RAJASTHAN TAX BOARD, AJMER

1. Appeal No. 1229/ 2014/Alwar
2. Appeal No. 1230/2014/ Alwar
3. Appeal No. 1231/2014/ Alwar
4. Appeal No. 1232/2014/ Alwar
5. Appeal No. 1233/2014/ Alwar

M/s UNITED BREWERIES LIMITED, BHIWADI ....Appellant

Versus

ASSISTANT COMMISSIONER, ANTI EVASION, RAJASTHAN, CIRCLE (III), JAIPUR .... Respondent

1. Appeal No. 1330/2014/ Alwar
2. Appeal No. 1331/2014/ Alwar
3. Appeal No. 1332/2014/ Alwar
4. Appeal No. 1333/2014/ Alwar
5. Appeal No. 1334/2014/ Alwar

M/s CARLSBERG INDIA PVT. LIMITED, ALWAR ....Appellant

Versus

COMMERCIAL TAXES OFFICER, ANTIEVASION, BHIWADI .... Respondent

1. Appeal No. 541/2014/ Alwar
2. Appeal No. 542/2014/Alwar
3. Appeal No. 543/2014/Alwar
4. Appeal No. 544/2014/Alwar

M/s MOUNT SHIVALIK INDUSTRIES LIMITED, GUNTI, BEHROD, ALWAR, RAJASTHAN ..... Appellant

Versus

ASSISTANT COMMISSIONER, ANTI EVASION, RAJASTHAN, CIRCLE (III), JAIPUR ..... Respondent

DB

RAKESH SRIVASTAVA, CHAIRMAN

SUNIL SHARMA , MEMBER

Advocate for the Appellant, M/s United Breweries Limited:
Shri Vivek Singhal
Advocate for the Appellant, M/s Carlsberg India Private Limited:
Shri Lakshmikumaran
Advocate for the Appellant, M/s Mount Shivalik Industries Limited:
Shri Alkesh Sharma
Shri N.K. VAID, Shri RAM KARAN SINGH
Deputy Government Advocates for the Respondent Revenue

Date : NOVEMBER 24, 2014

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JUDGEMENT

(1) Per Member Sunil Sharma : This batch of fourteen appeals has been filed before the Rajasthan Tax Board (for short ," the Board ") under section 83 of the Rajasthan Vat Act, 2003 (for short, " the RVAT Act") read with section 18 A of the Central Sales Tax Act,1956 (for short, " the CST Act ")against the assessment orders for years 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 of the above three appellant companies, passed by the Commercial Taxes Officers, Anti Evasion, Rajasthan, Jaipur (for short , " the Assessing Authority ") under section 9 of the CST Act read with sections 25, 55 and section 61 of the RVAT Act; the summary of which is as follows:

M/S UNITED BREVERIES LIMITED, ALWAR							
S.NO.	APPEAL	Year	Date of Assessment order	TAX (Rs in lacs)	Interest (Rs in lacs)	Penalty (Rs in lacs)	Total (Rs in lacs)
1.	1229/14	2009/10	20.06.2014	3,36,24,929	1,88,29,960	6,72,49,858	11,97,04,747
2.	1230/14	2010/11	20.06.2014	2,78,68,105	1,22,61,966	5,57,36,210	9,58,66,281
3.	1231/14	2011/12	20.06.2014	58,77,536	18,80,812	1,17,55,072	1,95,13,420
4.	1232/14	2012/13	20.06.2014	1,72,49,510	34,49,902	3,44,99,020	5,51,98,432
5.	1233/14	2013/14	20.06.2014	31,79,398	2,54,352	63,58,796	97,92,546

M/S CARLSBARG INDIA PRIVATE LIMITED,ALWAR							
S.NO.	APPEAL	Year	Date of Assessment order	Tax (Rs in lacs)	Interest (Rs in lacs)	Penalty (Rs in lacs)	Total (Rs in lacs)
1.	1330/14	2009/10	30.06.2014	33,68,317	17,17,842	67,36,634	1,18,22,793
2.	1331/14	2010/11	30.06.2014	86,99,011	39,14,555	1,73,98,022	3,00,11,587
3.	1332/14	2011/12	30.06.2014	2,25,89,751	74,54,618	4,51,79,502	7,52,23,871
4.	1333/14	2012/13	30.06.2014	2,39,82,676	50,36,362	4,79,65,351	7,69,84,389
5.	1334/14	2013/14	30.06.2014	1,39,85,736	12,58,716	2,79,71,472	4,32,15,924

M/S MOUNT SHIVALIK INDUSTRIES LIMITED,ALWAR							
S.NO.	APPEL	Year	Date of Assessment order	Tax (Rs in lacs)	Interest (Rs in lacs)	Penalty (Rs in lacs)	Total (Rs in lacs)
1.	541/14	10/11	05.03.2014	8,53,82,550	3,50,06,846	17,07,65,100	29,11,54,496
2.	542/14	11/12	05.03.2014	8,66,22,600	2,51,20,554	17,32,45,200	28,49,88,354
3.	543/14	12/13	05.03.2014	7,44,41,100	1,26,54,970	14,88,82,000	23,59,77,970
4.	544/14	13/14	05.03.2014	1,71,10,400	17,11,040	3,42,20,800	5,30,42,240

(2) The above cases being identical in nature and facts are being decided by a common order, a copy each of which be kept on each separate file. The facts in brief are that aforementioned three appellant assesses : M/s Carls Berg India Private Limited, Industrial Area, Alwar, M/s Mount Shivalik Industries Limited, Behrod, Alwar, and M/s United Breweries, Bhiwadi, Alwar are engaged in business of manufacture and trade of liquor in various States and having their manufacturing units, relevant in the present context, situate in the State of Rajasthan at Bhiwadi, Ghunti, and Alwar respectively. They do business in liquor also in the State of Bihar and the State of Jharkhand. In the State of Bihar its liquor trade is regulated by policies of the Bihar State Beverage Corporation Limited ("BSBCL", for short) ; similarly in Jharkhand, its Jharkhand counterpart, the Jharkhand State Beverage Corporation Limited (for short, " the JSBCL") does the same job of regulating liquor sourcing in the State.

