ANDHRA STEEL CORPORATION

*v.*

COMMISSIONER OF COMMERCIAL TAXES IN KARNATAKA

MARCH 30, 1990

[SABYASACHI MUKHARJI CJ., V. RAMASWAMI AND M.M. PUNCHHI, JJ.]

*Karnataka Sales Tax Act, 1957: Section 5(4)—Schedule 4—Item 2 Explanation II(As it stood prior to 1.4.78)—Declared goods—Levy of sales tax—Finished goods manufactured out of imported raw material subject to tax while similar goods manufactured out of locally purchased raw materials not taxed—Held discriminatory and violative of Article 304(a) of Constitution of India.*

*Constitution of India, 1950: Article 304(a): Restrictions on trade commerce and intercourse among States—Similarity is in the nature of quality and kind of goods and not whether they are subject to tax already or not—Finished goods—Iron ingots, Steel rounds and tor steel manufactured out of locally purchased raw material, iron-scraps, not subject to tax—Similar goods manufactured out of raw material purchased from outside State subject to tax—Held discriminatory between imported goods and goods produced locally.*

**The appellant, a registered dealer under the Karnataka Sales Tax Act, 1957, was purchasing iron-scraps from dealers inside and outside the State of Karnataka for the purpose of manufacturing iron ingots, steel rounds and tor steel. He filed a writ petition in the High Court challenging the Constitutional validity of Section 5(4) of the Act in so far as it pertains to item 2 of Schedule IV to the Act read with Explanation II thereof in respect of its application prior to 1.4.78 as violative of Article 304(a) of the Constitution on the ground that it discriminates in respect of sale of steel ingots manufactured out of raw material purchased from outside the State which was subject to tax while sale of similar goods manufactured out of locally purchased raw material was not subjected to tax.**

**The High Court dismissed the writ petition upholding the constitutional validity of the impugned provisions. Hence this appeal by special leave.**

**Setting aside the judgment of the High Court and allowing the appeal, this Court,**

**HELD: 1. The similarity contemplated by Article 304(a) is in the nature of the quality and kind of the goods and not with respect to whether they were subject to a tax already or not.** [262A]

**2. Section 5(4) of the Act in so far it pertains to item 2 of Schedule IV to the Act read with Explanation II thereof in respect of its application for the period prior to 1.4.1978 is violative of Article 304(a) of the Constitution.** [255C-D; 272D]

*Firm A.T.B. Mehtab Majid and Co.* **v.** *State of Madras and Anr.*, **[1963] Suppl. 2 SCR 435 and** *A. Hajee Abdul Skakoor and Co.* **v.** *State of Madras*, **[1964] 8 SCR 217, followed.**

*State of Madras* **v.** *N.K. Nataraja Mudaliar*, **[1968] 3 SCR 829;** *Rattan Lal & Co.* **v.** *Assessing Authority*, **[1969] 2 SCR 544 and** *Associated Tanners* **v.** *Commercial Tax Officer, Vizianagaram and Ors.*, **[1986] 62 STC 1, explained.**

*Mangalore Metal House* **v.** *State of Karnataka*, **[1986] 63 STC 482;** *State of Bombay* **v.** *United Motors (India) Ltd.*, **[1953] SCR 1069 and** *Bengal Immunity Company Ltd.* **v.** *State of Bihar*, **[1955] 2 SCR 603, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1672-74(NT) of 1990.

From the Judgment and Order dated 10.6.1988 of the Karnataka High Court in W.P. Nos. 14255 to 14257 of 1983.

B. Sen, H. Raghvendra Rao and Vineet Kumar for the Appellant.

P.R. Ramasesh for the Respondent.

The Judgment of the Court was delivered by

**V. RAMASWAMI, J.** Special leave granted.

The appellant is a registered dealer under the Karnataka Sales Tax Act (hereinafter called 'the Act'). The appellant (hereinafter referred to 'the assessee') purchases iron scrap from dealers inside and outside the State of Karnataka for the purpose of manufacturing iron ingots, steel rounds and tor-steel. These manufactured goods were

