use and consumption would involve conversion of the commodity into a different commercial commodity by subjecting it to some processing.
>
> **15.** In this appeal, cloth pieces of 100 metres’ length were brought within the octroi limits and those cloth pieces were cut into smaller pieces of different sizes. By doing so, no

37 *vide* ***Kathiawar Industries Ltd.*** (supra)

38 Entry 52 of List II has since been deleted by the Constitution (101st Amendment) Act, 2016.

different commercial commodity is shown to have been produced, so it cannot be said that there was use or consumption of the cloth within the octroi limits……..”

40.2. Similarly, in the case of ***HMM Limited*** (supra), the appellant dealer had brought the milkfood powder into the limits of respondent municipality in bulk containers (large steel drums) for being packed in Bangalore in unit containers (glass bottles) and thereafter exported outside the municipal limits. In the given fact situation, this Court held that there was no ‘sale, consumption, or use’ within the municipal limits and hence, octroi was not leviable.

40.3. The co-relation as also delicate distinction of these expressions “use” and “consumption” has been explained by the Constitution Bench of this Court in the case of ***Burmah Shell Oil Storage and Distributing Co.*** (supra) as follows :-

> “23. It is not the immediate person who brings the goods into a local area who must consume them himself, the act of consumption may be postponed or may be performed by someone else but so long as the goods have been brought into the local area for consumption in that sense, no matter by whom, they satisfy the requirements of the Boroughs Act and octroi is payable. Added to the word "consumption" is the word "use" also. **There may be certain commodities which though put to use are not 'used up' in the process.** A motor-car brought into an area for use is not used up in the same sense as food-stuffs. The two expressions use and consumption together therefore, connote the bringing in of goods and animals not with a view to taking them out again but with a view to their retention either for use without using them up or for consumption in a manner which destroys, wastes or uses them up.”
>
> (emphasis in bold supplied)

40.4. Tersely put, the meaning and connotation is clear that while in “consumption”, a thing shall be used up but in “use”, it may not be used up as such. To put it in different words, in “use”, a thing shall be employed for the accomplishment of a purpose but in “consume”, the thing shall not only be employed but shall also get absorbed or devoured in accomplishment of the purpose.

41. As noticed, clause (*a*) of sub-section (1) of Section 7-A of the Act covers both the eventualities i.e., of consumption and of use but when they take place “in the manufacture of other goods for sale”. Therefore, now it is necessary to delve into the salient features related with the expression “manufacture”.

41.1. As noticed, the relevant dictionary meanings fairly give out that by “manufacture” what is basically meant is the process by which a thing is made or built by human or by machine in contradistinction to what is produced by nature. Ordinarily, it denotes the application of labour or skill to material so as to bring out a new, different and useful article in place of the original one. In regard to this expression “manufacture”, it shall also be profitable to make a brief reference to the relevant decisions.

41.2. In the case of ***Kiran Spinning Mills*** (supra), this Court dealt with the issue in relation to the Excise Law where the assessee was cutting tow fibre into staple fibre i.e., of cutting long fibre into a short one which resulted in a new and different article of commerce. However, on the question as to whether a process of “manufacture” has been undertaken, this Court observed that

although the process had brought about “a change in the substance” but did not “bring into existence a new substance” and therefore it was held that such cutting involved no manufacture. This Court observed and held as follows :

> “**4.** In other words, tow is fibre in running length and staple fibre is obtained by cutting it into required short length. On an examination of the material and the contention, the Tribunal came to the conclusion that the material which the respondents had purchased was already man-made fibre but in running length. All that the respondents did in relation to it, was to cut it into staple length after some manual sorting and straightening. The question, therefore, is whether cutting the long fibre into short fibre resulted into a new and different article of commerce. Now it is well settled how to determine whether there was manufacture or not. This Court held in the case of *Union of India* v. *Delhi Cloth & General Mills*: AIR 1963 SC 791 that “manufacture” means to bring into existence a new substance and does not mean merely to produce *some change in a substance* (emphasis supplied). It is true that etymological word “manufacture” properly construed would doubtless cover the transformation but the question is whether that transformation brings about fundamental change, a new substance is brought into existence or a new different article having distinctive name, character or use results from a particular process or a particular activity. The taxable event under the excise law is “manufacture”.……In the instant case it is not disputed that what the respondent did, was to cut the running length fibre (tow) into short length fibre (staple fibre). It indubitably brought a *change in the substance* but did not bring *into existence a new substance.* The character and use of the substance (man-made fibre) remained the same.…Even by cutting, the respondents obtained man-made fibre. Such cutting, therefore, involved no manufacture and, hence, no duty liability can be imposed upon them.”

41.3. In the case of ***Pan Pipes Resplendents Ltd.*** (supra), the question was as to whether printing/decorating of duty-paid plain glazed ceramic tiles amounted to manufacture in terms of Section 2(f) of Central Excise Act, 1944. In that context, the Court said that manufacture implies a change but, every

change is not a manufacture; and, for “manufacture”, there must be transformation and a new article, having distinct name, character or use, ought to come into existence. Such requirements of “manufacture” were held not satisfied in the given case. This Court said :

> “**5.** The point which falls for consideration in this case is whether printing/decorating of duty-paid plain glazed ceramic tiles amounts to manufacture or not in terms of Section 2(*f*) of the Central Excise Act, 1944. The process for amounting to manufacture must be one which brings into being a new substance known to the market. Manufacture implies a change but every change is not a manufacture and yet every change in an article is the result of some treatment, labour and manipulation. For manufacture, something more is necessary. There must be transformation and a new article must result, having a distinct name, character or use. These conditions are not satisfied in the instant case because ceramic glazed tiles remain ceramic glazed wall tiles even after the process of printing and decorating. Persons dealing in this commodity recognise the same as wall tiles before and after printing and decorating. Transformation of a product must be such that it becomes a commercially different commodity to attract Central excise duty and unless a new and distinct article known commercially to the market emerges, the process will not amount to manufacture. In the present case no distinct commodity comes into being as a result of process carried out by the respondent. It is not the case of the Department that ceramic glazed tiles which are subjected to printing and decoration would be commercially useless but for the process carried out by the respondent.”