(3) The BSBCL (or, the JSBCL in Jharkhand State) , a public sector undertaking of the Government of Bihar established with the objective of governing liquor sourcing policy in the State directly regulates the procurement and sale of alcoholic beverages in the State of Bihar (or, Jharkhand). For illustration, the beer manufactured by the appellants in Rajasthan, if transported for business purposes to Patna in Bihar (or, Ranchi in Jharkhand) cannot move of its own in the territories of the relevant State unless permission from the local excise authorities is forthcoming, notwithstanding that it may exclusively be reserved for sale to the State owned enterprises: the BSBCL or the JSBCL.

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(4) The BSBCL draws sustenance from various notifications as to duties or fees issued by the Commissioner, Excise Department, Bihar from time to time under the Bihar Excise Act and rules framed thereunder for implementing directives of an instrument called the Liquor Sourcing Policy (for short, "the LSP") of the Bihar Government. Similarly in case of Jharkhand a similar undertaking, namely: the JSBCL has had a separate LSP: though, both are having roughly the same policy contours. As a matter of fact, licensing of the retail liquor shops in the aforesaid States is made either by policy of auction or by way of sale, and the vendors engaged in retail trade of liquor including alcoholic beverages function under directives of the Bihar (or, Jharkhand) excise department. However, sale of liquor wholesale and in retail vends is fully regulated by the concerned beverage corporations only.

(5) The appellant assesses are registered with the Commercial Taxes Department(for short, "CTD") in the State of Rajasthan and the branches of the Companies of the appellant assesses in Patna in Bihar and Ranchi in Jharkhand are also registered over there with the CTDs of the respective States. In the present appeals the appellant assesses have disputed levy of the CST and penalty in the impugned assessment orders made under section 9 of the CST Act read with sections 25, 55 and section 61 of the RVAT Act by the aforesaid Assessing Authorities of the CTD, Rajasthan against the inter-State beer transactions of the appellants in the States of Bihar and Jharkhand .The genesis of controversy has its origin in the decision of the Assessing Authorities charging central sales tax on the impugned inter-State transactions under belief that related transactions were , in fact , inter-State sales effected under section 3A of the CST Act which in no way could be declared tax exempt transactions under section 6A of the CST Act , in direct contradistinction to non compromising view of the appellant assesses that the transactions under dispute were unblemished depot transfers attracting no liability of sorts under the central sales tax (for short," the CST"). The respondent Revenue, per contra, considered the impugned

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inter-State sales as purportedly having been camouflaged under fake branch transfers by the appellant assesses in order to avoid paying CST thereon. The Assessing Authorities charged such transactions to the CST which in its wake attracted interest under section 55 and penalty under section 61 of the RVAT Act which found place being levied in the aforesaid assessment orders.

(6) Shri Alkesh Sharma, the learned counsel for the appellant assessee, M/s Mount Shivalik Industries Limited, did not press for adjudication in respect of beer transactions in the State of Jharkhand for the relevant aforesaid period because the CTD, Rajasthan coming to know of it as actual depot transfers, had since modified relevant assessment orders to the extent worthy under law ,and the appellant assessee and the respondent Revenue buried differences with regard to the validity of stock transfer transactions in the State of Jharkhand. The respondent Revenue did not contest the appellant's claim.

Before analyzing the nature of beer transactions in the instant cases, be they interstate sales or branch transfers, we think it is apt to examine how sale or supply of liquor including beer is regulated and conducted in the State of Bihar and the State of Jharkhand. A perusal of record placed before the bench and the arguments made in this regard reveal that this work is performed by a regulatory body called the State Beverage Corporation(s) established for sourcing distinct liquor policies in the respective States under control of the respective excise departments, both having more or less the same regulatory features. For brevity's sake, wherever expression 'the State of Bihar ' or ' the BSBCL ' occurs hereinafter in the appeal orders, it may be taken , if contextually so required, as covariant to expression 'the State of Jharkhand' or 'the JSBCL'.

(8) It is obvious that determination of applicability of the CST in relation to the impugned inter-State beer transactions is contextually entwined in present context with provisions of a nuanced liquor sourcing policy in

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the State of Bihar, but its byzantine intricacies show that only path to discover the nature of impugned sales lies through the maze of the BSBCL regulations.

Though an unregulated independent movement of beer from one State to another is prohibited by the excise laws of any State yet a regulated movement of alcoholic beverages from the appellants' Rajasthan based manufacturing units to the BSBCL (or JSBCL) depots in towns and cities of the State of Bihar, and for that matter in other States is allowed having virtue of certain statutory measures enshrined in the Rajasthan Excise Act, in juxtaposition the corresponding regulatory laws have been enacted in the Bihar (or, Jharkhand) Excise Acts, which the BSBCL and the JSBCL were bound to follow in the given legal framework for their commercial operations in the respective States.

(9) It is apparent that the L S P, Bihar is implemented by the BSBCL which in turn is governed by the provisions of the Bihar Excise Act, 1915, and under section 20 this Act, it has been mandated that no intoxicant can be sold in the State of Bihar except under the authority and subject to the terms and conditions of a license granted by the Collector. In the present case, it was the appellant assesses' Bihar (and Jharkhand) branches which were holders of license 19C for the wholesale sale of Foreign Liquor, Indian Made Foreign Liquor (IMFL) and Alcoholic Beverages in the State of Bihar, subject to the conditions prescribed in the certificate.

(10) In the present scenario procedure part of regulated liquor trade begins with the transport of beer consignments by the appellant assesses from their factory units situated in the State of Rajasthan to the depots in Patna and Ranchi in the respective States of Bihar and Jharkhand, which have been claimed as stock transfers by the appellant assesses but as inter-State transactions by the respondent Revenue. The appellant assesses claimed to have transferred beer stocks to their Patna depot and Ranchi depot after having obtained export permits from the Excise Department of Rajasthan.

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The BSBCL placed Orders for Supply (hereinafter referred to as, "OFS ") on the appellant assesses for supply of beer to its various depots spread across the entire State of Bihar . The appellant assesses required import permits - 52 B, for which they applied to the competent authority of the Bihar Excise Department and in case same were issued, the respective factory units, on receipt thereof, sold the goods (beer) to the designated depots of the BSBCL (or, JSBCL) The appellant assesses maintained their branches in the cities of Patna & Ranchi registered over there with the CTD, Bihar and the CTD Jharkhand.

The appellant assesses transferred beer stocks to their Patna depot and Ranchi depot, after obtaining export permits from the Excise Department of Rajasthan, simultaneously depositing requisite export fees for their beer dispatches to the State of Bihar (or, Jharkhand).