sold mostly within the State. In respect of the Assessment Years 1972-73 to 1974-75, accepting the contentions of the assessee that the goods sold were manufactured out of tax suffered iron scrap, the Commercial Tax Officer exempted the sales turn over of the manufactured goods. The Deputy Commissioner of Commercial Taxes in exercise of his powers under section 21 of the Act restricted the exemptions but otherwise confirmed the assessment order by his order dated 11.5.1979. The respondent Commissioner of Commercial Taxes, Bangalore initiated proceedings under section 22(A) of the Act for revising the order of the Deputy Commissioner on the ground that the assessee had been allowed exemption in respect of the turn over of manufactured goods without verifying as to whether the inputs iron scrap had suffered taxes and that Explanation II to Schedule IV of the Act was applicable or not. The appellant filed the writ petition praying for the issue of a writ certiorari to quash the show cause notice issued by the respondent under section 22(A) of the Act challenging the constitutional validity of section 5(4) of the Act in so far as it pertains to item 2 of Schedule IV to the Act read with Explanation II thereof in respect of its application for the period prior to 1.4.1978 as violative of Article 304(a) of the Constitution. It may be pointed out at this stage that in *Mangalore Metal House* v. *State of Karnataka,* [1986] 63 STC 482 the High Court upheld the Explanation II to Schedule IV of the Act which is differently worded in its application for the period subsequent to 1.4.1978. It may also be mentioned that the High Court had confined itself only to the challenge of the constitutional validity of the provision and left open the other question on merits including the validity of the notices to be agitated after exhausting the appellant's remedy before the Sales Tax authorities.

The High Court was of the view that the provision providing for not levying tax, if at an earlier stage tax has been paid, is only in the nature of exemption and the exemption arises only on proof that the tax has been paid at an earlier stage on the goods out of which the goods in question were manufactured, that there is nexus between the finished goods and the raw material used for manufacturing the same that it is not correct to state that the tax is not payable on the finished goods manufactured out of local raw material but the discrimination if at all would arise only in the quantum of tax payable, for the tax on finished goods will be definitely higher than on the raw material. The High Court was of the further view that there is no discrimination in the rate of tax between the imported items and the local items of finished goods of iron steel as such and that the variation in the quantum of tax is on account of the scheme of taxation working diffe-

A rently on different dealers, those who import raw material and manufacture and those who locally purchase and manufacture and hence such an effect is only indirect result and not having direct or immediate impact. In that view the High Court dismissed the writ petition and gave liberty to the appellant to file objections before the Commissioner of Commercial Taxes for dealing with questions on B merits. This appeal has been filed against the said judgment of the High Court.

The main point that was urged in this appeal was that section 5(4) of the Act in so far as it pertains to item 2 in the IV Schedule read with the Explanation II is violative of Article 304(a) of the Constitution as under that provision the sale of finished goods manufactured C out of imported raw material is taxed but the sale of finished goods manufactured out of locally purchased raw material is not taxed and that amounts to hostile discrimination in the rate of tax or quantum of tax.

D Section 5(4) of the Act is the charging section in respect of declared goods and the relevant portion reads as follows:

> "(4) Notwithstanding anything contained in sub-section (1) (or section 5 B or section 5 C) a tax under this Act shall be levied in respect of the sale or purchase of any of the E declared goods mentioned in column (2) of the Fourth Schedule at the rate and only at the point specified in the corresponding entries of columns (4) and (3) of the said Schedule on the dealer liable to tax under this Act on his taxable turnover of sales or purchases in each year relating to such goods:
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> Provided that where tax has been paid in respect of the sale or purchase of any of the declared goods under this sub-section and such goods are subsequently sold in the course of inter-state trade or commerce, and tax has been paid under the Central Sales Tax Act, 1956 (Central Act 74 G of 1956) in respect of the sale of such goods in the course of inter-state trade or commerce, the tax paid under this Act shall be reimbursed to the person making such sale in the course of inter-state trade or commerce in such manner and subject to such condition as may be prescribed.
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> H Provided further that in respect of the sale of cereals

mentioned in serial number 9 of the Fourth Schedule, made by any person to a procurement agent appointed by the Government of Karnataka or to any sub-agent of such procurement agent in pursuance of the Karnataka Rice Procurement (Levy) Order, 1981 or any other foodgrains procurement (Levy) Order of the Government of Karnataka for the time being in force, such sale shall not be deemed to be, but the subsequent sale by the said procurement agent or sub-agent shall be and shall be deemed to be the point at which the tax under this Act shall be levied.

Provided also that where tax has been paid under this sub-section on the purchase of paddy and such paddy is either subsequently sold to or is hulled and the resultant rice is sold to a procurement agent appointed by the Government of Karnataka or to any sub-agent of such procurement agent in pursuance of the Karnataka Rice Procurement (Levy) Order, 1984 or any other Foodgrains Procurement (Levy) Order of the Government of Karnataka for the time being in force, the tax paid under this Act on the purchase of such paddy shall be reimbursed to the person making such sale to such procurement agent or his sub-agent, as the case may be, in such manner and subject to such conditions as may be prescribed."