41.4. In the case of ***Alembic Glass Industries Ltd.***, this Court again noted the requirement that in order to decide whether or not a process amounts to manufacture, the twofold test were as to whether by the process a different commodity came into existence or the identity of the original ceased to exist; and whether the commodity which was already in existence will serve no purpose but for the said process. In the given case, by the process of

printing names or logos on the bottles, it was held that the basic character of the commodity did not change and they continued to be bottles. In the case of ***Punjab Aromatic*** (supra)***,*** this Court indicated that the test of irreversibility is an important criterion to ascertain as to whether a given process amounts to manufacture.

42. We need not multiply on the citations as the fundamental principles remain clear that, on the question as to whether manufacture has taken place or not, the relevant enquiry would be to find if a new substance has come into existence which is a different commercial commodity or whereby identity of the original commodity has ceased to exist. Tersely put, it is the test of irreversibility that remains fundamental to a query as to whether manufacture has taken place or not.

43. It has been argued on behalf of the assessee, and rightly so, that in the context of the commodities dealt with by it i.e., Beer/IMFL, the process of bottling is in fact a separate and distinct process than the manufacture of Beer/IMFL. The decision of this Court in the case of ***Mohan Meakin Breweries Ltd***. (supra) is sufficient to be noticed in this regard wherein it was clearly held that bottling takes place after brewing of Beer is complete. This Court said as under :-

> "**62.** It is not in dispute that the process of brewing beer and the process of bottling beer are considered to be distinct and separate processes governed respectively by the Brewery Rules and the Bottling Rules. The operations connected with bottling are required to be conducted in a separate premises under a different licence. The process of bottling begins with the transfer of bulk beer from the brewery for bottling. Sub-section (2) of Section 28-A refers to an allowance to an extent

> of 10% not only in regard to losses within the brewery but also to cover losses in bottling and storage. As noticed above, Rule 53 of the Brewery Rules and Rule 7(11) of the Bottling Rules when read conjointly show that the said Rules are supplementary to each other and together implement Section 28-A of the Act. At all events, the validity of neither Rule 53 of the Brewery Rules nor Rule 7(11) of the Bottling Rules is under challenge. Be that as it may."

43.1. What has been observed in relation to brewing and bottling of Beer would equally apply to distillation and bottling of IMFL.

44. Applying the relevant tests concerning the expressions "consumes", "uses" and "in the manufacture" to the present case, it remains hardly a matter of doubt that so far the empty bottles are concerned, even after being filled with liquor, they remain bottles only, retaining their original elements including shape, size and character. They are not "consumed" at all; and there arise no question of they being "consumed in the manufacture". Therefore, we have no hesitation in accepting the submissions of assessee that the bottles in question have not been consumed in manufacture of other goods for sale.

44.1. In continuity with the above, we are also inclined to accept the submission of the assessee that the empty bottles have not even been "used" in manufacture. This is for the reason that for operation and application of the phrase "uses in manufacture", it has to be shown that the bottles in question have been deployed as a means of achieving the purpose of manufacture. As noticed, the phrase "manufacture of other goods for sale", in the present case, refers to the goods manufactured by the assessee, i.e., Beer/IMFL; and, in fact, use of the bottles in question comes up in the activity of the assessee only after manufacture of liquor (Beer/IMFL) has already been accomplished

by brewing or distillation. Needless to reiterate that in relation to the activity of assessee, the action of bottling is a separate process and is undertaken only after the process of manufacture by way of brewing or distillation is complete. Thus understood, we are clearly of the view that the goods in question (empty bottles) cannot be said to have been "used" in manufacture.

45. For what has been discussed hereinabove, we have no hesitation in concluding that the bottles in question have neither been consumed in manufacture of Beer/IMFL nor they could be said to have been used in such manufacture of Beer/IMFL. Hence, elements (i) and (iii) pertaining to clause (*a*) of sub-section (1) of Section 7-A of the Act do not exist in this case.

46. Taking up elements (ii) and (iv) of clause (*a*) of sub-section (1) of Section 7-A of the Act, we need to enquire as to whether the goods in question (empty bottles) have been "consumed otherwise" or they have been "used otherwise". This area of examination takes us to the words "or otherwise" used in clause (*a*) of sub-section (1) of Section 7-A of the Act. In this regard, we need again to look at etymology related with the expression in question.

46.1. The expression "otherwise" is essentially used in the texts as an adverb or as an adjective. Out of the numerous meanings assigned to this expression in the Concise Oxford English Dictionary[39], some of the relevant meanings are: '*in other respects; in a different way, alternatively*.'

39 *Ibid*., p.1014

46.2. Similarly, in Black's Law Dictionary[40], the expression "otherwise" is assigned several meanings including '*in a different way; in another manner; except for what has just been mentioned; to the contrary; differently'.*

47. The variety of meanings assigned to the expression "otherwise" makes one aspect absolutely clear that this expression is intended to denote something different than the thing/s to which it is employed; and that this expression is essentially general in nature. In the phraseology of clause (*a*) of sub-section (1) of Section 7-A of the Act, the words "or otherwise" have been placed after the particular words "consumes", "uses" and "manufacture". Obviously, these words "or otherwise" are intended to convey that not only the activities envisaged by the particular words preceding but, even the other activities would also be covered thereunder. A question, perforce, arises as to what is intended by the Legislature to be the sphere and amplitude of the words "or otherwise" in clause (*a*) of sub-section (1) of Section 7-A of the Act. This query takes us to the principles for construction of general words in the statute. The fundamentals of these principles have been succinctly summarised in *Principles of Statutory Interpretation* by Justice G.P. Singh[41] as follows :-

> "The normal rule is that general words in a statute must receive a general construction unless there is something in the Act itself such as the subject-matter with which the Act is dealing or the context in which the said words are used to show the intention of the Legislature that they must be given a restrictive meaning. Their import to have wider effect cannot be cut down by arbitrary addition or retrenchment in language. Since general words have ordinarily a general meaning, the first task in construing such words, as in construing any word, is to give the words their plain and ordinary meaning and then to see whether the context or some principle of construction requires that some qualified meaning should be placed on those words."

