A BUILDERS' ASSOCIATION OF INDIA

v.

STATE OF KARNATAKA AND OTHERS

NOVEMBER 17, 1992

B [M.H. KANIA, CJ, J.S. VERMA, S.C. AGRAWAL, YOGESHWAR DAYAL AND DR. A.S. ANAND, JJ.]

Karnataka Sales Tax Act, 1957/Karnataka Sales Tax Rules : Sections 2(m), (n) (t) (u), 5-B, 6 and Sixth Schedule/Rule 6(4)—Works Contract—Categorisation—Deduction of amount towards labour and other charges—Prescribing different percentage of value of contract—Whether permissible—Transfer of property in goods involved in execution of works contract—Deemed sales—Fixing situs thereof—Validity of.

C

D *Constitution of India, 1950 : Articles 14, 136, 366(29-A)(b) and Seventh Schedule List II Entry 54—Enactment of Karnataka Sales Tax Act, 1957—Section 5B r/w Sixth Schedule—Legislative competence of—Levy of different rates of tax for particular type of works contract—Whether arbitrary and discriminatory—Appeal—Special Leave jurisdiction—Raising of new plea for the first time—Whether could be permitted.*

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The appellant is an association of contractors engaged in the work of construction, filed a writ petition before the High Court challenging the validity of various provisions of the Karnataka Sales Tax Act, 1957 as amended by the Amending Act of 1985 and the Karnataka Sales Tax F **Rules. However, during the course of arguments, the appellant confined its challenge to the validity of Explanation 3(e) to S.2(t) and Section 5-B of the Karnataka Sales Tax Act read with Sixth Schedule thereof.**

The High Court dismissed the Writ Petition and the appellant preferred the present appeal.

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On behalf of the appellant, it was contended that clause(c) of Explanation 3 to Section 2(t) of the Act which fixes the situs of sales has the effect of converting a transfer which is an inter-state sale or sale outside the State within the meaning of Sections 3 and 4 of Central Sales H **Tax Act into an inside sale and thereby subjecting the same to levy of tax**

under the Act which is beyond the legislative competence of the State Legislature under Entry 54 of State List read with Art.366(29-A) (b); that Section 5-B read with Sixth Schedule is invalid since tax is levied on the basis of the value of the contract irrespective of the value of goods involved in the execution of the contract, and also different rates of tax have been prescribed for different types of contracts; that the percentage of the value of the contract fixed in Column 3 of the table under Sub-cl.(v) of cl.(n) of Sub-rule 4 of Rule 6 was arbitrary and further it varied with the nature of the contract; and that S.19- A of the Act providing for deduction of tax at source, was invalid.

Dismissing the appeal, this Court,

HELD: 1. A perusal of clause(t) of S.2 of the Karnataka Sales Tax Act, 1957 shows that in the main part the expression 'sale' has been defined and in the inclusive part of the said definition, sub-cls.(i) to (iv) reproduce sub-clauses (a) to (d) of Clause (29-A) of Article 366 of the Constitution of India. Explanation 3 contains three clauses, whereby the situs of the sale is fixed. Clause (a) of Explanation 3 contains the words "other than the sale in the course of inter-State trade or commerce or in the course of import or export" which mean that a sale or purchase of goods in the course of inter-State trade or commerce or in the course of import or export is excluded. Moreover Clause (a) of Explanation 3 merely reproduces the provisions contained in the main part of sub-Section (2) of Section 4 of the Central Sales Tax Act. Clause (b) of Explanation 3 contains the Explanation in sub-s.(2) of Section 4 of the Central Sales Tax Act. Clause (c) of Explanation 3 relates to works contracts and fixes the situs of the deemed sales resulting from transfer of property in goods involved in execution of a works contract. It starts with a non-obstante clause which refers to the Sale of Goods Act, 1930. This means that clause (c) has to be read with other provisions of the Act including clauses (a) and (b) of Explanation 3, which expressly exclude a sale in the course of inter-State trade or commerce and a sale in the course of import or export. Construing clause (c) in the light of clauses (a) and (b) of Explanation 3, it cannot be said that in fixing the situs in respect of deemed sales resulting from transfer of property in goods involved in execution of a works contract the Legislature has included a sale in the course of inter-State trade or commerce or a sales outside the state or a sale in the course of

A import or export. [96-G, H; 97-A-C]

