

M/S. DEVI DASS GOPAL KRISHAN PVT. LTD. ETC. ETC.

A

v.

STATE OF PUNJAB AND ANR. ETC. ETC.

APRIL 8, 1994

[M.N. VENKATACHALIAH, C.J. A.M. AHMADI AND B.P.  
JEEVAN REDDY, JJ.]

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*Punjab General Sales Tax Act, 1948—Section 4B—Held valid.*

*Tamil Nadu Sales Tax Act—Section 7A—Held Valid.*

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*Kerala Sales Tax Act—Section 5A—Held valid.*

*West Bengal Sales Tax Act, 1941/1954—Sections 4(2)(i)/Section  
4(b)(ii)—Held valid.*

*Bombay Sales Tax Act, 1959/Act 2 of 1990—Section 13AA—Held valid.*

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*Sales Tax—Levy of Purchase Tax by States on goods purchased by a  
dealer for use within the State for manufacture of goods and disposing of such  
manufactured goods to a place outside the State in any manner otherwise  
than by way of sales in the course of inter-State trade or commerce or in the  
course of export outside the territory of India—Held valid.*

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The dealers from the States of Punjab, Kerala and Tamil Nadu challenged the validity of Sections 4B, 4(2)(i) and Section 7A respectively in their State Sales Tax Acts by which purchase tax was sought to be levied on purchases of any goods for being used as raw material in the manufacture of goods which were disposed of by the manufacturer in a manner other than by way of sale in the State or by way of sale or purchase in the course of inter-State trade or commerce, or in the course of export from India.

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Following the decision in *Good Year's case* 1990 (2) SCC 71, the West Bengal Tribunal held that Section 4(6) (ii) and 4(2)(i) of the West Bengal Act were *ultra vires*. The State Legislature thereafter amended the provision 4(6) (ii) and substituted clause (i) in Section 4(2). This amended provision was struck down by the High Court West Bengal following the judgment in *Good Year*.

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A Similarly, after the judgment in *Good Year's* case holding that Section 13AA of the Bombay Sales Tax Act, 1959, was beyond the competence of the State Legislature, an Amendment Act was passed substituting Section 13AA. Writ Petitions filed by various dealers challenging the new provision were allowed by the High Court of Bombay. Hence appeals were filed by the States of West Bengal and Maharashtra.

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The dealers contended that the reasoning and approach adopted and conclusion arrived at in *Good Year* is the correct one that the decision in *Hotel Balaji* needed re-consideration, that the decision in *Hotel Balaji* being in conflict with *Mukerian papers*, these matters should be placed before a larger bench to resolve the conflict between *Hotel Balaji* and *Mukerian Papers*, that the text of taxable event adopted in *Good Year* is correct whereas the ratio in *Hotel Balaji* has the effect of taxing the despatch of manufactured goods though purporting to tax the purchase of raw material, that the nexus, if any, between the purchase of raw material and the point of levy is absent where the tax is levied at the stage of despatch of manufactured goods beyond the state and that there can be no levy on non-existent goods.

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Dismissing the writ petition and appeals by the dealers and allowing the appeals filed by the States, this Court

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HELD : 1. Section 4B of the Punjab Act is in substance similar to Section 9(1)(b) of Haryana Sales Tax Act. Validity of Section 4B of the Punjab Act is sustained. It cannot be said to be beyond the competence of the State Legislature. [423-D]

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2. Section 5B of the Kerala Act and Section 7A(1) of the Tamil Nadu Act are similar to Section 6A of the A.P. Act which has been upheld in *Hotel Balaji*. Their validity is sustained. [424-C]

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3. Section 4(2)(i) of the West Bengal Sales Tax Act, 1941 and section 4(6) (ii) of the Amended Act of 1954 are valid. [425-C; 426-F]

*Rasoi Limited v. State of West Bengal and others*, (1991) 80 STC 356, reversed.

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*Chloride Industries Ltd. v. Commissioner of Commercial Taxes, Government of West Bengal and others*, overruled.

4. Section 13AA as substituted by the Bombay Sales Tax (Amendment) Act 2 of 1990 is perfectly valid and competent piece of legislation.

[427-A-E]

5. There is no conflict between *Hotel Balaji and Mukerian Papers*. The law laid down in *Good Year* does not represent the correct view of law.

[426-F]

*Hotel Balaji & Ors. v. State of A.P. & Ors.*, (1993) 88 S.T.C. 981, relied on.

