

**A****HINDUSTAN BROWN BOVERI LTD. ETC.**

v.

**STATE OF GUJARAT***April 7, 1981***[R. S. PATHAK AND E. S. VENKATARAMIAH, JJ.]***Gujarat Sales Tax Act, 1969—Sections 16 and 49(2)—Scope of.*

Exercising power under section 49(2) of the Gujarat Sales Tax Act, 1969, the State Government exempted the entire tax payable on sale of goods (other than prohibited goods) by a registered dealer to an electrical undertaking, certified for the purposes by the Commissioner; if the electrical undertaking, furnished to the selling dealer a certificate in the requisite form that the goods purchased were required for the generation or distribution of electricity by the undertaking. But according to section 16 of the Act where a dealer has purchased any taxable goods under a certificate given by him under section 13 and has used the goods for a purpose contrary to such certificate, such dealer becomes liable to pay tax on the purchase price of the goods.

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The appellants who were recognised dealers purchased raw materials of taxable goods from registered dealers by furnishing a certificate in Form 19 by reason of which no sales tax had been paid by them. After manufacturing the goods with raw materials, they sold part of the manufactured goods to an electrical undertaking in the State against 'C' forms to claim exemption from tax on them by virtue of a notification issued under section 49(2) of the Act. No tax had been paid on sales effected by them in favour of the electrical undertaking.

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On the ground that the undertaking furnished in Form 19 had been violated, the Sales Tax Officer levied purchase tax under section 16 on the raw-materials purchased by the appellants.

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The appellants were unsuccessful in their appeals before the Assistant Commissioner as well as before the Sales Tax Tribunal. The High Court answered the references against the assesseees and in favour of the Revenue.

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It was contended on behalf of the appellants (1) that the goods manufactured by them not having been goods the sale or purchase of which had been exempted from tax by inclusion in Schedule I they could not be treated as having infringed the terms of Form No. 19 notwithstanding the fact that particular sales made by them to the electrical undertaking were exempted from payment of tax (2) the condition in Form 19 became satisfied immediately on the

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**A** goods being manufactured by the appellants as at that stage the goods were really taxable and that a subsequent event of sale to the electrical undertaking could not be considered as a violation of the said condition and (3) in a transaction of sale if the sale was exempted from tax it could not be said that the purchase was also exempted.

Dismissing the appeal,

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HELD : (1) The expression "taxable goods" defined in section 2(33) of the Act means goods other than those on the sales or purchase of which no tax is payable under section 5 and section 49 or a notification issued thereunder. By this definition the dichotomy that existed between "taxable goods" and "taxable events" in the now repealed Act (The Bombay Sales Tax Act, 1959 which was in force in the State before the present Act) had been given a go by. It may be

**C** that section 5 and Schedule I refer to goods only but section 49 deals with only taxable events which result in the exemption from payment of tax on the happening of the conditions mentioned therein or in the notification even though the goods in question do not come under Schedule 1. [446 F-H]

(2) To find out whether the goods are taxable goods or not one has to wait till the disposal of the goods by the dealer in view of the definition of the said expression which takes away goods sold under circumstances attracting section 49 from the scope of the meaning of that expression. [447 A]

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(3) If the sale is exempt from tax under section 49 the goods sold would not be taxable goods. [447 B]

**E** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1185 of 1979,

Appeal by Special Leave from the Judgment and Order dated 15.12.1978 of the Gujarat High Court in Sales Tax Reference No. 24 of 1978.

**F** AND

Civil Appeal No. 1187 of 1979.

Appeal by Special Leave from the Judgment and Order dated 27.11.1978 of the Gujarat High Court in Sales Tax Reference No. 11 of 1977.

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*K. H. Kaji, T. Sridharan, R. D. Pathak, Miss C. K. Sucharita and Mrs. S. Bhandare* for the Appellant in both the Appeals.

**H** *S. T. Desai and M. N. Shroff* for the Respondent in both the Appeals.

The Judgment of the Court was delivered by

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VENKATARAMIAH, J. Since a common question of law is involved in these two appeals by special leave, they are disposed of by this common judgment.