2.1. Tax is not levied on the value of the works contract and that the taxable turnover on which tax is leviable is arrived at after deducting from the value of the works contract the expenses which are incurred by the contractor towards labour charges and other expenses, including amounts B paid to sub-contractors. The expression "labour charges" in sub-cl. (ii) of cl. (m) and the expression "labour charges and other like charges " in sub-cl.(iv) of cl.(n) of Section 6(4) are, wide enough to include the charges for labour and services. [100-D-F]

C 2.2. Charges for labour and services cannot be uniform for all types of works contracts and they would very with the nature of the contract and services. It is, therefore, permissible for the rule-making authority to categories works contracts into different categories and prescribe a different percentage of the value of the contract for the purpose of deduction of amount towards labour charges and other charges. On the basis of D material on record, it is not possible to say that the percentages for such deduction that have been prescribed in the table appended below sub-cl.(v) of cl.(n) of sub-rule(4) of Rule 6 of the Karnataka Sales Tax Rules are arbitrary. [101-A-C]

E *M/s. Gannon Dunkerley & Co. and Ors.* v. *The State of Rajasthan & Ors.*, [1992] Suppl. SCR (Civil Appeals arising out of SLP Nos. 3365-68 of 1992 decided on 17.11.92), relied on. [101-B-C]

3.1. While fixing the rate of tax, it is permissible for the Legislature to fix a uniform rate of tax for various goods involved in the execution of F a works contract which rate may be different from the rates of tax fixed in respect of sales or purchase of these goods as separate article. [101-F]

3.2. It is not impermissible for the Legislature to fix the rate for imposition of the tax on the basis of the nature of the works in which the G goods are incorporated, i.e., on the basis of the user of the goods and it cannot be said that in prescribing different rates of tax for particular types of works contract in the Sixth Schedule, the State Legislature has contravened the provisions of Article 14 of the Constitution. [101-G, 102-C]

3.3. Since the view of the High Court that the fixation of rate of tax H in respect of Item 20 in Sixth Schedule was discriminatory was not chal-

lenged by the State it was not necessary to express any view on that part of the judgment. [102-D] A

Twyford Tea Co. **v.** *Kerala State,* **[1970] 3 SCR 383;** *East India Tobacco Co.* **v.** *State of Andhra Pradesh,* **[1963] 1 SCR 404;** *Ganga Sugar Co. Ltd.* **v.** *State of U.P. & Ors.,* **[1980] 1 SCR 769 and** *Kerala Hotel & Restaurant Association and Ors.* **v.** *State of Kerala & Ors.,* **[1990] 1 SCR 516,** B **relied on.**

4. S.19-A of the Karnataka Sales Tax Act was not challenged by the appellant in the writ petition before the High Court and was also not challenged in the additional grounds which were submitted by the appellant in the High Court after the decision of this Court in *Builders Association* **case. It has also not been challenged by the appellant in the special leave petition filed before this Court. In these circumstances, the appellant cannot be permitted to raise this question. [102-E-F]** C

Builders Association of India **v.** *Union of India,* **[1989] 2 SCR 320,** D **referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 990 of 1991.

From the Judgment and Order dated 27.7.1990 of the Karnataka E High Court in W.P. No. 8926 of 1986.

C.S. Vaidyanathan, S.R. Setia and K.V. Vijayan for the Appellant.

G. Ramaswamy, Attorney General, Dipankar Gupta, Solicitor General, B.B. Ahuja, J. Ramamurty, R.N.N. Murthy, Ranbir Chandra, F Ashok Kumar Sharma, P. Parmeswaran, Ms. A. Subhashini, S.K. Kulkarni, M. Veerappa, P. Mahale, R.P. Wadhwani and B. Mohan for the Respondents.

The Judgment of the Court was delivered by G

S.C. AGRAWAL, J. This appeal arises out of the judgment of the High Court of Karnataka dated July 27, 1990 whereby the High Court has dismissed the Writ Petition No. 8926 of 1986 filed by the appellant under Article 226 of the Constitution of India. In the said writ petition, the appellant had challenged the validity of various provisions of the Karnataka H

A Sales Tax Act, 1957 as amended by Amending Act No. 27 of 1985 and the Karnataka Sales Tax Rules made thereunder.