*Good Year India Ltd. v. State of Haryana*, [1990] 2 S.C.C. 71, disapproved.

*Mukerian Papers v. State of Punjab*, [1991] 2 S.C.C. 580, distinguished.

(The Court observed that the opinion pertains to the provision which are subject matter before the Court. However, it was observed that if the provision in the other statutes are similar, those cases will be governed by the ratio of this decision). [427-G]

CIVIL APPELLATE JURISDICTION : Writ Petition (C) No. 1732 of 1981 etc. etc.

(Under Article 32 of the Constitution of India.)

Altaf Ahmad, Additional Solicitor General, Raja Ram Aggarwal, S.K. Bagga, Anil B. Divan, Santosh Hegde, T. Ramachandran, G. Sarangan, Harish N. Salve, K.M. Reddy, Ms. Priya Hingorani, Ms. Indu Malhotra, V. Subramanian, V.J. Francis, S.K. Jain, S.C. Gupta, Ms. Shirin Jain, S.R. Agrawal, A.T. Patra, Ms. Bina Gupta, Gautam Khaitan, for OP khaitan & Co. Suman J Khaitan, Darshan Singh for Khaitan & Co. S.M. Madhav, A.S. Bhasme, R.S. Yadav, G.K. Bansal, Ravinder Narian, S. Sukumaran, for JBD. Ms. Radha Rangaswamy and S. Balakrishnan for the appearing parties.

The Judgment of the Court was delivered by

**B.P. JEEVAN REDDY, J.** Leave granted in the Special leave Petition.

In *Goodyear India Limited v. State of Haryana*, [1990] 2 S.C.C. 71, a Bench of this Court comprising Sabyasachi Mukharji and S. Ranganathan, JJ. declared Section 9(1)(b) of the Haryana General Sales Tax Act, 1973

- A *ultravires* the powers of the State Legislature insofar as it imposed a tax on the despatch of goods outside the territory of the State. It was held that "the tax and despatch of goods outside the territory of the State certainly is in the course of inter-state trade or commerce and, in other words, amounts to imposition of consignment tax" Section 9(1)(b) levied purchase tax on goods purchased by a dealer who used them in the manufacture of other goods and disposed of such manufactured goods to a place outside the place 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. The said tax was also leviable in a case where
- C the manufactured goods were disposed of within the State otherwise than by way of sale in the State. Section 13AA of the Bombay Sales Tax Act, 1959 also came up for consideration in the same decision. Section 13AA provided that where a dealer purchased goods and used such goods in the manufacture of taxable goods and despatched the goods so manufactured to his own place of business or to his agent's place of business situated
- D outside the State within the territory of India, such dealer shall pay an additional purchase tax at the rate of two paise in the Rupee on the purchase price of the goods so used in the manufacture. The Division Bench held that the said provision is equally beyond the legislative competence of the Maharashtra Legislature inasmuch as it purported to levy a
- E consignment tax.

- F Relying upon the decision in *Goodyear*, dealers from various states challenged the validity of similar provisions in their respective enactments, all of which were referred to a three-Judge Bench. They were posted for hearing before a Bench comprising S. Ranganathan, V. Ramaswami, JJ. and one of us (B.P. Jeevan Reddy, J.). Having regard to the constraint of time, the bench confined its attention only to the relevant provisions in three enactments, viz., Section 15-B of the Gujarat Sales Tax Act, Section 3AAAA of the U.P. Sales Tax Act and Section 6-A of the Andhra Pradesh General Sales Tax Act, delinking the matters relating to other State enactments. The delinked matters were directed to be heard separately. Two opinions were delivered in the batch of cases heard by the Bench (reported in *Hotel Balaji & Ors. v. State of Andhra Pradesh & Ors.*, (1993) 88 S.T.C. 98). One opinion was delivered by one of us (B.P. Jeevan Reddy, J.) speaking for himself and V. Ramaswami, J. In this opinion, it was held that
- H the decision in *Goodyear* declaring the relevant provisions in Haryana and

Bombay Acts as outside the legislative competency of respective State Legislatures is not correct in law. It was held that the said provisions in both the enactments were perfectly competent, valid and effective. On that reasoning, the relevant provisions in Gujarat, Uttar Pradesh and Andhra Pradesh enactments were held to be perfectly valid and effective. S. Ranganathan, J., in his separate opinion, agreed that the provisions in the said three enactments were perfectly valid. The learned Judge recalled his observations in his concurring opinion in *Goodyear* and observed that the particular view-point presented in *Hotel Balaji* was not presented in *Goodyear* and that on reconsideration, he finds the reasoning in support of the validity of the provisions more persuasive. The learned Judge said :