40 *Ibid.,* p.1276
41 *ibid.,* pp.534-535

48. The aforesaid general principles are also not decisive of the matter because when an expression generally of wide amplitude like “otherwise” is used, the question still arises about its construction, particularly when it is placed after particular/specific words. In this process of construction, one may feel inclined to rely upon and apply the rule of *ejusdem generis* whereby and whereunder when a particular word pertaining to a class, category or genus are followed by general words, the general words are construed as limited to the things of the same kind as those specified. Even as regards the words “or otherwise”, in some of the interpretations, they have been treated as limited in their scope with reference to the context[42] but the Constitution Bench of this Court in the case of ***Smt. Lila Vati Bai v. State of Bombay: AIR 1957 SC 521***, while construing the words “or otherwise” occurring in *Explanation* (*a*) to Section 6 of the Bombay Land Requisition Act, held that these words were intended to cover all possible cases of vacancy occurring due to any reason whatsoever. The Constitution Bench observed that far from using these words *ejusdem generis* with the preceding clauses, the Legislature had used them in an all-inclusive sense; and, in the given context and looking to the object and the mischief sought to be dealt with by the enactment, there was no room for application of the rule of *ejusdem generis*. The Court, *inter alia*, said as under :

> “11….The legislature has been cautious and thorough-going enough to bar all avenues of escape by using the words “or otherwise”. Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking, a tenant’s occupation of his premises ceases when his tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant’s interest. But the legislature, when it used the words “or otherwise”, apparently intended to cover other cases which may not come within the

42 Like in the cases of ***S. Prakasha Rao and Anr v. Commissioner of Commercial Taxes and Ors.:*** **(1990) 2 SCC 259** and ***George Da Costa v. Controller of Estate Duty*** **Mysore : AIR 1967 SC 849**

> meaning of the preceding clauses, for example, a case where the tenant's occupation has ceased as a result of trespass by a third party. The Legislature, in our opinion, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever…."

48.1. Likewise, in the case of ***Western India Plywood Ltd. v. P. Ashokan:*** **(1997) 7 SCC 638**, where the question was that of construction of bar over receiving compensation or damages under any other law in terms of Section 53 of the Employee's State Insurance Act, 1948, this Court held that the words "or otherwise" indicated that the section was not limited to ousting the relief claimed only under any statute but such wordings disentitled the insured person to make a claim in torts too, which has the force of law.

48.2. The principles enunciated in the aforesaid cases make it clear that even the rule of *ejusdem generis* cannot be picked up and applied as an abstract proposition whenever general words are used after particular words and expressions. As regards the words "or otherwise", though, ordinarily, the class or category to be covered thereby may have to be kindred to the particular class or category preceding them but, such kinship could be even of general relatedness to the particular words and need not be that of cognates or agnates or analogues.

48.3. In our view, looking to the context as also the object of the provision in question, as regards the words "or otherwise", the rule of *ejusdem generis* would apply in a very limited sense and only to the extent that the class or category to be covered thereunder may not be dissimilar or incongruent to the particular class or category of the expressions preceding it. As already noticed, in the case of ***Nandanam Construction Co.*** (supra), the Constitution Bench has construed these words "or otherwise" in relation to the *pari materia* provisions of the Andhra Pradesh Act and held that the expression "otherwise" qualifies the word "manufacture" and,

therefore, consumption of the goods in question, even if not in manufacture, would lead to coverage for levy of purchase tax. We may usefully reiterate that in ***Nandanam Construction Co.*** (supra), the assessee was engaged in the business of building houses/flats and had consumed the goods like bricks and sand in such construction. The Constitution Bench found that such consumption was clearly a consumption otherwise than manufacture but was covered under the provisions for levy of purchase tax. The Constitution Bench also stated the reason for such construction that the goods in question were consumed and ceased to exist in their original form so as to be sold in that original form.

49. Keeping the principle aforesaid in view, we may now take up elements (ii) and (iv) of clause (*a*) of sub-section (1) of Section 7-A of the Act. Thus, the question is as to whether the bottles in question have been “consumed otherwise” or “used otherwise”.

49.1. As already noticed, consumption requires the thing in question being exhausted or ceasing to exist for being used up. The bottles in question, even when used as containers of the liquor manufactured by the assessee, had neither been exhausted nor had ceased to exist; they have rather continued to exist while retaining their basic identity and character as bottles. Of course, they (empty bottles) had been filled up with liquor but such filling up has not resulted in the bottles themselves being used up. Hence, the activity in question does not fall within the ambit of element (ii). However, the very same logic does not apply to element (iv) because it cannot be said that the bottles in question have not been “used otherwise”.

49.2. As noticed, the expression “use” is of wide amplitude and it refers to the usage or engagement of an article for the accomplishment of a purpose irrespective

of whether the article itself undergoes a visible change or not. The fact that the bottles in question have indeed been used by the assessee in its overall activity of manufacture and sale of liquor is clear from the fact that the manufacture of liquor by the process of brewing or distillation did not conclude the activity of the assessee. Undoubtedly, for the sale of such manufactured liquor to TASMAC, the assessee was required to put the same into the bottles; and the sale by assessee could have taken place only after such bottling of the liquor. The assessee has, indisputably, undertaken this process of bottling by the use of the goods in question, i.e., the empty bottles purchased from unregistered dealers. Hence, it is but apparent that the goods in question (empty bottles) have been used by the assessee, and for that matter, have been used for an activity closely connected and co-related with the main activity of manufacture of liquor as also as necessary ingredient of the end-purpose of sale of liquor. Significantly, after such use for bottling, the goods in question (empty bottles) did not remain available for sale in the form in which they were purchased by the assessee.

49.3. In other words, the process of bottling with the use of bottles in question has been an unalienable part of the complete chain of processes that the assessee was obliged to undertake for its business, i.e., manufacturing and selling the liquor. By this process, the bottles in question were used by the assessee in such a manner that they were no longer available for sale in the form they were purchased from unregistered dealers. That being the position, the bottles in question have indeed been “used otherwise” by the assessee. The assessee cannot avoid operation of the words “or otherwise” so far use of the bottles is concerned by merely establishing that they have not been consumed in manufacture or otherwise and further that they have not been used in manufacture. Even when these three elements viz.,

“consumed in manufacture”; “consumed otherwise”; and “used in manufacture” do not exist as regards the bottles in question in the business activity of the assessee, it is but apparent the activity of the assessee clearly entails the use of bottles for the purpose of bottling and sale of liquor manufactured by it. This activity clearly takes the bottles in question within the fourth element i.e., “used otherwise”.