On receipt of the export permit (Form: FL 5) and transportation pass (Form: FL 6) from the jurisdictional officer of the Excise Department of Rajasthan, the concerned factory In charge would arrange for transportation of beer in exclusive vehicles to the States of Bihar or Jharkhand as the case be, and beer consignments in conformity with the transit route chart provided by the BSBCL would travel to destination Patna, Bihar (or, Ranchi ,Jharkhand), accompanied with such documents as appellants' stock transfer invoices, export declaration Form 49 of the CTD, Rajasthan, import permit of the Excise Department of Bihar, export pass of the Rajasthan Excise Department , Suvidha Form of Bihar VAT (RVAT Form 47's counterpart), relevant insurance papers and GRs prepared for 'self to self ':i.e., 'from M/s United Breweries to M/s United Breweries', etc. After arrival of the goods in Patna (or, Ranchi), inspection by an official of the Excise Department of Bihar of the rank of an Inspector was made who, after completion of due checks in the presence of the employee of the appellant assessees on the staff of Patna branch, allowed unloading of the goods in the warehouse of the appellants' branch and recorded appropriate entries in the Register no. 86 of the Excise Department of Bihar, same also noted by the

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appellant's employees in their own register for personal convenience. Thereafter, the concerned official of the Excise Department, Bihar made an stamped endorsement on the twin documents accompanying the goods, i.e., export permit (FL 5) and transport pass (FL 6) of the Excise Department of Rajasthan which were returned to the driver carrier and later submitted by the appellant assessees to the Rajasthan Excise Department to claim a matching grant of 50 % rebate on bottling fees. As a natural corollary to all this, beer was then sold by the appellant assesses in the State of Bihar (or, Jharkhand) to its various BSBCL (or, JSBCL) retail outlets operating at different destinations in Bihar (or, Jharkhand), on the strength of 50 % Bihar (or, Jharkhand) VAT paid sale invoices raised by the appellant assesses.

(11) The above account dealt with the methodology of trade movement of the excisable goods, presently many brands of beer manufactured by the appellant assesses, from the State of Rajasthan to the State of Bihar (and Jharkhand). There are therefore three main parties germane to the issue of controversial classification of the nature of beer sales in the instant cases , namely: the appellant assesses, the BSBCL (or the JSBCL) and the respondent Assessing Authorities of the CTD, Rajasthan. Of them, the role of the BSBCL (or, the JSBCL) is of paramount importance in understanding the nature of the impugned transactions as to whether they were stock transfers or interstate sales. On one side the respondent Revenue held its own that the movement of beer from the premises of appellant's manufacturing units in the State of Rajasthan to the BSBCL (or, the JSBCL) depots in the towns of the State of Bihar(or, in Jharkhand) was occasioned in pursuance of the contract of sale entered into between the appellants and the BSBCL through a certain document termed as " Agreement to Sale" and charged that such taxable interstate sales were made under section 3A of the CST Act,1956, fraudulently claimed as tax free stock transfers under section 6A of the CST Act,1956, by the appellant companies in order to avoid paying Central Sales Tax on such inter-State sales. On the other side of

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spectrum were beer manufacturing appellant units from the State of Rajasthan strongly denying holding back CST otherwise not payable on the impugned liquor transactions related to Bihar and Jharkhand; which, in their view, in all fairness, were merely stock transfers and that the agreement being bandied about by the respondent Revenue as "Agreement to Sale" was a bare "Distribution Agreement" executed between the appellant units and the BSBL (or, the JSBL) only for distribution of beer sold within the State of Bihar from Patna or from Ranchi in Jharkhand, the liquor in question being continually transferred from appellants assessee in Rajasthan to their Patna branch or Ranchi branch at the depot in Patna (or Ranchi) in Bihar (or, Jharkhand) straight from the beer manufacturing units of the appellants situate in the State of Rajasthan irrespective of any orders from any quarters. Therefore, there was no contract to sale of goods between the appellants and the BSBCL pursuant to which the movement of beer was occasioned from the State of Rajasthan to the State of Bihar (or, Jharkhand) and the impugned sales of beer in the State of Bihar (or Jharkhand) fell in the casket of 'within the State sales' having had nothing to do with the imagined interstate sales effected between the BSBCL and the appellant companies as made out by the respondent Assessing Authorities.

(12) At the backdrop of above it is necessary to know how and in what manner, the BSBCL executed its liquid sourcing policy in the State of Bihar ,so that we may go to the whole hog whether movement of beer consignments from Rajasthan to Bihar (or Jharkhand) was under domain of interstate sales supposedly effected between the BSBCL and the appellant companies registered with CTDs in both the States of Rajasthan and Bihar ,or whether the OFS (order for sale) of beer to the appellant companies registered with CTD Bihar (or Jharkhand) issued by the BSBCL only catered for cloistered domain of 'intra-State sales' in Bihar *dehors,* any covenant to 'interstate sale' caused by beer dispatches from Rajasthan to Bihar, and whether the impugned transactions

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remained intact as stock transfers throughout the travel itinerary of goods from the appellants' factory units in Rajasthan to Patna,(Bihar) branch, thence to the BSBCL depots in other towns of Bihar, notwithstanding.

(13) Arguing on behalf of M/s Carlsberg Breweries Limited, the learned counsel, Mr Lakshmikumaran, said that the tax on the stock transfers levied in the aforesaid assessment orders by the learned Assessing Authority, was entirely illegal and unjustified for he erred in law and facts in considering the stock transfer as interstate sales.

(14) He assailed the assumption of jurisdiction by the Anti evasion authorities as an entirely illegal and unjustified act for the fact that appellant company was a registered dealer with the regular Assessing Authority of the CTD, Rajasthan at Alwar and all the transactions of sale and purchase inclusive of stock transfer, etc. were well recorded in the books of accounts and declared in the returns .The Assessing Authority, after examining the books of accounts and documents submitted and examining the nature of the agreement, accepted the transactions as stock transfer which were duly supported by the statutory declaration form F as per the provisions of section 6A of the CST Act, 1956 thereby discharging the burden of proving that the goods moved without any reference to contract of sales and that transfer of goods was otherwise then by way of sales for the year 2009-2010 to 2011-2012 in similar circumstances ;and, simply on the basis of change of opinion as to the nature of transaction the assumption of anti evasion jurisdiction on the part of the CTD, Rajasthan was entirely illegal and unjustified, because the appellant company had not avoided or evaded any tax liability and paid tax in accordance with law ;and, the stock transfers were made by the appellant company in the regular course of business. As such the assumptions of jurisdiction under section 25 of the RVAT Act by the Assessing Authority was entirely illegal an arbitrary.

