2010 eGLR_HC 10005309,2010 (35) VST 173

Before the Hon'ble MR D A MEHTA, JUSTICE the Hon'ble MS H N DEVANI, JUSTICE

DEEPAK NITRITE LTD Vs. STATE OF GUJARAT - OPPONENT(S)

TAX APPEAL No: 1110 of 2009 , Decided On: 07/07/2010

Mihir Joshi, Siraj Gori, Kamal Trivedi, Sangeeta Vishen, K.H.Kaji, Kamal Trivedi, Sangeeta Vishen, Wadia Ghandy & Co., Nanavati Associates

MS. JUSTICE H.N.DEVANI

All these appeals arise out of common order dated 30th March, 2009 made by the Gujarat Value Added Tax Tribunal (hereinafter referred to as the Tribunal) in Second Appeals No.639/2005, 640/2005, 364/2005, 746/2005, 716/2007, 206/2007 and Revision Application No.26/2007 respectively.

Tax Appeals No.1112/2009 and 1113/2009 Both these tax appeals arise out of common judgment and order dated 12th May, 2009 made by the Tribunal in Second Appeals No.230/2005 and 231/2005. Tax Appeals No.2203/2009 and 2204/2009 Both these appeals arise out of common order dated 18th June, 2009 made by the Tribunal in Second Appeals No.439/2003 and 1205/2002 respectively.

Tax Appeal No.2202/2009

This appeal arises out of order dated 22nd June, 2009 made by the Tribunal in Second Appeal No.439/2003.

1. While admitting all the aforesaid appeals, except Tax Appeals No.2121 of 2009 and 2122 of 2009, the following substantial questions of law had been framed by the Court:-

(1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in confirming the levy of purchase tax under Section 15-B of the Gujarat Sales Tax Act on the purchases from a new industry, which is granted sales tax exemption by a notification issued under Section 49(2) of the Gujarat Sales Tax Act?

(2) Whether on the facts and in the circumstances of the case, the good purchased by the appellant from a new industry having sales tax exemption vide notification issued under Section 49 of the Gujarat Sales Tax Act are "taxable goods" as per Section 2(33) of the Act and thereby liable to purchase tax under Section 15-B of the Gujarat Sales Tax Act?

2. In Tax Appeals No.2121 of 2009 and 2122 of 2009 while admitting the appeal, the Court had formulated the following two substantial questions of law:

(A) Whether on the facts and circumstances of the case, the Honble Tribunal has committed an error in not taking into consideration at all the detailed written submissions made by the appellant as well as the determination orders passed by the determining authority u/s.62 of the Gujarat Sales Tax Act whereby it has been conclusively decided that the purchases made by the normal dealer from tax exempted industries is not taxable u/s.15-B of the Act?

(B) Whether the Honble Tribunal has committed error in not taking into consideration the binding nature and effect of the determination orders as held by this Honble Court in a catena of decisions which were placed on record by the learned Advocate for the appellant before the Honble Tribunal?

3. As noted hereinabove, both the aforesaid appeals along with Tax Appeal No.1110 of 2009 and other appeals also arise out of common order dated 30th March, 2009 made by the Tribunal. In those appeals also the two questions formulated in the present two appeals had been proposed. The Court had while admitting the said appeals, vide order dated 10th July, 2009 formulated the questions reproduced hereinabove in paragraph 1. However, the Court further observed as follows:

"2. Mr. Joshi learned Counsel for the appellants also states that at the time of hearing before the Tribunal the appellant had relied on the determination orders passed by the Commissioner of Sales Tax under Section 62 of the Gujarat Sales Tax Act in the case of M/s Alchemy Organics Ltd., M/s Lupin Agrochemicals India Ltd. Sealtap Chemicals Ltd., and I.P.C.L. in the said determination orders the authority had held that the purchase tax under Section 15-B cannot be imposed in respect of purchases made from the unit having exemption certificate under Section 49(2) of the said Act. It is stated that the written submissions made before the Tribunal bear this nout. It is therefore, submitted that question nos.4 and 5 also arise from the order of the Tribunal.

3. Since the judgment of the Tribunal does not refer to such an argument, we leave it open to the appellant to make a review application before the Tribunal, without prejudice to the rights and contentions in these Tax Appeals."

In the light of the aforesaid, the questions formulated at the time of admitting the appeals are substituted by the questions of law as formulated in Tax Appeal No.1110 of 2009 and cognate matters by resorting to the proviso to sub-section (4) of section 78 of the Gujarat Value Added Tax Act, 2003.

4. Since all these appeals involve common questions of law, the same were taken up for hearing together and are disposed of by this common judgment. For the sake of convenience facts obtaining in Tax Appeal No.1110 of 2009 are recorded, there being no dispute that the principal controversy is common in all the appeals.

5. The appellant is a dealer duly registered under the provisions of the Gujarat Sales Tax Act, 1969 and the Central Sales Tax Act, 1956. During the relevant period, the appellant had made purchase of raw materials from new industries, which were enjoying the benefit of sales tax exemption by virtue of notification issued by the Government under section 49(2) of the Act. The appellant was assessed by the Assistant commissioner of Sales Tax vide assessment order dated 31st January, 2003 whereby purchase tax was imposed @ 15 per cent on tax free goods purchased from new industries as also on packaging materials. Interest was also sought to be levied on the dues arising out of the purchases made by the appellant from new industries enjoying the benefit of sales tax exemption. Being aggrieved, the appellant preferred appeal before the Joint Commissioner of Sales Tax, who vide order dated 27th May, 2005 confirmed the assessment order. The appellant carried the matter in second appeal before the Gujarat Value Added Tax Tribunal (hereinafter referred to as "the Tribunal") being Second Appeal No.639 of 2005 under section 65 of the Act. The appeal was heard along with other similarly situated matters and vide a common judgment and order dated 30th March, 2009, the Tribunal held in favour of the department insofar as the liability to pay purchase tax under section 15B on purchase of goods made by the appellant and such other parties from the industries enjoying the status of sales tax exemption as the goods sold by such exempted units were generally taxable goods. However, the levy of purchase tax on packaging material was set aside.

6. It is necessary to note that the Tribunal has not recorded any independent finding but relied upon and applied its own common order in the case of M/s. Godrej Soaps Ltd. vs. The State of Gujarat, Second Appeal Nos.511 of 2003 and 706 of 2003 and cognate matters rendered on 27th March, 2009, from which Tax Appeal No.1150 of 2009 and cognate tax appeals arise, which have also been heard together.