49.4. Hence, though the bottles in question have not been “consumed otherwise”, they have indeed been “used otherwise”; and therefore, the activity of assessee in relation to the bottles in question is clearly covered by element (iv) of clause (*a*) of sub-section (1) of Section 7-A of the Act.

50. To summarise the discussion aforesaid and to put our views in a nutshell, the goods in question (empty bottles) have not been consumed in the manufacture of other goods for sale nor they have been consumed otherwise because of having retained their identity. They have also not been used in the manufacture of other goods for sale because manufacture of Beer/IMFL was complete without their use. However, they have been used for bottling and when bottling remains an integral part of the business activity of the assessee, i.e., of manufacturing the liquor by the process of brewing/distillation and then, selling the manufactured liquor by putting the same in bottles, they have been “used otherwise”. That being the position, use of the goods in question for bottling takes the turnover of their purchase within the net of Section 7-A of the Act.

50.1. To put it more simply, if we read clause (*a*) of sub-section (1) of Section 7-A of the Act sliced down to the elements “uses in manufacture or otherwise”, it is clear that the goods in question (empty bottles) have been

used for bottling, which use, even if not for manufacture, had been a use otherwise which has been closely connected with the business of the assessee and whereby the bottles in question did not remain available for sale in the form in which they were purchased. This is the plain and clear operation of the dictum of Constitution Bench in the case of ***Nandanam Construction Co.*** (supra). Hence, applicability of Section 7-A of the Act is complete and remains beyond the realm of doubt.

51. Having thus arrived at the conclusion that ingredients (1) to (5) and (6)(a) for applicability of Section 7-A (1) are cumulatively satisfied, the inescapable result is that the turnover in question is exigible to purchase tax. However, there remains another limb of submissions on the part of assessee that when the bottles have not been disposed of "in any manner other than by way of sale in the State" and had been disposed of only by way of sale to TASMAC within the State of Tamil Nadu itself; and they had been subjected to sales tax at the same rate as that of the contents, purchase tax would not be leviable. This line of submissions on the part of assessee, in our view, remains entirely baseless.

52. As already noticed, the goods in question (empty bottles) have been used to complete the process of making the manufactured goods (Beer/IMFL) marketable. It is also clear that the bottles have not been sold by the assessee simply as bottles. They have been sold as an essential component of the marketable commodity. That being the position, charging of sales tax on these bottles comes into operation by virtue of Section 3 (1) read with Section 3 (7) of the Tamil Nadu Act. As noticed, the assessee is indisputably a dealer covered under sub-section (1) of Section 3 of the Act. By virtue of sub-section (7) of Section 3, when the assessee has sold the goods (Beer/IMFL) together with the bottles as containers or packing material, turnover of

Beer/IMFL was bound to include the price, cost or value of such bottles whether such price, cost or value had been charged separately or not; and sales tax was bound to be levied thereupon at the rate applicable to the goods contained, i.e., Beer/IMFL. The *Explanation* to Section 3 of the Act puts it beyond doubt that the expression "containers" includes bottles.

52.1 Another relevant feature of the provisions in question is that applicability of Section 7-A of the Act has not been made dependent on the event of levy of sales tax on the goods for which purchase tax is to be levied. As noticed, levy of purchase tax is dependent on cumulative existence of the necessary ingredients of Section 7-A of the Act; and no exception or exclusion is provided with reference to the factum of levy of sales tax on the goods in question at the time of their sale. In fact, not much of elaborate discussion in this regard appears requisite, for a direct answer being available in a 3-Judge Bench decision of this Court in the case of ***Premier Breweries*** (supra) wherein, *pari materia* provisions of the Kerala Act as regards levy of sales tax were considered. In the said case of ***Premier Breweries,*** the appellant had sold liquor packed in cardboard cartons. It was contended that such cardboard cartons had already borne tax under the entry "paper other than the newsprint cardboard and their products" and hence, such cartons could not have been taxed again when sold along with Beer. This Court examined sub-sections (5) and (6) of Section 5 of the Kerala Act, which had been more or less akin to sub-sections (7) and (8) of Section 3 of the Tamil Nadu Act, and negatived the contention of the dealer. The relevant paragraphs of the said decision, taking note of sub-sections (5) and (6) of Section 5 of the Kerala Act and rejecting this part of the contentions of assessee, could be usefully noticed as follows (at pp.602 and 607-608 of STC):-

> "**5.** Before examining the decisions, it will be useful to refer to the relevant provisions of the Kerala General Sales Tax Act. Tax on

sale or purchase of goods has been imposed by section 5 of the Act. Sub-sections (5) and (6) of section 5 of the Act provide:

> "5. (5) Notwithstanding anything contained in sub-section (1) or sub-section (2), but subject to sub-section (6), where goods sold are contained in containers or are packed in any packing materials, the rate of tax and the point of levy applicable to the containers or packing materials, as the case may be, shall, whether the price of the containers or packing materials is charged separately or not, be the same as those applicable to goods contained or packed, and in determining turnover of the goods, the turnover in respect of the containers or packing materials shall be included therein.
>
> (6) Where the sale or purchase of goods contained in any containers or packed in any packing materials is exempt from tax, then the sale or purchase of such containers or packing materials shall also be exempt from tax."
>
> *** *** ***
>
> **22.** We shall now deal with another point urged on behalf of the appellant. It has been contended that the cardboard cartons have already borne tax under the entry "paper, other than the newsprint, cardboard and their products" in the First Schedule of the Act. It is a single-point tax. The cardboard cartons cannot be taxed once again when sold along with the beer.
>
> **23.** There are two answers to this contention. Sub-section (5) of section 5 specifically provides that the rate of tax and point of levy applicable to the containers shall be the same as those applicable to the goods sold. Therefore, even if the cartons have already been subjected to tax by virtue of specific provision of section 5(5) they will be liable to tax at the same point and at the same rate as the goods contained therein.
>
> **24.** Moreover, the packing materials as such are not being taxed under sub-section (5) of section 5 of the Act. The subject-matter of tax are the goods packed in the containers. In calculating the turnover of the goods, packing materials will have to be taken into account. The packing materials will be taxed at the same rate and at the same point as the goods contained in the packing material. This is because the goods are sold packed in containers and are charged accordingly. This is a rule of computation of the turnover of the goods. If no tax is ultimately found leviable on the goods then no tax can be levied on the containers in which the goods are contained."

