A SHREE DIGVIJAY CEMENT CO. LTD. AND ORS.

v.

STATE OF RAJASTHAN AND ORS.

DECEMBER 17, 1999

B [S.P. BHARUCHA, B.N. KIRPAL, V.N. KHARE, D.P. MOHAPATRA, N. SANTOSH HEGDE, JJ.]

Central Sales Tax Act, 1956—Section 8(5)—Notification dated March 12, 1997 issued by State of Rajasthan—Reduction in the rate of Sales Tax C *on inter-state sale of cement by any dealer in Rajasthan to 4%—Dispensing with the requirement of furnishing of declaration in Form C or certificate in Form D as provided in Section 8(4) of the Act—Held, valid legal and constitutional.*

Constitution of India, 1950—Articles 301 and 303—Reduction of Sales D *Tax rate to 4% on inter—state sale of cement and dispensing with furnishing of Form C declaration and Form D certificate—Constitutional validity—Held, valued and constitutional.*

Petitioners 1 and 3 were cement companies, having their manufacturing E **units in the State of Gujarat. The cement manufactured by them were sold in Gujarat and elsewhere.**

The State of Rajasthan issued, under Section 8(5) of the Central Sales Tax Act, 1956, Notification dated 8th January 1990 and 27th January 1990, F **which had the effect of reducing tax on inter-state sale of cement by dealers from Rajasthan to 7% even though in respect of local sales the tax was 16%. These notifications were challenged by the aforesaid companies in a writ petition in the Rajasthan High Court. During the pendency of this writ petition another notification dated 7th March 1994 was issued by the State of Rajasthan reducing the rate of tax on inter-state sale of cement to 4%,** G **and also dispensing with the furnishing of Form C declaration or Form D certificate by the dealers in Rajasthan who had effected the inter-state sale. The aforesaid writ petition was amended, and Notification of March 7, 1994 was also challenged.**

The grievance of the petitioners was that consequent to such reduction H **of sales tax, cement from Rajasthan became much cheaper in the neighbouring**

States like Gujarat, and this affected the local sale of cement manufactured by the petitioners in Gujarat on account of the higher rate of sale tax on local sales in Gujarat. It was further submitted that such reduction in rate of tax was contrary to the scheme contained in part XIII of the Constitution and was therefore, liable to be struck down.

The writ petition having been dismissed by the Rajasthan High Court the petitioners filed special leave petition which was heard and judgment was reserved on 5th March 1997.

On 12th March 1997, the State of Rajasthan issued yet another Notification under Section 8(5) which was similar to the earlier notification whereby it reduced the rate of sales tax on inter-state sale of cement by any dealer from that State to 4% and did away with the requirement of Form C declaration or Form D certificate required by Section 8(4).

This Court on 21st March 1997 allowed the petitioners' Civil Appeal and quashed the earlier Notification dated 8th January 1990, 27th January 1990 and 7th March 1994. The Court held in *Shri Digvijay Cement Co. and Anr.* v. *State of Rajasthan,* [1994] 5 SCC 406 that reducing the rate of tax from 16% to 4% had the effect of increasing despatch of cement from Rajasthan to Gujarat and reduction of local sale of cement manufactured in Gujarat, and consequently had direct and immediate adverse effect on free flow of trade. The Court further held that the notifications dispensing with the requirement of furnishing of Form C declaration had the effect of facilitating evasion of payment of tax and were therefore, violative of the constitutional scheme contained in Chapter XIII.

The petitioners' writ petition was heard by a Three Judge Bench on 26th November, 1998, and it observed that similar earlier notifications had been struck down by the Court's decision on 21st March 1997 as violative of Articles 301 and 303, and that this judgment required to be considered by a larger Bench.

Consequently the matter came up before the Constitutional Bench for disposal.

It was submitted on behalf of the petitioners that

(i) That impugned notification under Section 8(5) was inconsistent with the legislative policy contained in the Central Sales Tax Act and was

A impermissible:

(ii) The dispensation of the requirement of furnishing Form C declaration or Form D certificate was violative of Articles 301 and 303 of the Constitution as it prevented or hindered the free movement of goods from one State to another:

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(iii) This facilitated tax evasion and this was not permissible and

(iv) This could not be regarded in public interest as contemplated by Section 8(5).

C The respondents contested the writ petition by submitting that the impugned notification was issued in public interest, the same was not violative of Part XIII of the Constitution, and that this Court's earlier decision dated March 21, 1997 does not lay down the correct law and needs to be reconsidered.

D Dismissing the Writ Petition, the Court

HELD : 1. The decision in *N.K. Nataraja Mudaliar* has not only upheld the validity of section 8(2), (2A) and (5) of Central Sales Tax Act but also observed that sub-section (5) of Section 8 authorised the State Government to waive or lower the rate of tax in public interest, notwithstanding anything E contained in Section 8. There can, therefore, be no challenge to the exercise of power under Section 8(5) except on the ground that such power has not been exercised in public interest. [444-D]

State of Madras v. *N.K. Nataraja Mudaliar,* [1968] 3 SCR 829, relied on.

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2. Section 8(5) has been held to be valid and its ambit explained in earlier decision by this Court, provides that in respect of inter-state sale of certain types of goods by any dealer having its place of business in the State, no tax shall be payable or tax shall be calculated at lower rates than those specified in sub-section (1) or sub-section (2). [446-C]

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State of Tamil Nadu & Ors. v. *Sitalakshmi Mills & Ors.,* [1974] 4 SCC 408; *Gwalior Rayon Silk Mfg. & Wvg. Co. Ltd.* v. *Asst. Commissioner of Sales Tax,* [1974] 4 SCC 98 and *Video Electronics (P) Ltd.* v. *State of Punjab & Anr.,* [1990] 3 SCC 87, relied on.