7. Heard Mr. Mihir Joshi, learned senior advocate with Mr. Siraj Gori, Mr. K.H. Kazi, learned advocate and Mr. K.S. Nanavati, learned senior advocate for the appellants and Mr. K.B. Trivedi, learned Advocate General with Ms. Sangeeta Vishen, learned Assistant Government Pleader for the respondents.

8. Referring to section 15B of the Act, the learned counsel for the appellants submitted that the said provision levies a purchase tax at the rate specified therein where a dealer who is liable to pay tax under the Act purchases any taxable goods (not being declared goods) either directly or indirectly or through a commission agent and uses them as raw or processing material or consumable stores, in the manufacture of taxable goods. Thus, for the purpose of attracting the provisions of section 15B, four conditions are required to be satisfied. Firstly the person should be a dealer who is liable to pay tax under the Act; secondly such dealer should purchase any taxable goods (not being declared goods); thirdly he should use such goods as raw or processing material or consumable stores in the manufacture of goods; and fourthly the goods so manufactured should be taxable goods. It is submitted that for the purpose of invoking the provisions of section 15B all these four conditions are required to be satisfied. It is pointed out that in all these appeals, the appellants are dealers as envisaged under the provision, who have purchased raw or processing materials or consumable stores and used mthem in the manufacture of goods. However, the goods so purchased by them are not taxable goods, inasmuch as the same have been purchased from new industries which are exempt from payment of sales tax by virtue of notification under section 49(2) of the Act. Hence, the basic ingredient of section 15B not being satisfied, the appellants are not liable to pay purchase tax in respect of the raw or processing material or consumable stores used by them in the manufacture of goods.

8.1 Attention is invited to the impugned order of the Tribunal to point out that the Tribunal has merely followed its earlier decision made in a group of 14 matters of Second Appeal No.511 of 2003 and cognate matters. It is urged that the facts of those cases and the facts of the present case stand on a different footing inasmuch as in the facts of the present case the raw or processing materials or consumable stores used by the appellants in the manufacture of goods are not taxable goods whereas in the facts of those appeals, it was the case of the appellants therein that they were manufacturing goods which were not taxable and hence, the fourth requirement was not satisfied. It is submitted that thus there being a basic and significant distinction in the facts of both the group of cases, the Tribunal was not justified in following its earlier decision without considering the distinction between the two cases.

8.2 Referring to clause (33) of section (2) of the Act which defines "taxable goods" to mean goods other than those on the sale or purchase of which no tax is payable under section 5 or section 49 or a notification issued thereunder, it is submitted that the said provision expressly provides that goods on which no tax is payable under section 49 or a notification issued thereunder are not taxable goods. In the case of the appellants it is an accepted position by the Sales Tax Authorities as well as the Tribunal that the appellants have purchased goods from vendors who enjoy sales tax exemption under notifications issued under section 49(2) of the Act. The issue whether the goods manufactured by the appellants are taxable goods or not does not arise inasmuch as the appellants are purchasers of goods sales of which are exempted in the hands of the sellers.

8.3 It is submitted that before the Tribunal, on behalf of the appellants reliance had been placed upon the decision of the Gujarat High Court in the case of Nowroji N. Vakil & Co. v. The State of Gujarat, 43 STC 238 (Guj) which has been confirmed by the Supreme Court in the case of Hindustan Brown Boveri Ltd. v. State of Gujarat, 47 STC 376 (SC). It is urged that the decision in the case of Nowroji Vakil (supra) directly applies on the construction of the words "taxable goods" wherein it has been held that even the goods which are exempt by virtue of notification under section 49(2) conditionally, are excluded from the definition of taxable goods, which view has been upheld by the Supreme Court in the case of Hindustan Brown Boveri Ltd. It is submitted that the Tribunal has misdirected itself in placing reliance upon the decision of this High Court in the case of Madhu Silica Private Ltd. and others v State of Gujarat, 85 STC 258 (Guj) which was not concerned with this issue at all but with regard to the constitutional validity of section 15B on various grounds. It is urged that the decision in the case of Madhu Silica is not a precedent insofar as the interpretation of the term "taxable goods" as defined under section 2(33) of the Act is concerned. It is further submitted that the Tribunal could not have placed reliance on the decision in the case of Cheminova India Ltd. v. Sales Tax Officer, 126 STC 334 (Guj) inasmuch as the matter was decided by a Division Bench consisting of Honourable Mr. Justice M.S. Shah and Honourable Mr. Justice D.A. Mehta on the basis of both the judges of the Division Bench agreeing that the provisional assessment under section 41B was without jurisdiction, whereas Honourable Mr. Justice D.A. Mehta did not agree with the reasoning adopted by Honourable Mr. Justice M.S. Shah as recorded in paragraphs 8 to 16 of the judgment, hence there is clearly no judgment of the Gujarat High Court in the case of Cheminova India Ltd. (supra) on this issue. Learned counsel, have referred to the aforesaid decisions extensively, and the same shall be dealt with at an appropriate stage hereinafter.

9. Opposing the appeals, Mr. K.B. Trivedi, learned Advocate General, submitted that section 49 of the Act deals with total or partial exemption from payment of tax but the goods otherwise would generally remain taxable. It is argued that all goods the sale or purchase of which is liable to tax under the Act are taxable goods and that goods would not be taxable goods only when their sales are exempted generally from payment of tax as provided in section 5 of the Act. It is, accordingly, contended that the goods used by the appellants as raw or processing material or consumable stores in the manufacture of goods not being goods, the sale or purchase of which has been exempted from tax by inclusion in Schedule I to the Act, they are generally taxable goods and as such the requirements of section 15B stand satisfied. It is submitted that the goods in question which have been purchased by the appellants and used for the manufacture of the goods being generally taxable goods, the Tribunal has rightly held that the appellants are liable to pay purchase tax under section 15B of the Act. Reliance is placed upon the decision of this Court in the case of Madhu Silica Private Limited (supra) wherein the Court while considering the definition of taxable goods under section 2(33) of the Act, has held that the phrase "uses them as raw material or processing material or consumable stores in the manufacture of taxable goods" as employed by section 15B would mean user of raw material in the manufacturing process for manufacturing generally taxable goods under the Act and ultimately, in given circumstances, such manufactured goods may not attract tax under the charging provision and still they would remain taxable goods. It is submitted that the said decision introduces a qualification that goods which are generally taxable would remain within the domain of taxability, even if they are otherwise exempted by virtue of a notification under section 49(2) etc. It is submitted that in the light of the said decision, if the goods purchased by the dealer are used as raw or processing material or consumable stores in

