REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2217 OF 2011

COMMERCIAL TAXES OFFICER ...APPELLANT

VERSUS

M/S. BOMBAY MACHINERY STORE ...RESPONDENT

WITH
CIVIL APPEAL NO. 2220 OF 2011
CIVIL APPEAL NO. 10000 OF 2017
CIVIL APPEAL NO. 10001 OF 2017

J U D G M E N T

ANIRUDDHA BOSE, J.

All these four appeals are being dealt with by this judgment as they all involve adjudication on a common question of law arising out of Sections 3 and 6 of the Central Sales Tax Act, 1956 (1956 Act), which was operational at the material point of time.

The question is as to whether as a condition of giving the benefit of Section 6(2) of the said Act, the tax authorities can impose a limit or timeframe within which delivery of the respective goods has to be taken from a carrier when the goods are delivered to a carrier for transmission in course of inter-state sale. For proper appreciation of the dispute involved in these appeals, the aforesaid provisions are reproduced below:-

> "**3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce**. A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase—
> (a) occasions the movement of goods from one State to another; or
>
> (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.
>
> Explanation 1 — Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.
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> Explanation 2 — Where the movement of goods commences and terminates in the

same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

Explanation 3 – Where the gas sold or purchased and transported through a common carrier pipeline or any other common transport or distribution system becomes co-mingled and fungible with other gas in the pipeline or system and such gas is introduced into the pipeline or system in one State and is taken out from the pipeline in another State, such sale or purchase of gas shall be deemed to be a movement of goods from one State to another."

6. Liability to tax on inter-State sales.— [(1)] Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales [of goods other than electrical energy] effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

[Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of

sub-section (3) of section 5 is a sale in the course of export of those goods out of the territory of India.]

[(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.]

[(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods, -

(a) to the Government, or

(b) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8,

shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or

within such further time as that authority may, for sufficient cause, permit,—

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made –

(i) to a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8, or

(ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of section (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,—

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than four per cent. (whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (a) or clause (b) of this sub-section.

[(3) Notwithstanding anything contained in this Act, if –

(a) any official or personnel of –

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar international body, entitled to privileges under any convention to which India is a party or under any law for the time being in force; or

(b) any consular or diplomatic agent of any mission, the United Nations or other body referred to in sub-clause (i) or sub-clause (ii) of clause (a), purchases any goods for himself or for the purposes of such mission, United Nations or other body, then, the Central Government may, by notification in the Official Gazette, exempt, subject to such conditions as may be specified in the notification, the tax payable on the sale of such goods under this Act."

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be."

2. We shall narrate the factual context of Civil Appeal No.2217 of 2011, before we address the legal issue involved in these

appeals, treating this to be the lead case. The dispute relating to the other three appeals are not identical, but the question of law being the same in all these appeals, we shall avoid narrating in detail the sequence of events which led to filing of the said appeals, except to the extent such narration is necessary for understanding the scope of these appeals. In Civil Appeal No.2217 of 2011, the period of assessment is 1995-96. The respondent-assessee Bombay Machinery Store had purchased electricity motors and its parts in the said financial year out of the State and sold them to purchasers within the Kota region of the State of Rajasthan. For such sales, they obtained the benefit of exemption under Section 6(2) of the 1956 Act. These goods had remained with the transport company upon arrival in Kota for more than a month. Revenue's case is that after importing these goods into Rajasthan, sale was effected through bilty (transport receipt) on obtaining separate orders. Such sale, it is the revenue's case, constituted sale within the State and hence taxable @12% per annum under the Rajasthan Sales Tax Act, 1954. Civil Appeal No.2220 of 2011 relates to the

same firm but for the assessment year 1994-95. Quantum of sales for the year 1994-95 effected through the same process was Rs.3,15,639/- and for 1995-96 it was Rs.2,60,93/-. Claim of benefit under Section 6(2) of the 1956 Act was rejected and tax along with interest and penalty was imposed under the State Act by Commercial Tax Officer, Anti-Evasion Circle-I, Kota after a survey by two orders, both dated 11th December, 1997. The appeals by Bombay Machinery Stores were allowed by the Deputy Commissioner (Appeals), Commercial Taxes, Kota following a decision delivered on 8th March, 1996 by the Rajasthan Tax Board in the case of **CTO vs. Bhagwandas & Sons (1996 Tax World 107).** The orders of the first appellate authority were passed on interpretation of the first explanation to Section 3B(1) of the 1956 Act. Imposition of tax, interest and penalty under the State Act was quashed. In State Tax authority's appeal before the Tax Board, reliance was placed on two circulars issued by the Commissioner bearing S.No.1132A: CCT Circular F.11(3)CST/Tax/CCT/1/61 dated 15th April, 1998, clarified by a further circular dated 19th July,