H 3. The power of exempting or reducing the rate of inter-state Sales Tax

on certain types of goods, like cement in the instant case, has to be exercised when the State Government is satisfied that it is necessary so to do in public interest. [446-D]

4. The high rate of tax on inter-state sale which had been prevalent had resulted in manufacturing units resorting to branch transfer of cement from one State to another without paying any tax in the State of Rajasthan. [446-G]

5. With the demand of cement within the State of Rajasthan being limited, it became imperative to encourage inter-state sales of cement from the State of Rajasthan. Reducing the rate of inter-state Sales Tax facilitated in the higher tax return and in the industry continuing to function. This clearly shows that the issuance of the said notification was in public interest as envisaged by Section 8(5) of the Act. [447-A-B]

6. Merely because local rate of tax in the State of Gujarat on the sale of cement was higher than the inter-state Sales Tax on cement sold from Rajasthan cannot lead to the conclusion that the impugned notification prevented or hindered free movement of goods from one state to another. In fact, the impugned notification had the opposite effect, *viz.* it increased the movement of cement from Rajasthan to other states. It is not as if the impugned notification created a barrier which may have had the effect of hindering free movement of goods but on the other hand, the Sales Tax barrier was lowered resulting in increased volume on inter-state trade. [444-C-D]

7. A notification issued under Section 8(5) can have an over-riding effect in view of the non-obstante clause. Form C and Form D are regarded as proof of inter-state sale being made by dealers from Rajasthan to a registered dealer or to a Government Department outside Rajasthan. The impugned notification requires the seller to record the name and address of the purchaser in the bill or cash memo which he is required to issue in relation to an inter-state sale and the dealer is required to prove that the transaction was in the nature of inter-state sale. The substitution of the requirement of furnishing Form C and Form D by making it obligatory for the dealer to record the name and address of the purchaser in the bill or cash memo would not have the effect of facilitating tax evasion. The experience of the State of Rajasthan has been that with the issuance of such notifications its tax revenue in inter-state sale of cement had increased. [447-E-G]

8. Variation in the rate of inter-state Sales Tax is clearly permitted by

A Section 8(5) whose validity has been expressly upheld. This being so the conclusion that variation of the rate of inter-state sales tax, which creates a local preference is contrary to the scheme in Part XIII of the Constitution, is not correct. On the other hand the power to grant exemption has been upheld provided it was not misused. [448-D-E; 448-H; 449-A]

B 9. Prior to 1957, Section 8(5) gave power to the Central Government to, *interalia*, reduce the rate of Sales Tax if it was necessary so to do in the public interest with the Central Sales Tax (Amendment) Act 1957, Parliament conferred this power on the State Governments instead of the Central Government. In this historical backdrop the public interest as referred to in C Section 8(5) of the Act, will certainly include the public interest of the state concerned. If reduction of the rate of tax results in increase in the industry as well as in the mining of limestone, it cannot be said that the notification was not issued in public interest. [449-D-F]

10. In the instant case, the condition for availing the benefit of the D notification is that in the bill or cash memo the name and complete address of the purchaser has to be stated and consequently the burden to prove that the transaction was in the nature of inter-state sales is on the dealer. At the time of assessment, therefore, the dealer who seeks to get the benefit of the said notification will have to establish the identity of the purchaser outside the state and also, in turn, prove that an inter-state sale has taken place. The E tax which is collected is allocated to the state from where the movement of goods starts. Therefore, the question whether there is evasion of tax has to be seen with relevance to that State. If reduced tax results in increase in collection of tax by encouraging more people to pay tax to that State then it cannot be urged that Article 301 is violated. [450-A-C]

F 11. The view that the notification dispensing with the requirement of furnishing declaration in Form C had the effect of facilitating evasion of payment of tax and was violative of the scheme of the constitutional provisions contained in Chapter XIII cannot be subscribed to. The mere fact that the local sale of cement in Gujarat may have been adversely affected cannot G result in impugned notification being regarded as affecting the free flow of trade and being violative of Article 301. The said provision is concerned with the movement of goods from one State to the other and as far as the instant case is concerned, with the lowering of tax, the movement has increased rather decreasing. The validity of the notification dated 12th March 1997 issued by the State of Rajasthan is accordingly upheld.

H [434-F; 450-G; 451-B]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 366/1997 A

(Under Article 32 of the Constitution of India.)

For Petitioners in W.P.(C) No. 366/97 Shanti Bhushan, Sunil Gupta, R.P. Sanghi, Puneet Tyagi, Narendra Sharma and R.P. Singh.

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For Respondents State of Rajasthan B. Sen, Sushil Kumar Jain, A. Mishra, Ms. Madhurima Tatia and Aruneshwar Gupta.

Respondent No. 4 in W.P. (C) No. 366/97 R.F. Nariman, Pradeep Aggarwal, M.L. Patodi and Ms. Pratibha Jain.

C

Respondent No. 5 in W.P. (C) No. 366/97 Pradeep Aggarwal and Ms. Pratibha Jain.