the manufacture of goods which are generally taxable goods, the provisions of section 15B would be attracted. That in the facts of the present case, the raw or processing material or consumable stores purchased by the appellants and used in the manufacture of goods, though have been purchased from dealers who are exempted from payment of tax, are otherwise taxable goods, that is they are generally taxable and as such, the provisions of section 15B would be clearly attracted on the purchase of such goods. It is submitted that section 2(33) of the Act has to be read in the light of the decision of the Division Bench in the case of Madhu Silica Private Limited (supra). Hence, the Tribunal has rightly held that the petitioners are liable to pay purchase tax under section 15B of the Act. Reliance is also placed upon the decision of the Supreme Court in the case of the State of Tamil Nadu v. M. K. Kandaswami
& others, 36 STC 191 (SC), wherein it was held that notwithstanding the goods being "taxable goods", there may be circumstances in a given case, by reason of which the particular sale or purchase does not attract tax under sections 3, 4 or 5. The Court held that the provisions of section 7-A of the Madras General Sales Tax Act, 1959 would be attracted if the purchases had been made by the dealers of "goods, the sale or purchase of which is generally liable to tax under the Act" but because of the circumstances aforesaid no tax was suffered in respect of the sale of these goods by the sellers. It is, accordingly, submitted that the goods in question, which had been used as raw or processing material or consumable stores, were goods, which were generally liable to tax under the Act, but because of the circumstance that new industries were exempted from payment of sales tax by virtue of notification under section 49(2), no tax was suffered in respect of the sale of these goods by the sellers. Hence, the goods being generally taxable goods would fall within the ambit of section 15B of the Act.

10. Facts are not in dispute. The appellants are dealers, who have purchased goods from new industries which are exempted under notification issued under section 49(2) of the Act and used them in the manufacture of goods. According to the appellants, the goods purchased by them being exempted under notification issued under section 49(2) of the Act are not taxable goods within the meaning of section 2(33) of the Act and as such not exigible to purchase tax under section 15B. Whereas according to the respondent authorities the goods in question being generally taxable goods cannot be said to be not taxable and as such are liable to purchase tax under section 15B. Thus the dispute revolves round the interpretation of section 15B of the Act and the definition of "taxable goods" as defined under section 2(33) of the Act. It may, therefore, be pertinent to refer to the said provisions as well as sections 5 and 49 of the Act, which insofar as they are relevant for the present purpose read as under:

"15B. Purchase tax on raw or processing materials or consumable stores used in manufacture of goods. Where a dealer who being liable to pay tax under this Act purchases either directly or through a commission agent any taxable goods (not being declared goods) and uses them as raw or processing materials or consumable stores, in the manufacture of taxable goods, then there shall be levied in addition to any tax levied under the other provisions of this Act, a purchase tax at the rate of-

(a) two paise in a rupee on the turnover of such purchases made during the period commencing on the 1st April, 1986 and ending on the 5th August, 1988; and (b) four paise in the rupee on the turnover of such purchases made at any time after the 5th August, 1988:

Provided that where the raw materials purchased and used in the manufacture of bullion or specie, the rate of purchase tax on the turnover of purchases of such raw materials shall not exceed the aggregate of the rates of sales tax and general sales tax leviable on bullion or specie under entry 15 in Part A of Schedule II.

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

"5. Sales and purchases of certain goods free from all tax.

(1) Subject to the conditions or exceptions (if any) set out against each of the goods specified in column 3 of Schedule 1, no tax shall be payable on the sales or purchases of any goods specified in that Schedule.

" 49. Exemptions.

(1) Subject to the conditions or exceptions, if any, specified in relation to them, the following classes of sales or purchases shall be exempt from the payment of the whole of tax payable under the provisions of this Act, namely :-

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

11. It is settled legal position as held by the Supreme Court in a catena of decisions that the intention of the legislature in a taxing statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing statute it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. (See Mathuram Agrawal v. State of M.P. (1999) 8 SCC 667). The Supreme Court in the case of Nathi Devi v. Radha Devi Gupta, (2005) 2 SCC 271, has held that the interpretative function of the court is to discover the true legislative intent. In interpreting a statute the court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. In such a case no question of construction of statute arises, for the Act speaks for itself. In the circumstances, before adverting to the various decisions referred to by the learned counsel for the respective parties, it would be germane to go by the plain meaning of the sections.

12. On analysis, section 15B can be found to consist of the following ingredients:

1. The person who purchases the goods should be a dealer liable to pay tax under the Act;

2. He should purchase any taxable goods (not being declared goods), either directly or through a commission agent;

3. He should use such goods as raw or processing materials or consumable stores, in the manufacture of goods;

4. The goods so manufactured should be taxable goods.

13. Thus, on a plain reading of section 15B, it is apparent that the same can be invoked only if all the above ingredients are cumulatively satisfied. If the above four requirements are satisfied, the dealer becomes exigible to tax under section 15B. This tax is in the nature of a purchase tax which is in addition to any tax levied under the other provisions of the Act.

14. The next question that arises for consideration is the construction of the term "taxable goods" as defined under section 2(33) of the Act. From the language employed in clause (33) of section 2 which defines "taxable goods" to mean goods other than those on the sale or purchase of which no tax is payable under section 5 or section 49 or a notification issued thereunder, it is apparent that the same is clear and unambiguous. It lays down that all goods other than the categories specified thereunder are "taxable goods". The excepted categories are (i) goods on the sale or purchase of which no tax is payable under section 5, and (ii) goods on the sale or purchase of which no tax is payable under section 49 or a notification issued thereunder. Hence, for the purpose of determining as to whether goods of any kind are "taxable goods", what is required to be seen is (i) whether they are goods the sale or purchase of which is free from all tax under section 5 of the Act as specified under Schedule I and therefore, exempt from payment of any tax, or (ii) whether the sale or purchase of such goods falls within the class or classes of sales or purchases specified under sub-section (1) of section 49 or (iii) whether the sale or purchase of such goods falls within the specified class of sales or of specified sales or of purchases by virtue of any notification issued by the State Government in the Official Gazette under sub-section (2) of section 49. If they fall within any of the classes referred to hereinabove, they would stand excluded from the purview of "taxable goods" as defined under section 2(33) of the Act. It has been contended on behalf of the respondents that it is only goods which are totally exempt under section 5 of the Act that would fall outside the scope and ambit of taxable goods as envisaged under the Act and that the goods in question being generally taxable would fall within the ambit of "taxable goods" and as such would attract the provisions of section 15B of the Act. However, if such contention were to be accepted, it would render the latter part of the definition of "taxable goods" viz. "or section 49 or a notification issued thereunder" nugatory. The very fact that the words "or section 49 or a notification issued thereunder" have been expressly included in the definition in the category of goods other than "taxable goods" is clearly indicative of the legislative intent to take them out of the ambit of taxable goods. In the present case the provisions of section 2(33) as well as section 15B of the Act are clear, plain and unambiguous and susceptible to only one meaning. In the circumstances, there is no reason to go beyond the plain meaning of the language employed in the said provision and import the concept of "generally taxable goods". The