The IV Schedule to the Act contains a list of declared goods specifying the point of levy and the rate of tax. Item 2 of this Schedule relates to iron steel since the interpretation of this item is in question the relevant portion of item 2 may be extracted and reads as follows:

"FOURTH SCHEDULE

| Sl. No. | Description of the goods | Point of levy | Rate of tax |
|---|---|---|---|
| 1. | | | |
| 2. (i) | pig iron and cast iron including ingot moulds, bottom plates, iron scrap, cast iron scrap runner scrap and iron skull scrap. | Sale by the first or earliest successive dealer in the state, liable to tax under this Act. | |

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| (ii) | steelsemis (ingots, slabs, blooms and billets of all qualities, shapes and sizes). | |
| (iii) | skelp bars, tin bars, sheet bars, hoebars and sleeper bars. | |
| (iv) | Steel bars (rounds, rods, squares fiats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths). | 4 per cent |
| (v) | Steel structurals (angles, joists, channels tees, sheet piling sections or any other rolled sections) | |
| (vi) | sheets, hoops, strips and skelp, both black and galvanised, hot and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil from as rolled and in revitted condition. | |
| (vii) | plates both plain and cheque-red in qualities. | |
| (viii) | discs, rings forgins and steel castings. | 3 per cent |
| (ix) | tool, alloy and special steels of any of the above categories. | |
| (x) | steel melting scrap in all forms including steel skulls, turnings and borings. | |
| (xi) | steel tubes, both welded and seamless of all diameters and lengths, including tube fittings. | |
| (xii) | tin-plates, both not dipped and electrolytic and tin free plates. | |

(xiii) fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, rails-heavy and light crane rails.

(xiv) wheels, tyres axles and wheel sets.

(xv) wire rods and wires-rolled, drawn, galvanised, aluminised, tinned or coated such as by Copper.

(xvi) defectives, rejects, currings or end pieces of any of the above categories.

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By Karnataka act 13 of 1982 Explanation II was added to item 2 of the IV Schedule with retrospective effect from 1.10.1957 and to be effective till 31.3.1978 and that Explanation reads as follows:

"Explanation II: Where tax has been paid in respect of the sale or purchase of:

(i) iron scrap, cast iron scrap, runner scrap and iron skull scrap referred to in entry (i) of serial number 2 or in respect of steel melting scrap in all forms including steel skull turnings and borings referred to in entry (x) of serial number 2 and out of the said scrap, steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes) referred to in entry (ii) of serial number 2 are manufactured and sold; or

(ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes) referred to in entry (ii) of serial number 2 and out of the said steel semis any re-rolled products of iron and steel referred to in anyone or more of the entries at (iii), (v), (vii) and (xv) serial No. 2 are manufactured and sold, no tax shall be leviable on the sale of the said steel semis or the re-rolled products as the case may be.

Provided that the dealer claiming exemption of tax under this explanation furnished before the assessing authority concerned proof of levy and payment of tax by

A the previous or earliest of successive dealers on the said scrap or steel semis used in the manufacture of the steel semis re-rolled products, as the case may be.

Provided further that in respect of the said steel semis or the said re-rolled products of iron and steel, no amount B was collected by the dealer from his customers by way of tax or purporting to be by way of tax."

As already stated the appellant purchases iron scrap both from local registered dealers and also from the dealers outside the State of Karnataka and manufactures ingots and sells the same mostly within the State of Karnataka. The constitutional validity of the above said C provision is challenged on the ground that while the appellant's sale of ingots manufactured out of locally purchased scrap will not be subjected to tax, the appellant's sale of ingots manufactured out of scrap purchased from outside the State of Karnataka would be subjected to tax.

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In the *Firm A.T.B. Mehtab Majid and Co.* v. *State of Madras and Anr.*, [1963] (Suppl.) 2 SCR 435 this Court considered the constitutional validity of Rule 16 of the Madras General Sales Tax Rules. Rule 16 of the Rules which was impugned in the case read as follows:

E "16.(1) In the case of untanned hides and/or skins the tax under section 3(1) shall be levied from the dealer who is the last purchaser in the State not exempt from taxation under section 3(3) on the amount for which they are brought by him.

F (2)(i) In the case of hides or skins which have been tanned outside the State the tax under section 3(1) shall be levied from tne dealer who in the State is the first dealer in such hides or skins not exempt from taxation under section 3(3) on the amount for which they are sold by him.