(15) He further argued that the orders passed by the Assessing Authority under section 9A of the CST Act read with section 25 of the RVAT Act were totally without jurisdiction and against the facts since there was no

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case of evasion and only on the basis of a different interpretation of and a legally incorrect subjective opinion on the nature of transactions the jurisdiction was assumed by the anti evasion wing of the CTD, Rajasthan in complete violation of the law : as such order was totally without jurisdiction.

(15) Arguing further he said that the assessments of the appellant company for the aforesaid assessment years were completed by the regular Assessing Authority under section 24 of the RVAT Act and after completion of the assessments under aforesaid section 24 of the RVAT Act, jurisdiction could not have been revoked under section 25 of the RVAT Act as it would lead to two parallel assessment provisions at work for the same assessments and also tantamount to reviewing or reopening the assessments already made , which could not have been the intention of the State legislature. The assumption under section 25 of the RVAT Act even with reference to section 25(4) of the RVAT Act could not have an overriding effect on section 24: It was only in cases where the assessment had earlier been made under section 25 would be subject to the assessment to be made again under section 25 of the RVAT Act. **He contended that the State legislature had not mentioned that the assessment under section 24 would be subject to assessment under section 25** and even the scheme of the Act also provided for other **remedies** in case the assessment under section 24 of the RVAT Act was proposed to be revised or reopened or reassessed. **The effect of assuming the jurisdiction under section 25 of the RVAT Act was of having revisionary powers of an order passed under section 24 of this Act: this power was not provided to the Assessing Authority and also not permitted by any provisions of Law and the action of the Assessing Authority of passing an order under section 9 of the CST Act read with section 25 of the RVAT Act by reopening the issue which was already settled by an order passed under section 9 of the CST Act read with section 24 of the RVAT Act was without jurisdiction and authority** and without properly considering the reply

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and submission made by the appellant company. The orders passed were totally in gross violation of principles of natural justice and arbitrary use of the authority under the Act ; hence, illegal.

(16) Mr Lakshmikumaran, the learned counsel , for the appellant company, M/s Carlsberg Breweries Private Limited, submitted that the show cause notice issued to the appellant company in the present case while proposing to raise CST demand against it had bluntly alleged that goods, beer in instant case, supplied under the Agreement with BSBCL qualified as interstate sale, and hence, the Appellant was liable to pay the CST on sale of the disputed goods to the BSBCL. The show cause notice vaguely made the above a one liner allegation against the appellant company without giving any reasons whatsoever as how the terms of the agreement between Appellant and BSBCL indicated inter-state sales by the Appellant company. There was also no discussion in the show cause notice of section 3 of the CST Act containing provisions for determining a sale in the course of inter-state trade or commerce, as also the facts of the case at hand.

He said that it was a well settled legal principle that a show cause notice which was made the basis of initiation of proceedings against an assessee must be well reasoned and contain all the grounds and reasons on the premise of which demand was proposed in the said show cause notice. If it was devoid of proper reasoning, it being against the principle of natural justice was invalid in the eyes of law. In this regard he placed reliance on the Hon'ble Supreme Court decision in the case of **Appropriate Authority v. Vijay Kumar Sharma (2001) 249 ITR 554 (SC)** wherein it was held that show cause notice devoid of reasoning is void *ab-initio* and did not hold good in the eyes of law. Moreover, during the personal hearing also the Appellant was not given any further notice of the reasons for holding its stock transfer to be in the nature of inter-state sales. Thus, the present non speaking impugned orders culminated from void-ab-initio show case notices bad in the eyes of law and liable to be set aside.

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(17) Coming to the main thrust of arguments, the learned counsel for the appellant counsel, Mr. Lakshmikumaran, strongly denied that the supply of liquor (beer) to the BSBCL under the terms of agreement between the Appellant company and the BSBCL qualified for being classified as inter-state sales by any stretch of imagination; on the contrary, movement of goods ,beer, from Rajasthan based brewery to Bihar depot was in the nature of stock transfer and not by way of sale, and hence not liable to central sales tax.

(18) Arguing further he submitted that principles for determining a sale to be an inter-state sale or purchase of goods were provided under section 3 of the CST Act, which said that a sale would be an interstate one if the sale had occasioned the movement of goods from one State to another; or if the sale was effected by the transfer of document of title to the goods during the movement of goods from one State to another.

However, the appellant company claimed that the movement of goods in question from the brewery located in the State of Rajasthan to the depot in Bihar was stock transfer under section 6A of the CST Act on the ground that the movement of such goods (beer) from Rajasthan State to Bihar/ Jharkhand was occasioned by reason of transfer of such goods by it to Patna / Ranchi and not by reason of sale.

(18) He said that the law , of course, enjoined that burden of proving that movement of those goods was so occasioned would be on that dealer and for this purpose he would furnish to the assessing authority a declaration, by the principal officer of the other place of business, or his agent or principal, as the case may be, *along with the evidence of dispatch of such goods and if the dealer failed to furnish such declaration, then, the movement of such goods would be deemed for all purposes of this Act to have been occasioned as a result of sale.*

(19) It was submitted that principles for determining whether a sale was in the nature of inter-state sale or purchase of goods had been provided under section 3 of the CST Act. The said section was read aloud,

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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.

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.

He argued that from the above extracted section, it could be seen that a sale would qualify as inter-state sale, in the following two circumstances:-

a) If the sale occasioned the movement of goods from one State to another; or

b) If the sale was effected by the transfer of document of title to the goods during the movement of goods from one State to another

(20) It was submitted that the Appellant had claimed the movement of goods in question from the brewery located in the State of Rajasthan to the depot in Bihar as stock transfer under section 6A of the CST Act. Quoting Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, he said that in case of transfer of goods claimed otherwise than by way of sale as was his case, he was not liable to pay tax under

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this Act on the ground that the movement of such goods, beer, from one State, Rajasthan, to another, Bihar, was occasioned by reason of transfer of such goods, beer, by him to any other place of his business ,in the present case, Patna or Ranchi, and not by reason of sale and accepted that the burden of proving that the movement of those goods was so occasioned was on the appellant company and for this purpose he furnished to the Assessing Authority, within the prescribed time declaration, duly filled and signed by the principal officer of the other place of business containing the prescribed particulars in the prescribed form obtained from CTD, Bihar along with the evidence of dispatch of such goods. Were **it** not such declaration furnished, the movement of beer would have been deemed for all purposes of this Act to have been occasioned as a result of sale.