The appellant in Civil Appeal No. 1185 of 1979 is M/s. Hindustan Brown Boveri Ltd., a company engaged in the business of manufacturing certain goods which are used in electrical undertakings for the purpose of generating and distributing electrical energy. It is registered as dealer under the provisions of the Gujarat Sales Tax Act, 1969 (Gujarat Act No. 1 of 1970) (hereinafter referred to as 'the Act'). For the purpose of manufacturing the goods, the appellant which was also a recognised dealer under the Act purchased raw materials during the period between May 6, 1970 and March 31, 1971 after furnishing a certificate in Form No. 19 as provided under section 13(1)(B) of the Act read with Rule 24(4) of the Gujarat Sales Tax Rules, 1970 (hereinafter referred to as 'the Rules') framed under the Act stating that the raw materials purchased by it would be used in manufacturing taxable goods which would be sold by it in the State of Gujarat. Some part of the goods manufactured by the appellant were sold to a certain electrical undertaking in the State of Gujarat against 'C' forms in order to claim exemption from payment of tax on the said sales under the Act by virtue of a notification issued under section 49(2) of the Act exempting the goods sold to electrical undertakings for being used in generation and distribution of electrical energy. On coming to know of the said sales, the Sales Tax Officer, who was the assessing authority under the Act levied purchase tax under section 16 of the Act on the raw materials purchased by the appellant on the ground that the undertaking given in Form No. 19 had been violated. The appeals filed by the appellant before the Assistant Commissioner of Sales Tax and the Gujarat Sales Tax Tribunal against the said levy were unsuccessful. Thereafter at the instance of the appellant the Tribunal referred the following question of law to the High Court of Gujarat under section 69 of the Act :—

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“Whether on the facts and in the circumstances of the case, and on a correct interpretation of sub-section (33) of section 2 of the Gujarat Sales Tax Act, 1969 the Tribunal was right in deciding that the applicant was liable to pay purchase tax under section 16 of the Gujarat Sales Tax Act, 1969 on the ground that certain electric goods manufactured

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- A** out of raw materials etc. purchased against declaration in Form 19 were sold to Gujarat State Electricity Board against declarations in Form C prescribed in Entry 5 of the Government Notification issued under section 49 of the Gujarat Sales Tax Act, 1969 ?”
- B** The appellant in Civil Appeal No. 1187 of 1979 is M/s. Elecon Engineering Co. Ltd. which is engaged in manufacturing heavy machinery and gear conveyers. It is also a recognised dealer under the Act. Like the appellant in Civil Appeal 1185 of 1979, this appellant also purchased raw materials by furnishing certificates in Form No. 19 and later on sold a part of the goods manufactured by it to a certain electrical undertaking against Form No. ‘C’ and claimed exemption under the notification issued under section 49(2) of the Act. In this case also the Sales Tax Officer levied purchase tax under section 16 of the Act for violation of the undertaking given in Form No. 19. The appeals to the Assistant Commissioner of Sales Tax and the Gujarat Sales Tax Tribunal failed. Thereafter
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- D** at the instance of the appellant, the Gujarat Sales Tax Tribunal referred the following question for the opinion of the High Court of Gujarat :—

**E** Whether on the facts and in the circumstances of the case, the Tribunal is justified in holding that the sales of machineries and conveyers manufactured by the applicant to an electrical undertaking against Form ‘C’ under Entry 5 of the Government Notification issued under section 49 of the Gujarat Sales Tax Act, 1969 resulted in the breach of the declarations in Form 19 as the goods so manufactured and sold did not amount to manufacture of taxable goods ?”

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**G** It is seen from the two questions referred to above that they are substantially the same. The High Court answered the said questions in favour of the Revenue and against the assesseees by two separate orders following its earlier decision in *M/s. Nawroji N. Vakil & Co. v. State of Gujarat*<sup>(1)</sup>. The appellants have filed these appeals against the decision of the High Court by special leave under Article 136 of the Constitution.