G (ii) In the case of tanned hides or skins which have been tanned within the State, the tax under section 3(1) shall be levied from a person who is the first dealer in such hides or skins not exempt from taxation under section 3(3) on the amount for which they are sold by him:

H Provided that, if he proves that the tax has already

been levied under sub-rule (1) on the untanned hides and skins out of which the tanned hides and skins had been produced, he shall not be so liable.

(3) The burden of proving that a transaction is not liable to taxation under this rule shall be on the dealer."

It was contended for the petitioner in that case that the effect of this rule was that tanned hides or skins imported from outside the State and sold within the State are subject to a higher rate of tax than the tax imposed on hides or skins tanned and sold within the State, inasmuch as sales tax on the imported hides or skins tanned outside the State is on their sale price while the tax on hides or skins tanned within the State, though ostensibly on their sale price, is, in view of the proviso to Clause (ii) of sub-rule (2) of rule 16, really on the sale price of these hides or skins when they are purchased in the raw condition and which is substantially less than the sale price of tanned hides or skins. It was further contended for similar reasons, hides or skins imported from outside the State after purchase in their raw condition and then tanned inside the State are also subject to higher taxation that hides or skins purchased in the raw condition in the State and tanned within the State, as the tax on the former is on the sale price of the tanned hides or skins and on the latter is on the sale price of the raw hides or skins. Such a discriminatory taxation was said to offend the provisions of Article 304(a) of the Constitution.

This Court pointed out that if the dealer has purchased the raw hide or skin in the State, he does not pay tax on the sale price of the tanned hides or skins. He pays on the purchase price of untanned hides or skins, only. If on the other hand, dealer purchases raw hides or skins from outside the State and tans them within the State, he will be liable to pay sales tax on the sale price of the tanned hides or skins. He will have to pay more for tax even though the hides and skins are tanned within the State, merely on account of his having imported the hides and skins from outside and having not paid any tax under sub-rule (1). This is one of the reasons on which this Court held that rule 16(2) discriminated against the imported hides or skins which had been purchased or tanned outside the State and that therefore they contravene the provisions of Article 304(a) of the Constitution. The next ground on which this Court invalidated the Rule was that mere circumstance of a tax having been paid on the sale of such hides or skins in the raw condition did not justify their forming goods of a different kind from the tanned hides or skins which had been imported

A from outside. At the time of sale of those hides or skins in the tanned state, there was no difference between them as goods and the hides or skins tanned outside the State as goods. The similarity contemplated by Article 304(a) is in the nature of the quality and kind of the good and not with respect to whether they were subject of a tax already or not.

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On the ground that the decision of this Court in *A.T.B. Mehtab's* case (supra) will result in claims for refund of tax being preferred by dealers in hides and skins already assessed under the impugned Rule thereby resulting in huge loss of revenue and will also result in administrative complications, the Madras General Salex Tax (Special Provisions) Act, 1963 was made. That Act provides that:

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> "(1) Notwithstanding anything contained in Madras General Sales Tax Act, 1939 (Madras Act IX of 1939) (hereinafter referred to as the said Act), or in the rules made thereunder (hereinafter referred to as the said rules), during the period commencing on the 1st April, 1955 and ending on the 31st March, 1959, in respect of sale of dressed hides and skins (which were not subjected to tax under the said Act as raw hides and skins), the tax under the said Act shall be levied from the dealer who in the State is the first seller in such hides and skins not exempt from taxation under sub-section (3) of section 3 of the said Act at the rate of two per cent of the amount for which such hides and skins were last purchased in the untanned condition."

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This was challenged in this Court by way of petition under Article 32 of the Constitution in *A. Majee Abdul Shakoor and Company* v. *State of Madras,* [1964] 8 SCR 217 on the ground that the persons who had purchased raw hides and skins in the State of Madras in the relevant period paid sales tax at 3 pies per rupee and paid no further tax with those hides after being tanned were not sold whereas the petitioners having purchased raw hides and skins from outside the State did not at the time paid tax at that rate on the purchase price of the raw hides and skins but were not now liable under the impugned provision to pay tax at the rate of 2 per cent of the amount for which such hides and skins were last purchased in untanned condition. Thus the contention was that the petitioners would pay a higher tax than what was paid by the seller of dressed hide and skins purchased in the State in raw condition and then tanned and sold and that, therefore, the impugned provisions set out above discriminate against imported untanned hides

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and skins. Accepting this contention after referring to the decision in *A.T.B. Mehtab's* case (supra) this Court observed: A