(21) He further argued that in light of the above discussed provisions, in the present case the Appellant entered into Agreement with BSBCL for distribution of beer to the same in accordance with the liquor sourcing policy of the BSBCL by which liquor manufactured at breweries of the Appellant located in various parts of India, primarily the brewery in the State of Rajasthan, was first stock transferred to the licensed depot in Bihar registered with CTD, Bihar (place of business of Appellant). From the depot, liquor was supplied and sold to the Corporation, in terms of the purchase orders placed on the Bihar Depot.

(22) He submitted that the present disputed movement of goods from Alwar Brewery of the Appellant to its Bihar Depot was pure stock transfer transaction. The said stock transfer movement was made by the Appellant without payment of tax under section 6A of the CST Act against declaration in Form F received from its Bihar depot.

He emphasized that the goods in the instant case had moved from Rajasthan brewery to Bihar Depot and not directly to BSBCL godown. Also there was no dispute of fact of furnishing of 'Form F' by the Appellant against such movement.

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(21) In light of the above, the learned counsel for M/s Carlsberg, Mr Lakshmikumaran, submitted that present impugned transaction undisputedly fulfilled all the conditions for qualifying as stock transfer under section 6A of the CST Act, and thus, the Appellant was not liable to pay central sales tax on the transaction in question and that the present impugned order was liable to be set aside on this ground itself.

As already discussed above, a sale qualifies as inter-state sale, in the following two circumstances:-

a) If the sale has occasioned the movement of goods from one State to another; or

b) If the sale is effected by the transfer of document of title to the goods during the movement of goods from one State to another

(22) Mr Lakshmikumaran, the learned counsel for the appellant company, M/s Carlsberg Breweries Limited submitted that sale of goods could be held to have taken place in the course of inter state trade or commerce under clause (a) of section 3 of the CST Act if that sale had **'occasioned'** the movement of goods from State to another and the word 'occasions' in the above provision was used as a verb and meant 'to cause or to be immediate cause of'. The expression 'occasions the movement of goods' has been subject matter of interpretation in various judgments by the Apex Court of India including the landmark case of **Tata Iron & Steel Co. Ltd. vs. S.R. Sarkar 1960 (11) STC 655 (SC)** wherein the Hon'ble Supreme Court laid down that a sale would qualify as inter-state sale under clause (a) of section 3 of CST Act 'if the movement of goods from one State to another is the result of covenant or incident of such contract of sale'. Further, in **M/s Ben Gorm Nilgiri Plantations Company Cooncor and Ors. v. Sales Tax Officer, Special Circle, Ernakulam and Ors. [1964] 7 SCR 706 (SC)** the Hon'ble Supreme Court dealt with similar expression i.e. 'occasions such export' under Section 5 of the CST Act which relates to sale or purchase of goods in the course of import or export. It was held in the said case that a sale in

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the course of export predicated connection between the sale and export, the two activities being so integrated that the connection between the two could not be voluntarily interrupted without a breach of the contract or the compulsion arising from the nature of the transaction. And to occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link was inextricably connected with one immediately preceding the other.

(23) The learned counsel, Mr Lakshmikumaran, for the appellant, M/s Carlsberg, further brought point home that observations in the case of **Tata Iron and Steel Co. (supra)** as well as **Ben Gorm Nilgiri Plantations Co. (supra)** were relied upon by a Constitution Bench of Hon'ble Supreme Court in the case of **Tata Engineering & Locomotive Company Limited v. The Assistant Commissioner of Commercial Taxes and Anr. 1970 (26) STC 354 (SC)** wherein it was held that for a sale to be exigible to tax as inter-State sales under the CST Act it must be shown to have occasioned the movement of goods or articles from one State to another and that the movement must be the result of a covenant or incident of the contract of sale.

Therefore, the movement should be incident of and be necessitated by the contract of sale and contract of sale and movement of goods should be so integrated that the connection between the two could not be voluntarily interrupted without a breach of the contract.

(24)He reiterated that there should be three essentials of a sale under section 3(a) of the CST Act in the course of inter-state trade or commerce: (i) there must be a contract of sale; (ii) the goods must actually be moved from one State to another; and (iii) the sale and movement of the goods must be a part of the same transaction.

(25) He submitted that the present disputed agreement between the Appellant and the BSBCL, required the Appellant to supply liquor to BSBCL. As per clause 1.1 of the Agreement quantity of liquor to be supplied by Appellant was determined by the Corporation from time to time keeping in view the demand for Appellant's liquor. For this purpose,

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Order For Supply (OFS) were placed by the BSBCL on Appellant's Bihar Depot, keeping in view the demand of Appellant's liquor in the market.

He said that the Corporation was not bound to order any minimum quantity of liquor from the Appellant, because Clause 1.1 of the Agreement also provided that the Appellant acquired no right under the Agreement to distribute liquor through the Corporation.

Upon receipt of the purchase orders, Bihar Depot of the Appellant supplied the required quantity of liquor to BSBCL, by delivering the same at the depots of BSBCL. **For the aforesaid sale of liquor from Bihar Depot, the Bihar Depot of the Appellant raised sale invoice on BSBCL.**

(26) Moreover, neither the purchase order made by the BSBCL nor the Agreement between Appellant and the BSBCL contained any term/ covenant requiring the movement of liquor by the Appellant from Rajasthan State to the State of Bihar. The movement of goods from Rajasthan Brewery to Bihar Depot was not an incident of contract of sale between Appellant and BSBCL. The stock transfer advice issued by Appellant as well as the goods receipt issued by the transporters for movement of goods from Rajasthan to Bihar had no mention of the purchase order or Agreement with BSBCL. The goods when they moved from Rajasthan Brewery were not appropriated or allocated towards any purchase order of BSBCL. In other words the Appellant was free to divert the goods during their interstate movement, without breaching any term or covenant of the Agreement in question.

(27) He further submitted that even the Export Permit & Export Pass issued under Rajasthan Excise Act and the Import Pass issued under Bihar Excise Act clearly mentioned that the goods **have** moved from Carlsberg Rajasthan to Carlsberg Bihar.

He reiterated that there was no link, leave aside inextricable link, between the movement of goods from Rajasthan Brewery and Bihar Depot of the Appellant. One did not immediately precede the other, rather, the two were completely independent.