The Judgment of the Court was delivered by

KIRPAL, J. The challenge in this writ petition is to the notification D dated 12th March, 1997 issued by the State of Rajasthan under Section 8(5) of the Central Sales Tax Act [for short 'the Act'] whereby it reduced the rate of sales tax on inter-state sale of cement by any dealer from that State to 4% and did away with the requirement of furnishing of declaration in Form-C or certificate in Form-D contemplated by Section 8(4) of the Act.

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Shri Digvijay Cement Co. Ltd. and M/s Gujarat Ambuja Cements Ltd., petitioners no.1 and 3 herein, manufacture cement and have their manufacturing units in the State of Gujarat. The cement manufactured by them is sold in Gujarat and elsewhere. The State of Rajasthan had issued under Section 8(5) notifications dated 8th January, 1990 and 27th June, 1990, which had the effect F of reducing tax on inter-state sale effected by dealers from Rajasthan to 7% even though in respect of local sales the tax was 16%. These notifications were challenged by the petitioners by their filing a writ petition in the Rajasthan High Court in February 1994. During the pendency of this petition the State of Rajasthan issued under Section 8(5) of the Act another notification dated 7th March, 1994 reducing the rate of tax on inter-state sale of cement to 4% G and without the requirement of furnishing of declaration in Form-C or certificate in Form-D by dealers in Rajasthan who may have effected the inter-state sale. By amending the aforesaid writ petition this notification of 7th March, 1994 was also challenged.

The grievance of the petitioners in the aforesaid petition was that as H

A a consequence of such reduction of sales tax, cement from Rajasthan became much cheaper in the neighbouring States like Gujarat and that adversely affected the local sale of cement manufactured by the petitioners in Gujarat by reason of higher rate of sales tax on the local sales within that State. Such reduction of the rate of tax, it was contended, was contrary to the scheme contained in Part XIII of the Constitution and was liable to be struck down.
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The Rajasthan High Court dismissed the writ petition. Thereupon a special leave petition was filed in this Court. Leave was granted and the Civil Appeal No. 2145 of 1997 was heard and on 5th March, 1997 the judgment was reserved. It is thereafter that on 12th March, 1997 the State of Rajasthan
C issued the impugned notification under Section 8(5) which was similar to the earlier notifications and continued the rate of tax on inter-state sale of cement at the reduced rate of 4%. This notification of 12th March, 1997 was to remain in force upto 31st March, 1998.

On 21st March, 1997 the appeal filed by the petitioners was allowed
D and the earlier notifications dated 8th January, 1990, 27th June, 1990 and 7th March, 1994 were quashed. In the said decision, reported as *Shri Digvijay Cement Co. and Anr.* v. *State of Rajasthan and Ors.*, [1994] 5 SCC 406, it was held that reducing the rate of tax from 16% to 4% had the effect of increasing the dispatch of cement from Rajasthan to Gujarat and in reduction of the local sale of cement manufactured in Gujarat and the said notifications, therefore,
E were held to be bad for having direct and immediate adverse effect on free flow of trade. It was also held that the notifications dispensing with the requirement of furnishing declaration in Form-C had the effect of facilitating evasion of payment of tax and were, therefore, violative of the scheme of the constitutional provisions contained in Chapter XIII.

F In the present writ petition the challenge is to the notification of 12th March, 1997, which was not the subject matter in the earlier appeal, on the grounds which found favour with this Court in its aforesaid decision of 21st March, 1997.

G On 26th November, 1998 this petition was heard by a Bench of Three Judges. It was noticed that similar earlier notifications had been struck down in *Shri Digvijay Cement Company's* case (supra) on the ground that they were violative of Articles 301 and 303 of the Constitution. The Bench observed that the aforesaid judgment required to be considered by a larger bench particularly in regard to the applicability of Articles 301 and 303 to the said
H notification. This is how this petition has come to be heard by this Bench.

Section 8 of the Act, in so far as it is relevant for the purpose of this case, is as follows: A

'8. Rates of tax on sales in the course of inter-state trade or commerce:—(1) Every dealer, who in the course of inter-state trade or commerce—

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(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3);

shall be liable to pay tax under this Act, which shall be [four per cent] of his turnover. C

(2) The tax payable by any dealer on his turnover 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 within sub-section (1)—

(a) in the case of declared goods, shall be calculated (at twice the rate) applicable to the sale or purchase of such goods inside the appropriate State; and D

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher; E

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law or the appropriate State, notwithstanding that he, in fact, may not be so liable under that law. F

(2-A) Notwithstanding anything contained in sub-section (1-A) of Section 6 or in sub-section (1) or clause (b) of sub-section (2) of this section the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods the sale or, as the case may be, the purchase of which is, under G the sales tax law of the appropriate State, exempt from tax generally or 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), shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation—For the purposes of this sub-section a sale or purchase H

of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stage or otherwise than with reference to the turnover of the goods.

(3) The goods referred to in clause (b) of sub-section (1) —

(a) Omitted

(b) ****are goods of the class or classes specified in the certificate of registration of the registered dealer, purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power;

(c) are containers or other materials specified in the certificate or registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in ***clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-state trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner—

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government;

provided that the declaration referred to in clause (a) is furnished

within the prescribed time or within such further time as that authority may, for sufficient cause, permit. A

(5) Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, and subject to such conditions as may be specified therein, direct,- B

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-state trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall C be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification;

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notifications which are made, D in the course of inter-state trade or commerce, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in E sub-section (1) or sub-section (2) as may be mentioned in the notification."