> "In the earlier case, discrimination was brought about on account of sale price of the tanned hides and skins to be higher than the sale price of untanned hides and skins, though the rate of tax was the same, while in the present B case, the discrimination does not arise on account of difference of the price on which the tax is levied as the tax on the tanned hides and skins is levied on the amount for which those hides and skins were last purchased in the utanned condition, but on account of the fact that the rate of tax on the sale of tanned hides and skins is higher than C that on the sale of untanned hides and skins. The rate of tax on the sale of tanned hides and skins is 2 per cent on the purchase price of those hides and skins in the utanned condition while the rate of tax on the sale of raw hides and skins in the State during 1955 to 1957 is 3 pies per rupee. The difference in tax works out to 7/16 paise of a rupee, D i.e., a little less than 1/2 naye paise per rupee. Such a discrimination would affect the taxation upto the 1st of August 1957 when the rate of tax on the sale of raw hides and skins was raised to 2 per cent of the sale price."

*Prima facie* the ratio of these two decisions applies to the facts of E the present case. However, it was contended by the learned counsel for the Revenue before the High Court that this Court has struck a new or different note in the cases of *State of Madras* v. *N.K. Nataraja Mudaliar,* [1968] 3 SCR 829; *Rattan Lal & Co.* v. *Assessing Authority,* [1969] 2 SCR 544 and *Associated Tanners* v. *Commercial Tax Officer Vizianagaram, and Others*, [1986] 62 STC 1 and this argument was F accepted and the impugned provisions were held valid by the High Court in the decision under appeal.

The point that was raised in the *State of Madras* v. *N.K. Nataraja Mudaliar* (supra), was that Section 8(2)(2A) and (5) of the Central Sales Tax which permitted levy of tax on inter-State sale at varying rates G in different States were invalid. In order to understand the exact ratio of the judgment which was noticed in the judgment itself, we have to note the development of the law relating to imposition of tax on *inter-State* sale. In exercise of the powers conferred under Entry 58 List II of the Seventh Schedule in Government of India Act and the corresponding Entry 54 of List 2 of the Seven[illegible] Schedule to the Constitution H

A which enable the State to legislature on taxes on the sale or purchase of goods other than newspaper various States enacted sales tax laws for the respective States acting on the principle of territorial nexus and picked out one or more ingredients constituting a sale and made it or them the basis of imposing liability for sales tax. This led to the imposition of multiple taxation on a single *inter-State* transaction by different B States, each State relying upon some territorial nexus between the State and the sale. The constitutional validity of these provisions were questioned on the basis of the restriction placed on the legislative power under the Constitution. In the *State of Bombay* v. *United Motors (India) Ltd.*, [1953] SCR 1069 this Court held that importing State is competent to levy tax on transactions of sale in the course of *inter-State* sale or commerce on persons who are resident outside the C territory, provided that the goods were delivered in the importing State for the purpose of consumption therein. Thus the delivery for consumption within the State was considered to be a point at which the tax can be levied on *inter-State* sale. But this decision made the dealer carrying on business in the exporting State amenable to the sales tax D law of the importing State. The question was again considered by this Court in *Bengal Immunity Company Ltd.* v. *State of Bihar*, [1955] 2 SCR 603. This Court held in that case that a sale or purchase in the course of *inter-State* sale, trade or commerce could not be taxed by any State until by law it was provided otherwise by Parliament. This led to the amendment of the Constitution by the Constitution (Sixth Amend- E ment) Act, 1956. By that amendment Article 286 was amended. Entry 92A was added to the Union List and Entry 54 was also suitably amended. The Parliament then enacted the Central Sales Tax Act, 1956. In respect of the certain transactions which were held by the assessing authorities as *inter-State* sales the assessee moved the High Court of Madras under Article 226 seeking a writ of certiorari quash- F ing the order of assessment on the ground that the provisions of the Central Sales Tax Act which permitted levy of tax at varying rates in different States on similar *inter-State* transactions and thereby resulting in inequality in burden of tax, affected and impeded *inter-State* trade, commerce and intercourse which are prohibited under Article 301 and 303(1) of the Constitution.

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The tax under the Central Sales Tax is payable by the seller. The State from which the movement of goods commences in the course of *inter-State* sale collects the tax as agent of the Central Government but section 9(4) provides that the tax collected under the Act in any State on behalf of the Government of India are to be assigned to that State. The H scheme of the Central Sales Tax Act has been neatly summarised if we

may say so with respect, in *State of Madras* v. *N.K. Nataraja Mudaliar* (supra) and no apology, is needed to quote that passage in extenso, which reads as follows: A