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(28) Further, as per one of the conditions of License 19C granted to the Appellant, Bihar Depot of the Appellant was required to maintain minimum stock at such depot and to recoup the stock within 7 days in the event of same going below minimum limit. The said condition further **fortifies** the Appellant's contention that movement of goods from Rajasthan brewery to Bihar depot was not on account of sale contract between Bihar Depot and BSBCL but in fulfillment of minimum stock condition of License 19C granted to the Appellant.

(29) He averred that in view of the above, the sale of goods by Appellant to BSBCL did not qualify as inter-state sale under section 3(a) of the CST Act, as the stock transfer movement was independent of sale of liquor at Bihar depot and was not occasioned because of contract of sale between Bihar Depot and the Corporation.

(30) In this regard the Appellant placed reliance on the decision of the Hon'ble Supreme Court in the case of **Kelvinator of India Ltd. vs. State of Haryana 1973 (32) STC 629 (SC).** He explained that Kelvinator had its factory in Haryana and godown in Delhi. The goods were stock transferred from Haryana to Delhi from where the goods were sold to distributors in Delhi as per the purchase orders placed by Distributors at godown in Delhi. In these circumstances it was held that movement of goods from Haryana factory to godown in Delhi was not an inter-state sale as there was no direct link between transfer of goods from Haryana and sale of goods at Delhi **Godown**.

(31) Specific reliance is also placed on the case of **Tata Engineering & Locomotive Co. Ltd. vs. Assistant Commissioner of Commercial Taxes 1970 (26) STC 354 (SC)** whose facts were narrated that the assessee carried on the business of manufacturing trucks in Jamshedpur in the State of Bihar. The sales office of the Appellant in Bombay used to instruct the Jamshedpur factory to transfer stocks of vehicles to the stock yards in various states after taking into account the production schedule and requirements of customer in different states. The stocks available in the stock yards were distributed from time to time to dealers.

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The transfer of the vehicles from the factory to the various stock yards was a continuous process and was not related to the requirements of any particular customer. Until an appropriation of the vehicles was made by the stock yard in charge against a contract of sale out of the stocks available with it, it was open to the assessee to allot any vehicles to any purchaser or even to transfer the vehicles from the stock yard in one State to another. It was held on the fact that the sale by the Appellant to a purchaser from its stock yard was not an interstate sale.

(32) Further, Mr Lakshmikumaran, the learned counsel , for the appellant company, M/s Carlsberg Breweries Limited contended that the Appellant case was squarely covered by the decision by the Allahabad High Court in the case of **Central Distilleries and Breweries Ltd. vs. Commissioner of Trade Tax U.P. 1999 (115) STC 296 (All)** wherein the facts were that the petitioner was a manufacturer of liquor having distillery in Uttar Pradesh and head office in Delhi. The petitioner entered into agreement for sale of liquor to Government retail vends in Delhi. The actual orders for purchase and sale were to be placed subsequently by the collector on fortnightly basis. The sales tax department took the view that the goods in question were taken to Delhi from the State of U.P. to be supplied to the Delhi Administration in pursuance of the agreements referred to above, and therefore, the goods moved to Delhi in pursuance of the said agreements, which occasioned the movement of goods from U.P. to Delhi, and thus, the transactions amounted to inter-State sales.

The Hon'ble Allahabad High Court held that the intention of the parties was to bring about intra-State sales in Delhi from the warehouse of the dealer. Dealer was required to maintain a buffer stock of at least two trucks without any guarantee that any purchase would be actually made by the Delhi Administration. As and when the Delhi Administration made the purchase, licensee would supply the goods and replenish the stocks. Therefore, as indicated by the agreement, the movement of the goods to Delhi was not in pursuance of any transaction

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of sale but in pursuance of the license under which the dealer was to maintain a warehouse with a minimum stock within the territory of Delhi. The agreement by itself did not bring about any sale or purchase and, therefore, the transport of goods from the distillery in U.P. to the warehouse in Delhi could not be treated as a movement of goods occasioned by any sale or purchase.

(33) As regards the coverage of the Appellant's case under clause (b) of section 3 of the CST Act, it was submitted that the said clause covered cases where a sale was effected by transfer of documents of title during the movement of goods from one State to another.

In respect of the above provision, reference was made to the Allahabad High Court decision in the case of **Hirason Enterprises vs. Commissioner of Sales Tax 1990 (76) STC 355 (All)**, wherein it was held that a sale qualified under section 3(b) if the goods sold were transferred during the movement of goods from one State to another and there was endorsement of document of title. It may be noted that the document of title in cases of movement of goods by road was the truck receipt/ railway receipt depending upon the vehicle for road transportation.

In view of the above, it was concluded that for a sale to qualify as interstate sale under section 3(b) of the CST Act, there should be transfer of document of title in goods by way of endorsement of document of title (goods receipt) while the goods were in movement from one State to another.

(34) He contended that in the case at hand, it was nobody's case that Appellant had transferred disputed goods (liquor) by way of transfer of document of title while the goods were in movement from one State to another. Factually also the Appellant had not made any endorsement to the goods receipt while the goods were in movement from Rajasthan to Bihar. Hence, the impugned transaction was not a 3(b) inter-state sales.

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Thus, the order demanding tax on the disputed transaction as an interstate sale, was completely incorrect and liable to be set aside.

(35) It was submitted that a contract of sale of goods was one in which a seller transferred or agreed to transfer the property in goods to the buyer for a price .As per Section 4(3) of the Sale of Goods Act, 1930, where the transfer of property in goods was to take place at a future time or subject to some condition thereafter to be fulfilled, the contract was called an agreement to sell. Section 4 (4) of the Sale of Goods Act, 1940, further provided that an agreement to sell became a sale when the time elapsed for the conditions were fulfilled subject to which the property in the goods was to be transferred.

(36) Further, Mr Lakshmikumaran, the learned counsel , for the appellant company, M/s Carlsberg Breweries Limited emphasized that in the case of **Kelvinator of India Ltd. (cited supra)**, the Hon'ble Supreme Court had made an observation in respect of distribution agreement entered into by the assessee therein that the number of refrigerators which were to be purchased by each of the distributors was not specified in the distribution agreements, nor did the agreements contain the price which was to be charged for each refrigerator.