52.2 As already noticed, this question was also examined by the High Court in the case of ***Appollo Saline Pharmaceuticals*** (supra) although the said decision was

rendered in relation to the bottles used for packing of I.V. fluid and the provision examined therein was that as existing after amendment of clause (*a*) of sub-section (1) of Section 7-A with insertion of the words “or for” but, such amendment is of no effect so far as this limb of contentions is concerned. In the said decision, the High Court repelled such a contention against levy of purchase tax on bottles because of the bottles being subjected to sales tax when being sold with I.V. fluid while observing that such sales tax was nevertheless leviable even in relation to the bottles which were purchased from a registered dealer after payment of sales tax. The relevant portion in paragraph 11 of the said decision of the High Court in ***Appollo Saline Pharmaceuticals*** (extracted in paragraph 20.2 hereinbefore) obviously conforms to the ratio of ***Premier Breweries*** (supra), which, in our view, is a direct and complete answer to the contention of the assessee. As noticed, in the entire scheme of Section 7-A of the Act, nowhere any exception is provided that if a particular commodity or goods would be subjected to sales tax in the event of their sale, they may not be liable to purchase tax. On the contrary, as rightly observed by the High Court, even if the bottles had been purchased after payment of sales tax, the turnover of such purchase was nevertheless required to be included in the total turnover at the time of sale of the contents with the containers.

52.3 In other words, the fact that the bottles in question were subjected to sales tax at the same rate as applicable to their contents is entirely irrelevant and has no bearing on the exigibility of the turnover in question to purchase tax. In this regard, we may also observe that even though the provision relating to the purchase tax was initially inserted to plug the loss of revenue in relation to the goods that were consumed in manufacture or were consumed otherwise, its scope and amplitude has been widened with insertion of the expression “or uses” and thereby, not only

consumption but even use in manufacture or use otherwise of the goods has been made subject to the levy of purchase tax. We need not expand more on these aspects of the matter. Suffice it to observe for the present purpose that merely because the bottles in question were to be subjected to sales tax, when being sold as containers of the liquor, liability of purchase tax cannot be obviated.

52.4. To put it differently, it is apparent that so far as sales tax on the bottles in question at the time of their sale is concerned, the same is leviable by virtue of Section 3 (7) of the Act and there is nothing in Section 7-A to even suggest that levy of sales tax at the time of sale of the goods in question would exclude them from the net of purchase tax. That being the position, the second limb of submissions on the part of assessee turns out to be hollow and baseless, and cannot be accepted.

53. Therefore, the final result of the discussion aforesaid is that purchase tax under Section 7-A of the Act is leviable on the purchase turnover of empty bottles purchased by the assessee in the course of its business of manufacture and sale of Beer and IMFL.

OPERATION AND EFFECT OF DEPARTMENT'S CLARIFICATIONS/CIRCULARS

54. As noticed, the High Court in its impugned order dated 10.09.2004 did reach to the conclusion that purchase tax was leviable on the purchase turnover of the empty bottles but found the assessee entitled to the benefit of Clarifications/Circulars issued by the revenue on 09.11.1989 and 27.12.2000. The revenue has questioned this part of the order of the High Court on the grounds and contentions as noticed hereinabove. In order to examine the rival contentions in this regard and the correctness of proposition adopted by the High Court, we may take note of the statutory provision in the Tamil Nadu Act

on the power of the Commissioner of Commercial Taxes to issue clarification as also the particular Clarifications/Circulars relevant to the present case.

55. Section 28-A came to be inserted to the Tamil Nadu Act by way of its amendment by Act No. 60 of 1997 w.e.f. 06.11.1997. This Section 28-A reads as under :

> "28-A. *Power to issue clarification by Commissioner of Commercial Taxes. –*
> (1) The Commissioner of Commercial Taxes on an application by a registered dealer, may clarify any point concerning the rate of tax under the Act. Such clarification shall be applicable to the goods specified in the application :
> Provided that no such application shall be entertained unless it is accompanied by proof of payment of such fee, paid in such manner, as may be prescribed.
>
> (2) The Commissioner of Commercial Taxes may, if he considers it necessary or expedient so to do, for the purpose of uniformity in the work of assessment and collection of tax, clarify any point concerning the rate of tax under this Act or the procedure relating to assessment and collection of tax as provided for under this Act.
> (3) All persons working under the control of Commissioner of Commercial Taxes shall observe and follow the clarification issued under sub-section (1) and sub-section (2)."

55.1. Prior to the insertion of the aforesaid Section 28-A in the Tamil Nadu Act, the SCCT had issued Clarification dated 09.11.1989 in regard to the issue of levy of purchase tax on empty bottles in the following terms :

> "The Spl. Commissioner and Commissioner of Commercial Taxes, Madras 5 letter No. Acts Cell I/D. Dis. 105980/88 dated 9.11.1989.
>
> Sub : TNGST ACT 1959 – Amendment of Section 7A-Levy of Purchase tax on empty bottles for backing *(sic)* IMFL – Whether attracts – clarified.
>
> Ref: Your letter No.9142/88 B2 dated 23.9.88.

As it is stated that sale value of the bottles is subjected to tax at the time of sale of the contents there is no liability to tax under Section 7(A).

2. This cancels the clarification issued in this office D.Dis. Acts cell I/136907/88 dated 17.1.89.

Sd/- S. Savarkar,
For Spl. Commr. And Commr of Comml Taxes."