The appellant is an association of contractors engaged in the work of construction. The provisions of the Karnataka Sales Tax Act which have been impugned by the appellant in writ petition were introduced in the said B enactment after the Constitution (Forty-Sixth Amendment) Act, 1983 whereby cl. (29-A) was introduced in Article 366 of the Constitution so as to enable State Legislatures to impose tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. The validity of Forty-Sixth Amendment came up for con- C sideration before this Court in *Builders' Association of India* v. *Union of India,* [1989] 2 SCR 320 wherein the said amendment was upheld as valid and it was declared that sales tax laws passed by the Legislature of States leaving taxes on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract are subject to the restrictions and conditions mentioned in each clause or sub-clause D of Article 286 of the Constitution. This Court further declared that whatever might be the situational differences of individual cases, the constitutional limits on the taxing power of the State as are applicable to 'works contracts' represented by "Building-Contracts' in the context of the expanded concept of 'tax on the sale or purchase of goods' as constitutionally E defined under Article 366(29-A), would equally apply to other species of 'works contracts' with the requisite situational modifications. In the light of the said decision, certain questions were raised before us which have been considered by us in our decision pronounced today in *M/s. Gannon Dunkerley & Co. & Ors.* v. *The State of Rajasthan & Ors.* (Civil Appeals F arising out of SLP Nos. 3365-68 of 1992) and wherein it has been held as under -

> "(1) In exercise of its legislative power to impose tax on sale or purchase of goods under Entry 54 of the State List read with Article 366(29-A)(b), the State legislature, while G imposing a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is not competent to impose a tax on such a transfer (deemed sale) which constitutes a sale in the course of inter- state trade or commerce or H a sale outside the state or a sale in the course of import

or export.

(2) The provisions of Sections 3, 4, 5 and sections 14 and 15 of the Central Sales Tax Act, 1956 are applicable to a transfer of property in goods involved in the execution of a works contract covered by Article 366(29-A)(b).

(3) While defining the expression 'sale' in the sales tax legislation it is open to the State Legislature to fix the situs of a deemed sale resulting from a transfer falling within the ambit of Article 366(29-A)(b) but it is not permissible for the State Legislature to define the expression sale in a way as to bring within the ambit of the taxing power a sale in the course of inter-State trade or commerce, or a sale outside the state or a sale in the course of import and export.

(4) The tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract falling within the ambit of Article 366(29-A)(b) is leviable on the goods involved in the execution of a works contract and the value of the goods which are involved in execution of the works contract would constitute the measure for imposition of the tax.

(5) In order to determine the value of the goods which are involved in the execution of a works contract for the purpose of levying the tax referred to in Article 366(29-A)(b), it is permissible to take the value of the works contract as the basis and the value of the goods involved in the execution of the works contract can be arrived at by deducting expenses incurred by the contractor for providing labour and other services from the value of the works contract.

(6) The charges for labour and services which are required to be deducted from the value of the works contract would cover (i) labour charges for execution of the works, (ii) amount paid to a sub-contractor for labour and services; (iii) charges for obtaining on hire or otherwise machinery

A and tools used for execution of the works contract; (iv) charges for planning, designing and architect's fees; (v) cost of consumables used in execution of the works contract; (vi) cost of establishment of the contractor to the extent it is relatable to supply of labour and services; (vii) other similar expenses relatable to supply of labour and services; and (viii) profit earned by the contractor to the extent it is relatable to supply of labour and services.

(7) To deal with cases where the contractor does not maintain proper accounts or the account books produced by him are not found worthy of credence by the assessing authority the legislature may prescribe a formula for deduction of cost of labour and services on the basis of a percentage of the value of the works contract but while doing so it has to be ensured that the amount deductible under such formula does not differ appreciably from the expenses for labour and services that would be incurred in normal circumstances in respect of that particular type of works contract. It would be permissible for the legislature to prescribe varying scales for deduction on account of cost of labour and services for various types of works contract.

(8) While fixing the rate of tax it is permissible to fix a uniform rate of tax for the various goods involved in the execution of a works contract which rate may be different from the rates of tax fixed in respect of sales or purchase of those goods as a separate article."

The impugned provisions of the Karnataka Sales Tax Act have to be considered in the light of the aforesaid principles.

Although in the writ petition the appellant had challenged the validity of a number of provision but in his arguments before the High Court the learned counsel for the appellant confined his submissions to Explanation 3(c) to Section 2(t) and Section 5-B read with the Sixth Schedule.

