The Concept of Inter-State Sale

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The history of the levy of salestax in India begins from the year 1935 when the Government of India Act, 1935 by List II Entry 48 of the Seventh Schedule conferred power on the Provinces to impose tax on the sale of goods. The power of the Provinces to levy taxes in respect of sales of goods was not restricted to intra-Province sales. It extended to taxation of inter-Province sales also. Various problems arose as a result of this situation. Of these, the problem of multiple taxation was the most important. The same transaction of sale was taxed by various Provinces on the basis of some nexus which connected the Province with the sale in question. With a view to remove the difficulties caused by this situation to the business community and to the consuming public certain provisions were made when the Constitution of India was drafted, to place some restrictions on the power of the States to levy salestax.

Salestax is undoubtedly a means of raising revenue. But it can if employed with care and farsightedness, be used as an instrument of effective economic policy and also as a regulatory device to ensure the free flow of goods from one State to another. On the other hand, if the power to tax is used by one State solely with a view to raise revenue, without any consideration of its side effects on the economy of the nation as a whole, evil results are likely to arise. Discriminatory taxation by one State or multiple taxation of the same transaction by the different States may be the results when the power to levy tax on sale or purchase of goods is conferred on the States in the absence of any restrictive provisions in the Constitution. The history of the levy of salestax in India reveals in early stages the story of such attempt at multiple taxation of the same transaction of sale by various States.

The Government of India Act, 1935 conferred power on the Provinces to levy tax on the sale of goods. There was no provision in that Act restricting the power of taxation to intra-Province sales alone. The concept of an inter-State sale in contra-distinction with an intra-State sale was not developed during this period. The only restriction in the 1935 Act in the matter of levy of tax by the Provinces on sale of goods was the provision that no province might
discriminate against goods produced or manufactured outside the Province.¹

In exercise of the power conferred on the Provinces by the Government of India Act, 1935 the various Provinces began to enact legislations imposing tax on sale of goods. The first Province to exercise the legislative power to levy tax on sales of goods under the Government of India Act, 1935 was Central Provinces and Berar which imposed a selective sales tax by enacting the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, on the retail sales of motor spirit and lubricants. The first Province to impose a general sales tax on sale of goods in exercise of the power was Madras, which in 1939 by enacting the Madras General Sales Tax Act, 1939 introduced a scheme of general sales tax on multipoint system. The other Provinces also followed in quick succession by enacting legislations imposing sales tax.

The provinces picked out one or two ingredients of sale which took place inside the Province and made it the nexus for the levy of tax. This resulted in multiple taxation of the same transaction by various Provinces. The cumulative tax burden ultimately fell on the consuming public. Cumulative tax burden, even when non-discriminatory, has the effect of discouraging inter-State commerce and of retarding the economic integration of the nation which is a prime national need. The whole position was thus in an unsatisfactory state.

It was therefore felt that while it was necessary to give to the States the power to impose tax on sale of goods as a means of raising revenue, it was also necessary that some restrictions on the power should be imposed in the national interest. Thus certain provisions imposing restrictions on the power of the States to levy tax on sale or purchase of goods were incorporated in the Indian Constitution.

The Constitution of India conferred power on the States to levy tax on sale or purchase of goods, but with a view to avoid the anomalies that existed previously, put some additional restrictions on the States’ power to levy the tax, apart from the provisions prohibiting discriminatory taxation. The Constitution while by Entry 54 of List II to the Seventh Schedule read with Art. 246 (3) conferred on the States the power to levy tax on the sale or purchase of goods,

¹. Section 297 (1) (b)
placed by Art. 286 some limitations on the States' power to levy the tax.

In the first draft of the Constitution there were no provisions restricting the power of the States in the matter of levy of sales tax on the lines of Art. 286. Incorporation of some provisions in the draft was proposed by the Central Ministry of Finance to place some restrictions on the power of the States. It was thus that a new Article, viz, Art. 264A was sought to be incorporated in the draft of the Constitution by the Central Ministry of Finance.

Since there were differences of opinion with regard to Art. 264A in the proposed form, Dr. Ambedkar, Chairman of the Drafting Committee suggested that the Provincial Premiers should send draft amendments putting in exact words what they would like to be introduced in Art. 264A and that on receipt of such drafts the Drafting Committee would in consultation with the Finance Ministry reconsider the matter. Accordingly, the Provincial Governments of Central Provinces and Berar, Orissa, West Bengal, Bihar, Madras, Bombay, East Punjab, Assam and the United Provinces submitted draft amendments² pointing out the grounds on which they disagreed with the draft of the Finance Ministry.

The objections raised by the various Governments were of different types based on different grounds. On a consideration of the various suggestions made, Art. 264A was redrafted in a different form. The Article even in the revised form was not free from criticism. However, in October 1949, the Drafting Committee prepared a final draft. Amendments proposed to this final draft were rejected by the Constituent Assembly and the Article in the form it was moved was adopted. When the Articles in the draft Constitution were renumbered, Article 264A was renumbered as Article 286.

Classified broadly, the limitations imposed by Art. 286 were in respect of the situs of sale, in respect of the nature of the sale and in respect of the goods which were the subject matter of sale. States had no power to impose tax on sale or purchase of goods taking place outside the State, no power to tax sale or purchase taking place in the course of export or import and no power, unless otherwise provided for by Parliament, to impose tax on sale or purchase of goods taking place in the course of inter-State trade or commerce.

². For the text of these amendments please see, Shiva Rao: The Framing of India's Constitution - Select Documents (1968) Vol. IV pp. 707 to 731
Further, any State legislation imposing tax on sale or purchase of 'essential Commodities' required the assent of the President.

Since no State had the power to levy tax on sale or purchase which took place outside the State it was necessary to provide guidelines to ascertain when a sale is to be deemed to have taken place outside the State. The Explanation to Art. 286 (1) served this purpose by providing the test. The Explanation provided that a sale or purchase shall be deemed to have taken place in the State in which the goods are actually delivered as a direct result of such sale or purchase for the purpose of consumption in that State. The Explanation thus defined an outside sale by implication: it defined an inside sale and meant by implication that a sale inside one State will be outside all other States.

Thus the first restriction put on the power of the States to levy tax was the delimitation of the power of the States to levy of taxes on sales taking place within the State. In that attempt some sales, some ingredients of which took place outside the State and which therefore may be characterised as inter-State sales in a broad sense, were treated by fiction as sales within the State. At the same time there was a ban on the State-taxation of inter-State sales. The Explanation to Art. 286 (1) (a) provided that the sales shall be deemed to have taken place in the State in which goods are delivered for consumption. Clause (2) of Art. 286 at the same time prohibited, in the absence of lifting of the ban by Parliament, State-taxation of sales or purchases taking place in the course of inter-State trade or commerce. This position gave rise to sharp differences of opinion as to the true scope of the Explanation to Art. 286 (1) (a) and as to the true scope of the concepts of 'inside sales', 'outside sales' and 'inter-State sales'.

Art. 286: Controversy as to the Scope of the Limitations Imposed

In Govinda Rajulu Naidu & Co v. State of Madras,¹ the scope of Art. 286 (1) (a) and the Explanation there to came up for the consideration of the High Court of Madras. The crucial question for the consideration of the Court was whether the effect of the Explanation was to enlarge the scope of the legislative competence of the State Legislature or to restrict it. The point for decision was whether, when a contract of sale was concluded in Madras and the

3. (1952) 3 S. T. C. 405 (Mad.)
property in the goods passed in that State, the State of Madras could levy tax on the transaction of sale if the goods were actually delivered in the State of Bombay as a direct result of the sale for the purpose of consumption in the State of Bombay.

The High Court of Madras held that the effect of the Explanation to Art. 286 (1) (a) was to enlarge the scope of the legislative competence of the States and that both the State of Madras and the State of Bombay were competent to levy tax on the transaction. In the view of the High Court, the transaction was liable to be taxed by the State of Madras by virtue of Entry 54 of List II of the Seventh Schedule read with Articles 245 and 246 of the Constitution, and by the State of Bombay by virtue of the Explanation of Art. 286 (1) (a) which provided that the sale shall be deemed to have taken place in the State in which the goods are actually delivered for consumption. The effect of the Explanation to Art. 286 (1) (a) was, in the view of the High Court of Madras, to lift the limitation imposed by Art. 245 and Art. 286 (1) (a) on the power of the State Legislature to impose tax on extra-territorial sales and to permit the State to levy tax on such sales provided the sales were of the category covered by the Explanation.

The scope of Art. 286 came up for the consideration of the High Court of Bombay in United Motors (India) Ltd. v. State of Bombay. In this case the Constitutional validity of the Bombay Sales Tax Act was under attack. The contention raised in the case was that the Act, in so far as it purported to tax a transaction of sale in which the property in goods passed in Bombay but the goods were delivered in another State for purpose of consumption there, violated Art. 286 (1) (a) read with the Explanation, for it purported to tax an outside sale. The contention was accepted by the High Court of Bombay and the Bombay Sales Tax Act was struck down as violative of Art. 286 of the Constitution.

In the view of the High Court of Bombay the purport of clauses (1) and (2) of Art. 286 was to put some restrictions on the power of the States to levy tax on the sale or purchase of goods. These restrictions were that it cannot tax an outside sale, it cannot tax a sale or purchase taking place in the course of export or import, and that it cannot tax a sale taking place in the course of inter-State

4. (1953) 4 S. T. C. 10 (Bom.)
trade or commerce. The prohibition to tax an outside sale was contained in Art. 286 (1) (a) and the purpose of the Explanation in Art. 286 (1) was to state what an outside sale was. The Explanation by stating what was an inside sale, by necessary implication, stated what was an outside sale. The Explanation postulated two States, viz., a State in which under the general law the property in the goods passed and another State in which the goods were delivered for consumption and said that the sale takes place in the State in which the goods are delivered. This meant that such sale was outside all other States and those other States had no power to tax the transaction. The purpose of the Explanation was to save the consumer from multifold or cumulative imposts by providing for one single levy and the rational basis for taxing goods intended for consumption was to tax them where they were delivered for consumption. On the above construction of the Explanation in Art. 286 (1) and on the scope of Art. 286, the High Court struck down the Bombay Sales Tax Act as violative of Art. 286 (1) (a) read with the Explanation, since the Act did not exclude those sales in which the property in goods passed in Bombay but the goods were delivered outside Bombay for consumption outside.