"This larger concept namely, that these various alternatives are not set out in the section with a view to fasten the charge of tax at the point of use, consumption, manufacture, production and consignment or despatch but in an attempt to make clear that what is sought to be levied is a tax on raw materials on the occasion of their last purchase inside the State had not been projected before, or considered by us. *I am inclined now to think that this is an approach that basically alters the parameters and removes the provision from the area of vulnerability.*"

(Emphasis supplied)

The matters relating to other States have now come up before us. They relate to Punjab, Tamil Nadu, Kerala, West Bengal and Bombay. The main contention of the counsel for the dealers is that the reasoning and approach adopted and conclusion arrived at in *Goodyear* is the correct one. Counsel faulted the reasoning and conclusion in *Hotel Balaji* and asked for its reconsideration. Counsel submitted that the decision in *Hotel Balaji* is also contrary to the reasoning in *Mukerian Papers v. State of Punjab*, [1991] 2 S.C.C. 580, a decision rendered by Bench of three-Judges. It is argued that the decision in *Mukerian Papers* squarely affirms the decision in *Goodyear*. For this reason, it is submitted, these matters must be placed before a larger Bench to resolve the conflict between *Hotel Balaji* and *Mukerian Papers*. It is urged that the test of taxable event adopted in *Goodyear* is the correct one whereas the ratio of *Hotel Balaji* has the effect of taxing the despatch of manufactured goods though purporting to tax the purchase of the raw material. The nexus, if any, between the purchase of

A raw material and the point of levy, it is submitted, is absent where the tax is levied at the stage of despatch of manufactured goods beyond the State. There can be no levy on non-existent goods, it is contended further.

B *Mukerian Papers* was decided by a Bench comprising Ranganathan Misra, C.J., and two of us, M.N. Venkatachaliah and A.M. Ahmadi, J. The only contention before the Bench was that the point arising therein was concluded by *Goodyear* and the Bench agreed with the said contention in the facts of that case. The correctness of *Goodyear* was not questioned before the Bench which fact was expressly recorded in the judgment. There was, therefore, no occasion for the Bench either to affirm or dissent from the decision in *Goodyear*. This aspect has been dealt with in Para 101 of the decision in *Hotel Balaji* and we agree with it. Accordingly, we see no conflict between *Hotel Balaji* and *Mukerian Papers*.

D Now coming to the merits of the contention, we are of the considered opinion that there is no reason to take a view different from the one taken in *Hotel Balaji*. All the contentions urged now have been considered and dealt with in the said decision. In our opinion, the approach adopted in *Goodyear* does not accord with the scheme, intendment and language of the relevant provisions of the Haryana and Bombay Acts, and cannot be accepted.

E The challenge in this batch is to Section 4-B of the Punjab General Sales Tax Act, Section 7-A of the Tamil Nadu Sales Tax Act, Section 5-A of the Kerala Sales Tax Act, Sections 4(2)(i) and 4(6) (ii) of the West Bengal Sales Tax Acts, 1941 and 1954 respectively and Section 13AA of the Bombay Sales Act. The sole basis of the attack on the said provisions is the reasoning in and ratio of *Goodyear*. No separate arguments are addressed each provision-wise. Even so, it would be appropriate to notice briefly the relevant provisions in each State enactment.

Section 4-B of the Punjab General Sales Tax Act, 1948 reads thus :

G "Section 4-B : Levy of purchases tax on goods - where a dealers who is liable to pay tax under this Act purchases any goods other than those specified in Schedule 'B' from any source and :-

H (i) Uses them within the State in the manufacture of goods specified in Schedule 'B' or

(ii) Uses them within the State in the manufacture of any goods, other than those specified in Schedule 'B' and sends the goods so manufactured outside the State in any manner other than by way of sale in the course of inter-state trade or commerce or in the course of export out of the territory of India, or A

(iv) sends them outside the State other than by way of sale in the course of inter-state trade or commerce or in the course of export out of the territory of India and no tax is payable on the purchase of such goods under any other provision of this Act, there shall be levied a tax on the purchase of such goods at such rate not exceeding the rate specified under sub-section (1) or Section (5) as the State Government may direct." B C