Clause (t) of Section 2 of the Act defines the expression 'sale' in the

following terms :

"(t) "Sale with all its grammatical variation and cognate expressions means every transfer of the property in goods (other than by way of mortgage, hypothecation, charge or pledge) by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration and includes -

(i) a transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) a delivery of goods on hire purchase or any system of payment by installments;

(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

Explanation (1) - Omitted

Explanation (2) - Omitted

Explanation (3) - (a) The sale or purchase of goods (other than in the course of inter-State trade or commerce or in the course of import or export) shall be deemed, for the purposes of this Act, to have taken place in the State wherever the contract of sale or purchase might have been made, if the goods are within the State -

(i) in the case of specific or ascertained goods at the time the contract of sale or purchase is made; and

(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the

A assent of the other party is prior or subsequent to such appropriation.

(b) Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of clause (a) shall apply as if there were separate contracts B in respect of the goods at each of such places.

(c) Notwithstanding anything contained in the Sale of Goods Act, 1930 (Central Act 3 of 1930), for the purpose of this Act, the transfer of property in goods (whether as C goods or in some other form) involved in the execution of a works contract shall be deemed to have taken place in the State, if the goods are within the State at the time of such transfer, irrespective of the place where the agreement for works contract is made, whether the assent of the other party is prior or subsequent to such transfer.

D

(Rest omitted)"

It has been urged by learned counsel that clause (c) of Explanation 3, which fixes the situs of the sale, has the effect of converting a transfer which is an inter-State sale or sale outside the State within the meaning of E Sections 3 and 4 of the Central Sales Tax Act into an inside sale and thereby subjecting the same to levy of tax under the Act which is beyond the legislative competence of the State Legislature under Entry 54 of the State List read with Article 366(29-A)(b). The said contention of the appellant has been rejected by the High Court. Having heard Shri Vijayan, F the learned counsel for the appellant, we do not find any substance in the contention.

A perusal of clause (t) shows that in the main part the expression 'sale' has been defined and in the inclusive part of the said definition, sub-cls. (i) to (iv) reproduce sub-clauses (a) to (d) of Clause (29-A) of G Article 366. Explanation 3 contains three clauses, whereby the situs of the sale is fixed. Clause (a) of Explanation 3 contains the words "other than the sale in the course of inter-State trade or commerce or in the course of import or export" which means that a sale or purchase of goods in the course of inter-State trade or commerce or in the course of import or H export is excluded. Moreover Clause (a) of Explanation 3 merely

reproduces the provisions contained in the main part of sub-Section (2) of Section 4 of the Central Sales Tax Act. Clause (b) of Explanation 3 contains the Explanation in sub-s.(2) of Section 4 of the Central Sales Tax Act. Clause (c) of Explanation 3 relates to works contracts and fixes the situs of the deemed sales resulting from transfer of property in goods involved in execution of a works contract. It starts with a *non-obstante* clause which refers to the Sale of Goods Act, 1930. This means that clause (c) has to be read with other provisions of the Act, including clauses (a) and (b) of Explanation 3, which expressly exclude a sale in the course of inter-State trade or commerce and a sale in the course of import or export. Construing clause (c) in the light of clauses (a) and (b) of Explanation 3, we are unable to hold that in fixing the situs in respect of deemed sales resulting from transfer of property in goods involved in execution of a works contract the Legislature has included a sale in the course of inter-State trade or commerce or a sales outside the state or a sale in the course of import or export.

The other provision which has been challenged is Section 5-B which provides as under -

> "(5-B) Levy of tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of works contracts - Notwithstanding anything contained in sub-section (1) or sub-section (3) of section 5, but subject to sub-sections (5) and (6) of the said section, every dealer shall pay for each year, a tax under this Act on his taxable turnover of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract mentioned in column (2) of the Sixth Schedule at the rates specified in the corresponding entries in column (3) of the said schedule.

It has been pointed out that in the Sixth Schedule different rates of tax have been prescribed for different types of works contracts. The validity of Section 5-B read with Sixth Schedule has been assailed by the appellant on two grounds - (1) the tax is levied on the basis of the value of the contract irrespective of the value of the goods involved in the execution of the contract and (2) different rates of tax have been prescribed for different types of contracts. As regards the first ground of attack, it may be stated

A that under Section 5-B, the tax is imposed on the taxable turnover of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract. The expression 'taxable turnover' is defined in cl.(u-I) of Section 2 as follows -

> B "(u-I) 'taxable turnover' means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out C of the territory of India or in the course of import of the goods into the territory of India;