Thus the High Courts of Madras and Bombay took two different views as to the scope of Art. 286 (1) (a) read with the Explanation thereto. In a case where the property in goods passed in Madras but the goods were delivered in Bombay for consumption there, in the view of the High Court of Madras, both Madras and Bombay were competent to levy tax on the transaction, whereas in the view of the Bombay High Court only the State of Bombay could levy tax on the transaction.

Both the above views however were in a sense narrow in so far as the scope of Art. 286 (1) was not examined in these cases exhaustively in the light of Art. 286 (2) which prohibited State-taxation of inter-State sales.

The scope of Art. 286 came up for the consideration of the Supreme Court in State of Bombay v. United Motors (India) Ltd. in appeal from the decision of the High Court of Bombay and the Supreme Court examined the scope of the Explanation in Art. 286 in a wider plane in the light of Articles 286 (2), 301 and 304. As the case involved important issues the Supreme Court permitted the
various States to intervene and argue the case. The Attorney General of India was also permitted to intervene on behalf of the Union of India. This facilitated a full argument dealing with the various aspects of the case. The case was heard by a Bench consisting of five Judges. The case was decided by majority opinion.

Two divergent views as to the scope of Art. 286 were canvassed before the Supreme Court in this case. The State of Bombay canvassed the view that the Explanation to Art. 286 (1) virtually extended the scope of State-taxation in so far as it added to the State the power to tax a transaction of sale as a direct result of which goods were delivered in the State, in addition to the transactions of sale taking place in the State as a result of transfer of property within the State. According to this view the Explanation did not by implication declare that the delivery State is the only State which can tax a transaction of sale of the type covered by the Explanation. If as a result of a sale involving States A and B the property in goods passed in State A and the goods were delivered in State B for consumption as a direct result of such sale, according to this view, both State A and State B could levy tax on the transaction.

The State of Madras urged the view that the type of transactions covered by the Explanation to Art. 286 (1) was of an inter-State character and since Art. 286 (2) prohibited levy of tax by the States on inter-State sales or purchases until Parliament lifted the ban, the States have no power to levy tax on transactions covered by the Explanation until Parliament so lifted the ban imposed by Art. 286 (2).

The Supreme Court took the view in this case that the purpose of the Explanation in Art. 286 (1) was to prescribe an easily applicable test to find out the locus of a sale in a case where two States are involved. The Explanation thus provided by a legal fiction that the State in which the goods sold or purchased are actually delivered for consumption is the State in which the sale or purchase is to be considered to have taken place. Such sale thus being an inside sale as far as the delivery State was concerned was an outside sale as far as all the other States were concerned; the delivery State alone could tax the transaction in exercise of the powers under Art. 246 (3) read with entry 54 of the Seventh Schedule.

7. The majority judgment (Patanjali Sastri C. J., Mukerjea and Gulam Hassan J.J.) was delivered by Patanjali Sastri C. J., Bhagwati J. and Bose J. wrote separate dissenting judgements.
Considering the scope of Art. 286 (2) which prohibited the levy of tax by the States on inter-state sales or purchases in the light of the Explanation to Art. 286 (1) the Supreme Court took the view that the operation of clause (2) of Art. 286 stood excluded as a result of the legal fiction enacted in the Explanation: the Explanation invested an inter-State sale or purchase with the character of an intra-State sale or purchase. The effect of the legal fiction in the Explanation, in the words of the Supreme Court, was that it “completely masks the inter-State character of the sale or purchase which, as a collateral result of such masking, falls outside the scope of clause (2)”. In the view of the Supreme Court in this case, inter-State sales or purchase which are outside the power of the States to tax were those sales and purchases involving two States and which fell outside the four corners of the Explanation.

Thus neither of the views urged by the State of Madras and the State of Bombay was accepted by the Supreme Court. The view that the State of sale as well as the State of delivery could tax the transaction covered by the Explanation was rejected by the Supreme Court for the reason that such a construction would permit double taxation of the same transaction and would result in discriminatory taxation of the same inter-State transaction. The view that neither State could levy tax on transactions covered by the Explanation was also rejected by the Supreme Court on the ground that in such a case the inter-State transactions will be free of any tax and such a position would lead to the result that local transactions are placed at a disadvantage compared to the inter-State transactions. In the view of the Supreme Court, the above construction put on the Explanation had the advantage of avoiding the above two anomalies and of placing the local trade and inter-State trade on an equal footing in so far as the delivery State could tax both the local and out-of-State dealers equally, without discrimination against either.

His Lordship Bhagwati J. wrote a separate judgment in which he disagreed with the majority view on the scope of Art. 286. Examining Art. 286 His Lordship observed that the ban imposed by the Article is in respect of the sale or purchase of goods *taking place* outside the State, in the course of export or import and in the course of inter-State trade or commerce. Broadly classified sales or purchases can be divided into two, viz. (a) sales or purchases taking place inside a State, and (b) sales or purchases taking place outside a State. Of the sales or purchases taking place inside the State two sub-categories are carved out viz., sales or purchases taking place (i) in
the course of export or import, and (ii) in the course of inter-State trade or commerce. The ban imposed by Art. 286 was on taxation of outside sales or purchases and on taxation of the inside sales or purchases if they take place in the course of export or import or in the course of inter-State trade or commerce. The scope of the Explanation was not to define an inside sale or outside sale but to invest the delivery State with the power to levy tax on the transaction. According to His Lordship Bhagwati J., the fact that the Explanation permitted the sales or purchases covered by it to be taxed by the delivery State did not take away the power of the selling State in which the property in the goods passed to tax the transaction: it was taken away not because of the Explanation but because of the ban imposed by Art. 286(2) with the result that if the ban is lifted by Parliament both the selling State and delivery State could levy tax on the transaction.

His Lordship Bose J. in his dissenting opinion took a totally different view. According to His Lordship, Art. 286 prohibited State-taxation of sale or purchase always when it takes place in the course of export or import and until the ban is lifted by Parliament when it takes place in the course of inter-State trade or commerce. The purpose of the Explanation was only to fix the situs of sale when the ban under Art. 286(2) was lifted by Parliament. The category covered by the Explanation was in fact sale or purchase taking place in the course of inter-state trade or commerce and therefore so long as the ban under Art. 286(2) was not lifted no State could tax the transaction.

Thus three different views were expressed by their Lordships of the Supreme Court who decided the case. According to the majority view the cases covered by the Explanation were transactions of intra-State nature, whereas according to the view of Bose J., it was inter-State in character. According to the view of Bhagwati J. the ban on taxation of inter-State sales was not applicable as far as the delivery State was concerned in respect of the transactions covered by the Explanation.

The scope of Art. 286 again came up for the consideration of the Supreme Court in Bengal Immunity Company Ltd. v. State of Bihar and in this case the Supreme Court overruled its decision in the United Motors Case. Four possible constructions were placed for
the consideration of the Supreme Court in this case. The first view canvassed was that Art. 286 was intended to put some ban on the power of the States to levy sales tax, that the purpose of the Explanation was only to explain an outside sale by creating a legal fiction and that the Explanation was neither an exception nor a proviso to the other clauses of Art. 286 but created only a fiction for purposes of Art. 286 (1) (a) with the result that its operation cannot be projected to Art. 286 (2) so as to give an enlarged legislative power to the delivery State in respect of transactions falling within Art. 286 (2). In other words the view canvassed was that the Explanation does not convert an inter-State sale into an intra-State sale.

According to the second view, the Explanation not only explained what an outside sale was but also fixed the situs of sale and therefore, though it by itself did not confer any legislative power on the States, did enable the delivery State to tax the transaction in exercise of the legislative power under Art. 246 (3) read with Entry 54 of List II of the Seventh Schedule.

The third view suggested was that the Explanation concerned itself with notionally fixing the situs in the delivery State alone and that it did not in any way affect the taxing power of the State in which under the general law the property in the goods passed.

According to the fourth view the Explanation concerned itself only with two types of States, viz., the State in which the property in the goods passed and the State in which the goods were delivered. The Explanation took the taxing power out of the hands of the State in which the property in the goods passed and vested the power in the delivery State. The only State which was prohibited from taxing a sale or purchase on the ground that the sale or purchase took place out of its territory was the State in which the property in the goods passed.

On a consideration of the various constructions, the Supreme Court, by majority, approved the first construction. In the view of the Supreme Court the purpose of Art. 286 was to put some restrictions on the power of the States to levy tax on sale or purchase of goods with a view to avoid multiple taxation of the same transaction by various States and thus to ensure free flow of inter-State trade. The Supreme Court held that the restrictions imposed by the Article were four and that each was separate from and independent of the others. The restrictions were imposed in clause (1) (a) from the point of view of the situs of sale, in clause (1) (b) and clause (2) from the point of view of foreign trade and inter-State trade respectively and
in clause (3) from the point of view of the importance of the goods themselves. Cases might arise where these various bans may overlap, but if a transaction was hit by any one ban the State could not levy tax on the transaction. The court therefore held that the Explanation in Art. 286 (1) (a) could not be projected to Art. 286 (2) with the result that if a sale or purchase occurs in the course of inter-State trade or commerce, even if it is covered by the Explanation in Art. 286 (1) (a) no State could tax the transaction until Parliament lifted the ban under Art. 286 (2). The Supreme Court, thus over-ruled its earlier decision in the *United Motors Case*.

According to the majority view of the Supreme Court in the *Bengal Immunity Case* the Explanation in Art. 286 (1) (a) did not have the effect of converting an inter-State sale or purchase into an inter-State sale or purchase. But the question as to what exactly was the scope of the expression “sale or purchase in the course of inter-State trade or commerce” was not considered by the Supreme Court in this case.

The majority decision in the *United Motor case* was anomalous in so far as Art.286 which was a provision imposing a legislative prohibition was construed as one conferring legislative sanction. Further, if the Explanation by fixing the situs did convert inter-State transactions into intra-State ones, in so far as the same result should follow when the situs in respect of inter-State sales not covered by the Explanation was fixed by judicial decisions, there will be no sale which can be characterised as an inter-State sale, for every sale will be an intra-State sale in the State where the situs of a sale is fixed. The decision also created a lot of trouble to the business community in so far as in effect it required the dealers to be conversant with the salestax laws of the various States, for the sales covered by the Explanation were held to be taxable by the delivery State. It also required as a result, the production of the books of accounts before the various salestax authorities of the various States for the purpose of assessment and further proceedings.