1999. The Board did not take into consideration these two circulars. These were not referred to in the orders of the Tax Assessment Officer. The Board sustained the view of the Deputy Commissioner (Appeals) in a composite order. This order was challenged by the revenue by filing two revision petitions before the High Court, as two appeals were disposed of by the Board by its order dated 24.11.2004. The High Court, in the judgment delivered on 14th September, 2007 confirmed the Board's order and quashed two circulars bearing S.No.115B dated 16th September, 1997 and S.No.1132A dated 15th April, 1998. These circulars sought to impose a time limit on retention of goods in the carrier's godown, beyond which time the revenue was to treat obtaining of constructive delivery of the goods involved. That judgment is under appeal before us. Before we deal with this judgment, we shall briefly refer to the other appeals which have been heard together.

3. In Civil Appeal No.2220 of 2011, incidences of sale relate to different dates between 24th March, 1994 and 30th January, 1995.

4. Civil Appeal No.10000 of 2017 and Civil Appeal No. 10001 of 2017 relate to another assessee, Unicolour Chemicals Company. That firm purchased chemical and colour from a Gujarat based company, and the goods reached the godown of the carrier transport company on 12th May, 2000. They were sold to a firm in Jaipur in two tranches, after 55 days and 80 days from the date of arrival. The monetary value of these goods was Rs.1,27,592. In Civil Appeal No. 10001 of 2017, revenue's case is that survey of the business place of the same firm revealed that:-

> "the stock of taxable good colour chemical of price Rs.4,72,653/- has been found less and on doubt on the nature of sale showing in the Section 6(2) of the Central Sales Tax Act and seeing the possibility of tax evasion the record found in the survey of the business firm has been seized."
>
> (quoted from the order annexed to the paper book)

These goods had reached the godown of the transport company on 25th July, 2001. These were brought against bilty and the documents were transferred to the same firm on 4th September,

2001. There was thus delay of 41 days. The tax fixation authorities directed application of the State Act treating the transactions to be local sales. This order was sustained by the Deputy Commissioner (Appeals) and the order of the Tax Board also went against Unicolour. The High Court, following the judgment in the case of **Bombay Machinery Store** (which we are treating as the lead case in this judgment), quashed the orders of the statutory authorities in both the appeals and also invalidated the two circulars.

5. The two circulars issued by the Commissioner, Commercial Taxes Department, Rajasthan have been quoted in the impugned judgment in the case of Bombay Machinery Store. Henceforth, wherever we refer to the expression judgment under appeal, we shall imply that judgment only, unless we specifically refer to any of the three other decisions under appeal. These circulars read:-

> "**S. No. 1115B : CCT Circular F.11(3)/CST/Tax/CCT/1997/1563 dated 16.9.1997**
>
> As you are aware of the fact that to avoid multiple taxation of goods sold by transfer of documents of title to the goods in their

single movement from one State-to another, provisions for exemption of such transaction are embodied in S. 6(2), CST Act, 1956. It appears that application of this provision has been made more or less mechanical by the assessing authorities in as much as on furnishing form E-I/E-II and C forms without looking into the material facts regarding single inter-State movement of such goods, benefits are conferred to such dealers. If the movement of the goods from one State to another terminates, the subsequent sales will be treated as intra-State sales and benefit of the above sub-section (2) of Section 6 will not be available in such cases. It is found that trade is often claiming large exemptions under this provision, particularly in respect of paper, dyes and chemicals, etc. It is, therefore, directed that all the assessing authorities should specifically examine the nature of transactions before granting benefit under the said section.

It may be argued that in view of the Explanation I to Section 3 of the CST Act, 1956, inter-State movement of goods continues until the consignee obtains physical delivery of goods from the carrier, after arrival of these goods at the destination. This argument is based on the incorrect notion that "delivery" in the Explanation means only "physical delivery". This argument can be countered on the basis of the well settled proposition of "constructive delivery".

The material fact to be looked into by the assessing authorities while granting benefit of Section 6(2) of the CST Act relate to the termination of the movement of goods in the inter-State transactions. If after arrival of the goods at the destination, the consignee asks the transporter expressly or impliedly, to retain the goods at his godown until further directions, then the carrier ceases to hold the goods as transporter, and in the eyes of law, the goods are as much in possession of the consignee as if he had taken them into his own godown. As per the settled legal concept this sequence of events tantamounts to constructive delivery of the goods by transporter to the consignee and transit ends. Any sale by the consignee thereafter will be local sale and benefit of Section 6(2) will not be available.