**H** We shall now briefly refer to the relevant provisions of the Act. Section 2(10) of the Act defines a ‘dealer’ as any person who

(1) Sales Tax Reference No. 1 of 1977 decided on November 24/27, 1978.

buys or sells goods in connection with his business and when he obtains a certificate of registration he becomes a registered dealer. Section 32 of the Act provides for the recognition of a registered dealer. It says that where during the previous or current year, the value of all taxable goods manufactured for sale by a dealer registered under section 29 or by a dealer registered under section 30, whose turnover of sales or purchases has subsequently, exceeded the limits specified in sub-section (4) of section 3, exceeds Rs. 3,000/- such dealer on application by him may be granted recognition by the Commissioner and on such recognition being granted, he becomes a recognised dealer. Section 5 of the Act says that subject to the conditions or exceptions (if any) set out against each of the goods specified in column 3 of the Schedule I to the Act, no tax shall be payable on the sales or purchases of any goods specified in that Schedule. Section 6 of the Act provides that subject to the provisions of the Act and to any rules made thereunder there shall be paid by every dealer who is liable to pay tax under the Act, the tax or taxes leviable in accordance with the provisions of Chapter II of the Act. In order to ensure that as far as possible the incidence of tax under the Act is not felt at more than one point in the series of transactions of sales and purchases of goods other than declared good in the State of Gujarat, sections 7, 8 and 10 of the Act are enacted as follows :

“7. Levy of sales tax on goods in Schedule II, Part A.—There shall be levied a sales tax on the turnover of sales of goods specified in Part A of Schedule II at the rate set out against each of them in column 3 thereof, but after deducting from such turnover,—

- (i) resale of goods on the purchase of which the dealer is liable to pay purchase tax under sec. 16.
- (ii) resales of goods purchased by him from a Registered dealer.
- (iii) sales of goods, of resales of goods to which clauses (i) and (ii) do not apply, to a Recognised dealer or to a Commission agent holding a permit who purchases on behalf of a principal who is a Recognised dealer, upon such dealer or Commission agent, as the case may be, furnishing in the circumstances and subject to the conditions specified in sub-clause (B) and item (ii) of sub-clause (C) of

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**A** sub-sec. (1) of sec. 13, a certificate as provided therein, and

**B** (iv) sales of goods or resales of goods to which clauses (i) and (ii) do not apply, to a Licensed dealer or to a Commission agent holding a permit who purchases on behalf of a principal who is a Licensed dealer, upon such dealer or Commission agent, as the case may be; furnishing in the circumstances and subject to the conditions specified in item (j) of sub-clause (A) and item (i) (a) of sub-clause (C) of sub-sec. (1) of sec. 13, a certificate as provided therein.”

**C** “8. Levy of general sales tax on goods in Schedule II Part B—There shall be levied a general sales tax on the turnover of sales of goods specified in Part B of Schedule II at the rate set out against each of them in column 3 thereof, but after deducting from such turnover,—

**D** (i) resales of goods on the purchase of which the dealer is liable to pay purchase tax under sec. 16;

**E** (ii) resales of goods purchased from a Registered dealer by a dealer who is not a Licensed dealer at the time of such purchase; and

**F** (iii) sales of goods, or resales of goods to which clauses (i) and (ii) do not apply, to a Licensed dealer, Recognised dealer or to a Commission agent holding a permit, who purchases on behalf of a principal who is a Licensed dealer or a Recognised dealer, upon such dealer or Commission agent as the case may be furnishing, in the circumstances and subject to the conditions specified in sec. 13, a certificate as provided therein.”

**G** “10. Levy of sales tax and general sales tax on goods specified in Schedule III.—(1) There shall be levied a sales tax on the turnover of sales of goods specified in Schedule III at the rate set out against each of such goods in column 3 thereof, but after deducting from such turnover,—

**H** (i) resales of goods on the purchase of which the dealer is liable to pay purchase tax under sec. 16,

(ii) resales of goods purchased by him from a Registered dealer,

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(iii) sales of goods, or resales of goods to which clauses (i) and (ii) do not apply, to a Recognised dealer or to a Commission agent holding a permit who purchases on behalf of a principal who is a Recognised dealer, upon such dealer or Commission agent, as the case may be, furnishing in the circumstances and subject to the conditions specified in sub-clause (B) and item (ii) of sub-clause (C) of sub-sec. (1) of sec 13, a certificate as provided therein, and

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(iv) sales of goods or resales of goods to which clauses (i) and (ii) do not apply, to a Licensed dealer or to a Commission agent holding a permit who purchases on behalf of a principal who is a Licensed dealer, upon such dealer or Commission agent as the case may be, furnishing in the circumstances and subject to the conditions specified in item (i) of sub-clause (A) and item (i) (a) of sub-clause (C) of sub-sec. (1) of sec. 13, a certificate as provided therein.