legislative intent being to exclude the goods that are subject matter of transactions of sale or purchase as the case may be, which are wholly exempt from payment of any tax under section 49 or a notification issued thereunder from the purview of the term "taxable goods" the construction put forth on behalf of the respondents would nullify the legislative intent. Moreover as noted hereinabove, the construction suggested on behalf of the respondents would render the latter part of section 2(33) otiose. It is settled legal position that even apparently conflicting statutory provisions should be harmoniously construed for upholding and giving effect to all the provisions as far as possible, and for avoiding interpretation which may render any of them ineffective or otiose. (State of Rajasthan v. Gopi Kishen Sen, 1993 Supp (1) SCC 522). Whereas in the facts of the present case there is no conflict between the provisions of section 15B and section 2(33). Hence, while construing the term "taxable goods" in section 15B of the Act, any interpretation which renders any part of section 2(33) ineffective or otiose should be avoided. Moreover, the fact that section 15B was not on the statute book when the decisions in the case of Nowroji Vakil (supra) and Hindustan Brown Boveri Ltd. (supra) came to be delivered would not be a relevant factor for the purpose of interpreting the provisions of section 2(33) of the Act, because the said judgments were directly concerned with the meaning of the term "taxable goods".

15. As regards the interpretation of the term "taxable goods" as defined under section 2(33), the first authoritative decision had been rendered by this High Court , in the case of Nowroji N. Vakil and Co. vs. State of Gujarat (supra). In the said decision, a Division Bench of this Court observed that the scheme of the Act involves four inter-related but distinct concepts which may, for the sake of convenience, be described as: (1) taxable person, (2) taxable turnover, (3) taxable transaction, and (4) taxable goods. The identity of "taxable person" is established by reference to the provisions of section 6, which says that ". there shall be paid by every dealer, who is liable to pay tax under this Act, the tax or taxes leviable". It is apparent, therefore, that the taxable person must be a dealer who is liable to pay tax under the Act. The taxable turnover under the Act is the turnover which is determined after the statutory deductions are effected from the gross turnover. Under section 6 read with sections 7, 8, 15 and 16, one or the other tax becomes payable by a dealer who is liable to pay tax under the Act in respect of sales or purchases, as the case may be, of taxable goods. Since liability to pay tax arises upon such sales or purchases taking place, any of those transactions ordinarily would be a "taxable transaction". Not all such transactions, however, invariably give rise to the liability to pay tax under the scheme of the Act. Out of the four concepts, these appeals are mainly concerned with the concept of "taxable goods". In relation to "taxable goods" the Court held thus:

"10. Out of the four concepts referred to above, the only one that is statutorily defined is "taxable goods". We shall presently come to the definition of the said term in clause (33) of section 2. Before we do so, however, it may be mentioned that taxable goods are specified in Schedules II and III. The sales or purchases of those goods bear tax at the rate specified against each of those goods. It might be noted at this stage that entry 13 of Schedule III is a residuary entry and that thereunder all goods other than those specified from time to time in section 18 (sugarcane) and in Schedules I and II and in the preceding entries of Schedule III are covered. This brings into focus Schedule I, which enumerates goods, the sale or purchase of which is free from all taxes. This schedule is enacted under section 5. Sub-section (1) of the said section provides that subject to the conditions or exceptions (if any) set out against each of the goods specified in column 3 of Schedule I, no tax shall be payable on the sales or

purchases of any goods specified in that schedule. Sub-section (2) provides that the State Government may, by notification in the official gazette, add to or enlarge, any entry in Schedule I or relax or omit any condition or exception specified therein; and thereupon the said schedule shall be deemed to have been amended accordingly. The foregoing discussion would show that all goods other than those specified in Schedule I are taxable goods. Ordinarily, therefore, the term "taxable goods" should have been defined in the Act as meaning goods other than those on the sale or purchase of which no tax is payable under section 5. Such was the definition of the said term in section 2(33) of the Bombay Sales Tax Act, 1959, which was the law in force immediately prior to the enactment of the present Act in the area now comprised in the State of Gujarat. The definition of the term "taxable goods" in clause (33) of section 2 of the present Act is, however, different. It reads as follows:

(33) taxable goods means goods other than those on the sale or purchase of which no tax is payable under section 5 or section 49 or a notification issued thereunder."

(11)It would appear, therefore, that the words of exclusion in the definition of the term "taxable goods" are now more extensive. The legislature has taken in the exclusion clause not only those goods the sale or purchase of which is exempted from payment of all taxes by virtue of the inclusion of such goods in Schedule I, but also those goods which are the subject matter of transactions of sale or purchase, as the case may be, which have been exempted from the payment of the whole of any tax under the provisions of section 49(1) and (2). The enlarged exclusion clause has the effect of giving a more restrictive meaning to the words "taxable goods" in the present Act. In other words, the range of taxable goods for the purposes of the Act is narrower. In defining the term accordingly, the legislature must be presumed to have acted deliberately inasmuch as it has departed from the definition of the said term as contained in the Bombay Sales Tax Act, 1959. It is manifest, therefore, that all goods other than (a) those to whom exemption attaches by virtue of their inclusion in Schedule I and (b) those that are the subject-matter of transactions of sale or purchase, as the case may be, which are wholly exempt from payment of any tax under section 49(1) and (2) are taxable goods."