The decision in the *Bengal Immunity case* did do away with the above defects, but it raised some new problems. As per the decision inter-State sales or purchases stood completely free from any taxation. Such a position would place the retail dealers purchasing goods
for resale from sellers within the State at a disadvantage compared to the dealers purchasing goods inter-State for resale within the State. Apart from this aspect, the effect of the decision on the State-revenue was vital for it took away from the hands of the delivery States the power to tax the sales covered by the Explanation. In the view of the Supreme Court, difficulties if any, which arose from the decision were matters which could be solved by Parliament by appropriate measures.

Art. 286(2) as it originally stood: The impact of the restriction imposed

When local sales purchases are subjected to tax what would be the effect on the economic situation of a State if no tax is imposed on inter-State transactions of sale or purchase? The question may be examined with the aid of the following illustration:

Goods having a local and outside market are manufactured in State A and State B. In both the States the local sales are subjected to tax at 5 percent. The raw materials for the manufacture of goods are available in both States. The transportation charges of both the raw materials and the manufactured goods from one State to the other amount to one per cent of the value of the goods.

In such a situation when a dealer in State A sells to dealers or consumers in the State, ‘x’ quantity of goods manufactured by him, at a price of Rs. 1000/- the total amount the purchaser has to pay will be Rs. 1050/- inclusive of the taxes. The same will be the position when seller in State B sells to purchasers in State B. But when a retailer in State A purchases from the manufacturer in State B or vice versa the total amount he has to pay will be only Rs. 1010/-. A natural result of such a situation is that purchasers will be inclined to purchase goods inter-State. Such a tendency will be there in the purchase of raw materials also. When both States produce raw materials as well as manufactured goods and when both are in demand in the other State the situation may not work out any harm except that the State revenue will stand reduced to a considerable extent.

If, on the other hand, the raw materials are produced only in one State hard situations may arise. If raw materials are produced only in State A, under the above situation the local manufacturer in State A will be at a disadvantageous position compared to the manufacturer in State B. The manufacturer in State B gets ‘x’ quantity of raw materials for Rs. 1010/- (Rs. 1000/- plus transportation charge Rs. 10/-)
whereas the local manufacturer in State A gets it only for Rs. 1050/- (Rs. 1000/- plus Tax Rs. 50/-). This enables the manufacturer in State B to pay a slightly higher price for the raw material and to capture the market. A higher price for the raw material in State A is a good result but on the other side is the great defect that the local manufacturing business would become very dull.

A similar result may be there if the manufactured goods are more in demand in one State than the other. If the demand for the manufactured goods is high in State A and dull in State B, even if the manufacturers in State A and State B get the raw materials at the same rates and the manufacturing cost is the same, the manufacturer in State B will be at an advantage in the above situation because his goods will be in demand in State A due to lower price line compared to the manufacturer in State A whose price line will necessarily have to be higher if he sells in State A due to the incidence of the tax burden.

Thus a situation may arise when raw materials produced in State A may not be available for the manufacturing units in that State and the goods produced by such units may not find a local market whereas goods produced in other States may capture the local market. Such a situation will adversely affect the economic position of State A.

As a result of the decision of the Supreme Court in the Bengal Immunity Company's case a situation arose in which when the local transactions of sale or purchase were subjected to tax, inter-State transactions had to be left free without any incidence of taxation. Certain legislative measures were therefore taken by the Parliament to meet the situation, which will be discussed later.

Development of the Concept of Inter-State Sale before the Amendment of Articles 286 and 269

The ban imposed by Art. 286(1) (b) and Art. 286 (2) is on the State-taxation of sales or purchases 'in the course of' export or import and 'in the course of' inter-State trade or commerce respectively. In the tracing of the concept of inter-State sale the judicial interpretation of the expression 'in the course of' therefore becomes central. Since the expression is used in clauses (1) (b) and (2) of Art. 286 it is necessary to consider how the expression was interpreted judicially in both these contexts under Art. 286 as it stood in its original form before amendment.
In *State of Travancore-Cochin v. Bombay Co. Ltd.*\(^{11}\) the scope of the expression 'in the course of' in Art. 286 (1) (b) came up for the consideration of the Supreme Court. Four viewpoints as to the scope of the expression were presented for the consideration of the Court.

According to the first view, the exemption was limited to sale by export and purchase by import. In other words the scope of the exemption was limited to sales or purchases which occasion the export or import, as the case may be, and was not to be extended to any other sale or purchase however directly connected with those sales or purchases.

The second view canvassed was that the exemption covers not only transactions of the above type but covers also the last purchase by the exporter and the first sale by the importer so proximately and directly connected with sale by export or purchase by import as to form part of the same transaction.

As per the third view the expression 'in the course of' covers only transactions of sale or purchase during the course of transit of goods, i.e., after the goods begin to move to and before they reach the foreign destination.

The fourth view was that the expression makes the scope of the Article very wide and that it is not restricted to the point of time at which the goods are exported or imported. Transactions which precede the export or import of goods also come within the scope of the expression and are therefore exempt from the levy of tax. Thus according to this view purchases made for the purpose of export are exempt, being integral parts of the process of exporting.

The transactions involved in the case were sales which themselves occasioned the export. By holding that such sales were exempt the court rejected third of the four views suggested. But the court did not decide whether any of the other views was correct and if so which among them was the correct view, for, the case did not require a decision on the second and fourth views and even on the first view it was not necessary for the purposes of the present case to decide whether sales or purchases by export or import were the *only* transactions exempted as sales or purchases in the course of export or im-

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\(^{11}\) (1952) 3 S. T. C. 434 (S. C.)
port under Article 286(1) (b). This case is therefore authority for the proposition that irrespective of the place where the transfer of property in the goods passed, when a sale cannot be dissociated from the export without which it cannot be effectuated, i. e., where the sale and the resultant export form parts of a single transaction, the sale can be regarded as taking place 'in the course of' export and thus exempt under Article 286(1) (b).

Our Supreme Court was not agreeable to the introduction into our law of the concepts developed by the American Supreme Court under the Commerce Clause and the Import-Export Clauses of the American Constitution, since the language and scope of those clauses were different from those in Article 286 of our Constitution.

The scope of Article 286 came up again for the consideration of the Supreme Court in State of Travancore-Cochin v. Shanmuga Vilas Cashew-nut Factory. The question that arose for consideration in this case was whether in addition to the export sale and import purchase covered by the decision in State of Travancore-Cochin v. Bombay Co. Ltd. the following two categories of cases would also fall within the scope of the exemption:

a) The last purchase of goods by the exporter for the purpose of export to implement orders already received or expected to be received and the first sale by the importer to fulfil orders pursuant to which goods were imported or orders expected to be received.

b) Sales or purchases of goods effected within the State by transfer of shipping documents while the goods were in the course of transit.

The Court held that the first category was not within the exemption of Art. 286 (1) (b) whereas the second category was within the exemption, the first category being not sales or purchases 'in the course of' export. The Court observed that what is exempted under the above clause is a sale or purchase and not the 'goods' and that the words 'in the course of' denoted not only a period of time during which the movement was in progress but also postulated a connected relation. So a sale or purchase to be exempt under Clause (1) (b) of Art. 286 should be a part of or connected with the export

12. (1953) 4 S. T. C. 205 (S. C.)
13. (1952) 3 S. T. C. 434 (S. C.)
or import. The Court was of the view that the connection should be so direct that the sale and the resultant export form part of the same transaction in the sense that such sale cannot be dissociated from the export without which it cannot be effectuated. A purchase for the purpose of export being an act only preparatory to the export was not, in the view taken by the Court, an act done in the course of export. The purchase for the purpose of export and the actual export are two distinct transactions. Similar is the case of a sale after the goods have been imported.

Sales or purchases effected within the State by transfer of documents of title to the goods, during the transit of the goods from one country to another, while the goods were on the high seas, were held by the Court to be sales or purchases in the course of export or import as the case may be, for, the words 'in the course of' implied a movement and in the view of the court the movement in the course of export or import begins and ends, as the case may be, when the goods cross the customs frontier.

The conclusions arrived at by the Supreme Court in the two Travancore cases about the scope of the expression 'in the course of' in Article 286 (1) (b) if applied to the context of the words 'in the course of' in Article 286 (2) the position will be as follows:

1. Sales by export to another State and purchases by import from another State will fall within the exemption under Art. 286 (2) being inter-State transactions.
2. Purchases within the State for export to another State or sale within the State after the import of the goods from another State will not be within the protection of Art. 286 (2).
3. Sales in the State while the goods are in transit from one State to another will be inter-State sales falling within Article 286 (2).

In *Bengal Immunity Company Ltd. v. State of Bihar* His Lordship Venkatarama Ayyar in his dissenting judgement expressed the view that the cases covered by the Explanation to Art. 286 (1) (a) were not sales in the course inter-State trade and hence not hit by Art. 286 (2). In his view a sale could be said to be an inter-State sale only if two conditions concurred, viz. a sale of goods and trans-

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14. (1955) 6 S. T. C. 446 (S. C.)
port of those goods from one State to another under the contract of sale. A sale and transportation from one State to another are not sufficient to constitute the sale with an inter-State character. The transportation must be under the contract of sale itself. Therefore if A, a dealer in State B, goes to State C and purchases goods and then transports them to State B, the movement of goods from State C to State B is not in the course of inter-State sale, since the movement is not under any contract of sale. So also if A, after transporting the goods to State B sells them at State B the sale is not in the course of inter-State trade since the movement of the goods from one State to another is not under any contract of sale. Therefore in the view of His Lordship Venkatarama Ayyar, J. to constitute an inter-State sale there must be a sale at the time of transportation and the movement of goods must be under that sale. The cases of inter-State sales covered by the Explanation to Art. 286 (1) (a) were, in the opinion of His Lordship, taken out of the category of inter-State sales covered by Art. 286 (2) and stamped with an intra-State character by means of a fiction in the Explanation as to the situs of goods.

In *Mohanlal Hargovind Das v. State of Madhya Pradesh*\(^*\) the Supreme Court had to consider the question whether a sale transaction between a dealer in Madhya Pradesh and a supplier in Bombay who was also dealer in Madhya Pradesh would amount to an inter-State sale if the transaction involved movement of goods from one State to another under the contract of sale. The Court held that the sale in question was one between a person in Madhya Pradesh and another in Bombay and the transaction involved movement of goods from one State to another under the contract of sale. The fact that the Bombay supplier was also a registered dealer in Madhya Pradesh did not alter the nature of the transaction.