The impugned notification has been issued under sub-section (5) of Section. This sub-section when originally enacted was as under: F

"(5) Notwithstanding anything contained in this section, the Central Government may, if it is satisfied that it is necessary so to do in the public interest by notification in the Official Gazette, direct that in respect of such goods or classes of goods as may be mentioned in the notification and subject to such conditions as it may think fit to G impose, no tax under this Act shall be payable by any dealer having his place of business in any Union territory in respect of the sale by him from any such place of business of any such goods in the course of inter-state trade or commerce or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification". H

A In sub-section (5) the words 'the State Government' and 'the State' were substituted for the words 'the Central Government' and 'any Union Territory' respectively, by Section 2 of Central Sales Tax (Amendment) Act, 1957 (Act No.16 of 1957). The amendment thus enabled a State Government (in place of the Central Government under the amended provisions), if it so desired, to exempt any goods or class of goods from Central Sales Tax, or to prescribe a lower rate of tax therefor.

Clause 4 of the Statement of Objects and Reasons to the Amendment Bill of 1957 reads as under:

> "Incidentally, section 8(5) is sought to be amended so as to enable a State Government, if it so desires, to exempt any goods or class of goods from inter-state sales tax".

Sub-section (5) in its present form has been substituted by Section 5(c) of the Central Sales Tax (Amendment) Act, 1972 (Act No.61 of 1972) with effect from 1st April, 1973. Under the 1958 substituted sub-section, the State Government could grant exemption from tax or reduction in the rate of tax with reference to any class or classes of goods only, the newly substituted sub-section provides for such exemption or reduction being granted with reference to persons also. The Notes on clause 5(c) reads as under:

> "2. Sub-clause 9(c) of clause 5 of the Bill seeks to substitute a new section for existing sub-section (5) of Section 8 of principal Act for the purpose of enabling State Governments to grant exemption from or reduction in rate of tax only with reference to any goods or classes of goods as at present but also with reference to persons. The exemption from tax or reduction in rate of tax may be granted only if the State Government is satisfied that it is necessary to do so in public interest. As it is not possible to visualise in advance the cases in which such exemptions or reductions may be necessary and as the exemptions and reductions can be granted only in public interest, the delegation of power to grant exemptions or reductions is of a normal character."

The impugned notification dated 12th March, 1997 issued under Section 8(5) of the Act is as follows:

> "S.O. 320—In exercise of the powers conferred by sub-section (5) of Section 8 of Central Sales Tax Act, 1956 and in supersession of this Department Notification No.F-4(8)/FD/Gr.IV/94-70 dated 7th March,

1994 (as amended from time to time), the State Government being satisifed that it is that the tax payable under sub-section (1) and (2) of the said Section, by any dealer having his place of business in the State, in respect of the sales of cement made by him from any such place in the course of inter-state trade and commerce shall be calculated at the rate of 4% subject to the following conditions:-

(1) That the dealer shall record the name and complete address of the purchaser in the bill or cash memo for such inter-state sale to be issued by him;

(2) that the burden to prove that the transaction was in the nature of inter-state sale, shall be on the dealer; and

(3) that the dealer making inter-state sales under this Notification shall not be eligible to claim benefit provided for by the Notification No.F- 4(72)/FD/Gr.IV/81-18 dated 6.5.86 as amended from time to time.

This Notification shall remain in force upto 31st March, 1998."

On behalf of the petitioners, Sh. Shanti Bhushan, learned senior counsel, submitted that the impugned notification issued under Section 8(5) was inconsistent with the legislative policy contained in the Central Sales Tax Act inasmuch as the rate of tax on inter-state sales has been made lower than the rate of tax on the said goods when sold within the State and furthermore the requirement of furnishing declaration in Form-C or a certificate in Form-D, as contemplated by Section 8(4) has also been done away with. He further submitted that this notification was violative of Articles 301 and 303 of the Constitution inasmuch as it prevented or hindered the free movement of goods from one State to the other. In support of this contention reliance was placed by him in the case of *Indian Cement and Ors.* v. *State of Andhra Pradesh and Ors.*, [1988] 1 SCC 743 and in the petitioner's own case that of *Shri Digvijay Cement Co. and Ors.* v. *State of Rajasthan and Ors.*, [1997] 5 SCC 406. He also invited our attention to the judgment of Hegde, J. in the case of *State of Madras* v. *N.K. Nataraja Mudaliar,* [1968] 3 SCR 829 and submitted that lowering the rate of tax on inter-state sales in the manner it has been done was not permissible. He lastly urged that the nature of public interest contemplated by Section 8(5) of the Act was not the kind on the basis of which the impugned notification has been issued by the Government of Rajasthan. He also submitted that by doing away with the requirement of furnishing Forms-C and D the State of Rajasthan had in fact encouraged or

A facilitated tax evasion and this was not permissible and could not be regarded as being in public interest as contemplated by Section 8(5) of the Act.

Learned counsel for the respondents contended that the impugned notification was issued in public interest and the same was not violative of Part XIII of the Constitution. It was also their submission that the decisions B of this Court in *Indian Cement* (supra) and *Shri Digvijay Cement Co.* (supra) do not lay down the correct law and need to be reconsidered. It was also their contention that the petitioner who was a dealer in the State of Gujarat had no locus standi to challenge the impugned notification issued by the State of Rajasthan.