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(2) There shall be levied a general sales tax on the turnover of sales of goods specified in Schedule III at the rate set out against each of such goods in column 4 thereof, but after deducting from such turnover—

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(i) resales of goods purchased from a Registered dealer, by a dealer who is not a Licensed dealer at the time of such purchase; and

(ii) sales of goods, or resales of goods which clause (i) does not apply to a Licensed dealer, or Recognised dealer or a Commission agent holding a Permit who purchases on behalf of a principal who is a Licensed dealer or a Recognised dealer upon such dealer or Commission agent, as the case may be, furnishing in the circumstances and subject to the conditions specified in sec. 13 a certificate as provided therein.”

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**A** It may be noted that in the above provisions that from the turnover of sales of goods of a dealer which are otherwise taxable, the turnover of goods sold to a Recognised dealer, upon such Recognised dealer furnishing in the circumstances and subject to the conditions specified in sub-clause (B) of sub-section (1) of section 13 of the Act a certificate as provided therein becomes deductible and

**B** no tax is payable on such sales in favour of the Recognised dealer. The relevant part of section 13 of the Act reads thus :—

“13. No deduction from turnover except on a certificate.—(1) There shall not be deducted from the turnover of sales, sales of goods to a Licensed dealer, Recognised dealer or to a Commission agent holding a permit purchasing on behalf of his principal, as provided in sections 7, 8 and 10 unless—

(A).....

**D** (B) The Recognised dealer certifies in the prescribed form, that the goods other than prohibited goods sold to him are goods purchased by him for use by him as raw or processing materials or as consumable stores in the manufacture of taxable goods for sale by him; or.....”

**E** Rule 24(4) of the Rules prescribes that the certificate issued by a Recognised dealer shall be in Form No. 19. The relevant part of Form No. 19 reads :—

“.....and that the *goods purchased* by me/the said ..... and specified in bill/cash memo/invoice No..... dated.....of M/s.....address.....will be used by me/the said.....as raw/or processing materials or consumable stores in the manufacture of taxable goods viz. ....for sale by me/the said.....and that such sale shall not take place outside the State of Gujarat.

(Emphasis supplied)”

**G** The expression ‘taxable goods’ is defined by section 3(33) of the Act thus :—

**H** “2(33). “taxable goods” means goods other than those on the sale or purchase of which no tax is payable under sec. 5 or sec. 49 or a notification issued thereunder.”

Sub-section (1) of section 49 provides that subject to the conditions or exemptions, if any, specified in relation to them, the classes of sales or purchases referred in clauses (i) to (vii) of section 49(1) shall be exempt from the payment of the whole of tax payable under the provisions of the Act. Sub-section 2 of section 49 of the Act authorises the State Government to exempt any other specified class of sales by a notification published in the Official Gazette. Section 49(2) reads :—

“49. Exemptions—(1).....

(2) Subject to such conditions as it may impose, the State Government may, if it considers it necessary so to do in the public interest, by notification in the Official Gazette, exempt any specified class of sales or purchases from payment of the whole or any tax payable under the provisions of this Act.’

By a notification dated April 29, 1970 issued under section 49(2) of the Act the State Government exempted the entire tax payable on sales of goods (other than prohibited goods) by a registered dealer to an electrical undertaking, certified for the purpose by the Commissioner, if the electrical undertaking furnished to the selling dealer a certificate in Form appended to the notification stating inter alia that the goods purchased were required for the use of the generation or distribution of electrical energy by the undertaking. In view of the above notification the sales made to the electrical undertaking become exempt from payment of sales tax under the Act on the undertaking furnishing the required certificate and no tax was paid by the appellants in these two appeals on sales of goods effected by them in favour of the electrical undertaking. It is now necessary to refer to section 16 of the Act, the relevant part of which reads :—

“16. Liability to purchase tax for contravention of terms of certificate etc.—(1) Where any dealer or Commission agent has purchased any taxable goods under a certificate given by him under section 12 or 13, and

(a) contrary to such certificate, the goods are used for another purpose, or are not resold or despatched in the manner and within the period certified, or

**A** (b) on the resales in the course of inter-State trade or commerce, of the goods so purchased, no tax under the Central Sales Tax Act 1956 (LXXIV of 1956), is actually payable by him on account of any deduction admissible under any of the provisions of the said Act.