55.2. After insertion of the aforesaid Section 28-A and in relation to the request further made by the assessee, the PCCT proceeded to issue Clarification dated 27.12.2000, practically reiterating the earlier opinion in the following terms:-

"COMMERCIAL TAXES DEPARTMENT

FROM	TO
THIRU P.C. CYRIAC, I.A.S.,	Tvl. Mohan Breweries and
Principle Commissioner and	Distilleries Ltd.,
Commissioner of Commercial	Rayala Towers,
Taxes	II Floor,
Chepauk,	781-85 Anna Salai,
Chennai – 600 005	Chennai – 600 002.

D. DIS. ACTS CELL II/52900/2000 DATED : 27.12.2000
CLARIFICATION NO.192/2000

Sir,

Sub : TNGST Act 1959 – Clarification on rate of tax for purchase of old/used bottles for filling beer/IMFL products – requested – reg.

Ref : From Tvl. Mohan Breweries and Distilleries Ltd., Chennai-2. Lr. Dt. 13.7.2000.

Tvl. Mohan Breweries and Distilleries Ltd., Chennai-2, in their letter cited have requested clarification for the years 1991-92, 93-94, 94-95 and 95-96 in respect of purchase of old bottles assessed to tax under section 7-A of the TNGST Act, 1959.

The details furnished by the petitioners have been perused and the following clarification on rate of tax is issued :

In this office reference D.Dis.Acts Cell.I/105980/88, dt.9.11.89, it has been clarified that "if the sale value of bottles

is subjected to tax at the time of sale of the contents. there is no liability to tax under section 7-A". Perhaps, your company did not made it clear that the sale value of the bottle was also included in the price of the product. Now that you have clarified this point specifically, that the value of empty bottles also has been included in the sale price of the product, the clarification issued in Acts Cell II/105980/89, dt. 9.11.89 will apply to IMFL/Beer.

Sd/- P. C. Cyriac,
Principal Commissioner and Commissioner
of Commercial Taxes."

55.3. Further, after the decision of the Tribunal in ***Appollo Saline Pharmaceuticals*****: 120 STC 493,** the SCCT issued another Clarification dated 28.01.2002 in modification of the earlier Clarification dated 27.12.2000 and stated that the purchase in question was liable to tax under Section 7-A of the Act. This Clarification dated 28.01.2002 reads as under :

"COMMERCIAL TAXES DEPARTMENT

From	To
Thiru Arun Ramanathan,I.A.S.,	Tvl. Mohan Breweries and
Special Commissioner and	Distilleries Limited,
Commr. of Commercial Taxes,	Rayala Towers, IInd Floor,
Chepauk, Chennai – 5.	781-85 Anna Salai,
	Chennai-2.

Acts Cell – II/6914/2002, Dt. 28.1.2002

Sir,

SUB : TNGST ACT 1959 – Clarification on rate of tax for purchase of old/used bottles for filling beer/IMFL Products – Issued – Modified.

Ref : PC & CCT. Chennai – 6, D. Dis. Acts Cell-I/52900/2000, Dated :27.12.2000.

In this office reference cited it was clarified to Tvl. Mohan Breweries and Distilleries Limited, Chennai-2 as follows :-

"In this Office Ref. D. Dis. Acts Cell-I/105980/88 Dated : 9.11.89, it has been clarified that "if the sale value of bottles is subjected to tax at the time of sale of the contents, there is no liability to tax under Section 7-A. Perhaps, your company did not make

> it clear that the sale value of bottle was also included in the price of the product. Now that you have clarified this point specifically, that the value of empty bottles also has been included in the sale price of the product, the clarification issued in Acts Cell-I/105980/89, Dated:9.11.89 will apply to IMFL/Beer."
>
> The issue has been re-examined in the light of the decision of the Tamil Nadu Taxation Special Tribunal in the case of Appollo Saline Pharmaceuticals Private Limited reported in 120 STC. P.493, and the clarification issued in the reference cited is modified as below :
>
> It is hereby clarified that purchase of empty bottles from un-registered dealers used for the packing of Beer/IMFL manufactured by Tvl. Mohan Breweries and Distilleries Limited, Chennai is liable to tax under section 7-A as per decision reported in 120 STC Page 493.
>
> (Sd.) Arun Ramanathan,
> Special Commissioner and Commissioner
> of Commercial Taxes."
> (underlining in original)

56. As noticed, in support of its conclusion that the revenue cannot refuse the benefit of Clarifications dated 09.11.1989 and 27.12.2000 to the assessee, the High Court has relied upon various decisions including that of the Constitution Bench of this Court in the case of ***Dhiren Chemical Industries*** (supra). The learned counsel for the assessee has additionally relied upon several other decisions as mentioned hereinbefore.[43] On the other hand, it is contended on behalf of the revenue that Clarifications dated 09.11.1989 and 27.12.2000 were merely administrative in nature and had no binding force on a Quasi-judicial Authority or a Court of law; and that as per dictum of the Constitution Bench in ***Ratan Melting & Wire Industries*** (supra), the law declared by the Court as regards the issue at hand would remain binding and not the said Clarifications.

43 Vide paragraph 11.1 *ibid.*

57. Having regard to the reasoning of High Court and the contentions of rival parties as also for dealing with the operation and effect of the Clarifications/Circulars aforesaid, we need to imbibe the principles enunciated in the binding decisions of this Court, particularly the dictum in two Constitution Bench decisions in ***Dhiren Chemical Industries***[44] and ***Ratan Melting & Wire Industries***[45]***.***

57.1. In ***Dhiren Chemical Industries*** (supra), the questions referred to the Constitution Bench were relating to the interpretation of the phrase "on which the appropriate amount of duty of excise has already been paid"; and operation of the exemption notification issued by the Central Government, exempting iron or steel products made out of fresh unused re-rollable scrap if appropriate amount of duty had already been paid. In the context of such questions and the exemption notification calling for interpretation, though the Constitution Bench placed the interpretation in favour of the revenue but also observed as follows (at p. 125 of STC):

> "11. We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue."

57.2. The aforesaid observations in ***Dhiren Chemical Industries*** led to certain misunderstanding as regards operation and effect of the circulars and as to whether effect can be given to the circular of the Government in preference to the binding precedents of High Court and of this Court. This led

44 Rendered on 12.12.2001
45 Rendered on 14.10.2008

to the other reference to the Constitution Bench and the issue came to be resolved in the case of ***Ratan Melting & Wire Industries*** (supra).