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For the view which we are taking, we do not intend to decide this question of locus standi and we proceed to examine the issues raised in this case on the assumption that the writ petition filed by the petitioners is maintainable.

D Reading of Section 8 indicates that the Scheme for the levy of the Central Sales Tax Act, 1956, relating to inter-state sales falls under the following five categories:

(I) Inter-state sales by a dealer to the Government or to a registered dealer, of the description of goods referred to in Section 8(3) E shall be at 4 per cent provided the conditions prescribed in Section 8(4) are satisfied (Section 8(1)).

(II) Tax payable by a dealer on his turnover of inter-state sales, not falling under Section 8(1) of "declared goods" shall be twice the rate applicable to the sale or purchase of such goods inside the F appropriate State (Section 8(2)(a)).

(III) Tax payable relating to inter-state sale of other than declared goods and not falling under Section 8(1) shall be at ten per cent, or at the rate applicable for sales inside the appropriate State whichever is higher (Section 8(2)(b)).

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(IV) Notwithstanding anything contained in Section 8(1) or 8(2)(b) if the goods are sold inter-state, the sale or purchase of which is, under the sales tax law of the appropriate State exempt from tax generally or subject to tax generally at a rate lower than 4 per cent, it shall be either exempt from tax or the tax under the H Central Sales Tax Act shall be levied at the lower rate as it is

obtained in the 'State' (Section 8 (2A)). A

(V) Notwithstanding anything contained in Sections 8(1) to 8(4) of the Act, the State Government may, in public interest and subject to such conditions as may be specified by it, exempt any person from payment of tax regarding the inter-state sales, or levy a rate lower than that specified in Section 8(1) or 8(2) (Section 8(5)). B Section 8(5) empowers the State Government, in public interest to dispense with the requirement of Section 8(4).

The validity of sub-sections (2), (2A) and (5) of Section 8 came up for consideration before this Court in *State of Madras* v. *N.K. Nataraja Mudaliar,* [1968] 3 SCR 829. The respondent in that case had successfully contended C before the High Court that sub-sections (2), (2A) and (5) of Section 8 imposed or authorised the imposition of varying rates of tax in different States on similar inter-state transactions and the resulting inequality in the burden of tax affected and impeded inter-state trade, commerce and inter-course thereby offended Articles 301 and 303 (1) of the Constitution. D

Shah. J., as he then was, speaking for the majority after referring to the earlier decision of this Court in *Atiabari Tea Co. Ltd.* v. *State of Assam and Ors.,* [1961] 1SCR 809, *Firm ATB Mehtab Majid and Co.* v. *State of Madras and Anr.,* [1963] Supp. 2 SCR 435; *Automobile Transport (Rajasthan) Ltd.* v. *State of Rajasthan and Ors.,* [1963] 1 SCR 491, pertaining to Articles 301 and E 303, observed that it was settled law that a tax may in certain cases restrict or hamper the flow of trade but every imposition of tax does not do so. Tax under the Central Sales Tax Act on inter-state sales was in its essence a tax which may encumber movement of trade and commerce, but Article 302 expressly provided that on the freedom of trade restrictions may be imposed not only in one State but also within any part of the territory of India. Dealing F with the contention, which had found favour with the High Court that rates of tax on the sale of same or similar commodity by different States was by itself discriminatory since it authorised placing of a burden on inter-state trade and commerce and affected its free flow between the States, Shah, J. further observed at page 843 as under: G

> "We are unable to accept the view propounded by the High Court. 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 H

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."

Again at page 845 it was observed as under:

"The rate which a State Legislature imposes in respect of inter-state transactions in a particular commodity must depend upon a variety of factors. A State may be led to impose a high rate of tax on a commodity either when it is not consumed at all within the State, or if it feels that the burden which is falling on consumers within the State will be more than offset by the gain in revenue ultimately derived from outside consumers. The imposition of rates of sales tax is normally influenced by factors political and economic. If the rate is so high as to drive away prospective traders from purchasing a commodity and to resort to other sources of supply, in its own interest the State will adjust the rate to attract purchasers.....Again, in a democratic constitution political forces would operate against the levy of an unduly high rate of tax. The rate of tax on sales of a commodity may not ordinarily be based on arbitrary considerations but in the light of the facility of trade in a particular commodity, the market conditions-internal and external-and the likelihood of consumers not being scared away by the price which includes a high rate of tax. Attention must also be directed to sub-section (5) of Section 8 which authorises the State Government, notwithstanding anything contained in Section 8, in the public interest to waive tax or impose tax on sales at a lower rate on inter-state trade or commerce. It is clear that the legislature has contemplated that elasticity of rates consistent with

economic forces may be maintained." A

The Court accordingly upheld the validity of Section 8(2), 8(2A) and 8(5) and held at page 846 as under:

> "The Central Sales Tax Act is enacted under the authority of the Union Parliament, but the tax is collected through the agency of the B State and is levied ultimately for the benefit of the States and is statutorily assigned to the States. That is clear from the amendments made by the Constitution. (Sixth Amendment) Act, 1956, in Art.269, and the enactment of cls. (1) and (4) of Section 9 of the Central Sales Tax Act. The Central Sales tax though levied for and collected in the name of the Central Government is a part of the sales-tax levy imposed C for the benefit of the States. By leaving it to the States to levy sales-tax in respect of a commodity on inter-state transactions no discrimination is practised: and 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 limitation D already set out, in our judgment, no discrimination can be deemed to be practised."