**B** then such dealer or Commission agent shall be liable to pay tax on the purchase price of the goods purchased under such certificate; and accordingly, he shall include the purchase price thereof in his turnover of purchases in his declaration or return under section 40 which he is to furnish next thereafter.

**C** (2).....

(3) the purchase tax leviable under this section in respect of any goods specified in Schedule II or III shall be the aggregate of all taxes which would have been leviable thereon but for the certificate given under section 12 or 13.

**D** (4) If any question arises whether the purchase price of goods purchased under a certificate given under section 12 or 13 is not liable to be included in the turnover of purchases of a dealer or Commission agent under this section, the burden of so proving shall be upon such dealer, or as the case may be, the Commission agent."

**E** Section 16 of the Act provides that where a dealer has purchased any taxable goods under a certificate given by him under section 13 and has used the goods for a different purpose contrary to such certificate, then such dealer shall be liable to pay tax on the purchase price of the goods purchased under such certificate and his liability has to be computed in the manner stated in that section. It is this liability of the appellants that is in dispute in these appeals.

**F** It is not disputed that the appellants are recognised dealers; that they had purchased raw materials which were taxable goods (other than prohibited goods) from registered dealers against certificates issued by them in Form No. 19; that no sales tax had been paid on sales in their favour; that they had manufactured goods by using the said raw materials that they had sold a part of the goods to an electrical undertaking notified under section 49(2) of the Act and that no tax had been paid on sales effected by them in

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favour of the electrical undertaking. It is also not disputed that in Form No. 19 the appellants had stated that the raw materials purchased by them would be used to manufacture taxable goods which would be sold inside the State of Gujarat. The question for consideration is whether the appellants had used the raw materials for another purpose contrary to the terms of Form No. 19. The contention of the Department is that the appellants had contravened Form No. 19 by manufacturing goods which were not 'taxable goods' and hence were liable to pay purchase tax on the purchase of raw materials under section 16 of the Act and the contention of the appellants is that the goods manufactured and sold by them to the electrical undertakings were 'taxable goods' and merely because they were sold to an electrical undertaking under transactions exempted by section 49(2) of the Act, the goods did not cease to be taxable goods. The solution to the question, therefore, lies on the true meaning of the expression 'taxable goods'.

Relying upon the decision of this Court in the *State of Tamil Nadu v. M. K. Kandaswami and Ors.*<sup>(1)</sup> it is urged on behalf of the appellants that the expressions 'taxable persons', 'taxable goods' and 'taxable events' are entirely different concepts in sales tax law; that the goods in question were taxable goods as any sale of those goods not covered by section 49(1) and (2) would make such sale taxable and that section 49(1) and (2) of the Act referred to only events which resulted in the exemption from payment of sales tax. It is further argued that all goods the sale or purchase of which is liable to tax under the Act are taxable goods and that goods would not be taxable goods only when their sales are exempted generally from payment of tax as provided in section 5 of the Act. It is, therefore, contended that the goods manufactured by the appellants not having been goods, the sale or purchase of which had been exempted from tax by inclusion in Schedule I to the Act, the appellants could not be treated as having infringed the terms of Form No. 19, notwithstanding the existence of the circumstance that the particular sales made by them to the electrical undertakings were exempt from payment of tax. The second ground urged on behalf of the appellants is that the condition under Form No. 19 became satisfied immediately on the goods being manufactured by the appellants as at that stage the goods were really taxable and that a subsequent event of sale to the electrical undertaking cannot be considered as having violated the said condition. The third ground urged by the appel-

(1) 36 STC 191

**A** lants is that a transaction of sale involved two facets— a sale and a purchase and if a sale is exempted from tax, it cannot be said the purchase is also exempted. On the above footing it is contended that since under section 49(2) only the tax on sale is exempted and nothing is said about the liability of the purchaser to tax, it cannot be said that the goods which were otherwise taxable had become non-taxable on being sold under a transaction which attracted section 49(2) of the Act.