In *State of Mysore v. Mysore Shinning & Manufacturing Co Ltd.*\(^*\) the Supreme Court had to consider a case of sale by manufacturers of goods to exporters who subsequently exported the goods. The course of dealings involved in the transaction were briefly as follows:

The exporters obtained offers for purchase from buyers overseas. Then they entered into contracts with the manufacturers in

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15. (1955) 6 S. T. C. 687 (S. C.)
16. (1958) 9 S. T. C. 188 (S. C.)
India for the Manufacture of goods according to the specifications. The manufacturers supplied the goods to the exporter. The exporter then exported the goods to the foreign buyers with whom he had entered into contract for the sale of the goods.

The question for decision in the case was whether the sale by the manufacturers to the exporter was sale in the course of export. The Supreme Court held that only a sale that occasions an export is exempt and that the sale by the manufacturers can at best be described only as sale 'for the purpose of export'. It was held therefore that the sale in question was not one in the course of export. Applying the decision to the context of inter-State sale the position will be that if there is a sale between two persons within the State, notwithstanding the fact that the purchaser had entered into a contract with another outside the State for the supply of goods and that the goods were manufactured for that purpose according to specifications and that after purchase the goods were sent to the party outside the State in fulfilment of the pre-existing contract, the sale will not be one in the course of inter-State trade or commerce.

The Supreme Court had to consider a transaction of a different type in *J. V. Gokal & Co. (P) Ltd. v. Asst. Collector of Sales Tax (Inspection)*. The question the court had to consider in this case was whether sale by transfer of shipping documents against payment, while the goods were on the high seas amounted to a sale in the course of import. The court held that a purchase by an importer of goods when they are on the high seas by payment against shipping documents is a purchase in the course of import and that a sale by such a purchaser to another by a similar process will also be a sale in the course of import. The course of import, it was held, starts at a point when the goods cross the customs barrier of the foreign country and ends at a point in the importing country after the goods cross the customs barrier.

The scope of Art. 286 (2) again came up for the consideration of the Supreme Court in *Endupuri Narasimham and Son v. State of Orissa*.

17. (1960) 11 S. T. C. 186 (S. C.)
might be said to take place in the course of inter-State trade within the meaning of Art. 286 (2) it is essential that there must be a transport of goods from one State to another under the contract of sale or purchase and that therefore a purchase made inside a State, for sale outside the State, cannot itself be said to be in the course of inter-State trade.

According to the above view a sale or purchase in the course of inter-State trade or commerce and a sale or purchase with a view to sell the goods inter-State are different in their character. The latter category forms intra-State sales falling outside the scope of Art 286 (2).19

In State of Bihar v. Tata Engineering & Locomotive Co. Ltd, 20 the Supreme Court held that where under the terms of a contract of sale the buyer is required to move the goods from one State to another the sale is an inter-State sale. The court said that sales will be in the course of export or import or in the course of inter-State trade or commerce, as the case may be, in the following circumstances.

1. When goods which are in export or import stream are sold.
2. When the contract of sale or the law under which goods are sold require those goods to be exported or imported to a foreign country or from a foreign country, as the case may be, or are required to be transported to a State other than the State in which the delivery of goods took place.
3. When as a necessary incident of the contract of sale, goods sold are required to be exported or imported or transported out of the State in which the delivery of goods took place.

19. Reaffirmed by the Supreme Court in Himatsingka Timber Co. Ltd. v. State of Orissa (1966) 18 S. T. C. 235 (S. C.). In this case the appellant-company registered under the Orissa Sales Tax Act, held a contract for the supply of sleepers to the Sleeper Control Officer, Eastern Group, Calcutta. For this purpose it purchased sleepers from Orissa and exported it to Calcutta. The question was whether these purchases were in the course of inter-State trade. Following the above decision the Supreme Court held that a registered dealer in a State who makes purchases within the State to carry out his obligations to constituents outside the State does not make such purchases in the course of inter-State trade because those purchases are at a stage when the inter-State trade or commerce does not really commence.

20 (1971) 27 S. T. C. 127 (S. C.)
Amendment of Article 286 and the Enactment of the Central Sales Tax Act

The decision of the Supreme Court in *State of Bombay v. United Motors (India) Ltd.* resulted in the exercise of jurisdiction by the various State Governments over dealers resident in places outside the respective States, in the matter of levy of tax on sale of goods. Further, the consumers began to purchase goods from dealers in other States in order to escape taxation by either State. There was no coordination between the States, for, the exporting States had no fiscal interest in a transaction of the above type and this led to much tax evasion since the exporting States were not prepared to undertake the trouble of gathering information for the benefit of the importing States. The dealers in the various States were put to much difficulty since different States began to exercise jurisdiction over them. The whole situation was therefore unsatisfactory.

On 1st April 1953 the Government of India constituted the Taxation Enquiry Commission. The report of the Commission was published in 1955. The question of levy of sales tax and the nature of restrictions to be imposed on the power of the States in the matter of levy of sales tax was considered by the Commission. The Commission recommended that intra-State sales tax must continue to be a State tax but that inter-State sales must be the concern of the Union. Tax on those articles which when taxed during intra-State trade have a direct bearing on inter-State trade (as for example a tax on raw materials in the manufacturing State where the manufactured articles are sold inter-State), should in the opinion of the Commission, be subject to control by the Union. With a view to achieve these purposes the Commission suggested draft amendments to the Constitution.

The Commission also recommended that the Central Legislation to be enacted under the powers so conferred should impose tax on the sale or purchase of goods in the course of inter-State trade or commerce, the State machinery should be used for the levy and collection of the tax, lower rates of tax should be prescribed for the inter-State transactions between registered dealers compared to transactions between registered and unregistered dealers, goods exempted

21. *1953) 4 S. T. C. 133 (S. C.)*
under the local Act or goods subjected to lower rates of tax when sold within the State should be exempt or subject to such lower rate of tax only, when sold inter-State, and that the principles for determining when a sale or purchase takes place outside the State, outside the territory of India and in the course of inter-State trade or commerce should be embodied in the Central legislation. The Commission further recommended that no purchase tax should be levied on goods the inter-State sale of which is taxed and that goods of special importance in inter-State trade or commerce should be specified and that the power of the State to levy tax in respect of them should be controlled by providing that the States should levy only a single point tax in respect of such goods and also that the rate of tax in respect of such goods should be subject to the maximum prescribed in the Central legislation.

In 1955 the Supreme Court decided the *Bengal Immunity Company's case* in which it held that no State had the power to levy tax on inter-State transactions and that the sales falling under the Explanation to Art. 286 (1) (a) were inter-State transactions. Several States had already collected tax from non-resident dealers and in several States collection proceedings were in progress in respect of the sales covered by the Explanation to Art. 266 (1) (a) based on the decision of the Supreme Court in the *United Motors case*. In the light of the decision of the Supreme Court in the *Bengal Immunity Company's case* dealers who had already paid the tax began to claim refund. The financial positions of various States were thus likely to be affected adversely. Serious confusion and uncertainty prevailed. The Government of India therefore stepped in. The Salestax Laws Validation Ordinance, 1956 was promulgated by the President of India (which was later replaced by the Salestax Laws Validation Act, 1956), validating the levy of tax on such sales from 1-4-1951 to the date of the decision of the *Bengal Immunity Company's case*, viz., 6-9.1955.

Steps were then taken to amend the Constitution and to enact a Central legislation on the lines suggested by the Taxation Enquiry Commission. Accordingly the Constitution of India was amended by the Constitution (Sixth Amendment) Act, 1956. In the amendment the Explanation to Art. 286 (1) (a) was deleted, new clauses were

23. (1955) 6 S. T. C. 446 (S. C.)
24. (1953) 4 S. T. C. 446 (S. C.)
25. (1956) 6 S. T. C. 446 (S. C.)
substituted for clauses (2) and (3) of Art. 266 and entry 92A was introduced in the Union List (List I) of the Seventh Schedule to the Constitution empowering the Union of India to levy tax on inter-State sales or purchases. Entry 54 of the State List (List II) of the Seventh Schedule was amended. Article 269 was also amended by adding sub-clause (g) to clause (1) and clause (3) to the Article. Clause (1) (g) of Art. 269 provided for distribution of taxes collected by the Union on inter-State sales or purchases to the respective States. Clause (3) of the Article authorised Parliament to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.

Thus by these amendments taxes on sale or purchase of goods in the course of inter-State trade or commerce were brought expressly within the purview of the legislative jurisdiction of the Parliament. Parliament was also authorised to impose restrictions on the power of the State legislatures with respect to the levy of taxes on the sale or purchase of goods within the States where the goods were of special importance in inter-State trade or commerce. Parliament was also authorised to formulate principles for determining when a sale or purchase takes place in the course of inter-State trade or commerce, or in the course of import into or export out of the territory of India, or outside the State. In exercise of the powers so conferred Parliament enacted the Central Sales Tax Act, 1956.

Section 3 of the Central Sales Tax Act, 1956 laid down the principles for determining when a sale or purchase takes place in the course of inter-State trade or commerce. It provides that a sale or purchase shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase either occasions the movement of the goods from one State to another or is effected by transfer of documents of title to the goods during their movement from one State to another. Section 4 of the Act provided that subject to the provisions of Section 3 when a sale or purchase is inside a State it shall be deemed to be outside all other States and that a sale shall be deemed to have taken place inside a State if the goods are within the State at the time of contract of sale in the case of ascertained or specific goods, or at the time of their appropriation to the contract in the case of unascertained or future goods. Section 5 provided that a sale or purchase shall be deemed to take place in the course of export out of India if the sale or purchase occasions the export or is effected by transfer of documents of title to the goods.
after the goods have crossed the customs frontiers of India and that a sale or purchase shall be deemed to take place in the course of import into the territory of India if the sale or purchase occasions such import or is effected by transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

Section 6 of the Act created the charge. Section 7 provided for registration of dealers and Section 8 provided a concessional rate of tax for inter-State transactions between registered dealers and a higher rate of tax in respect of inter-State transactions between persons other than registered dealers. Section 14 of the Act declared the goods listed therein as of special importance in inter-State trade or commerce and Section 15 provided that the intra-State sale of such goods should be subject to tax under the local sales tax law only at a single stage and that the rate of tax should be subject to the maximum specified in the Section.

Thus most of the suggestions of the Taxation Enquiry Commission 1953-54 in the matter of levy of tax on inter-State transactions were given effect to by the Constitutional amendment and the enactment of the Central Sales Tax Act.

Development of the Concept during the first Decade After the Amendment of Article 286 of the Constitution.