"25. The words "taxable goods" are defined in precise and clear terms in section 2(33). Accordingly, all goods "other than those on the sale or purchase of which no tax is payable under section 5 or section 49 or a notification issued thereunder" are taxable goods. As explained earlier, the definition has the effect of giving a restrictive meaning to the words "taxable goods". The exclusion clause narrows down the range of taxable goods. The scope and ambit of the exclusion clause is plain and explicit. On a literal reading of the exclusion clause it is manifest that it takes in all goods, which are exempt either generally or conditionally under section 5 and also those goods which are the subject-matter of transactions of sales or purchases which are exempt either generally or conditionally under section 49. There is no indication, external or internal, which requires that the clause should be construed in a constricted or restricted manner so as to cut down its operation. We do not see any good reason to add to or alter or modify the exclusion clause by reading the word "generally" in between the words "is" and "payable" in the exclusion clause as suggested by the assessee. It is a settled rule of construction that where the statutes meaning is clear and explicit, words

cannot be interpolated. In the first place, in such a case, they are not needed. If they should be interpolated, the statute would more than likely fail to express the legislative intent, as the thought intended to be conveyed might be altered by the addition of new words. They should not be interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted word, interpolation is improper, since the primary source of the legislative intent is in the language of the statute [see Crawford on Construction of Statutes (1940) Ed., at page 269, cited with approval in Polestar Electronic (P.) Ltd.s case1]. Besides, no hardship, injustice, absurdity or anomaly will arise if words, as suggested by the assessee, are not added or read into the exclusion clause. It has been pointed out earlier that under section 5 goods can be and are exempted generally as also conditionally and it is not as if the goods which find place in Schedule I are all exempted without exceptions or conditions. Similar is the case with regard to total exemptions in respect of transactions of purchases or sales under section 49. By giving to the exclusion clause its plain natural meaning without any addition of words or alteration of its structure, therefore, no inequitable result is produced. All goods, the sales or purchases of which are generally or conditionally free from the whole of the tax under section 5 or 49, are treated similarly by excluding them from the range of taxable goods. The legislative intent, therefore, is clear from the exclusion clause, as it stands, namely, to group together all such goods and to exclude them from the purview of taxable goods. To read the exclusion clause otherwise would bring about a distortion of the legislative intent by introducing an artificial dichotomy between generally exempted goods and conditionally exempted goods or between goods which are the subject-matter of transactions which are generally exempted and those that are conditionally exempted. Such exercise is not warranted by the context and collocation."

16. The aforesaid decision in the case of Nowroji N. Vakil was subsequently followed by this High Court in the case of Hindustan Brown Boveri Ltd. vs. State of Gujarat. The said decision came to be challenged before the Supreme Court and the Supreme Court in its decision in the case of Hindustan Brown Boveri Ltd. vs. State of Gujarat (supra) held thus:-

"14. We find no substance in any of the three grounds urged on behalf of the appellants for the reason that the present case is governed by the definition of the expression "taxable goods" in Section 2(33) of the Act. It is interesting to note that the Bombay Sales Tax Act, 1959 (Bombay Act 1 of 1959) which was in force in the State of Gujarat before the Act came into force and which was repealed by Section 88 of the Act contained the definition of the expression "taxable goods" in Section 2(33) thereof. The expression taxable goods was defined in the Bombay Act as goods other than those on the sale or purchase of which no tax is payable under Section 5. In the Bombay Act there was also a provision corresponding to Section 49 of the Act in Section 41 thereof which empowered the State Government subject to such conditions as it may impose to exempt by a notification published in the Official Gazette any specified class of sales or purchases from payment of the whole or any part of any tax payable thereunder if the State Government was satisfied that it was necessary so to do in the public interest. Still the definition of "taxable goods" in that Act did not refer to sales exempted under Section 41 thereof. But in the Act which repealed and replaced the Bombay Act the meaning of the expression "taxable goods" has been narrowed down as Section 2(33) of the Act reads - "taxable goods" means goods other than those on the sale or purchase of which no tax is payable under Section 5 (which corresponds to Section 5 of the Bombay Act) and Section 49 of the Act

(which corresponds to Section 41 of the Bombay Act) or a notification issued thereunder. By this definition, the dichotomy that is stated to exist between "taxable goods" and "taxable events" has been given a go-by. It may be that Section 5 and Schedule I refer to goods only but Section 49 deals with only taxable events which result in the exemption from payment of tax on the conditions mentioned therein or in the notification issued thereunder being satisfied even though the goods in question do not come under Schedule I. Secondly one has to wait till the disposal of the goods by the dealer to find out whether the goods are taxable goods or not in view of the definition of the said expression which takes away goods sold under circumstances attracting Section 49 from the scope of the meaning of that expression. Nor does the third ground survive for the very same reason. If the sale is exempt from tax under section 49 of the Act, the goods sold would not be taxable goods."

Thus, Nowroji N. Vakil (supra) which was confirmed by the Supreme Court in Hindustan Brown Boveri Ltd. specifically deals with the concept of taxable goods under clause (33) of section 2 of the Act and holds that it is manifest that all goods other than (a) those to whom exemption attaches by virtue of their inclusion in Schedule I and (b) those that are the subject matter of transactions of sale or purchase, as the case may be, are wholly exempt from payment of any tax under section 49(1) and (2) are taxable goods. It follows that, goods which are subject matter of transactions of sale or purchase, as the case may be, which are wholly exempt from payment of any tax under section 49(2) of the Act are not taxable goods within the meaning of section 2(33) of the Act.

17. In both the aforesaid decisions, the interpretation of the term "taxable goods" as defined under section 2(33) of the Act was directly in issue and it has been held that goods which are subject matter of transactions of sale or purchase, as the case may be, which are wholly exempt from payment of any tax under section 49(2) of the Act are not "taxable goods" within the meaning of section 2(33) of the Act.

18. The definition of taxable goods indicates that goods other than those on the sale and purchase of which no tax is payable either under section 5 or section 49 or a notification issued under section 49 of the Act are all to be taxed. That means that all goods are to be treated as taxable goods except those on which no tax is payable.

19. Under section 5 of the Act though the marginal note states that sales and purchases of certain goods free from all tax, when one reads the provision it stipulates that goods specified in column no.3 of Schedule I are goods on which no tax shall be payable subject to the conditions or exceptions set out therein.

20. When one goes to section 49 of the Act, the said provision talks of exemption. Under sub-section (1) of section
49 of the Act, it is stated that the class/classes of sales or purchases shall be exempt from the

payment of the whole of the taxes payable under the provisions of the Act. Similarly, under sub-section (2) of section 49 of the Act, the State Government has been empowered to exempt any specified class of sales etc. from payment of the whole or any part of the tax payable under the provisions of the Act, if it is necessary so to do in the public interest by issuing a notification.