> "The scheme of the Act was first to devise definitions of '*inter-State* sales' and 'sales outside the State', and then to declare *inter-State* sales subject to tax, and to set up machinery for levying and collecting tax on those sales. Transactions in goods which were made subject to tax in the course of *inter-State* trade or commerce were classified into three broad categories—(1) transactions falling within s. 8(1) i.e. all sales to Government, and sales to a registered dealer other than the Government of goods referred to in sub-s (3) of s. 8(2) transactions falling within s. 8(2)(a) i.e., sales in respect of declared goods; and (3) transactions falling within s. 8(2)(b) i.e. sales not falling within (1) in respect of goods other than declared goods. Sales of goods in category (1) were declared liable at the relevant time to pay a tax of two per cent, on the turnover. On sales of declared goods tax was to be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State. But by s. 15 the tax payable under a State law in respect of any sale or purchase of declared goods inside the State was not to exceed two per cent of the sale or purchase price thereof, and was not leviable at more than one stage. On turnover from sale of goods not falling within categories (1) & (2) the rate was seven per cent, or the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever was higher. But by sub-s. (2A) of s. 2 it was provided that notwithstanding anything contained in sub-s. (1) or sub-s. (2), if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than two per cent, the tax payable under the Act on the turnover insofar as the turnover or any part thereof relates to the sale of such goods shall be nil, or as the case may be shall be calculated at the lower rate. There is a slight inconsistency between s. 8(2) and s. 8(2A). If the rate of tax under the State law is less than two per cent by virtue of s. 8(2A), even in respect of turnover falling within s. 8(2)(b), the rate of tax will not exceed the State rate; if the State rate exceeds two per cent, tax at the rate of seven B C D E F G H

per cent or of the State, whichever is higher, shall prevail. But that has no bearing on the question under discussion."

The main contention in *Nataraja Mudaliar's* case was that the liability to pay tax on *inter-State* transaction depending upon the rate of tax prevailing in the exporting State, hampers trade and commerce by giving or authorising the giving of preference to one State over another or by making or authorising the making of discrimination between one State and another violating the provisions of Articles 301 and 303(1) of the Constitution. After noting the decisions that every imposition of tax does not amount to restriction or impediment of the free flow of trade or commence but that levy which directly and immediately impede or hampering the free flow of trade or commerce only will fall within the provisions imposed by Articles 301, this Court considered the question whether tax imposed under sub-sections (2)(2A) and (5) of section 8 of the Central Sales Tax Act on *inter-State* sales do no amount to law giving or authorising the giving of any preference to one State over the other on the ground of varying rates of tax prevailing in different States. It was argued in that case that the rates of tax on the sale of the same or similar commodity by different States by itself was discriminatory since it authorised the placing of unequal burden on *inter-State* trade or commerce affecting its free flow between the States. It was further contended that since the rates of tax prevailing in different States on transactions of sale were not uniform the impugned provisions affected the free movement or flow of goods in *inter-State* trade. Rejecting this contention this Court held that:

"The flow of trade does not necessarily depend upon the rates of sales tax: it depends upon a variety of factors, such as the source of supply, place of consumption, existence of trade channels, the rates of freight, trading facilities, availability of efficient transport and other facilities for carrying on trade. Instances can easily be imagined of cases in which notwithstanding the lower rate of tax in a particular part of the country goods may be purchased from another part where a higher rate of tax prevails. Supposing in a particular State in respect of a particular commodity, the rate of tax is 2% but if the benefit of that low rate is offset by the freight which a merchant in another State may have to pay for carrying that commodity over a long distance, the merchant would be willing to purchase the goods from a nearer State, even though the rate of tax in that State may be higher. Existence of long-standing business

> relations, availability of communications, credit facilities and a host of other factors-natural and business-enter into the maintenance of trade relations and the free flow of trade cannot necessarily be deemed to have been obstructed merely because in a particular State the rate of tax on sales is higher than the rates prevailing in other States."

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and that

> "by authorising the State from which the movement of goods commences to levy on transactions of sale Central Sales Tax at rates prevailing in the State subject to the limitations already set out, in our judgment no discrimination can be deemed to be practiced."

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As may be seen from the above discussion the decision in *Nataraja Mudaliar's* case (supra) related to a levy of sales tax on *inter-State* sale under the Central Sales Tax Act by a State in which the movement of goods commenced subject to certain exceptions and limitations. If the rate of tax on *inter-State* sale was the same as that for *inter-State* sale no discrimination can be said to arise.