The transporters, whether Railways or Roadways, impose condition of delivery of goods transported through them at the destination usually within ten days and the consignee is required to check up with such transporting agency as to the arrival of the goods. In these circumstances, if the carrier retains the goods for an extended period, then there is a clear inference that the consignee was aware of the arrival of his goods and the transporter is holding the goods on his behalf as a bailee for the consignee. These factual matrix leads to the conclusion that there is a local sale and not sale under said Section 6(2). Payment of warehouse rent/demurrage charges by the

consignee to the transporter is conclusive evidence that transporters have assumed the role of bailee and transit having ended. It may be observed that bailment can be either gratuitous or for remuneration or partially both. In law, there can also be bailment without contract.

As per legal position, 'transit' gets over as soon as a reasonable time elapses for the consignee to elect whether he would take the goods away or leave them in the transporters premises, because at the conclusion of reasonable time there is deemed to be a constructive delivery of goods from the transporters to the consignee. If a dealer claims that the had not obtained the delivery of goods, the burden of proving that the goods really remained with the carrier from the date of their arrival till the date of their clearance is on the dealer. If the dealer fails to furnish this proof, then the assessing authority would be justified in concluding that the dealer had himself taken physical delivery of the goods from the carrier and thereby disallowing his claim of exemption under S. 6(2), CST Act.

The decision of the Delhi High Court in *Arjun Dass Gupta and Bros.* v. *Commer of Sales Tax, New Delhi*, reported in (1980) 45 STC 52, lays down the basic guidelines regarding exemption of sales under S. 6(2), CST Act. The Delhi High Court had held that Explanation I to S. 3(b) of the CST Act, 1956 did not permit the dealer to expand the movement of goods beyond the time of

physical landing of the goods in the Union Territory of Delhi. As to the knowledge except this there are no other directly relevant or contra judgment reported from any other High Court. It is understood that Special Leave Petition is pending in the Supreme Court on the issue but there is no stay. As such Delhi High Court judgment holds the field.

It is therefore, enjoined upon the assessing authorities that in future they should not grant the benefit of exemption under S. 6(2), CST Act, simply on furnishing of the Form E-I/E-II and C Form. If on the contrary it is found that assessee had taken physical delivery or the goods remained with the transporter beyond a reasonable time looking to the facts and circumstances of each case, the doctrine of constructive delivery should be invoked and action be taken accordingly.

S. No. 1132A : CCT Circular F.11(3) CST/Tax/CCT/61 dated 15.04.1998

It may be recalled that vide circular dated 16.9.1997 [S. No.1115B], instructions were issued clarifying therein the legal position of granting benefits under Section 6(2) of the CST Act, 1956. It has been clarified that the concept of constructive delivery shall also be invoked while determining when the transit comes to an end. It was also clarified that the Railways or Roadways usually impose conditions of delivery of goods

transported by them at the destination within 10 days and the consignee is required to check up with such transporting agency as to the arrival of the goods. In view of this, it was desired by the above referred circular that the AAs should ascertain the fact that whether the goods remained with the transporter beyond reasonable time. Looking to the facts and circumstances of each case, the doctrine of constructive delivery should be invoked and action be taken accordingly.

The representatives of various associations of trade and industry had brought to the notice that in almost all cases the AAs are invoking the doctrine of constructive delivery in a mechanical manner immediately after ten days of arrival of the goods at the destination. As per these Associations, this approach has resulted in hardship to the dealers and avoidable harassment is being caused to them with adverse effect on the trade. They have requested for increasing this limit.

Keeping in view these factual aspects and the discussions at the Govt; level, it is reiterated that the reasonability of the time should be looked into after analysing the facts and circumstances of each case and the usual period of treating constructive delivery which may even extend upto thirty days instead of ten days as suggested in the above referred circular.

> Deputy Commissioner (Admn) should ensure that, while ensuring the State revenue, no harassment shall be caused to the dealers by enthusiastic assessing authorities while determining the end of transit."