The scope of Section 3 of the Central Sales Tax Act, 1956 came up for the consideration of the Supreme Court in *Tata Iron and Steel Co. Ltd. v. S. R. Sarkar.* The court held in this case that a sale becomes an inter-State sale within the meaning of Clause (a) of Section 3 of the Act if the movement of the goods from one State to another is under a covenant or as an incident of the contract of sale and the property in the goods passes to the purchaser otherwise than by transfer of documents of title when the goods are in movement from one State to another, and that a sale becomes an inter-State sale under Clause (b) of Section 3 when the sale is effected by transfer of documents of title during the movement of goods from one State to another. A transfer of property in goods before the commencement of the inter-State movement of the goods or after the movement has come to an end will not therefore make the sale an inter-State sale within the meaning of Clause (b) of Section 3 of the Act. Under Clause (a) of Section 3 comes cases of

sales other than those covered by Clause (b), in which there is a movement of goods from one State to another as a result of a covenant or incident of the contract of sale and the property in the goods passes in either State.

The court held that a sale can 'occasion the movement' of goods sold, only when the terms of the sale provide that the goods would be moved; in other words a sale can occasion a movement of goods only when the contract of sale so provides for the movement of the goods. The expression 'occasions the movement of goods from one State to another' in Clause (a) of Section 3 of the Central Sales-tax Act was interpreted to mean a movement as a result of a covenant or incident of the contract of sale. The words 'incident of the contract of sale' widened the concept of inter-State sale, for the expression takes within its scope obligation for movement of goods from one State to another arising from sources other than express covenants in the contract. Such obligations may be the result of Statute, or mutual understanding between the parties or even of the very nature of the transaction.

The decision of the Supreme Court in Cement Marketing Company of India (P) Ltd. v. State of Mysore 27 opened the way for the introduction of the concept of an implied covenant for the movement of the goods from one State to another, in a contract of sale, based on the facts and circumstances of the case. In this case there was no express term in the contract of sale for the movement of the goods from one State to another. The contract related to the purchase of cement. The purchase was however subject to control and hence a permit issued by the Government was necessary. The permit provided that the supply had to be made from a factory situated outside the State. Consequently there was an actual movement of cement concerned in the sales from one State to another. The question for decision was whether the movement was the result of a covenant or an incident of the contract of sale between the parties. The court held that although the contract of sale of cement did not itself contain a covenant for the supply of cement from a factory outside the State involving an inter-State movement of the goods, in so far as the contract was subject to the terms of the permit which provided that the supply had to be made from a factory outside the State, the contract between the parties must be deemed

27. (1963) 14 S. T. C. 175 (S. C.)
to have contained a covenant that the cement would be supplied from outside the State and hence the sales were inter-State in character.

In *State Trading Corporation of India Limited v. State of Mysore* the above view was reiterated by the Supreme Court. It was held in this case that even though the contract between the parties for supply of cement did not contain any specific provision that the supply had to be made from outside the State, since the supply could be made only under permits issued by Government which provided for supply from outside the State, the contract should be deemed to contain a provision for the movement of the goods from one State to another and that therefore the sale occasioned the movement of goods from one State to another with the result that the sale was inter-State in character.

The question as to how the inter-State sales were to be understood during the period after the amendment of Article 286 by the Constitution (Sixth Amendment) Act, 1956 and before the enactment of the Central Sales tax Act, (i.e. during the period from 11th September 1956 to 4th January 1957) came up for the consideration of the Supreme Court in *State Trading Corporation of India Ltd. v. State of Mysore (No. 2)*. It was held that the concept of inter-State sales during this period has to be understood in the same sense in which it was interpreted by the Supreme Court under Article 286 as it stood before the amendment.

In *Ben Gorm Nilgiri Plantations Co, v. Sales tax Officer*, the scope of Article 286 (1) (b) was considered by the Supreme Court. The question for decision in this case was whether sales of tea by auction to the agent or intermediary of a foreign buyer within the State was a sale in the course of export within the meaning of Article 286 (1) (b). The Court by majority held that the transaction of sale did not occasion the export of the goods, even though the sellers were aware that the buyers were acting as agents of foreign principals and that the buyers intended to export the goods. There was between the sale and the export no bond which justified an inference that the sale and export formed one single transaction or that the sale and export were integrally connected. Since the sellers were not concerned with the actual exportation of the goods and the sales

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28. (1963) 14 S. T. C. 188 (S. C.)
29. (1963) 14 S. T. C. 416 (S. C.)
30. (1963) 15 S. T. C. 753 (S. C.)
were intended to be complete without the export, the Court held that the sales cannot be said to have occasioned the export and that hence the sales were only sales for export and not sales in the course of export. The Court observed that a sale in the course of export predicates a connection between the sale and export, the two activities being so integrally connected with each other that the connection between the two cannot be voluntarily interrupted without a breach of the contract, or the compulsion arising from the nature of the transaction. Therefore, to constitute a sale in the course of export there must be an intention, on the part of both the parties to the transaction, to export the goods, coupled with an obligation to export and there must be a resultant actual export. The obligation to export may arise by reason of a Statute, by reason of contract between the parties, from mutual understanding or even from the nature of the transaction. A sale preliminary to export will therefore be one for export and not one in the course of export unless such sale itself occasions the export. The Court took the view that the words 'in the course of' contemplated an integral relation or bond between the sale and the actual exportation and that without such a bond between the two, the sale could not be said to have occasioned the export. The Court observed that the question whether a sale is one for export or one in the course of export will have to be determined on a correct appraisal of the facts of each case and that there is a real distinction between a sale for export and a sale in the course of export. In general where the sale is effected by the seller and he is not connected with the export which actually takes place, the sale is one for export. But where the export is the result of sale, the export being inextricably linked up with the sale so that the bond cannot be dissociated without a breach of the obligation arising out of a Statute, contract or mutual understanding between the parties arising from the nature of the transaction, the sale will have to be characterised as one in the course of export.

The Court also observed in this case that Section 5 of the Central Sales Tax Act, 1956 (which provides that a sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India) was legislative recognition of the principles laid down by the Court in the two Travancore cases\(^1\) about the true connotation of the

\(^1\) (1952) 3 S. T. C. 434 (S. C.) and (1953) 4 S. T. C. 265 (S. C.)
expression 'in the course of the export out of territory of India' in Art. 286 (1) (b) of the Constitution.

It is worth mention in this connexion that the Supreme Court had held previously that the inter-State sale defined under Section 3 (a) of the Central Salestax Act was the same as the one contemplated in Art. 286 (2) as it stood before the amendment.

The test to decide whether a sale is in the course of export or in the course of inter-state trade or commerce under Section 5 and 3 respectively of the Central Salestax Act is a common one viz., whether the sale has occasioned the movement of the goods (outside India or from one state to another, as the case may be) or whether the sale has been effected by transfer of documents of title during movement of the goods (from one country to another or from one State to another, as the case may be). The principles to be applied in both the cases being the same the judicial interpretation of the one has its direct impact and application on the other. The development of the concept of inter-State sale is therefore inextricably connected and mixed up with the development of the concept of a sale in the course of export.

In Khosla and Co. (P) Ltd. v. Deputy Commissioner of Commercial Taxes, the Supreme Court held that expression 'occasions the movement of goods' in sections 3 and 5 of the Central Salestax Act had the same meaning. This means that the tests applied to decide whether a sale is in the course of export or import can be applied with equal force in deciding whether a sale or purchase is in the course of inter-State trade or commerce, the only difference between the two transactions being that the former involves an export of goods from or an import of the goods into, the territory of India whereas in the latter is involved an export of the goods from one State to another within the territory of India.

In Khosla and Company (P) Ltd. v. Deputy Commissioner of Commercial Taxes, the question for decision of the Supreme Court was whether certain sales effected in India were sales in the course of import. The appellant, M/s Khosla and Co. had entered into contract with the Director General of Supplies and Disposals, New Delhi for the supply of certain goods. The goods were, according to the

32. Cement Marketing Company of India v. State of Mysore: (1963) 14 S.T.C. 175
33. (1966) 17 S.T.C. 473 (S.C.)
contract between the parties, to be manufactured in Belgium, imported into India, cleared from the Madras harbour and then consigned to the Railway Department Stores at Madras and Mysore. The contract also provided for the inspection of the goods at Belgium by an inspecting Officer designated as the D. G. I. S. D. London or his representative. There was provision for inspection of the goods at Madras also after their arrival. It was also provided in the contract that it was open to the consignee to reject the goods on arrival at destination if it was found that the goods supplied were not in conformity with the terms of the contract. The supplier was responsible for the safe arrival of the goods at destination. In accordance with the contract the appellant imported the goods, cleared the same from Madras Harbour and then consigned the goods to Madras and Mysore stores. The sales tax authorities at Madras treated the supply of the goods by the appellant to the Madras stores as local sales within Madras and the sales to the Mysore stores as inter-State sales. The contention of the appellant was that both the sales were sales in the course of import and were exempt from taxation.

The Court held that it was not necessary that the sale should have preceded the import in order to treat the sale as occasioning an import. The expression 'occasion the movement' in section 5(2) was held to have the same meaning as that in section 3(a) of the Central Sales Tax Act. It was also held that it was clear from the contract entered into between the appellant and the Director General of Supplies and Disposals that the goods had to be manufactured in Belgium, inspected there and imported into India for the consignee. The movement of the goods from Belgium to India was in pursuance of the condition of the contract between the appellant and the Director General of supplies and Disposals. There was no possibility of the goods being diverted by the appellant for any other purpose. On a consideration of the above circumstances the Supreme Court held that the sales took place in the course of import within the meaning of section 5(2) of the Central Sales Tax Act.

The Departure made by the Supreme Court in the Case of Khosla and Company: Khosla & Co (P) Ltd. The new Law

In the decision in Khosla and Company (P) Ltd. v. Deputy Commissioner of Commercial Taxes the Supreme Court has made
a decisive departure from the principles laid down by it on the subject in the previous cases.

In *State of Travancore-Cochin v. Bomboy Co. Ltd.* in which the Supreme Court first examined the concept of a sale or purchase occasioning an export or import, the principles were laid down in the following terms by Patanjali Sastri C. J.:

"Such sales must of necessity be put through by transporting the goods by rail or ship or both out of the territory of India, that is to say, by employing the machinery of export. A sale by export thus involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and the resultant export form parts of a single transaction. Of these two integrated activities, which together constitute an export sale, whichever first occurs can well be regarded as taking place in the course of the other."