21. Thus, a conjoint reading of section 2(33), section 5 and section 49 of the Act stipulates that the emphasis is on sale or purchase of goods on which no tax is payable either under section 5 or section 49(1) or section 49(2) of the Act. Hence, the legislative intent is clear. Even if the goods are chargeable to tax under the Act, or the charge stands fastened by virtue of the provisions of the Act, if no tax is payable on fulfillment of the conditions prescribed, either under section 5, or section 49(1) or a notification issued under section 49(2) of the Act, the goods on which no such tax is payable would not be termed to be taxable goods.

22. In the facts of the present case, it is an undisputed position that the purchase of goods made by the appellants fall within the specified class of sales or of specified sales or of purchases by virtue of various notifications issued by the State Government under section 49(2) of the Act. In the circumstances, applying the principles enunciated in the decisions cited hereinabove, the goods so purchased would not fall within the purview of "taxable goods" within the meaning of section 2(33) and as such cannot be said to be "taxable goods" as envisaged under the said provision.

23. The next aspect which is then required to be examined is that when the goods being raw or processing material or consumable stores purchased by the appellants and used in the manufacture of goods are not taxable goods within the meaning of section 2(33) of the Act, whether the appellants are liable to pay purchase tax under section 15B of the Act only on the plea that the goods can be termed to be generally taxable goods. As already noted hereinabove, for the purpose of invoking the provisions of section 15B, the four ingredients referred to hereinabove are cumulatively required to be satisfied. Insofar as the first ingredient is concerned, namely the person who purchases the goods should be a dealer liable to pay tax under the Act, undisputedly the same is satisfied. The third ingredient namely that the goods purchased by such person as raw or processing material or consumable stores should be used in the manufacture of goods also stands duly satisfied. However, the second requirement namely that the goods purchased by the appellants and used as raw or processing materials or consumable stores should be "taxable goods" is evidently not satisfied, inasmuch as it is an admitted position that the appellants have purchased goods from new industries which are exempted from payment of tax under notifications issued under section 49(2) of the Act. Thus, the basic ingredient namely that taxable goods should be used as raw or processing materials or consumable stores for the manufacture of goods is not satisfied. Insofar as the fourth requirement namely that the goods manufactured should be taxable goods is concerned, the same is not relevant for the present purpose inasmuch as in the facts of the present case, it is the case of the appellants that since the goods used by them as raw or processing material or consumable stores for the manufacture of goods are not taxable goods, the second ingredient of section 15B is not satisfied and as such they are not liable to pay purchase tax under the said provision.

24. Thus, going by the plain meaning of the above- referred provisions of the Act, it is apparent that the goods purchased by the appellants and used as raw or processing material or consumable stores in the manufacture of goods are not exigible to purchase tax under section 15B of the Act.

25. As can be seen from the impugned order of the Tribunal, the Tribunal has placed reliance upon its earlier decision dated 27th March, 2009 made in Second Appeal No.511 of 2003 and other cognate matters against which Tax Appeal No.1150/2009 and other appeals have been filed which have also been heard together. The case of the said appellants was that they were holding exemption certificates and were accordingly not required to pay tax in view of the notification issued under sub-section (2) of section 49, the goods manufactured by them are not taxable goods within the meaning of section 2(33) of the Act and as such, the goods purchased by them and used as raw or processing material or consumable stores in the manufacture of such goods were not exigible to purchase tax under section 15B of the Act. In the said order, in paragraph Nos.1 to 14 the Tribunal has recorded the facts of the said appeals; in paragraph Nos. 15 to 22 the contentions of the learned advocates for the appellants; in paragraph Nos.23 & 24 the Tribunal has reproduced written submissions of the learned Government Agent. In paragraph Nos.25 to 27 relevant provisions have been reproduced; paragraph Nos.28 to 30 contain submissions on behalf of the assessee and in paragraph Nos.31 to 33 the submissions of the learned Government agent are recorded. Paragraph No.34 merely records the submissions of the learned advocates for the appellants that the decision of this High Court in 85 STC 258 was required to deal with the constitutional validity of section 15B and therefore the respondents cannot place reliance thereon. From paragraph Nos.35 to 56 the Tribunal has referred to the decision of this High Court in the case of Cheminova India Ltd. which in view of the disagreement between the members of the Bench can at best be said to be the view of a learned Judge of this Court but cannot be said to be a decision of a Division Bench of the High Court. Though in paragraph No.56 the Tribunal has recorded thus: "Let us not consider Cheminova judgment at all", it is apparent that the Tribunal has placed strong reliance upon the same. The Tribunal has thereafter referred to the decision of this High Court in the case of Madhu Silica and held that the term "taxable goods" under section 15B of the Act means goods which are generally taxable. The Tribunal has held that once the term taxable goods is interpreted to mean goods which are generally taxable, there was no room for holding that the last requirement of section
15B viz., that the goods manufactured by the appellants therein were not taxable goods had not been complied with. That in the matters at hand also the "taxable goods" should carry the said meaning i.e., "the goods are generally taxable. That if this interpretation is read in section 15B of the Act, it will have to be held that even the last requirement of section 15B has also been complied with.

26. In the impugned order the Tribunal has followed its earlier decision which has been referred to hereinabove and recorded thus: "xxx the term taxable goods would mean the "goods which are generally taxable". Here, the goods in question are generally taxable and, therefore, if the appellants have purchased or produced "generally taxable goods", the appellants in the present cases would also be liable to pay purchase tax under section 15B of the Act".