6. The High Court has referred to two decisions, one by the Rajasthan High Court itself, in the case of **Guljag Industries Limited vs. State of Rajasthan & Another** reported in (2003) 129 STC 3 (Raj.) and the other of the Delhi High Court in the case of **Arjan Dass Gupta and Brothers** vs. **Commissioner of Sales Tax, Delhi Administration** (1980) 45 STC 52 (Delhi). In the latter decision, a Bench of the Delhi High Court construed certain provisions of 1956 Act and the Bengal Finance (Sales Tax) Act, 1941, (as it was applicable to Delhi at the material point of time). On the aspect of what would be implication of the expression 'delivery' in Section 3(b) of the 1956 Act, it was, inter-alia, held:-

> "**10**…….Normally, when the goods are carried by a carrier from one State to another, the delivery is taken by the importer immediately after the goods land in the importing State. Thus, normally, the

> landing of the goods in the importing State and the delivery of the goods are almost simultaneous acts, although technically there will be some hiatus between the two. Considering these commercial facts, it is difficult to accede to the retailer's contention that the movement of goods continues even if the goods have landed in Delhi only because the importer has transferred the documents of title to the purchasing retailers and such retailers take delivery from the railways at a subsequent time. If taking delivery is the test of termination of movement and not the landing of the goods in an importing State, Explanation 1 to Section 3(b) of the Central Sales Tax Act would lead to anomalous results. If, after the landing of the goods in Delhi, the railway receipts are endorsed one after another to ten persons and the delivery is taken by the tenth person, say after three months, the movement of goods would on the dealer's interpretation artificially continue for three months after the landing of the goods in Delhi."

7. In the judgment under appeal, the Rajasthan High Court, however, disagreed with this view of the Delhi High Court relying on the case of **Guljag Industries Limited** (supra), in which three

appeals were dealt with in a common judgment. It was held by the High Court in the judgment under appeal:-

> "**12.** Therefore, the proposition of law by the learned Commissioner in the impugned circulars that "as per legal position, 'transit' gets over as soon as a reasonable time elapses for the consignee to elect whether he would take the goods away or leave them in the transporters premises, because at the conclusion of reasonable time there is deemed to be a constructive delivery of goods from the transporter to the consignee", cannot be said to be a correct legal position. The subsequent Circular dated 15.4.1998 purportedly issued to ameliorate the situation for dealers created by previous circular dated 16.9.1997, merely ended up extending the time limit of 10 days to 30 days without undoing the damage done by the previous circular by propounding a particular view of constructive delivery. In fact, the very power to issue such circulars by the learned Commissioner giving a particular interpretation of law purportedly binding on all the assessing authorities is doubtful. There is no specific provision in the Sales Tax Act, either under the RST Act or under the CST Act, empowering the Commissioner to issue such circulars, as against such powers conferred under Section 119 of the Income Tax Act on the Central Board of Direct Taxes. Even

Section 119 of the Income Tax Act, which empowers the highest administrative body under the Act, namely CBDT, by way of its proviso restricts and provides that no such order, instruction or direction shall be issued so as to require any Income Tax authority to make a particular assessment or dispose of a particular case in a particular manner and such orders or instructions shall also not interfere with the discretion of the Commissioner (Appeals) in exercise of its appellate functions. Therefore, this court cannot countenance the issuance of such circulars by the Commissioner of Sales Tax, which unduly fetter with the quasi-judicial discretion of the assessing authorities, who are expected in law to give their findings of fact and interpret the statutory law in their own quasi-judicial discretion in accordance with the law as interpreted by the Supreme Court or jurisdictional High Court. The circulars issued by the Commissioner in the aforesaid manner like done vide Circulars dated 16.9.1997 and 15.4.1998 are likely to hamper and throttle such quasi-judicial discretion which vests with the assessing authorities. Therefore, the aforesaid circulars issued by the Commissioner aforesaid on 15.4.1998 (S. No. 1132A) and 16.9.1997 (S. No. 1115B) are in conflict with the Division Bench decision of this Court in *Guljag Industries Ltd's case* (supra) and even otherwise they are found to be without any authority of law. Consequently, both these circulars are

found to be ultra vires and are hereby quashed.

13. In view of aforesaid, since there was no basis for the learned Commissioner to stipulate the time frame of 10 days or 30 days and thereafter, to require the assessing authority to invoke the concept of constructive delivery so as to deny the exemption of CST on subsequent sales made by transfer of documents of title to the goods made under Section 6(2) of Act, though requisite conditions of Section 6(2) of the Act are fulfilled by the dealer and such circulars have already been held to be ultra vires and have been quashed and in absence of any other material justifying the denial of exemption under Section 6(2) of the Act to the assessee, the impugned order of the Tax Board allowing such exemption to the assessee is not required to be interfered with in the present revision petitions filed by the Revenue."

8. We must add here that the decision in the case of **Guljag** (supra) was subsequently carried up in appeal before this Court. It appears from the records of this Court that two of these appeals were disposed of on 30th September, 2010 as the assessee chose to approach the statutory forum whereas another appeal was

dismissed having regard to the quantum of tax involved in the appeal.