57.3. In ***Ratan Melting & Wire Industries*** (supra), the Constitution Bench referred to the above-quoted observations in ***Dhiren Chemical Industries*** and also noted that those observations had been explained in another decision in the case of ***Kalyani Packaging Industries v. Union of India:*** **(2004) 6 SCC 719.** The Constitution Bench observed and noted as follows:-

> "3. …… In *Kalyani Packaging Industry* v. *Union of India* it was noted as follows: (SCC p. 721, para 6)
>
> > "6. We have noticed that para 11 of *Dhiren Chemical case* is being misunderstood. It, therefore, becomes necessary to clarify para 11 of *Dhiren Chemical case*. One of us (Variava, J.) was a party to the judgment of *Dhiren Chemical case* and knows what was the intention in incorporating para 11. It must be remembered that law laid down by this Court is law of the land. The law so laid down is binding on all courts/tribunals and bodies. It is clear that circulars of the Board cannot prevail over the law laid down by this Court. However, it was pointed out that during hearing of *Dhiren Chemical case* because of the circulars of the Board in many cases the Department had granted benefits of exemption notifications. It was submitted that on the interpretation now given by this Court in *Dhiren Chemical case* the Revenue was likely to reopen cases. Thus para 11 was incorporated to ensure that in cases where benefits of exemption notification had already been granted, the Revenue would remain bound. The purpose was to see that such cases were not reopened. However, this did not mean that even in cases where the Revenue/Department had already contended that the benefit of an exemption notification was not available, and the matter was sub judice before a court or a tribunal, the court or tribunal would also give effect to circulars of the Board in preference to a decision of the Constitution Bench of this Court. Where as a result of dispute the matter is sub judice, a court/tribunal is, after *Dhiren Chemical case*, bound to interpret as set out in that judgment. To hold otherwise and to interpret in the manner suggested

would mean that courts/tribunals have to ignore a judgment of this Court and follow circulars of the Board. That was not what was meant by para 11 of *Dhiren Chemical case*."

57.4. Taking note of the above and clarifying the law on the subject, the Constitution Bench of this Court in ***Ratan Melting & Wire Industries*** (supra) laid down the principles in no uncertain terms as follows :

> "7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, **but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says** and it is not for the executive. Looked at from another angle, **a circular which is contrary to the statutory provisions has really no existence in law**."
>
> (emphasis in bold supplied)

58. In view of the aforesaid pronouncement by the Constitution Bench of this Court in ***Ratan Melting & Wire Industries*** (supra), there remains hardly any doubt on the principles that Clarifications/Circulars/Instructions issued by the competent authority are binding on the authorities under the respective statutes but so far as declaration of law in regard to any particular statutory provision is concerned, the view expressed in the binding decision of this Court or the High Court is to be given effect to; and no direction can be issued to enforce a clarification or circular contrary to the declaration of law by the Courts.

59. In view of the above, the decisions relied upon by the learned senior counsel for the assessee do not require much dilation. However, we may refer to a few representative decisions as *infra.*

59.1. In the case of ***Trans Asian Shipping*** (supra), reference to the circular was made by this Court only after declaration of law while indicating that the circular clarified the need and essence of the provisions when such circular was issued contemporaneously by the Central Board of Direct Taxes with introduction of the provisions of Section 115-VF and 115-VG in the Income Tax Act, 1961. As regards the circular, this Court observed as under :-

> "30. We would also like to refer to Circular No.05/2005 dated 15-7-2005 explaining the need and essence of the introduction of these provisions which was issued contemporaneously by the Central Board of Direct Taxes (CBDT). The Circular clarifies that the Scheme is a "preferential regime of taxation". It also clarifies that "charging provision is under Section 115-VA read with Section 115-VF and Section 115-VG". Circulars of CBDT explaining the scheme of the Act have been held to be binding on the Department repeatedly by this Court in a series of judgments ….."

59.2. In ***Signode India*** (supra), the circular concerned was explanatory of the expression "cargo handling services" as defined in Section 65(23) of the Finance Act, 1994 and was standing in conformity with the statutory provision. Therein, this Court observed as under :-

> "11. There is yet another aspect of the case which would require a mention. In a Circular bearing No.F.No.B.11/1/2002-TRU dated 1-8-2002 issued by the Central Board of Excise and Customs, services liable to tax under the category of "cargo handling services", have been clarified to mean services provided by cargo handling agencies which is, in effect what Section 65(105)(*zr*) provides for."

59.3. In the case of ***India Cements Limited*** (supra), this Court noticed the declaration of law by the Constitution Bench in the case of ***Ratan Melting & Wire Industries*** (supra) that a circular which is contrary to the statutory provisions has really no existence in law. In ***India Cements Limited,*** the circular in question was not found to be in conflict with any statutory provision or the applicable schemes and, therefore, the same was held binding on the adjudicating authority in the following words: –

> **"30.** In the present case, it is not the case of the Revenue that the Circular dated 1-5-2000 is in conflict with either any statutory provision or the deferral schemes announced under the aforementioned government orders. We, therefore, hold that the said circular is binding in law on the adjudicating authority under the TNGST Act."

60. The aforesaid and other decisions, essentially dealing with exemption notifications, have no application to the present case; and in any event, none of the decisions, as referred on behalf of the assessee or as referred by the High Court, could be read for any principle contrary to that laid down by the Constitution Bench in ***Ratan Melting & Wire Industries*** (supra).