The Court observed that even though the minimum number of refrigerators had been agreed to be purchased by the distributors, the exact number of refrigerators to be sold by the appellant to the distributors was left to the volition of the assessee. The mode of operations as observed by the Court was that subsequent to the distribution agreements, orders were placed by the distributors with the assessee after the refrigerators had reached the assessee's sale office and godown in Delhi. The price of the refrigerators was also to be mutually agreed upon from time to time. The Court held that it was the orders which were placed in Delhi by the distributors and the acceptance thereof by the assessee that resulted in mutual agreement of sale. The Court held that the mutual agreement between the parties at the time of

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the placing of the order by the distributor with the assessee constituted the contract of sale and not the distribution agreement and, therefore, the sale could not be deemed as inter-State sales.

(37) Mr Lakshmikumaran, the learned counsel , for the appellant company, M/s Carlsberg Breweries Limited emphasized that in the case of **Central Distillery & Breweries Ltd. (cited supra)** the assessee entered into agreement with the government run country liquor vends in UT of Delhi. Terms of the agreement provided that collector of Excise, Delhi would place fortnightly orders at the Delhi office for supply of liquor. The Delhi Liquor License Rules 1976 provided that the government did not guarantee purchase of any specified quantity of liquor during the currency of agreement. In these facts, the Hon'ble Allahabad High Court held that agreement between assessee and Delhi Administration was not an agreement of purchase of any quantity of liquor, but merely a license to sell liquor.

It was his averment that the agreement entered into between the Appellant and BSBCL, was a distribution agreement and not an agreement to sell. The agreement between Appellant and BSBCL did not contain any information related to price, number of beer cases, size, type of beer etc. Also the BSBCL was under no obligation to procure any specified minimum quantity of any brand of liquor during the currency of the period (clause 6.2 of the Liquor Sourcing Policy).

He argued that clause 10.1 of the Liquor Sourcing Policy 2008-09 itself provided that Order For Supply (OFS) would be construed as agreement to sell under sub-section 3 of section 4 of the Sale of Goods Act 1930.

Therefore, agreement between Appellant and Corporations could neither be a contract of sale nor an agreement to sell. It was the OFS which qualified as agreement to sell, which became sale upon conclusion.

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Further, as regards the finding that the bottles moving from Rajasthan to Bihar bore a label to the effect that such bottles were meant for sale in Bihar, it was submitted that the such a label was put in pursuance of a statutory requirement under the State Excise Laws. However, such a declaration in no way proved that the liquor was moved from Rajasthan to Bihar in pursuance of the agreement to sell (Order for supply) between Appellant and BSBCL.

(38) Mr Lakshmikumaran, the learned counsel , for the appellant company, M/s Carlsberg Breweries Limited said that the distribution agreement offered to the beverage corporation as per the Liquor Policy of that State , did not even specify any quantity, any amount, any time or any value of sale of goods, therefore, it could not be at any cost be presumed as contract of sale and therefore, the precise nature of the distribution agreement offered was not a contract of sale but an offer to distribute the material to the beverage corporation on yearly basis as per the policy of the State Government of that respective State so as to regulate and control the wholesale and retail trade of liquor in the State.

He elaborated that what the Bihar State Beverages Corporation Limited had been offered was a distribution agreement which was, general in nature regarding distribution activity and was irrespective of any fixed quantity, value or specific sale of any goods but was an offer for the reason that it was not a purchase or sale agreement, and it made the appellant company only make a valid offer to supply and deliver the Beer through the respective Beverage Corporation to its various depots in State of Bihar.

(39) Mr Lakshmikumaran, the learned counsel appearing for the appellant company, M/s Carlsberg Breweries Limited further contended that the assessing authority had wrongly interpreted the distribution agreement offered by the applicant as a contract for sale presuming the occasioning of movement of goods, whereas as per the provision of law the offer could not be considered as an contract or even an agreement of sell and the interpretation taken by the Assessing Authority to the

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distribution agreement offered as a contract of sale was entirely unjustified and against the facts and circumstances of the case and totally based on presumptions and assumption without any basis .

He said that the enquiry made from the branch did not reveal that there was any contract in pursuance of which the goods were stock transferred, as such the presumption made by the Assessing Authority regarding interstate sale was entirely illegal, unjustified and against the provisions of law.

(40) Mr Lakshmikumaran, the learned counsel , for the appellant company, M/s Carlsberg Breweries Limited said that the copy of the assessment made in the State of Rajasthan by the regular assessment authorities wherein on the basis of the documents and declaration form F the contents of which **have** not yet found to be incorrect for the year 2019-10 to 2011-2012 the regular Assessing Authorities had accepted the transfer as stock transfer. The assessment orders were also passed by the Assessing Authorities of the respective States who had accepted the transaction as local transaction and assessed the transaction of the appellant as local sale. First, there was no document or basis by which it was established or proved that the stock transfer made by the applicant was in pursuance of the contract of sale or by virtue of covenant of any contract of sale, rather it was only on the basis of a different interpretation of the agreement that interstate sale by the Assessing Authority was presumed whereas two other authorities of different States had accepted the transactions as stock transfer and the local sale transaction. Secondly in any case, a transaction could not be a local sale as well as a interstate sale and the applicant could not be made to suffer the tax liability under Central Sales Tax Act and the Local sales Tax Act on the same movement of goods.

(41) It was further stated that as the applicant had already been assessed in the State of Rajasthan on the basis of stock transfer up to 2011-12 and in other States appellant had deposited VAT at 50% considering the same as local sale in that State , therefore and as the same transaction

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could not be a branch transfer and a local sale as well as an Inter State sale, and the appellant turnover could not be considered as Local sale in one State and Inter State Sale in another State and the appellant could not be subjected to double taxation on same transaction it flouted mandatory requirement of law and the demand had been created arbitrarily against the provision and any proper authority of law.

(42) Defending the modus operandi of his assessee M/s Carlsberg, Mr. Laxmikumaran, the learned counsel, strongly contended that the contents of the form F had not been found false or incorrect and neither the transactions had been examined and simply on presumption the transactions had been considered as interstate sales which was entirely illegal and unjustified.

(43) Mr. Laxmikumaran said that the impugned order had imposed interest demand under section 55 of the RVAT Act. Section 55 of the RVAT Act was extracted hereunder for ready reference:-

55. Interest on failure to pay tax or other sum payable

(1) Where any person or a dealer commits a default in making the payment of any amount of -

(a) tax leviable or payable; or

(b) any amount of tax, fee, penalty or interest assessed or determined; or

(c) any other amount payable by him,

within the specified time under the provisions of this Act or the rules made or notifications issued thereunder, he shall be liable to pay interest on such amount at such rate, as may be notified by the State Government from time to time, for the period commencing from the day immediately succeeding the date specified for such payment and ending with the day on which such payment is made.