Rule 6 of the Karnataka Sales Tax Rules, 1957 provides for determination of total and taxable turnover of a dealer. The total turnover is to D be determined in accordance with clauses (a) to (f) of sub-Rule (1). Clause (c) relates to works contracts and it provides that the total turnover shall be the aggregate of "the total amount paid or payable to the dealer as the consideration for transfer of property in goods (whether as goods or in some other form) involved in the execution of works; and including any amount paid as advance to the dealer as part of the consideration. In E sub-Rule (4) of Rule 6, it is provided that "in determining the taxable turnover the amount specified in clauses (a) to (p) shall, subject to the conditions specified therein, be deducted from the total turnover as determined under clauses (a) to (e) of sub-Rule (1)". In respect of works contracts such deductions are specified in cls.(m) and (n) of sub-rule (4). F Clause (m) relates to works contracts specified in serial numbers 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 17, 26 and 27 of the Sixth Schedule and provides for following deductions -

> G "(i) all amounts for which any goods specified in the said serial numbers and falling under second schedule are purchased from registered dealers liable to pay tax under the Act.
>
> (ii) all amounts actually expended towards 'labour charges for erection, installation, fixing, fitting out, or commission- H ing of the goods specified in the said serial numbers.

(iii) all amounts paid to sub-contractors as the consideration for execution of works contract whether wholly or partly:

Provided that, no such deduction shall be allowed unless the dealer claiming deduction produces proof that the sub-contractor is a registered dealer liable to tax under the Act and that the turnover of such amounts is included in the monthly statement or return of turnover as the case may be, filled by such sub-contractor;

Clause (n) relates to works contracts specified in serial numbers 6, 13, 14, 15, 16, 18, 20, 23, 24 and 25 of the Sixth Schedule and makes provision for the following deductions -

"(i) all amounts for which any goods specified in the Second and Fourth Schedule are purchased from registered dealers liable to pay tax under the Act,

(ii) all amounts for the purchase of any goods which are specifically exempted from tax under any of the provisions of the Act.

(iii) all amounts paid to sub-contractors as the consideration for execution of works contract whether wholly or partly :

Provided that, no such deduction shall be allowed unless the dealer claiming deduction produces proof that the sub-contractor is a registered dealer liable to tax under the Act and that the turnover of such amounts is included in the monthly statement or return of turnover, as the case may be, filed by such sub-contractor,

(iv) such amounts towards 'labour charges and other like charges' not involving any transfer of property in goods actually incurred in connection with the execution of works contract, or

(v) such amounts calculated at the rate prescribed in column (3) of the Table below, if they are actually incurred

A towards 'labour charges' and other like charges and are not ascertainable from the books of accounts maintained and produced by a dealer before the assessing authority."

In the table which is appended below Clause (n), the percentage of the value of the contract which would be deducted towards labour and B other charges has been specified in respect of different types of works contracts specified in the said table.

In sub-cl.(ii) of cl.(m) amounts actually expended towards labour charges for erection installation, fixing, fitting out, or commissioning of the C goods specified in the serial numbers wholly or partly, are deductible and under sub-cl.(iii) of cl.(m) all amounts paid to sub-contractors as the consideration for execution of works contract whether wholly or partly, are deductible. Similarly, under sub-cl.(iii) of cl.(n), all amounts paid to sub-contractors for execution of works contract whether wholly or partly are D deductible and under sub-cl.(iv) of cl.(n) amounts towards labour charges and other like charges not involving any transfer of property in goods actually incurred in connection with the execution of work contract are deductible. From these provisions, it is evident that the tax is not levied on the value of the works contract and that the taxable turnover on which tax is leviable is arrived at after deducting from the value of the works contract E the expenses which are incurred by the contractor towards labour charges and other expenses, including amounts paid to sub-contractors. The expression "labour charges" in sub-cl. (ii) of cl.(m) and the expression "labour charges and other like charges" in sub-cl.(iv) of cl.(n) are, in our opinion wide enough to include the charges for labour and services, as indicated F by us in our judgment in *M/s Gannon Dunkerley and Ors.* v. *State of Rajasthan* (supra) to which reference has been made earlier. It cannot, therefore, be said that section 5-B provides for levy of tax not on the value of the goods involved in the execution of a works contract but also on something which is not part of that value.