Hegde, J. delivered a separate judgment agreeing with the conclusion reached by Shah, J. to the effect that the aforesaid sub-sections of Section 8 were intra-vires to the Constitution, but his reasons for coming to that E conclusion were, however, not the same which had prevailed with the majority. Hegde, J. observed that once it is shown that a measure *prima facie* gives preference to the residents of one State over another State or it makes discrimination between the residents of a State and that of another because of the adoption of different rates of tax in different States, then the matter F assumes a different complexion in view of Article 303(1). After referring to the Taxation Enquiry Committee Report, he observed at page 853 that *"Therefore, it is clear that the Act is not a haphazard legislation; it is the product of deep thinking and clear analysis of the various aspects of the matter. This Court will be slow to hold such a measure as being either not in public interest or is violative of Article 303(1)"*. The learned Judge then analysed G the provisions of different sub-sections of Section 8 which were impugned and came to the conclusion that they were *intra-virus* and held at page 856 as under:

> *"If we bear in mind the fact that sales tax on inter-State sales is levied for the benefit of the States and the further fact that each one* H

A *of the State Governments in its own interest is bound to create the best possible condition for the growth of industry and commerce in that State, it is reasonable to assume that they will not be blind to economic forces. All that one has to guard against is to see that they do not, by having recourse to their taxation power, obstruct the flow of trade into their State. In the normal course they will be interested* B *in seeing that goods produced in their States are sold outside. Reasonably sufficient safeguards against the free flow of trade into a State have been provided by the provisions of the Act, firstly, by providing for the levy of sales tax in the State in which the goods are produced, and, secondly, by placing various restrictions on the* C *power of the States in fixing the rates. None of the impugned provisions, in my opinion, has direct or immediate impact on inter-State trade or commerce."*

The aforesaid decision in *N.K. Nataraja Mudaliar's* case (supra) not only upheld the validity of Section 8(2)(2A) and (5) but also observed that D sub-section (5) of Section 8 authorised the State Government to waive or lower the rate of tax in the public interest, notwithstanding anything contained in Section 8. There can, therefore, be no challenge to the exercise of power under Section 8(5) except on the ground that such power has not been exercised in public interest..

E In State of *Tamil Nadu and Ors.* v. *Sitalakshmi Mills and Ors.*, [1974] 4 SCC 408, the validity of Section 8(2)(b) of the Act was once again considered by a Constitution Bench of this Court in the light of Articles 301 and 303 of the Constitution. While upholding the validity of Section 8(2)(b) and by following the decision in the case of *N.K. Nataraja Mudaliar* (supra), this F Court at page 414 observed as under:

"As regards the contention that Section 8(2)(b) is violative of Article 303(1) in that there will be varying rates of tax on inter-State sales in different States depending upon their rates of sales tax for inter-State sales and that that will lead to the imposition of dissimilar tax on the G sale of same or similar commodities, it is enough to state that this question has been considered by this Court in *State of Madras* v. *N.K. Nataraja Mudaliar* (supra) and the Court has rejected the contention. The Court said that the existence of different rates of tax on the sale of the same or similar commodity in different States by itself would not be discriminatory as the flow of trade does not necessarily depend H upon the rates of sales tax; it depends, according to the Court, 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 the trade".

The validity of Section 8(2)(b) of the Act, on the ground that it suffers from the vice of excessive delegation, was also considered by a Constitution Bench of this Court in *Gwalior Rayon Silk MFG. (WVG.) Co. Ltd.* v. *The Assistant Commissioner of Sales Tax and Ors.*, [1974] 4 SCC 98 and it was held that Parliament had not abdicated its legislative function by enacting Section 8(2)((b) of the Act.

In *Video Electronics Pvt. Ltd. And Another* v. *State of Punjab and Another*, [1990] 3 SCC 87, the challenge was to notifications issued by the State of U.P. under Section 4-A of the U.P. Sales Tax Act and Section 8(5) of the Central Sales Tax Act exempting new units of manufacturers in respect of the goods specified therein from payment of any sales tax for different period ranging from 3 to 7 years. The petitioners therein, who were not new manufacturers and were not entitled to claim the benefit of the said notifications, had contended that Part XIII of the Constitution had envisaged the preserving of the unity of India as an economic unit and hence had guaranteed free flow of trade and commerce throughout India and, therefore, either a State should grant exemption to all goods irrespective of the fact that the goods are locally manufactured or imported from other States, otherwise it would be violative of Articles 304 and 304(a) of the Constitution. Repelling this contention, it was held that while maintaining the general rate at par, special rates for certain industries for a limited period can be prescribed by the States without offending the provisions of Articles 301 and 304(a) of the Constitution. In coming to this conclusion it was observed at page 108 as follows:

> "Concept of economic barrier must be adopted in a dynamic sense with changing conditions. What constitutes an economic barrier at one point of time often ceases to be so at another point of time. It will be wrong to denude the people of the State of the right to grant exemptions which flow from the plenary powers of legislative heads in List II of the Seventh Schedule of the Constitution. In a federal polity, all the States having powers to grant exemption to specified class for limited period, such granting of exemption cannot be held to be contrary to the concept of economic unity. The contents (sic concept) of economic unity by the people of India would necessarily include the power to grant exemption or to reduce the rate of tax in

A special cases for achieving the industrial development or to provide tax incentives to attain economic equality in growth and development. When all the States have such provisions to exempt or reduce rates the question of economic war between the States *inter se* or economic disintegration of the country as such does not arise. It is not open to any party to say that this should be done and this should not be done by either one way or the other. It cannot be disputed that it is open to the States to realise tax and thereafter remit the same or pay back to the local manufacturers in the shape of subsidies and that would neither discriminate nor be hit by Article 304(a) of the Constitution. In this case and as in all constitutional adjudications the substance of the matter has to be looked into to find out whether there is any discrimination in violation of the constitutional mandate."