The expression ‘a series of integrated activities’ in the above judgement was explained clearly by the learned Chief Justice in *State of Travancore-Cochin v. Shanmugha Vilas Cashew-nut Factory* as follows:

"The phrase ‘integrated activities’ was used in the previous decision to denote that ‘such a sale’ (i.e., a sale which occasions the export) ‘cannot be dissociated from the export without which it cannot be effectuated and the sale and the resultant export form parts of a single transaction’. It is in that sense that the two activities—the sale and the export—were said to be integrated”.

The court held in this case that the first sale by the importer to fulfil orders pursuant to which the goods were imported will not come within the protection of Art. 286 (1) (b). The Court said:

"The only question debated before us was whether in addition to the export-sale and import-purchase, which were held in the

35. (1952) 3 S. T. C. 434 (S. C.)
36. (1953) 4 S. T. C. 205 (S. C.)
previous decision to be covered by the exemption under clause (1) (b), the following two categories of sale or purchase would also fall within the scope of that exemption:

(1) The last purchase of goods made by the exporter for the purpose of exporting them to implement orders already received from a foreign buyer or expected to be received subsequently in the course of business, and the first sale by the importer to fulfil orders pursuant to which the goods were imported or orders expected to be received after the import.

(2) Sales or purchases of goods effected within the State by transfer of shipping documents while the goods are in the course of transit.

As regards the first mentioned category, we are of opinion that the transactions are not within the protection of clause (1) (b)."

Thus according to these decisions privity of contract between the exporter and the foreign buyer was necessary to make a sale one occasioning the export. Therefore only a sale by an exporter to a foreign buyer in pursuance of a contract between them can be said to be a sale occasioning the export. On the same principle to make a sale one occasioning the movement of goods from one State to another there must be privity of contract between the seller and the buyer; there must be a sale in pursuance to that contract and there must be a movement of the goods from one State to another in pursuance of the contract of sale.

The import of the above two decisions was explained by the High Court of Madras in Gandhi Sons Ltd. v. State of Madras, thus:

"What was characterised by the Supreme Court as an 'export sale' was one in which the assessees figured as exporters, privity having been established between them and the foreign buyer, either through direct negotiation or dealing, or through the local representatives of the latter. That certainly does not obtain here. The assessees were in no sense the exporters of these goods. The position appears to be that the three merchants in Bombay who entered in their respective contracts with the assessees were themselves the purchasers whether their
purchases were on their own behalf or on behalf of undisclosed foreign principals, between the latter of whom and the assesses there was no privity. Undoubtedly an export took place here. But in that transaction the assesses were not the sellers who exported or whose sales occasioned the export. A sale will occasion an export or there will be an export sale as understood by the Supreme Court only where the sale is to a foreign buyer with whom the local seller has privity and when as a direct result of such sale the goods are transported across the frontier”.

The principles enunciated by the Supreme Court in the above two Travancore cases were reaffirmed by it in *Ben Gorm Nilgiri Plantations Co. v. Sales Tax Officer* in the following words:

“A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted, without a breach of the contract or the compulsion arising from the nature of the transaction. In this sense to constitute a sale in the course of export it may be said that there must be an intention on the part of both the buyer and the seller to export, there must be an obligation to export, and there must be an actual export”.

The court further observed:

“It may be regarded as therefore settled law that where there are two sales leading to export—the first under which goods are procured for sale and the property in the goods passes within the territory of India and the second by the buyer to a foreign party resulting in export—the first cannot be regarded as a sale in the course of export, for a sale in the course of export must be directly and integrally connected with the export”.

Thus the position in law upto the decision of the Supreme Court in *Khosla and Company (P) Ltd. v. Deputy Commissioner of Commercial Taxes* was that in a sale or purchase which occasions the export or import two countries must be involved in the sense that there should be an export from India to another country or an import from another country into India under the contract of sale between a person in India and another in a foreign country. On the
same reasoning a sale which occasions the movement of goods inter-State should involve a movement of the goods from one State to another under the contract of sale between the seller and the buyer.

The only other category of sale or purchase in the course of export or import is that in which a sale is effected by the transfer of documents of title to the goods while the goods are on the high seas. Similarly the only other category of inter-State sales is that in which a transfer of documents of title to the goods is effected while the goods are in movement from one State to another.

Now, judged by these principles the sales by Khosla and Company to the Director General of Supplies and Disposals cannot be considered as sales in the course of import. In this case, in the sale transaction between Khosla and Company and the Director General of Supplies and Disposals, the sale was effected after the goods were cleared from the customs boundaries, i.e., after the process of import was over.

It was the purchase of the goods by Khosla and Company from the foreign supplier at Belgium that occasioned the import. In this transaction alone was there a privity of contract between a foreign seller and an Indian buyer. It was in pursuance of this contract that goods moved from the foreign country to India. In the light of the Supreme Court in *State of Travancore-Cochin v. Bombay Company Ltd.*,41 and *J. V. Gokal and Company (P) Ltd. v. Asst. Collector of Salestax*,42 the purchase by Khosla and Company from Belgium can be said to have occasioned the import. But how can it be said that the sale by Khosla and Company, after the process of import was complete, to the Director General of Supplies and Disposals was a sale in the course of import? A finding that such sale is in the course of import goes directly counter to the decision of the Supreme Court in *State of Travancore-Cochin v. Shanmugha Vitas Cashew-nut Factory*43 where it was held in clear terms that the first sale by the importer to fulfil orders pursuant to which the goods were imported were not sales in the course of import. But in *Khosla and Company (P) Ltd. v. Deputy Commissioner of Commercial Taxes*44 the Supreme Court made a departure from this position and held that the sale by

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41. (1952) 3 S. T. C. 434 (S. C.)
42. (1960) 11 S. T. C. 186 (S. C.)
43. (1953) 4 S. T. C. 205 (S. C.)
44. (1960) 17 S. T. C. 473 (S. C.)
Khosla and Company (first sale by the importer) to fulfil orders from Director General of Supplies and Disposals pursuant to which the goods were imported were sales in the course of import.

The decision of the Supreme Court in this case runs counter to the decision and the principles laid down by it in *State of Mysore v. Mysore Spinning and Manufacturing Co. Ltd* where sales of textiles, manufactured by the Company according to export specifications, to the purchaser who had entered into contract with an overseas buyer for supply of goods according to the specifications, were held to be not sales occasioning export.

The decision that the sales by Khosla and Company were in the course of import is in direct conflict with the decision of the Supreme Court in *Ben Gorm Nilgiri Plantations Co. v. Sales tax Officer* where making a clear distinction between the two sales, viz., the first transaction under which goods are procured in India for export and the second transaction under which the goods are exported by the purchaser to the foreign buyer, it was held that the first transaction was not a sale in the course of export. In the case of *Khosla and Company* there were two sales: the first between the Belgium manufacturer and Khosla and Company and the second between Khosla and Company and the Director General of Supplies and Disposals. In the latter sale both parties were in India and the sale was effected after the goods were imported into India. There was thus a hiatus between the two sales: they were distinct and mediate as in the case of the *Ben Gorm Nilgiri Plantations’ case*. But the Supreme Court arrived at a different decision in the case of *Khosla and Company (P) Ltd. v. Deputy Commissioner of Commercial Taxes*.

In deciding the case of *Khosla and Company* the Supreme Court first considered whether in order to occasion the import it was necessary that the sale should have preceded the import. In the light of the previous decisions it was held that it was not necessary that the sale should have preceded the import in order to make it one in the course of import. Then the court considered the question whether the movement of the goods from Belgium to Madras was the result of a covenant in the contract of sale between Khosla and Company

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45. (1958) 9 S. T. C. 188 (S. C.)
46. (1964) 15 S. T. C. 753 (S. C.)
47. (1966) 17 S. T. C. 473 (S. C.)
and the Director General of Supplies and Disposals or was an incident of such contract. It was held that the movement of the goods from Belgium to India was in pursuance of the conditions of contract between them, that there was no possibility of the goods being diverted by Khosla and Company for any other purpose and that therefore the sale by Khosla and Company took place in the course of import. In arriving at this conclusion the Supreme Court did not base its decision on any of the previous decisions.

The decisive departure made by the Supreme Court lies in the fact that it had consistently taken the stand up to this decision that the movement of the goods should be in pursuance of the contract between the foreign supplier and the importer in India, to make the sale one in the course of import. Similarly, a sale was treated as one in the course of export when in pursuance of the contract between the exporter and the foreign buyer the goods were exported. Any sale to the exporter was characterised as a sale for export and not as one in the course of export. Had the principles laid down in the previous decisions been applied in deciding the case of Khosla and Company the natural conclusion would have only been that it was the contract between the Belgium manufacturer and Khosla and Company that occasioned the import and that the sale by Khosla and Company to the Director General of Supplies and Disposals after the goods were imported and cleared from the customs frontier by Khosla and Company was not a sale in the course of import. Thus there is a conflict between the principles evolved in the earlier decisions and those laid down in the case of Khosla and Company.48

Applying the ratio of the decision in Khosla and Company (P) Ltd. v. Deputy Commissioner of Commercial Taxes48 to the context of inter-State transactions the position is that if a contract is entered into between two persons in State A specifying the manufacture of goods in State B and when the goods are so manufactured in State B, brought to State A and then sold in accordance with the previous contract, the sale will be one in the course of inter-State trade or commerce within the meaning of clause (a) of Section 3 of the Central Sales tax Act.

The decision in the case of Khosla and Company48 was based directly on Section 5 of the Central Sales tax Act. It may be said that the Supreme Court was free to decide the case on the basis of Section
5 without being bound by the earlier decisions made before the enactment of the Central Salestax Act. If the real purport of Section 5 of the Central Salestax Act was to state the law differently from that laid down in the previous decisions, a decision based on a proper construction of Section 5 is bound to depart from the previous decisions on the subject. The point for consideration therefore is whether the Parliament did intend in enacting Section 5 to extend the scope of a sale or purchase occasioning an export or import. The history behind the enactment of the section as well as the language used in the section clearly indicates that the Parliament had no intention to alter the law on the subject.

The Central Salestax Act was enacted in pursuance of the report of the Taxation Enquiry Commission 1953-54. In Chapter IV, para 7 of the report the Commission observed:

"In regard to foreign trade, i.e., sales which constitute import and export in terms of the country as a whole, the present position under the Constitution may be regarded as satisfactory. As interpreted by the Supreme Court, this position is briefly that those sales and purchases which themselves occasion the export or import and those sales in the State which are effected by the importer by transfer of shipping documents while the goods are still beyond the customs frontier are excluded from the salestax jurisdiction of the States. Purchases in the State by the exporter for the purpose of export and sales in the State by the importer after the goods have crossed the customs frontier are held to be not within the exemption. Hardly any State has complained about the particular provision of the Constitution which concerns this aspect. We consider the position under the Constitution to be perfectly satisfactory so far as foreign trade is concerned."