9. We, accordingly, shall test the revenue's case including the question of legality of the said two circulars in the context of the provisions of Sections 3 and 6 of the 1956 Act. The respondent in this case had taken benefit of sub-section (2) on the ground that this was a case involving inter-state sale and the sale took place by way of transfer of documents of title of such goods during their movement from one State to another. It is also the respondents' case that the requisite forms and certificates were duly furnished pertaining to such sales. On the part of the State, barring retention of the goods in the transporters' godown at the destination point for a long period of time, default on no other count by the assesses has been asserted.

10. In the two appeals in which the respondent is Bombay Machinery Stores, sales pertained to financial years before the circulars came into subsistence. In these instances of sales, the Commercial Tax officer in the respective orders treated retention of

goods beyond 30 days in the transporters' godown as the cut-off period. After that date, the assessee was deemed to have had taken constructive delivery of goods and sale beyond that period within the State of Rajasthan was held to be local sales and subjected to sales tax under the State Law. Same reasoning was followed in the respective orders of the tax authorities forming subject-matters of two appeals involving Unicolour Chemicals Company. The Tax Board, while deciding the issue in favour of revenue, referred to the aforesaid two circulars in upholding the concept of constructive delivery.

11. As per the aforesaid circulars, retention of goods by the transporter beyond the time stipulated therein (being 30 days as per the later circular) would imply that constructive delivery of the goods has been made by the transporter to the consignee. In such a situation, the transit status of the goods would stand terminated and the deeming provision in first explanation to Section 3 of the 1956 Act conceiving the time-point of delivery as termination of movement shall cease to operate.

12. In this set of appeals we have already indicated that transfer of documents of title were effected subsequent to the goods reaching the location within destination State. But when the goods are delivered to a carrier for transmission, first explanation to Section 3 of the 1956 Act specifies that movement of the goods would be deemed to commence at the time when goods are delivered to a carrier and shall terminate at the time when delivery is taken from such carrier. The said provision does not qualify the term 'delivery' with any timeframe within which such delivery shall have to take place. In such circumstances fixing of timeframe by order of the Tax Administration of the State in our opinion would be impermissible.

13. Before the High Court, the revenue authorities has relied on Section 51 of the Sale of Goods Act, 1930 (hereinafter referred to as the "1930 Act"). But the said provision also does not aid or assist the revenue. Section 51 of the 1930 Act reads: -

> "**51. Duration of transit**.—(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or

other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

> (7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods

14. Sub-clause (1) of the said provision specifies when the goods shall be deemed to be in course of transit and sub-clause (3) thereof lays down the conditions for termination of transit. That condition is an acknowledgment to the buyer or his agent by the carrier that he holds the goods on his behalf. There is no material to suggest such an acknowledgment was made by the independent transporter in these appeals. In such circumstances we do not think the decision of the High Court requires any interference.

15. In the case of **Arjan Dass Gupta** (supra) principle akin to constructive delivery was expounded and we have quoted the relevant passage from that decision earlier in this judgment. In our opinion, however, such construction would not be proper to interpret the provisions of Section 3 of the 1956 Act. A legal fiction is created in first explanation to that Section. That fiction is that

the movement of goods, from one State to another shall terminate, where the good have been delivered to a carrier for transmission, at the time of when delivery is taken from such carrier. There is no concept of constructive delivery either express or implied in the said provision. On a plain reading of the statute, the movement of the goods, for the purposes of clause (b) of Section 3 of the 1956 Act would terminate only when delivery is taken, having regard to first explanation to that Section. There is no scope of incorporating any further word to qualify the nature and scope of the expression "delivery" within the said section. The legislature has eschewed from giving the said word an expansive meaning. The High Court under the judgment which is assailed in Civil Appeal No.2217 of 2011 rightly held that there is no place for any intendment in taxing statutes. We are of the view that the interpretation of the Division Bench of the Delhi High Court given in the case of **Arjan Dass Gupta** does not lays down correct position of law. In the event, the authorities felt any assessee or dealer was taking unintended benefit under the aforesaid provisions of the 1956 Act, then the proper

course would be legislative amendment. The Tax Administration Authorities cannot give their own interpretation to legislative provisions on the basis of their own perception of trade practise. This administrative exercise, in effect, would result in supplying words to legislative provisions, as if to cure omissions of the legislature.

16. For these reasons, we do not want to interfere with the judgments of the High Court in these four appeals. The appeals are dismissed. Any connected applications shall also stand disposed of.

There shall be no order as to costs.

..…….J.
(Deepak Gupta)

……..…….J.
(Aniruddha Bose)

New Delhi,
April 27, 2020.