Section 8(5) of the Act, which has been held to be valid and whose ambit has been explained in the afore-said decisions, provides that in respect of inter-state sale of certain types of goods by any dealer having its place of business in the State, no tax shall be payable or tax shall be calculated at lower rates than those specified in sub-section (1) or sub-section (2). This power of exempting or reducing the rate of inter-state sales tax on certain types of goods, like cement in the present case, has of course to be exercised when the State Government is satisfied that it is necessary to do so in public interest. The respondents have clearly stated that as a result of reduction of tax to 7% vide Notification dated 8th January, 1990, it had got additional revenue of lakhs of rupees in the last quarter of that financial year. It is also stated in the affidavit in reply that unless incentives are given to the industries in the State of Rajasthan, further economic, industrial and social development of the State would be hampered. The production of cement in the State was far in excess than the consumption. The surplus available with the cement manufacturers had to be sold outside the State and unless it was advantageous for the cement manufacturing units to sell their cement outside the State, the cement industry within the State would be crippled which would have an adverse industrial, social and economic impact on the State of Rajasthan and would consequently be detrimental to public interest. The high rate of tax on inter-state sale which had been prevalent had resulted in manufacturing units resorting to branch transfer of cement from one State to another without paying any tax in the State of Rajasthan and lowering of the inter-state sales tax had the effect of increasing the tax collection. There were 33 units in Rajasthan which were engaged in manufacturing of cement which are stated to be providing direct employment to 10475 personnel. In addition thereto,

25000 workers were stated to be engaged in mining industry and more than 50000 workers were engaged in allied activities i.e. transportation, loading, unloading and marketing etc. With the demand of cement within the State of Rajasthan being limited, it thus became imperative to encourage inter-State sales of cement from the State of Rajasthan. Reducing the rate of inter-State sales tax facilitated in the higher tax return and in the industry continuing to function. This would clearly show that the issuance of the said notification was in public interest as envisaged by sub-section (5) of Section 8 of the Act.

We are unable to agree with the contention of the learned counsel for the petitioners that the impugned notification had the effect of preventing or hindering the free movement of goods from one State to another. As far as the State of Rajasthan is concerned, it had the opposite effect. Merely because local rate of tax in the State of Gujarat on the sale of cement was higher than the inter-State sales tax on the cement sold from Rajasthan cannot lead to the conclusion that the impugned notification prevented or hindered the free movement of goods from one State to another. In fact the impugned notification had the opposite effect, namely, it increased the movement of cement from Rajasthan to other States. It is not as if the impugned notification created a barrier which may have had the effect of hindering free movement of goods but on the other hand, the sales tax barrier was lowered resulting in increased volume of inter-state trade.

It is no doubt true that Section 8 of the Act contemplates the furnishing of Form-C and Form-D where inter-State sale is made to registered dealer or to the Government Department outside the State. But a Notification which is issued under sub- section (5) of Section 8 can have an overriding effect in view of the non-obstante clause. Form-C and Form- D are regarded as proof of inter-State sale being made by dealers from Rajasthan to a registered dealer or to a Government Department outside Rajasthan. The impugned notification requires the seller to record the name and address of the purchaser on the bill or cash memo which he is required to issue in relation to an inter-State sale and the dealer is required to prove that the transaction was in the nature of inter-State sale. We are unable to agree that the substitution of the requirement of furnishing Form-C and Form-D by making it obligatory on the dealer to record the name and address of the purchaser in the bill or cash memo would have the effect of facilitating tax evasion. The experience of the State of Rajasthan has been that with the issuance of such notifications, its tax revenue on inter-State sale of cement had increased.

Shri Shanti Bhushan had placed strong reliance on the decision of this

A Court in the case of *Indian Cement* (supra). This Court was dealing with the case where the State of Andhra Pradesh had issued a notification under Section 8(5) of the Act reducing the rate of tax in respect of sale made in the course of inter-State trade or commerce from that State. After referring to the decisions of this Court in Atiabari Tea Co. Ltd., N.K. Nataraja Mudaliar, Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. And Sitalakshmi Mills B (supra), this Court at page 759 observed as follows:

> "Variation of the rate of inter-State sales tax does not affect free trade and commerce and creates a local preference which is contrary to the scheme of Part XIII of the Constitution. The notification extends the benefit even to unregistered dealers and the observations of Hegde, C J. on this aspect of the matter are relevant. Both the notifications of the Andhra Pradesh Government are, therefore, bad and are hit by the provisions of Part XIII of the Constitution. They cannot be sustained in law."

D The aforesaid conclusion, with respect, does not flow from the decisions of the Constitution Benches of this Court to which reference has been made earlier. Variation in the rate of inter-State sales tax is clearly permitted by Section 8(5) of the Act whose validity has been expressly upheld in *N.K. Natarja Mudaliar* case (supra). This being so the conclusion in *Indian Cement* case (supra) that variation of the rate of inter-State sales tax, which E creates a local preference, is contrary to the scheme of Part XIII of the Constitution, is not correct. In *Indian Cement* case (supra) there is reference to the observations of Hegde, J. which were to the following effect.