Thus in the view of the Commission the interpretation of the expression 'in the course of import or export' by the Supreme Court was satisfactory. The language used in Section 5 of the Central Salestax Act also shows that the Parliament had adopted the same principles evolved by the Supreme Court in State of Travancore-Cochin v. Bombay Company Ltd.⁴⁹ and State of Travancore-Cochin v. Shanmugha Vilas Cashew-nut Factory⁵⁰. Referring to Section

⁴⁹. (1952) 3 S. T. C. 434 (S. C.)
⁵⁰. (1953) 4 S. T. C. 205 (S. C.)
5 of the Central Salestax Act the Supreme Court itself observed in 

Bcn Gorm Nilgiri Plantations Co. v. Sal-eastax Officer

“The Parliament has under the Central Salestax Act (74 of 1956) enacted by section 5 that 'sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India'. This was legislative recognition of what was said by this Court in State of Travancore-Cochin and Others v. The Bombay Company Ltd. and State of Travancore-Cochin and Others v. Shanmuga Vilas Cash-w-nut Factory and Others about the true connotation of the expression 'in the course of the export of the goods out of the territory of India' in Article 286 (1) (b) ”.

Apart from this aspect of the matter the wording in Section 5 rules out any possibility of there being two sales which can occasion an export or import. The expression used by the Parliament in the Section is “if the sale or purchase occasions such export” and “if the sale or purchase occasions such import”. The definite article used there definitely refers to a particular sale alone. Further, it has also to be noted that the reference in the section is to a sale and not to an agreement to sell.

It was the sale to Khosla and Company by the Belgium manufacturer that occasioned the import; the agreement to sell entered into between Khosla and Company and the Director General of Supplies and Disposals cannot therefore occasion the import since no two sales can occasion an import. It has also to be noted that in all the cases referred to by the Supreme Court in the case of Khosla and Company only the immediate parties to the transaction viz., the seller and the buyer were involved and that there was no involvement of any third party with a prior agreement of sale or purchase.

The language used in Section 3 (a) of the Central Salestax Act is also on the same lines as that used in Section 5 of the Act. The section says that a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce 'if the sale or purchase' occasions the movement of goods from one State to ano-

51. (1964) 15 S. T. C. 763 (S. C.)
52. (1966) 17 S. T. C. 473 (S. C.)
ther. The expression being the same as in Section 5, it should bear the same meaning as in Section 5. The principles therefore apply with equal force in the context of inter-State sale also. The Supreme Court itself made the above position clear when it said in the case of *Khosla and Company* that the expression 'occasions the movement of the goods' in Section 3 (a) of the Central Sales Tax Act and the expression 'if the sale occasions such import' in Section 5 (2) of the Act had the same meaning.

**Later Development of the Law: from Khosla & Co to Coffee Board, Bangalore.**

The scope of the expression 'in the course of export' in Section 5 (1) of the Central Sales Tax Act came up for the consideration of the Supreme Court in *Coffee Board, Bangalore v. Joint Commercial Tax Officer.* The question for decision was whether certain sales by the Coffee Board were sales in the course of export. The Coffee Board is a statutory body functioning under the Coffee Act, 1942, which controls the sale and export of coffee. Coffee for export was selected by the Board and put to auction in which registered exporters alone could bid. According to the rules framed by the Board the coffee sold at the auction had to be exported within three months and the buyer or the buyer's agent had to export them and produce evidence of the export before the Board. There was prohibition of any local sales or other disposals, of the coffee sold at the auction, within India. If the coffee was not exported by the buyer within the stipulated period he was liable to pay heavy penalty and the goods were liable to be seized and dealt with by the Coffee Board. These were the main aspects of the rules and conditions of the sale of coffee by the Coffee Board which incorporated the terms and conditions of the sale at the export auctions. The question for decision of the Supreme Court was whether sales of the above nature effected by the Coffee Board were sales in the course of export.

It is necessary at this stage to compare the facts of the present case with the facts in *Khosla & Co (P) Ltd. v. Deputy Commr. of Commercial Taxes.* In the latter case the contract between the local parties contemplated an import into India. In the *Coffee Board's case* the reverse process was involved, viz., the contract...
between the local parties contemplated an export out of India. Whereas in the case of Khosla and Company there was an obligation on the part of the seller to import, in the Coffee Board's case there was an obligation on the part of the purchaser to export. If the sale by Khosla and Company to the Director General of Supplies and Disposals was a sale in the course of import, on the facts of the Coffee Board's Case on the same principle, the decision ought to be that the sales by the Coffee Board to the auctioneers were sales in the course of export. But the Supreme Court arrived at a different conclusion and held that the sale by the Coffee Board was not a sale in the course of export.

In deciding the case the Supreme Court relied on the previous cases. The Court observed that the provision in Section 5 of the Central Sales Tax Act gives effect to what was laid down in the two Travancore cases. These two cases emphasised the position that only sales or purchases which themselves occasion the export of the goods came within the exemption, being sales or purchases in the course of export. The other types of sales or purchases which fell within the exemption were those effected after the goods have started the journey from one country to another i.e., transactions of sale or purchase effected while the goods were on the high seas.

Observing that difficulties are likely to be felt in deciding whether a sale occasioned an export or import in cases where the sale is not so apparently connected with the export or import, the Supreme Court referred to the decision in Khosla and Company's case and said.

"In K. G. Khosla and Co. v. Deputy Commissioner of Commercial Taxes, the phrase 'in the course of import' was considered. It was held that in Section 3 of the Central Sales Tax Act the phrases 'occasions the movement of goods from one State to another' and 'occasions the import' mean the same thing. The movement, it was pointed out, must be the result of an agreement or an incident of the contract of sale, although it was not necessary that the sale should precede the import.

A more direct authority is in Ben Gorm Nilgiri Plantations Co. v. Sales Tax Officer."

55. (1970) 25 S.T.C. 528 (S. C.)
56. (1952) 3 S. T. C. 434 (S. C.) and (1953) 4 S. T. C. 205 S. C.
57. (1964) 15 S. T. C. 753 (S. C.)
It has to be noted that though the Supreme Court referred to the decision in *Khosla and Company’s Case* it considered the decision in *Ben Gorm Nilgiri Plantations Company’s Case* as a more direct authority on the issue in question.

The Supreme Court in the *Coffee Board’s case* formulated certain tests as applicable to all cases to decide whether a sale is in the course of export. The Court said:

"The phrase, ‘sale in the course of export’ comprises in itself three essentials: (i) that there must be a sale, (ii) that goods must actually be exported, and (iii) the sale must be part and parcel of the export. Therefore either the sale must take place when the goods are already in the process of being exported which is established by their having already crossed the customs frontiers, or the sale must occasion the export. The word ‘occasion’ is used as a verb and means ‘to cause’ or ‘to be the immediate cause of’. Read in this way the sale which is to be regarded as exempt is a sale which causes the export to take place or is the immediate cause of the export. The export results from the sale and is bound up with it. The word ‘course’ in the expression ‘in the course of’ means ‘progress or process of’ or shortly ‘during’. The phrase expanded with this meaning reads ‘in the progress or process of export’ or ‘during export’. Therefore the export from India to a foreign destination must be established and the sale must be a link in the same export for which the sale is held. To establish export a person exporting and a person importing are necessary elements and the course of export is between them. Introduction of a third party dealing independently with the seller on the one hand and with the importer on the other breaks the link between the two, for then there are two sales one to the intermediary and the other to the importer. The first sale is not in the course of export for the export begins from the intermediary and ends with the importer.

*Therefore the tests are that there must be a single sale which itself causes the export or is in the progress or process of export. There is no room for two or more sales in the course of export.*

57. (1964) 15 S. T. C. 753 (S. C.)
58. (1966) 17 S. T. C. 473 (S. C.)
The only sale which can be said to cause the export is the sale which itself results in the movement of the goods from the exporter to the importer.

The course of export may be established by agreement or by force of law. To be the former the agreement between the seller and the buyer must envisage an export out of India who then become an exporter and importer respectively. By force of law a person selling the goods may be compelled to sell them only in an export sale but that too is not essentially different from the first. In either case there is a seller and a buyer who by reason of the sale also become exporter and importer respectively. Any other buyer who is not himself the importer buys for export even if export ultimately results. It is to bring out these results that Parliament has recognised only two cases of sale in the course of export: (a) where the sale is effected by a transfer of documents of title to goods after the goods have crossed the customs frontiers that is to say the goods are already on the way to the importer and (b) when the sale itself causes the export to take place that is to say the exporter and importer negotiate and complete a sale which without more would result in the export of the goods. No other sale can qualify for the exemption under Section 5 (1) read with Article 286 (1) (b)”. (Emphasis added).

Thus by ruling out the possibility of two or more sales occasioning an export and by restricting the scope of a sale occasioning the export to the particular transaction of sale between the exporter and importer the Supreme Court again deviated from the position taken in the case of Khosla and Company and re-established the law as it existed upto the decision in that case. The tests to decide when a sale or purchase occasions the import should be the same in principle as those for deciding when a sale or purchase occasions an export. In the case of Khosla and Company the Supreme Court held that the sale other than the one between the exporter and importer occasioned the import. Thus according to that decision more than one sale could occasion an import. But in the Coffee Board's case the Supreme Court held that only one sale can occasion the export viz. the transaction of sale between the exporter and the importer.

60. (1970) 25 S. T. C. 528 (S. C.)
The Supreme Court held that the sale by the Coffee Board to the exporter was only a sale for export and not one in the course of export, for, in the words of the Supreme Court the test was that there should be a ‘seller and a buyer who by reason of the sale also become exporter and importer respectively’ and on this test the sale by the Coffee Board to the exporter could not be treated as a sale in the course of export. The court held clearly that it was the sale by the exporter to the foreign buyer that could be said to be in the course of export, for, in that sale alone was involved a movement of goods between an exporter and an importer. The Court said:

"Here there are two independent sales involved in the export programme. The first is a sale between the Coffee Board as seller to the export promoter. Then there is the sale by the export promoter to a foreign buyer. Of the latter sale, the Coffee Board does not have any inkling when the first sale takes place. The Coffee Board’s sale is not in any way related to the second sale. Therefore, the first sale has no connection with the second sale which is in the course of export, that is to say, movement of goods between an exporter and an importer”.