27. Since the decision in the case of Madhu Silica Private Limited (supra), forms the basis of the decision of the Tribunal, it would be necessary to refer to the same in some detail. In the said case, the Division Bench of this Court was called upon to decide as to whether the State Legislature had the legislative competence for enacting section 15B by formulating the following controversies underlying this question: (a) Whether section 15B in substance imposes a consignment tax; (b) Whether it imposed a tax in the nature of excise; (c) Whether it imposes user tax. The Court held that the moment goods are purchased and used by the purchasing dealer as raw of processing material or consumable stores in the manufacture of taxable goods, levy gets immediately attracted under the section. The taxing event is the purchase of raw materials etc. in the State and which are ultimately used in the manufacture of taxable goods. The charging event centering around purchase of raw materials etc., remains dormant till the goods are actually put to use in manufacture of taxable goods. It gets activised then. These events have nothing to do with the ultimate manufacture of taxable goods. It is easy to visualize that ultimately taxable goods may not be manufactured even if raw or processing material or consumable stores might have been utilised in the manufacturing process. For example, even after utilisation of such raw material in the manufacturing process, the finished goods may turn out to be defective goods which cannot be sold. Therefore, manufacture of the taxable goods may have been complete and the whole lot may have to be destroyed even after utilisation of such material in the manufacturing process or before process gets completed, it may be intercepted and the final product may not emerge, still, liability to pay tax under the section would emerge as user of raw material or processing material of consumable stores in the manufacturing process has taken place. Therefore, it is impossible to find nexus of the charge with the ultimate manufacture of taxable goods. It is now well-settled that excise duty is a duty or levy on the manufacture of goods. Impost is on the manufacture of goods and the new goods which are manufactured have to bear the charge. In the purchase tax levied on raw materials which are inputs, there is no contemplation of the ultimate output. It is tax on purchased inputs which has been brought as inputs in the manufacturing process and there charge settles and gets exhausted. Consequently, by no stretch of imagination, such a charge can be said to be imposing excise duty on ultimate manufactured goods. The impugned section imposes tax on the dealer as purchaser and not as manufacturer or ultimate manufactured goods. The Court, thereafter also held that the phrase "uses them as raw material or processing materials or consumable stores in the manufacture of taxable goods" as employed by section 15B of the Act would mean user of such raw material in the manufacturing process for manufacturing generally taxable goods under the Act and ultimately, in given circumstances, such manufactured goods may not attract tax under the charging provision and still would remain taxable goods. The Court, therefore, did not find it possible to agree with the contention of the petitioners that charging event under section 15B would be the manufacture of taxable goods. The Court, after considering the decision of this High Court in Nowroji N. Vakil as well as the decision of the Supreme Court in Hindustan Brown Boveri Ltd. found that the said decisions could not be of any avail to the petitioners therein. The Court held in the facts of the said case that once raw materials were utilised in the manufacturing process for manufacturing taxable goods which are generally taxable under the Act, charge under the section gets attracted. Ultimately, if the manufactured goods are found not to bear tax, then the question at the stage of assessment may arise. But that by itself would not whittle down the charge or postpone it in any manner. The Court did not agree with the contention of the learned advocates for the petitioners that under section 15B of the Act, the charge would extend even beyond the manufacture of taxable goods till manufactured taxable goods actually bear tax. The Court observed that actual liability to pay tax is quite distinct from general taxability of the goods

manufactured, as laid down by the Supreme Court in Kandaswamis case (supra). The Court held that in fact, once purchased raw material is utilised in the manufacturing process, charging event gets completed under the section and the aspect whether ultimately the manufactured goods emerge or not, would pale into insignificance. That the moment goods are purchased as inputs and user of the purchased raw material, etc., is made in the manufacturing process and they enter as inputs in the manufacture of generally taxable goods, the charge under the Act gets completely settled and attracted.

28. On a conjoint reading of the aforesaid decisions, it is apparent that in Madhu Silicas case the Court has not considered or entered into the interpretation of the term "taxable goods" as defined under section 2(33) of the Act. Thus, apparently there is no dichotomy in the decision in case of Nowroji Vakil and Madhu Silica. Besides, if one considers the analysis of section 15B of the Act as made in the case of Madhu Silica it is abundantly clear that the Court has not considered the provision in the light of the earlier part which mandates that the goods used as raw material in the manufacture of goods should also be taxable goods, because in view of the controversy before it, the Court was not required to enter into that arena.

29. The decision in the case of Madhu Silica (supra) came to be confirmed by the Supreme Court in the case of Hotel Balaji and others v State of Andhra Pradesh and others, 88 STC 98 (SC), wherein while upholding the constitutional validity of section 15B of the Act, the Court held that the section, read as a whole, is applicable only to those goods which are used in the manufacture of other goods. The levy is upon the purchase price of raw material and not upon the value of manufactured products. So long as the levy retains the basic character of a tax on sale, the Legislature can levy it in such mode or manner as it thinks appropriate. The said decision does not refer to the concept of generally taxable goods.

30. Insofar as the decision in the case of Cheminova India Ltd. (supra) is concerned, in the light of the disagreement recorded by one of the members of the Division Bench, the reasoning adopted by one of the learned Judges can at best be said to be an opinion of the said learned Judge, it cannot be said to be a decision of the High Court. In the circumstances it is not necessary to refer to the said decision. Even otherwise, in light of what is stated hereinbefore the Court does not agree with the opinion of one of the learned judges. The attempt by the nTribunal to refer to paragraph No.19 of the said case and read something therein, which is not stated nor intended, is unfortunate and not warranted.

31. In the case of the State of Tamil Nadu v. M.K. Kandaswami and others (supra) on which reliance has been placed by the learned Advocate General, the Court was called upon to interpret the provisions of section 7-A of the Madras General Sales tax Act, 1959 which provided for levy of tax on the turnover relating to purchase of any goods. The Apex Court did not agree with the High Court by stating:

"We are unable to accept this interpretation which would render section 7-A(1) wholly nugatory. With due respect, it seems to us that in arriving at this erroneous interpretation, the learned Judges mixed up the concept of goods liable to tax with the transactions liable to tax under the Act. The scheme of the Act involves three inter-related but distinct concepts which may conveniently be described as "taxable person", "taxable goods" and "taxable event". All the three must be satisfied before a person can be saddled with liability under the Act."

The concept of generally taxable was brought in by the Court to explain what the High Court has said was a contradiction in terms between the expression "goods, the sale or purchase of which is liable to tax under this Act" and the phrase "purchases in circumstances which no tax is payable under section 3, 4 or 5". Whereas in the facts of the present case, section 15B of the Act seeks to levy purchase tax on goods used as raw or processing material or consumable stores used in manufacture of goods, only if the goods so used are taxable goods. In other words goods which do not fall within the purview of "taxable goods" stand excluded from the ambit of the said provision. Since the term "taxable goods" stands defined under section 2(33) of the Act, and insofar as the second ingredient of section 15B is concerned, the context otherwise does not require the same to be interpreted in any other manner, the said term is required to be given the meaning as defined under the Act.