> "Sub-Section (5) of Section 8 provides for giving individual exemptions in public interest. Such a power is there in all taxation measures. It is F to provide for unforeseen contingencies. Take for example, when there was famine in Bihar, if a dealer in Punjab had undertaken to sell goods to a charitable society in that State at a reasonable price for distribution to those who were starving, it would have been in public interest if the Punjab Government had exempted that dealer from paying sales tax. Such a power cannot immediately or directly affect the free flow G of trade. The power in question cannot be said to be bad. If there is any misuse of that power, the same can be challenged."

We do not find these observations of Hegde, J. in *N.K. Nataraja Mudaliar* case (supra) in any way indicating that in public interest the rate of inter-State sales tax could not be reduced even if it meant benefit being H given to un-registered dealer. On the other hand the power to grant exemption

was upheld provided it was not misused. We accordingly hold that *Indian Cement* Case (supra) has not been correctly decided and is, accordingly, overruled.

In *Shri Digvijay Cement Co.* case (supra), it was contended on behalf of the State of Rajasthan that the public interest contemplated by Section 8(5) of the Act, insofar as the State of Rajasthan is concerned, would mean interest of the public of Rajasthan and as the increased revenue could be used for the benefit of the people of Rajasthan, the impugned exercise of power must be regarded as being in public interest. This contention was not accepted and it was observed that public interest has to be interpreted in the context of the Central Sales Tax Act and Articles 301 & 304 of the Constitution. It was further held that increase in revenue and its utilisation for the public of the State can generally be regarded to be in public interest but, that by itself, could not be regarded as sufficient, if it had the effect of going against the policy of the Act and object of the constitutional provisions. It appears to us that Section 8(5) of the Act clearly enables the State Governments to reduce the rate of inter-State sales tax if it is satisfied that it is necessary to do so in the public interest. Prior to 1957, sub-section (5) of Section 8 gave power to the Central Government to, *inter alia*, reduce the rate of sales tax if it was necessary so to do in the public interest. With the Central Sales Tax Amendment Act, 1957, the Parliament conferred this power on the State Governments instead of the Central Government. In this historical backdrop the public interest, as referred to in sub-section (5) of Section 8 of the Act, will certainly include the public interest of the State concerned. If the reduction of the rate of tax results in increase of revenue and of industrial activities, providing employment in the industry as well as in the mining of limestone, it cannot be said that the notification was not issued in public interest.

In the aforesaid judgment in *Shri Digvijay Cement* case (supra) it was also observed, while dealing with dispensing with the requirement of furnishing declaration in Form-C, that it was difficult to appreciate how the State of Rajasthan could have effectively checked or prevented evasion of payment of tax or inter-State sale of cement. Under Section 8(5) of the Act, the State Government can exercise power notwithstanding anything contained in the said Section. Therefore, notwithstanding the requirement of sub-section (4) of Section 8 in relation to the furnishing of Form-C and Form-D, the State Government could, while lowering the rate of tax, impose conditions which may not be in conformity with sub-section (4) of Section 8 of the Act. When the purpose of furnishing Form-C and Form-D is only to ensure that sales are

A made in the course of inter-State sales, the State Government may provide for a different mode or manner in which this object can be achieved. In the instant case, the condition for availing the benefit of the notification is that in the bill or cash memo the name and complete address of the purchaser has to be stated and, consequently, the burden to prove that the transaction was in the nature of inter-State sales is on the dealer. At the time of assessment, therefore, B the dealer who seeks to get the benefit of the said notification will have to establish the identity of the purchaser outside the State and also, in turn, prove that an inter-State sale has taken place. The tax which is collected is allocated to the State from where the movement of goods starts. Therefore, the question whether there is evasion of tax has to be seen with relevance C to that State. If reducing tax results in increase in collection of tax by encouraging more people to pay tax to that State then it cannot be urged that Article 301 is violated.

We cannot subscribe to the view that the said Notification by dispensing with the requirement of furnishing declaration in Form-C had the effect of D facilitating evasion of payment of tax and was violative of the scheme of the Constitutional provisions contained in Chapter XIII.

In *Shri Digvijay Cement Company's* case (supra), it was observed that:

> "We are also of the view that the justification advanced by the State E of Rajasthan that as a result of the impugned notifications the State revenue had increased and thus they were beneficial to the State revenue, is not valid as the said notifications had the effect of creating a preference to cement manufactured and sold in Rajasthan and disadvantage for the sale of cement manufactured and sold in Gujarat and thus had the direct and immediate adverse effect on the free flow F of trade."

Lowering of rate of tax by the State of Rajasthan, as we have already noticed, had the direct effect of increasing the flow of trade. The mere fact that the local sale of cement in Gujarat may have been adversely affected cannot result G in the impugned notification being regarded as affecting the free flow of trade and being violative of Article 301 of the Constitution. The said provision is concerned with the movement of goods from one State to the another and as far as the present case is concerned, with the lowering of tax, the movement has increased rather than decreasing.

H The decision of Three Judge Bench in *Shri Digvijay Cement Co.* case

(supra) does not, in our opinion, lay down the correct law and the same is accordingly over-ruled. A

For the afore-said reasons we uphold the validity of the impugned notification dated 12th March, 1997 issued by the State of Rajasthan with the result that this writ petition is dismissed. There shall be no order as to costs. B

P.K.S. Petition dismissed.