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After referring to the decisions in *Nataraja Mudaliar's* case (supra) and *Hajee Abdul Shakoor's* case (supra) and distinguishing the same this Court further observed:

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> "In the two cases the differential treatment violated Art. 304(a) of the Constitution, which authorises the Legislature of a State notwithstanding anything in Arts. 301 and 303 by law to "impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so however, as not to discriminate between goods so imported and goods so manufactured or produced.". Imposition of differential rates of tax by the same State on goods manufactured or produced in the State and similar goods imported in the State is prohibited by that clause. But where the taxing State is not imposing rates of tax on imported goods different from rates of tax on goods manufactured or produced, Art. 304(a) has no application. Article 303 prohibits the making of law which gives, or authorises the giving of, any preference to one State over another, or makes, or authorises the making of, and dis-

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A crimination between one State and another. Prevalence of different rates of sales-tax in the State which have been adopted by the Central Sales Tax Act for the purpose of levy of tax under that Act is, as already mentioned, not determinative of the giving of preference or making a discrimination."
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What is relevant is that *A.T.B. Mehtab's* case (supra) and *Hajee Abdul Shakoor's* case (supra) are concerned with hides and skins tanned inside the State but by reason of the raw material having suffered the tax the goods tanned out such raw material was exempted from tax which in effect means not taxable goods or the tax is nil. C That is how the discrimination arose in those two cases. We may also mention that *Nataraja Mudaliar's* case (supra) did not dissent from the ratio of the judgment in *Mehtab Majid & Co's* case (supra) or *Hajee Adbul Shakoor's* case (supra).

D In *Rattan Lal & Co. & Anr.* v. *The Assessing Authority & Anr.* (supra) the discrimination pleaded was that in fixing the stage of tax for declared goods section 5(3) of the Act made a discrimination between imported goods and local goods. That provision reads as follows:

"(3) Notwithstanding anything contained in this Act—

E

(a) in respect of declared goods tax shall be levied at one stage and that stage shall be—

(i) in the case of goods liable to sales tax, the stage of sale of such goods by the last dealer liable to pay tax under this Act;
F

(ii) in the case of goods liable to purchase tax, the stage of purchase of such goods by the last dealer liable to pay tax under this Act;

G The argument was that there is a discrimination between the first purchase in the case of imported goods and last sale in the case of local goods. Since the imported goods might be more expensive by reason of freight etc. or intermediary sales having taken place, it was said, that the burden of tax will be heavier and, therefore, this will offend against the equality clause under Article 304 of the Constitution. H Overruling this objection this Court held:

"The rate of tax is same in every case. In *State of Madras* v. *N.K. Nataraja Mudaliar*, [1969] 1 SCR, this Court stated that the essence of Arts. 301 and 303 is to enable the State by a law "to impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in the State and subject, so, however as not to discriminate between goods so imported and goods so manufactured or produced." It was pointed out by this Court that "imposition of differential rates of tax by the same State on goods manufactured or produced in the State and similar goods imported in the State is prohibited by that clause. But where the taxing State is not imposing rates of tax on imported goods different from rates of tax on goods manufactured or produced, Art. 304 has no application.

Here also the tax is at the same rate and therefore the tax cannot be said to be higher in the case of imported goods. It may be that when the rate is applied the resulting tax is somewhat higher but that does not offend against the equality contemplated by Art. 304. That is the consequence of *ad valorem* tax being levied at a particular rate. So long as the rate is the same Art. 304 is satisfied. Even in the case of local manufactures if their cost of production varies, the net tax collected will be more or less in some cases but that does not create any inequality because inequality is not the result of the tax but results from the cost of production of the goods or the cost of their importation. This ground, therefore, has also no substance.

In *Associated Tannerse* v. *Commercial Tax Officer Vizianagaram & Ors.* (supra) the facts were these. The assessee was a tanner who had a tannery at Vizianagaram and was at the material time a dealer under the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter called the 'State Act') as well as the Central Sales Tax Act, 1956 (hereinafter called the 'Central Act'). The assessee purchased raw hides and skins in the State of Andhra Pradesh and tanned the same. He was selling mostly the tanned hides and skins in the course of *inter-State* trade. The assessing officer assessed the assessee's *inter-State* sales under the Central Act. The assessee filed a writ petition in the High Court questioning the constitutional validity of item 9(b) of Schedule III of the Andhra Pradesh General Sales Tax Act as unconstitutional and void and for a further declaration that no tax could be