61. For what has been discussed hereinabove, we need not examine as to whether the Clarifications/Circulars in question could be said to be such clarification as envisaged by Section 28-A of the Act because even if the Clarifications/Circulars in question are treated to be those authorised by Section 28-A, they cannot have any effect over and above the interpretation of Section 7-A of the Act by the Courts. In other words, applicability of Section 7-A to the turnover in question could only be decided on the interpretation of the provision and its application to the given fact situation and not on the basis of

Clarifications/Circulars in question. Put differently, the so-called Clarifications dated 09.11.1989 and 27.12.2000 had not been of explaining the meaning of any doubtful term or expression in the statutory provision nor they were explaining the object and purport of the provision concerned. The said Clarifications/Circulars had merely been the expression of the understanding of the concerned officer, be it SCCT or PCCT, about operation of Section 7-A of the Act vis-à-vis the purchase turnover of the empty bottles purchased by the assessee. However, such understanding of the officer concerned turns out to be a pure misunderstanding, when it stands at contradiction or incongruous to the declaration of law by the Courts; and could only be ignored. The latest Circular of the year 2002, issued after decision of the jurisdictional Tribunal in the case of ***Appollo Saline Pharmaceuticals*** (supra) could also be read only to the extent it is in conformity with the decision of the Tribunal (that came to be approved by the High Court) and in any case, even this circular cannot be decisive of the interpretation of Section 7-A of the Act. The decisive interpretation shall only be the one which is rendered in the binding decision/s of the Court. In continuity, we may also observe that various other decisions referred on behalf of the assessee, that modification of any particular circular or guideline or policy decision could only be made effective prospectively, have no application whatsoever to the present case.

62. In the aforesaid view of matter, we have no hesitation in concluding that the High Court, after having found that purchase tax was leviable on the turnover in question under Section 7-A of the Act, could not have issued

directions for any benefit to the assessee with reference to the Clarifications/Circulars dated 09.11.1989 and 27.12.2000, particularly when such Clarifications/Circulars do not stand in conformity with the statutory provision and its interpretation by the Courts.

63. Hence, the impugned order of the High Court, on the second question as regards the operation and effect of Clarifications/Circulars dated 09.11.1989 and 27.12.2000, cannot be approved.

64. The net result of the discussion foregoing is that the purchase turnover of the empty bottles purchased by the assessee from the unregistered dealers under bought note is exigible to purchase tax under Section 7-A of the Tamil Nadu Act; and the assessee cannot escape such liability on the strength of the Clarifications/Circulars dated 09.11.1989 and 27.12.2000 which do not stand in conformity with the statutory provision as also declaration of law by the Courts.

Other Question

65. So far as the other question regarding taxability of cash discount on the price offered by the assessee to the Tamil Nadu State Marketing Corporation Limited is concerned, the High Court has ruled in favour of the assessee with reference to the decision in the case of ***Neyvli Lignite Corporation Ltd.*** and the clear expressions in *Explanation* 2(iii) to Section 2(r) of the Act.

65.1. The relevant provision reads as under:-

> "**Section 2(r).-** "turnover" means the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (n), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea, and rubber (natural rubber, latex and all varieties and grades of raw rubber) grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.
> *** *** ***
>
> *Explanation* (2) Subject to such conditions and restrictions, if any, as may be prescribed in this behalf-
> *** *** ***
>
> (iii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover;
> *** *** ***"

65.2. In view of the clear phraseology of the above extracted *Explanation*, not much of discussion appears requisite as regards this issue that has rightly been decided by the High Court in favour of the assessee and not much of serious contentions have been put forward by the revenue in this regard. The impugned order of the High Court, to this extent, calls for no interference.

CONCLUSION

66. In view of the above, the appeal filed by the revenue (Civil Appeal No. 7164 of 2013) is partly allowed by holding that the purchase turnover of the empty bottles purchased by the assessee from the unregistered dealers under

bought note is exigible to purchase tax under Section 7-A of the Tamil Nadu Act; and the assessee cannot escape such liability on the strength of the Clarifications/Circulars dated 09.11.1989 and 27.12.2000. As a necessary consequence, the appeal filed by the assessee (Civil Appeal No. 7165 of 2013) is dismissed.

Civil Appeal Nos. 4416-4419 of 2014

67. This set of appeals by the assessee pertaining to assessment years 1986-87, 1987-88, 1988-89 and 1989-90, directed against the common order dated 05.12.2013 passed by the High Court in a batch of tax revision petitions, involves essentially the same question on the applicability of Section 7-A of the Act against the assessee.

68. Briefly put, the relevant background aspects relating to these appeals had been that by the respective assessment order pertaining to the said assessment years 1986-87, 1987-88, 1988-89 and 1989-90 the AO held the assessee liable for purchase tax against the purchase of empty bottles from unregistered dealers and also levied penalty on various scores like turnover relating to excise duty and vend fees as also the turnover relating to purchase tax. After the respective orders passed by the Appellate Authority, the matters ultimately travelled to the Tribunal in cross appeals preferred by the assessee and by the State. The Tribunal, by its common order dated 09.09.2002, decided various issues including those relating to purchase tax under Section 7-A of the Act and levy of penalty in relation to the turnover pertaining to excise duty, vend fee and purchase tax. So far the issue relating

to purchase tax was concerned, the Tribunal took the view that the assessee was liable for purchase tax under Section 7-A of the Act while relying upon the decision of the High Court in ***Appollo Saline Pharmaceuticals*** (supra) and of this Court in ***Premier Breweries*** (supra).

69. Aggrieved by the order so passed by the Tribunal, the assessee filed Tax Revision petitions, being Tax Case (Revisions) Nos. 1667,1669, 1857 of 2008 and 13 of 2009 before the High Court. The High Court, by its impugned common order dated 05.12.2013, has partly allowed the said petitions while deciding the issues pertaining to penalty in favour of the assessee but, has dismissed the same in relation to the levy of purchase tax under Section 7-A of the Act. In regard to the issue of purchase tax, the High Court relied on the reasoning given in its earlier order dated 10.09.2004 for assessment year 1996-97, which we have taken note of hereinbefore. The assessee has, therefore, assailed the said common order dated 05.12.2013 insofar as the High Court has confirmed its liability towards purchase tax under Section 7-A of the Act for the aforesaid assessment years 1986-87, 1987-88, 1988-89 and 1989-90 in Civil Appeal Nos. 4416-4419 of 2014.

70. What has been discussed and held hereinbefore in relation to order dated 10.09.2004, equally applies to this set of appeals too. Therefore, the High Court has rightly decided the issue of levy of purchase tax against the assessee in its order dated 05.12.2013 and no case for interference at the instance of the assessee is made out.

71. Accordingly, Civil Appeal Nos. 4416-4419 of 2014 filed by the assessee stand dismissed.

…….J.
(A.M. KHANWILKAR)

…….J.
(DINESH MAHESHWARI)

New Delhi,
Dated: 29th June, 2020**.**