(Extracted from Para 7 of Writ Petition No. 1732 of 1981)

It is evident that Section 4-B of the Punjab Act is in substance similar to Section 9(1)(b) of the Haryana Sales Tax Act. For the reasons given hereinabove, the validity of Section 4-B is sustained. It cannot be said to be beyond the legislative competence of the State Legislature. D

Section 5-A of the Kerala General Tax Act read thus :

"5A levy or 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 section 5, and either-- E

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

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

(c) despatches them to any place outside the state except as a direct result of sale or purchase in the course of interstate trade or commerce shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on the taxable turnover relating to such purchase for the year at the rates mentioned in Section 5. H

A (2) Notwithstanding anything contained in sub-section (1), 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 section 5, shall not be liable to pay tax under sub-section (1) if his total turnover for a year less than one lakh rupees;

B Provided that where the total turnover of such dealer for the year in respect of the goods mentioned in clause (i) of sub-section (1) of section 5 is not less than fifty thousand rupees, he shall be liable to pay tax on the taxable turnover in respect of those goods.

C (3) Omitted as unnecessary."

It is evident that Section 5-B of the Kerala Act broadly corresponds to Section 6-A of the Andhra Pradesh General Sales Tax Act, which has been upheld in *Hotel Balaji*. For the reasons given hereinabove, the validity of Section 5-A is also sustained.

D Section 7-A of the Tamil Nadu Sales Tax Act reads thus :

E "7-A. Levy of purchase tax.—(1) Every dealer who in 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 section 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

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

G (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 of aforesaid at the rate mentioned in section 3, 4 or 5 as the case may be, whatever be the quantum of such turnover in a year.

H 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 one lakh rupees. A

Sub-sections (2) and (3) are omitted as unnecessary." B

It is evident that Section 7-A(1) of the Tamil Nadu Act is similar to Section 6-A of the Andhra Pradesh General Sales Tax Act. Accordingly, the attack upon its constitutionality is liable to fail.

In West Bengal, the purchase tax is levied by Section 4(6)(ii) of the Bengal Finance (Sales Tax) Act, 1941 and Section 4(2)(i) of the West Bengal Sales Tax Act, 1954 which read thus: C

"4(6)(ii) — Every dealer, who has become liable to pay tax under sub-section (1) or sub-section (2) or sub-section (4) of this section or sub-section (3) of section 8 and is registered under this Act, shall, in addition to the tax referred to therein, be also liable to pay tax under this Act on all his purchases from — D

(i).....

(ii) a registered dealer, to whom a declaration referred to in the proviso to clause (bb) of sub-section (1) of section 5 has been or will be furnished by him respect of sales referred to in sub-clause (i) or sub-clause (ii) of the said clause, of goods purchased against such declaration, and used by him directly in the manufacture of West Bengal, of goods or in the packing of of such goods, when such manufactured goods are transferred by him to a place outside West Bengal or disposed of by him, otherwise than by way of sale in West Bengal. E F

S.4(2)(i) — A dealer to pay tax under sub-section (1) availing himself of the benefit under section 23A by furnishing a declaration referred to in the proviso thereto shall, in addition to the tax payable under sub-section (1), be liable to pay tax under this Act, — G

(i) on all such purchases against the declaration issued or to be issued by him goods required for use by him directly, in manufacturing, making, processing or packing in West Bengal of notified H

A commodities, when such notified commodities are transferred by him to a place outside West Bengal or disposed of by him otherwise than by way of sale in West Bengal."

B Following the decision in *Goodyear*, the Tribunal held in *Rasoi Limited v. State of West Bengal & Ors.* (1991) 80 S.T.C. 356 (a decision rendered on September 11, 1990) that the aforesaid provisions were *ultravires* the powers of the State Legislature and, therefore, invalid. The State Legislature then stepped in and amended the said provisions by the West Bengal Taxation Laws (Amendment) Act, 1990 amending the said provisions. By the said (Amendment) Act, in Section 4(6)(ii) of the 1941 Act, the words beginning with "and used by him directly in the manufacture" and ending with "by way of sale in West Bengal" were omitted with retrospective effect from October 10, 1977. The said (Amendment) Act also substituted clause (i) in sub-section (2) of Section 4 of 1954 Act. The substituted clause (1) reads as follows :

D "(i) on all such purchase of goods against the declaration issued or to be issued by him."