G The learned counsel for the appellant has challenged the fixation of the percentage on account of labour and other charges in the table under sub-cl.(v) of cl.(n) of sub-rule 4 of Rule 6. The said table is applicable in cases where the amounts actually incurred towards 'labour charges and other like charges' are not ascertainable from the books of account main- H tained and produced by a dealer before the assessing authority. The

submission is that the percentage of the value of the contract fixed in column 3 of the said table is arbitrary and further that it varies with the nature of the contract. In *Gannon Dunkerley* case (supra), we have indicated that charges for labour and services cannot be uniform for all types of works contracts and they would vary with the nature of the contract and services. It is, therefore, permissible for the rule-making authority to categorise works contracts into different categories and prescribe a different percentage of the value of the contract for the purpose of deduction of amounts towards labour charges and other charges. On the basis of material on record, it is not possible to say that the percentages for such deduction that have been prescribed in the table appended below sub-cl.(v) of (n) of sub-rule (4) of Rule 6 of the Rules are arbitrary.

As regards the challenge to the rates of tax prescribed in the Sixth Schedule on the ground that the same have been fixed with reference to the nature of the contract and not with reference to the goods involved in the execution of a works contract, we find that the High Court has upheld the same and has placed reliance on the decision of this Court in *Twyford Tea Co.* v. *Kerala State,* [1970] 3 SCR 383, wherein this Court has referred to the decision in *East India Tobacco Co.* v. *State of Andhra Pradesh,* [1963] 1 SCR 404 and has laid down that the legislature has a "wide range of selection and freedom in appraisal not only in the objects of taxation and the manner of taxation but also in the determination of the rate or rates applicable" (p.393). In *Gannon Dunkerley* case (supra) after taking note of the above-mentioned principle and the decisions of this Court we have held that while fixing the rate of tax, it is permissible to fix a uniform rate of tax for the various goods involved in the execution of a works contract which rate may be different from the rates of tax fixed in respect of sales or purchase of these goods as a separate article. Here we find that while imposing tax at a uniform rate for the various goods involved in the execution of a works contract different rates of tax are prescribed for different types of works contract specified in the Sixth Schedule. This only means that rate for imposition of the tax is fixed on the basis of the nature of the works in which the goods are incorporated, i.e. on the basis of the user of the goods. Such a course is not impermissible. In *Ganga Sugar Co. Ltd.* v. *State of U.P. & Ors.,* [1980] 1 SCR 769, purchase tax was levied at the rate of Rs. 1=25 per quintal on sugarcane sold to sugar factories and at the rate of 50 p. per quintal on sugarcane sold to Khandsari units. The challenge to differential rate for levy of tax was negatived by this Court.

A Similarly, in *Kerala Hotel & Restaurant Association And Ors.* v. *State of Kerala & Ors.*, [1990] 1 SCR 516, this Court upheld the constitutional validity of the provisions contained in Kerala General Sales Tax Act, 1963 and the Tamil Nadu General Sales Tax Act, 1959 whereby tax was imposed on cooked food sold in luxury hotels while there was exemption from tax on cooked food sold in modest eating places. Classification based on the use of the goods for the purpose of imposition of the tax was upheld in these cases.

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It cannot, therefore, be held that in prescribing different rates of tax for particular types of works contract in the Sixth Schedule, the State C Legislature has contravened the provisions of Article 14 of the Constitution. We may, in this context, mention that the High Court while upholding the validity of the rates fixed in the Sixth Schedule has held that while under the Second Schedule tax on pipes, tubes and fittings of iron, cement and asbestos not falling in the Fourth Schedule is to be levied @ 8%, the tax on the corresponding item under item No. 20 of the Sixth Schedule is levied D at the rate of 10%. The High Court has held the fixation of rate of tax in respect of Item 20 in Sixth Schedule as being discriminatory and has struck it down. The said part of the judgment of the High Court has not been challenged by the State and we do not wish to say anything on the same.

E During the course of arguments before us, the learned counsel for the appellant sought to challenge the validity of section 19-A of the Karnataka Sales Tax Act which provides for deduction of tax at source. We find that the said provision was not challenged by the appellant in the writ petition before the High Court and was also not challenged in the additional grounds which were submitted by the appellant in the High F Court after the decision of this Court in *Builders' Association* case (supra). It has also not been challenged by the appellant in the special leave petition filed before this Court. In these circumstances, we have not permitted the appellant to raise this question.

G In the result, the appeal fails and it is accordingly dismissed with no orders as to costs.

G.N. Appeal dismissed.