A levied or was leviable under the Central Sales Tax Act on *inter-State* sales of tanned hides which had already suffered tax at the untanned stage. Thus the question for consideration was whether tanned hides and skins which has already suffered tax at the untanned stage when sold in *inter-State* sale was liable for levy of tax under the Central Act. This was raised in this form because tanned hides and skins which were B not subjected to tax as untanned hides and skins alone was liable for the levy under items 9(b) of Schedule III of the State Act. The High Court dismissed the writ petition relying on the *Nataraja Mudaliar* case (supra) and *Rattan Lal & Co.* case (supra). The assessee preferred an appeal by special leave. This Court was of the view that the point involved in the case was no longer *res integra* and it is covered by the decision in *Nataraja Mudaliar* case and held since "the rate of tax was C the same, both for the goods brought from outside as well as local goods and it cannot be said that the taxation did directly and immediately restrict or hamper the free flow of trade, commerce, or intercourse and it offended Article 304 (a)." But it is pertinent to point out the further passages appearing in the judgment which actually D show the ratio of the judgment. The learned Judges observed:

> "It further appears to us that there is another aspect. The levy by the State Act is in consonance with the scheme of the Central Act. By sub-section (2) of section 8 of the Central Act, the tax payable by any dealer on his turnover E in so far as the turnover or any part thereof relates to the sale of goods in the course of *inter-State* trade or commerce not falling under sub-section (1), shall be at the rate specified in sub-section (2) of section 8."

and this Court further observed:

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> "The effect of an imposition of tax might work differently upon different dealers, namely, those who use imported tanned goods and those who purchase these locally and tan these locally and then sell in the course of *inter-State* sales. But that effect cannot be said to be arising directly, or as an G immediate effect of the imposition of the tax. Therefore there cannot be any question of violation of article 304(a) of the Constitution.
>
> There is another aspect of the matter. The imposition in this case was in implementation of the Central Act and it H was submitted on behalf of the respondent that there was

no prohibition under article 304 of the Constitution on the Parliament for imposition of any law. The embargo that was placed by article 304 of the Constitution was on the Legislature of a State.

Sub-article (a) of article 304 of the Constitution reads as follows:

"304. Restrictions on trade, commerce and intercourse among States.—Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law—

(a) impose on goods imported from other States or the Union Territories any tax to which similar goods manufactured or produced in that State was subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced."

Therefore the prohibition was not on the Parliament. But in the view we have taken on the first aspect of the matter and in view of the decisions of this Court in the cases of *State of Madras* v. *N.K. Nataraja Mudaliar,* [1968] 22 STC 376 (SC); (1968) 3 SCR 829 and *Rattan Lal & Co.* v. *Assessing Authority*, [1970] 25 STC 136 (SC): (1969) 2 SCR 544, it is not necessary for us to discuss this aspect any further."

It may be seen from these passages cited that the ratio of the decision as in the case of *Nataraja Mudaliar*, case (supra) was that in the case of *inter-State* sale the levy of tax is under the Central Sales Tax only though for the purposes of rates of tax that rate which is applicable to local sales is adopted subject to the maximum mentioned in section 8(2) of the Central Act and these decisions have no application to a case where the discrimination pleaded with reference to a provision in State law imposing taxes with reference to local as well as in respect of the imported goods. As we have already noticed the States have no legislative power to tax *inter-State* sales and it is only the Parliament that could make law. The Central Act is the law relating to tax on *inter-State* sales made by Parliament. The State from which the movement of goods commences in the course of *inter-State* sale collects the tax as agent of the Central Government. On sale of declared goods tax was to be levied and collected at the rate applicable to the sale or purchase of such goods inside the appropriate State subject to the maximum prescribed under section 15 and the restriction relating to

A taxing it at single point. This is also further subjected to the rates prevailing for local sales. It is with respect to these provisions, in the three decisions in *Nataraja Mudaliar* case, *Rattan Lal & Co.* case and *Associated Tanner* case this Court held that so long the rates applicable are in accordance with section 8 no discrimination would arise and none of the provisions of part XIII of the Constitution could be B said to have been offended. But the case on hand is not one arising out of Central Act. The tax was levied under the State Act in respect of steel semis. The State Act exempted steel semis which have been manufactured out of iron scrap which have suffered tax but not the other categories where the scrap had not suffered tax at that stage. This is directly covered by the decision in *A.T.B. Mehtab's* case C (supra) and that decision has not been dissented in *Nataraja Mudaliar* case (supra) or *Rattan Lal & Co's* case (supra). The decision in *A.T.B. Mehtab's* case (supra) is by a Constitution Bench and had not been dissented so far in any case. The ratio of the judgment being fully applicable, the judgment of the High Court under appeal is not acceptable.

D

We accordingly hold that the provision which is impugned in this case is *ultra vires* and accordingly set aside the judgment of the High Court and allow the writ petition filed by the assessee in the High Court. There will be no order as to costs.

T.N.A. Appeals allowed.