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**C** We find no substance in any of the three grounds urged on behalf of the appellants for the reason that the present case is governed by the definition of the expression 'taxable goods' in section 2(33) of the Act. It is interesting to note that the Bombay Sales Tax Act, 1959 (Bombay Act No. I of 1959) which was in force in the State of Gujarat before the Act came into force and which was repealed by section 88 of the Act contained the definition of the expression 'taxable goods' in section 2(33) thereof. The expression 'taxable goods' was defined in the Bombay Act as 'goods other than those on the sale or purchase of which no tax is payable under section 5'. In the Bombay Act there was also a provision corresponding to section 49 of the Act in section 41 thereof which empowered the State Government subject to such conditions as it may impose to exempt by a notification published in the Official Gazette any specified class of sales or purchases from payment of the whole or any part of any tax payable thereunder if the State Government was satisfied that it was necessary so to do in the public interest. Still the definition of 'taxable goods' in that Act did not refer to sales exempted under section 41 thereof. But in the Act which repealed and replaced the Bombay Act the meaning of the expression 'taxable goods' has been narrowed down as section 2(33) of the Act reads— 'taxable goods' means goods other than those on the sale or purchase of which no tax is payable under section 5 (which corresponds to section 5 of the Bombay Act) and section 49 of the Act (which corresponds to section 41 of the Bombay Act) or a notification issued thereunder. By this definition, the dichotomy that is stated to exist between 'taxable goods' and 'taxable events' has been given a go by. It may be that section 5 and Schedule I refer to goods only but section 49 deals with only taxable events which result in the exemption from payment of tax on the conditions mentioned therein or in the notification issued thereunder being satisfied even though the goods in question do not come under Schedule I. Secondly one has to wait till the disposal of the goods by the dealer to find out whether the goods are taxable goods or not in view of the

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definition of the said expression which takes away goods sold under circumstances attracting section 49 from the scope of the meaning of that expression. Nor does the third ground survive for the very same reason. If the sale is exempt from tax under section 49 of the Act, the goods sold would not be taxable goods. We need not go into the question whether the purchaser in a sale under section 49 of the Act has to pay tax in these cases. This reason also disposes of an allied argument of the appellants that the possibility of any liability arising under section 50 of the Act on the breach of any condition imposed by section 49 or the notification issued thereunder would absolve the appellants of their liability to pay the tax under section 16 of the Act. Any such levy made under section 50 has not been shown to have any effect in law on the liability of the appellants under section 16.

The scheme of the Act appears to be that sales tax should be levied on goods which are not included in Schedule I at least once inside the State in the series of sales and purchases even though they may have been converted into manufactured goods and that is why Form No. 19 requires the purchaser to state that the goods will be used by him as raw or processing materials or as consumable stores in the manufacture of taxable goods for sale by him inside the State and section 16 of the Act provides that where any dealer has purchased any taxable goods under a certificate given by him under section 12 or section 13 of the Act and contrary to such certificate the goods are used for another purpose or are not resold or despatched in the manner and within the period certified or on the resales in the course of inter-State trade or commerce, of the goods so purchased no tax under the Central Sales Tax Act is actually payable by him on account of any deductions admissible under any of the provisions of that Act, then such dealer shall be liable to pay tax on the purchase price of the goods purchased under such certificate. The deliberate alteration of the definition of 'taxable goods' in the Act also is attributable to the said intention of the State Legislature.

The appellants also cannot derive any assistance from the decision of this Court in *Polestar Electronic (Pvt.) Ltd. v. Additional Commissioner, Sales Tax and Anr.*(<sup>1</sup>) as these cases are governed by

(1) 41 S.T.C. 409.

**A** the provisions of the Act and as there appears to be no similarity between the facts of these appeals and the facts involved in that case.

For the foregoing reasons, we do not find any merit in these appeals. The appeals are dismissed with costs. Hearing fee one set.

P.B.R.

*Appeals dismissed*