(It is not necessary to notice the other amendments in Section 4 for the purpose of this case.)

E The amended provision was again challenged in a batch of writ petitions - *Chloride Industries Ltd. v. Commissioner of Commercial Taxes, Government of West Bengal & Ors. & batch.* By its judgment and order dated December 20, 1991, the Tribunal struck down the amended provisions as well on the very reasoning adopted in *Goodyear*. Since we have held that the law laid down in *Goodyear* does not represent the correct view of law, the appeals filed by the State of West Bengal (Commissioner of Commercial Taxes, West Bengal and Ors.) have to be allowed declaring the aforesaid provisions both before and after amendment as perfectly valid, competent and effective.

G So far as State of Maharashtra is concerned, Section 13AA which was incorporated in the Bombay Sales Tax Act, 1959 with effect from July 1, 1982 was declared to be beyond the competence of the State Legislature in *Goodyear*. With a view to get over the said judgment and its consequences, the Governor of Bombay issued the Bombay Sales Tax (Amendment) Ordinance, 1989 which was subsequently enacted into an Amendment Act

substituting Section 13AA altogether with retrospective effect from July, 1982. The substituted Section 13AA reads as follows: A

"13AA. (1) Where a dealer, who is liable to pay tax under this Act, purchases any goods specified in Part I of the Schedule C, directly or through Commission Agent, from a person who is or is not a Registered dealer and uses such goods in the manufacture of taxable goods, then, unless the goods so manufactured are sold by the dealer, there shall be levied, in addition to the Sales Tax, paid or payable, if any, or as the case may be, the purchase tax levied or leviable, if any, under the other provisions of this Act in respect of purchases of such goods, a purchase tax at the rate of two paise in the rupee on the purchase price of the goods so used in the manufacture, and accordingly the dealer shall include purchase price of such goods in his turnover of purchases in his return under Section 32, which he is to furnish next thereafter." B C

The validity of this provision was questioned in a batch of writ petitions which have been allowed by a Division Bench of the Bombay High Court by its judgment and order dated August 28, 1990 in Writ Petition Nos. 477, 587 and 924 of 1990. Civil Appeal Nos. 226-228(NT) of 1991 are preferred against the said judgment. The basis upon which the division Bench has struck down the amended Section 13AA is the one contained in *Goodyear*. For the reasons given hereinabove, these appeals are allowed and it is declared that Section 13AA as substituted by Bombay Sales Tax (Amendment) Act 2 of 1990 (which replaced Maharashtra Ordinance IX of 1989) is perfectly valid and competent piece of Legislation. Indeed, the result of our judgment would be that the decision in *Goodyear* insofar as it declared the original Section 13AA as invalid must be deemed to not correct in law. D E F

It is brought to our notice that besides West Bengal and Bombay, other States too have amended/substituted the relevant provisions with a view to neutralise the attack based on *Goodyear*. The amended provisions in these enactments have not been placed before us. It is evident that our opinion pertains to the provisions which are the subject-matter of the matters before us. However, if the provisions in the other statutes are similar, those cases will be governed by the ratio of this decision. G

For the above reasons, the writ petitions and appeals filed by the H

- A dealers, viz, W.P. 1732/81, W.P. 28/81, W.P. 1316/82, C.A. 3523-25/79, C.A. 3266/79, C.A. 649/80, S.L.P. (C)6958/94 C.A.No. 2352/94 (CC16536), C.A. 2551-61/92 and C.A. 1563/91 are dismissed. The appeals filed by the States, viz. C.A.2990/91, C.A.4807/91, C.A. 543/86, C.A.3410/84, C.A. 2125/91, C.A.1649/92, C.A.1650/92, C.A.2562/92, C.A.1941/92, C.A.2289/92, C.A.1645/92, C.A.2256/92, C.A. arising from SLP 5626/94 C.A. 5900/92, C.A.1898-99/91, C.A.4850-51/91, C.A. 3437-38/91, C.A.1646-48/92, C.A. 709-09A/91, C.A.2452/91, C.A.1389-90/91, C.A.1816/91 and C.A. 226-228/91 are allowed. No order as to costs.
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C Civil appeal No. 407 of 1993 is not concerned with the batch. Accordingly, it is delinked and may be posted for hearing in usual course.

V.M.

W.P. and Appeals filed by dealers are dismissed.  
Appeals filed by the States are allowed.