32. Therefore, the emphasis by the Revenue that what has to be seen are whether the goods are generally taxable or not is misplaced and unwarranted. What has been discussed by this High Court in the case of Madhu Silica has not been understood nor appreciated either by Revenue or the Tribunal. The controversy before the High Court was in the first instance as to whether provisions of section 15B of the Act are ultra vires the Constitution. To press home the said challenge the contention raised before the Court was that the said provision in effect is either a consignment tax or a duty in the nature of excise and hence beyond the legislative competence of the State Government. It was in context of the said challenge that the concept of generally taxable goods and fastening of the charge have been discussed by the Court in the judgment.

33. However, when it comes to a specific challenge as to leviability, and liability to pay tax i.e. purchase tax under section 15B of the Act, the Court has to read the provision as it stands and interpret the same, if there is any debate, to achieve the object with which the provision has been brought on the Statute book. A plain reading makes it clear that even if the goods purchased are generally taxable, or can be termed to be goods on which the charge is fastened, yet when the said provision has to be invoked and applied, a question has to be posed and answered: as to whether the goods purchased are taxable goods? For determining the same, the Court has to look at the definition given in the Statute. It is well-settled that a definition of a term in a law has to be read as it stands without either importing anything therein or removing any part of the definition. The only exception being where the context requires otherwise. In the instant case, even in the contextual setting, one need not travel beyond the plain meaning which flows from a plain reading of the definition of the term "taxable goods".

34. Thus, for all intents and purposes, the definition of the term "taxable goods" means all goods except goods which are carved out in the definition itself, namely goods on which no tax is payable either under section 5 of the Act or under section 49(1) of the Act or under section 49(2) of the Act. Hence, even if the goods are generally taxable goods if no tax is payable they cannot be treated to be taxable goods, the emphasis being on liability to pay tax. Same meaning is available both under section 5 and section 49 of the Act when the Legislature has used the phrase "no tax shall be payable" (section 5) and "shall be exempt from the payment of the whole mof the tax payable" (section 49(1)) and "exempt any specified class of sales - - - from payment of the whole or any part of the tax payable" (section 49(2)) (emphasis supplied). The Tribunal has thus misdirected itself in law in reading judgments of Madhu Silica (supra) and Cheminova (supra) without appreciating the true import of the relevant provisions discussed hereinbefore. In fact, the Tribunal has not even read and discussed the provisions. In none of the judgments relied upon by Revenue and the Tribunal has the true import of the term "taxable goods" been discussed and dealt with, because in none of the cases the issue ever arose.

35. In the light of the aforesaid discussion, the question is answered in the affirmative, that is, against the Revenue and in favour of the appellants. The goods purchased by the appellants from a new industry having sales tax exemption vide notification issued under section 49 of the Gujarat Sales Tax Act, 1969 are not "taxable goods" within the meaning of section 2(33) of the Act and as such are not liable to purchase tax under section 15B of the Act. The Tribunal was, therefore, not justified in confirming the levy of purchase tax under section 15B of the Gujarat Sales Tax Act, 1969 on the purchases from a new industry, which had been granted exemption by notification issued under section 49(2) of the Act. The questions stand answered accordingly.

36. The impugned orders made by the Tribunal are hereby quashed and set aside. The appeals are accordingly allowed with no order as to costs.

Special Civil Application No.8926 of 2009

37. This petition has been preferred by one of the appellants challenging the judgment and order dated 06th April, 2009 made by the Tribunal in Revision Application No.84 of 2003 as well as the orders made by the appellate authority and the Sales Tax Officer alongwith show-cause notice. The Tribunal has not assigned any independent reasons but held that the petitioner (revision applicant) is liable to pay purchase tax under section 15B of the Act as the said issue has been dealt with in the Second Appeal filed by the petitioner. Insofar as the other challenges are concerned, in the Revision Application, the Tribunal has upheld the action of the respondent authorities on the footing that once it is held that the petitioner is liable to pay purchase tax under section 15B of the Act, the payment is required to be made in cash and no adjustment against the ceiling limit is permissible, penalty and interest are rightly levied and no interference was warranted. Learned counsel appearing for the respective parties have adopted the same contentions as raised in the appeals.

Tax Appeal No.1150 of 2009 and Cognate Appeals

38. The case of the petitioner is also the case of the appellants in Tax Appeal No.1150 of 2009 and cognate matters, namely no purchase tax is payable as the requisite conditions are not fulfilled. As can be seen from the order impugned in the petition, the Tribunal has not assigned any independent reasons except following its own order dated 27th March, 2009 rendered in Second Appeal No.511 of 2003 and cognate appeals.

39. Thus, it is apparent that this entire group of Second Appeals has been decided only on the erroneous reading of judgment in case of Madhu Silica (supra) and the Revision Application has been decided without any independent reasons. As already recorded hereinbefore, the concept of generally taxable goods would not enter when the term taxable goods stands defined.

40. Hence, for the reasons recorded hereinbefore, the common order dated 27th March, 2009 in Second Appeal No.511 of 2003 and cognate appeals, order dated 31st March, 2009 in Second Appeal No.498 of 2005 and the order dated 06th April, 2009 in Revision Application No.84 of 2003 are quashed and set aside. However, it is not possible to grant relief to the appellants and the petitioner because, as already recorded hereinbefore, the Tribunal has failed to consider and record the correct facts. It was incumbent upon the Tribunal to ascertain the ambit and scope of notification issued under section 49(2) of the Act. The Tribunal ought to have verified as to whether these group of assessees were entitled to exemption from payment of tax in relation to the purchase of raw material as well as sale of manufactured goods or only in relation to sale. Tribunal was also required to verify as to whether the goods mpurchased as raw material were taxable goods or not. These factual inquiries have not been carried out by the Tribunal. In the circumstances, Second Appeal Nos. 511 of 2003, 706 of 2003, 663 of 2003, 1007 of 2003, 498 of 2005 (Order dated 31st March, 2009) and Revision Application No.84 of 2003 are restored to file of the Tribunal for deciding the same afresh after undertaking necessary factual inquiry and applying the law laid down by the High Court in this judgment.

Civil Applications No.265/2009, 458/2009, 266/2009, 267/2009, 268/2009, 273/2009, 274/2009, 281/2009, 336/2009, 337/2009, 338/2009 and 282/2009 In view of the order passed in the main matters, these Civil Applications do not survive and are disposed of accordingly.

Registry is directed to place a copy of this judgment in each matter.

Order accordingly