The enunciation of the principles in this case thus really runs counter to the view taken by the Supreme Court in Khosla and Company’s case and there is a swinging back of the pendulum to the position taken in the two Travancore cases. Therefore it may be said that the decision in the Coffee Board’s case set at rest the uncertainty that arose consequent on the decision in Khosla and Company’s case which had unsettled the principles enunciated in the two Travancore cases.

Applying the principle enunciated by the Supreme Court in Coffee Board’s case to the context of inter-State sale the position will be that only a sale in pursuance of which there is a movement of goods from one state to another can be characterised as an inter-State sale with in the meaning of Section 3 (a) of the Central Sales Tax Act. The only other category of inter-State sales will be the class falling under Section 3(b) of the Central Sales Tax Act, viz., those in which sales are effected, during the course of movement of the goods from one State to another, by transfer of documents of title to the goods.

61. (1966) 17 S. T. C. 473 (S. C.)
62. (1952) 3 S. T. C. 434 (S. C.) and (1963) 4 S. T. C. 205 (S. C.)
63. (1970) 25 S. T. C. 528 (S. C.)
In *State of Bihar and Another v. Tata Engineering & Locomotive Co. Ltd.* the Supreme Court had to consider the question whether sales were inter-State when under the contract of sale the buyers were required to move the goods from one State to another. The court held that the sales were in the course of inter-State trade. Referring to the previous decisions on the subject the Court observed that sales will be considered as sales in the course of export or import or in the course of inter-State trade or commerce under the following circumstances:

1. When goods which are in the export stream are sold.
2. When the contracts of sale or law under which goods are sold require those goods to be exported or imported to a foreign country or from a foreign country as the case may be or are required to be transported to a State other than the State in which the delivery of goods takes place.
3. Where as a necessary incidence of the contract of sale goods sold are required to be exported or imported or transported out of the State in which the delivery of goods takes place.

In the *Coffee Board's case*, there was a requirement that the goods sold by the Coffee Board had to be exported to places outside India, but still the Supreme Court had held in that case the sales to be not in the course of export. The decision in that case was explained by the Supreme Court in the present case as follows:

"In the *Coffee Board's case*, this court found that what was insisted on by the Coffee Board was that the coffee set apart for the purpose of the export must be exported; it was not incumbent on the purchasers at the auction to export that coffee themselves; they may do it themselves or they may sell it to somebody who may export it outside India. On that basis, this court came to the conclusion that the sales effected by the Coffee Board are not sales in the course of export; they are only sales for the purpose of export. The ratio of that decision does not bear on the facts before us. Herein under the terms of the contracts of sale, the purchasers were required to remove the goods from the State of Bihar to other States. Hence the sales with which we are concerned in this case must

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63. (1970) 25 S. T. C. 528 (S. C.)
64. (1971) 27 S T. C. 127 (S. C.)
be held to be sales in the course of inter-State trade or com-
merce”.

It is submitted with respect that on an examination of the judg-
ment of the Supreme Court in the Coffee Board’s case it will be
seen that the position was not as stated above. The purchasers at
the auction had the responsibility of exporting the goods either by
themselves or through their agents. There was no question of selling
the goods by the purchasers to any other person for the purpose
of export. To quote the very words of the Supreme Court in the
Coffee Board’s case:

“We are concerned with condition No. 26 which is headed
‘Export Guarantee’. This condition is vital in the consideration of
the questions involved in this case and may be quoted:

'26. It is an essential condition of this auction that the coffee
sold thereat shall be exported to the destination stipulated in
the catalogue of lots or to any other foreign country outside
India as may be approved by the Chief Coffee Marketing
Officer, within three months from the date of notice of tender
issued by the agent and that it shall not under any circumstance be
diverted to another destination, sold, or be disposed of, or
otherwise released in India.

The aforesaid period may, on application by the buyer, be ex-
tended by the Chief Coffee Marketing Officer in his discretion
if he is satisfied that there is good ground to do so, subject
nevertheless to the condition that as consideration for such exten-
sion, the buyer shall pay the following additional amounts to
the Board......”

The buyer is free to export the coffee either by himself or
any forwarding agent but the coffee must not be sold to the forward-
ing agents. In other words, the buyer himself arranges for the ex-
port of the coffee he has purchased at the auction and condition
No.29 imposes an obligation on the buyer to produce immediately
after shipping evidence of the export of the coffee to the Chief
Marketing Officer”. (Emphasis added).

It is clear from the above that the buyer himself had the duty
to export and that he was not free to sell it to any other person for
export. Failure to so export would subject the buyer to penalty under condition No. 30 and the goods were liable to be seized by the Coffee Board under condition No. 31 and dealt with as if it were part and parcel of Board’s coffee held in the pool stock. The decision in Coffee Board’s case cannot be distinguished therefore on the ground that there the buyers were not required to export the goods but were free to sell to another for export. But the Supreme Court so distinguished the case and held in the present case that in deciding the Coffee Boards case it did not deviate from the position previously taken.

Conclusions

Thus the principles evolved by the Supreme Court originally in State of Travancore-Cochin v. Bombay Co. Ltd. and State of Travancore Cochin v. Shanmugha Vilas Cashew-nut Factory, which were affirmed by the later decisions, were unsettled by the Supreme Court in the decision in Khosla and Company (P) Ltd. v. Deputy Commissioner of Commercial Taxes and though the decision in Coffee Board, Bangalore v. Joint Commercial Tax Officer seemed to re-establish the principles evolved originally the Supreme Court by the decision in State of Bihar v. Tata Engineering & Locomotive Co. Ltd again unsettled them. The whole position therefore remains in the same state of uncertainty that prevailed in the early stages.

The tests applied to decide whether a sale is in the course of export or import or in the course of inter-State trade or commerce being the same the decisions of the Supreme in each of the two contexts had their bearing on the other. The words used by the Parliament being ‘in the course of’ in both Section 3 and Section 5 of the Central Sales Tax Act there is no reason why the principles to be applied to both the contexts should not be the same.

The crucial point for consideration now is whether the Parliament intended that more than one sale or purchase could occasion an inter-State movement of goods or an export or import.

As per the definition of inter-State sales in the Central Sales Tax Act in Section 3, they are divided into two categories:

67. (1952) 3 S. T. C. 434 (S. C.)
68. (1953) 4 S. T. C. 265 (S. C.)
69. (1966) 17 S. T. C. 473 (S. C.)
70. (1971) 27 S. T. C. 127 (S. C.)
(1) Sale which occasions the movement of goods from one State to another.
(2) Sale effected during the movement of goods from one State to another, by a transfer of documents of title to the goods.

Similarly a sale or purchase in the course of export or import is divided into two categories in Section 5 of the Central Sales Tax Act, Viz:

(1) Sale or purchase which occasions the export or import.
(2) Sale or purchase during the movement of goods from one country to another, effected by a transfer of documents of title to the goods.

Inter-State sales are subject to tax whereas sales or purchases in the course of export or import are exempted from tax.

It is clear that any number of transactions of sale or purchase can take place, while the goods are in movement, by transfer of documents of title to the goods. But did the Parliament intend that more than one sale or purchase can 'occasion' an inter-State movement of goods or an export or import when it laid down the principles? It appears that the legislative intention was that only one sale or purchase could occasion an inter-State movement of goods or an export or import as the case may be. This view gains support from Section 6(2) of the Central Sales Tax Act, which was incorporated by Act 31 of 1958. The scheme of Section 6 of the Central Sales Tax Act is to create the charge on inter-State sale and to exempt subsequent inter-State sales involved during the course of inter-State movement of the goods. Sub-Section (1) of Section 6 creates the charge and sub-Section (2) provides that when an inter-State sale has occasioned the movement of goods or has been effected by transfer of documents of title to the goods any subsequent sale to a registered dealer effected by a transfer of documents of title to such goods shall not be subjected to tax. It may be noted that when a sale has occasioned an inter-State movement, the only other mode of inter-State sale that could be effected, in the contemplation of the Parliament, was that effected by transfer of documents of title to the goods. Since the Parliament wanted to tax only one sale among the series of inter-State sales that may be effected between registered dealers in the course of movement of goods by transfer of documents of title to the goods it provided for the exemption in Section 6(2) of the Act. If the legislative intention was that more than one sale could occasion inter-State movement of goods and would therefore be inter-State sales, it would have provided for the
exemption of the second or subsequent sales which so occasion the same inter State movement of the goods. There is no reason in such a case to limit the exemption to second or subsequent sales effected by transfer of documents of title to the goods alone.

Further, the Statement of Objects and Reasons to Act 31 of 1958 also supports the above view. Clause (ii) of the Statement of Objects and Reasons to Act 31 of 1958, said:

"(ii) The law at present provides for the taxation of all sales effected by a transfer of documents of title to the goods during a single movement from one State to another and also lays down that in respect of such sales the tax shall be collected in the States where the sales take place. Administrative difficulties have been experienced in fixing the place of sale and there is also the rigour of multiple taxation of such sales of goods in a single movement. It is now proposed to avoid this multiple taxation and levy the tax only once at the first point during a single movement of goods from one State to another and also to fix the place of sale as being in the State from which the movement of goods commenced".

If, therefore, the intention behind the introduction of sub-Section (2) to Section 6 was to avoid multiple taxation of inter-State sales involved in a single movement of goods from one State to another, if the legislative intention in enacting clause (a) of Section 3 was that more than one sale could occasion an inter-State movement of goods and would therefore be inter-State sales, the Parliament would have provided for exemption of the second or subsequent transactions of sale which occasion the same inter-State movement of the goods. The fact that this has not been done indicates the true legislative intention contained in Section 3 (a) of the Central Sales Tax Act. The wording being the same in Section 5 the same would be the intention there also; in both the contexts only one single sale could occasion the movement.

Since the law on the point has reached an unsatisfactory stage now, as we have seen, in order to avoid confusion and to settle the law clearly on the point it seems better that the Parliament should interfere now and restrict the scope of a sale occasioning the inter-State movement of goods to the very sale under which there is a movement of goods from one State to another, by amending clause (a) of Section 3 of the Act. This could be done by adding the words 'by itself' at the beginning of clause (a) of Section 3 of the Act. Similar amendment in Section 5 would settle the uncertainty with regard to sales or purchases in the course of export or import also.