At the outset, it was submitted that no interest was chargeable on the Appellant as based on the submissions made above the alleged tax itself was not payable.

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(44) Mr. Laxmikumaran the learned counsel, citing the case of **JK Synthetics Ltd. v. CTO [1994] 94 STC 466 (SC), said that** the Constitutional bench of the Supreme Court discussed the issue regarding levy of interest under Section 11B of the Rajasthan Sales Tax Act, 1954, he brought it to the notice that the Hon'ble Court held that when Section 11B (a) used the expression tax payable under sub-section (2) and (2A) of Section 7 that must be understood in the context of the aforesaid expression employed in the two sub-sections. Therefore, the expression 'tax payable' under the two sub-sections was the full amount of tax due and tax due was that amount which became due ex hypothesi on the turnover and taxable turnover 'shown in or based on the return'.

Further, the Hon'ble Court held that 'tax payable' in 11B meant the full amount of tax which became due under the Act when assessed on the basis of the information regarding turnover furnished or shown in the return. Therefore, so long as the assessee paid the tax which according to him was due on the basis of the information supplied in the return filed by him, there would be no default on his part to meet the statutory obligation under Section 7 of the Act and, thus, it would be difficult to hold that the 'tax payable' by him 'was not paid' to visit him with the liability to pay interest under clause (a) of Section 11B.

Making his argument in the light of the judgment stated above, he said that that interest under Section 55 of the RVAT Act could be levied only for failure to pay tax as shown in the returns filed by the Appellant. It was an admitted position in the present case that the tax due in the returns was fully paid by the Appellant. Therefore, there was no occasion to levy interest under section 55 of the RVAT Act and the same was liable to be dropped.

(45) As regards penalty, It was submitted that the impugned order had imposed penalty on the Appellant under section 61 of the RVAT Act. The said section 61 is extracted hereunder for ready reference:-

Penalty for avoidance and evasion of tax

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(1) Where any dealer has concealed any particulars from any return furnished by him or has deliberately furnished inaccurate particulars therein or has concealed any transactions of sale or purchase from his accounts, registers or documents required to be maintained by him under this Act or has avoided or evaded tax in any other manner, the assessing authority or any officer not below the rank of an Assistant Commercial Taxes Officer as may be authorised by the Commissioner, may direct that such dealer shall pay by way of penalty, in addition to the tax payable by him under this Act, a sum equal to two times of the amount of tax avoided or evaded.

(46) From the above, it was deducted by him that penalty under section 61 of the RVAT Act, could be imposed in any of the following circumstances:-

a) concealment of particulars from any return; or
b) deliberately furnishing inaccurate particulars in any return; or
c) concealment of any transaction of sale or purchase from accounts, registers or documents; or
d) avoidance or evading tax in any other manner

Arguing that it was alleged that the Appellant with the intention to evade tax had shown inter-state sales as stock transfer, and hence, liable to penalty under section 61 of the Act ab initio was a nullity because It was an undisputed fact that the present impugned stock transfer transactions were duly declared and disclosed by the Appellant in the returns furnished with the VAT Authorities and further the disputed stock transfer transactions were well recorded and accounted for by the Appellant in the books of accounts maintained by the appellant company.

(47) Moreover the appellant had no intention to evade tax on the transaction in question by showing the same a stock transfer instead of inter-state sales under a bonafide belief that the transactions in question were a stock transfer transaction ; the bonafide of the Appellant based

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on the ratio of decisions and case laws cited above, specifically, the case of **Central Distilleries & Breweries (cited supra),** wherein under similar facts and circumstances the Hon'ble Allahabad High Court held transaction identical to the Appellant to be in the nature of stock transfer and not inter-state sales.

(48) He said that the bonafide of the Appellant was further evident from the fact that inter-states sale of liquor in the State of Rajasthan were taxable @ 20%, whereas, local sale in the State of Bihar were taxable @ 50%. And the Appellant **has** in fact paid local VAT @ 50% on sale of the stock transferred liquor in the State of Bihar, therefore, the Appellant by showing the disputed transaction as stock transfer instead of inter-state had paid higher taxes, thus, clearly showing absence of any guilty mind and intention to evade payment of tax on the part of the Appellant.

(49) He wished to place reliance on the case of **Commercial Taxes Officer v. Rajdhani Wines (1992) 87 STC 362 (Raj.)** wherein the Hon'ble Rajasthan High Court set aside levy of penalty on the basis of bonafide belief on the part of the assessee.

(50) In the said case, the respondent purchased foreign liquor free of tax in Delhi, recorded the purchases in its books of account and claimed exemption in respect of sales thereof in its returns under the Rajasthan Sales Tax Act, 1954. It had also not collected sales tax from its customers on sales of foreign liquor. Penalty was levied on the respondent under section 16(1)(e) of the Act for not disclosing the turnover of foreign liquor in its return as taxable.

The Hon'ble Rajasthan High Court held that the provisions of section 16(1)(e) of the Rajasthan Sales Tax Act are in two parts: (i) where the dealer has concealed any particulars from any return furnished by him; and (ii) has deliberately furnished inaccurate particulars therein. Both these clauses **contemplate** that there must be concealment by the dealer involving mental element. It was held that the respondent had not collected tax from its purchasers and had also recorded the purchases in

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its books and the Tribunal had rightly come to the conclusion that the respondent was under a bona fide belief that foreign liquor was exempt in Rajasthan and had rightly cancelled the penalty.

Further, in the case of **Cement Marketing Co. of India Ltd. v. Asst. Commissioner of Sales Tax, Indore, [1980] 45 STC 197 (SC)** penalty was imposed under Section 43 of the Madhya Pradesh General Sales Tax Act, 1958 and Section 9 sub-section (2), of the Central Sales Tax Act, 1958, on the ground that the assessee had furnished false returns by not including the amount of freight in the taxable turnover disclosed in the returns. The Hon'ble High Court held that it was difficult to see how the assessee could be said to have filed 'false' returns when what the assessee did, namely not including the amount of freight in the taxable turnover was under the bona fide belief that the amount of freight did not form part of the sale price and was not includable in the taxable turnover.

(51) Also citing the case of **Sajot Lime Co. [1989] 74 STC 288 (Raj)** the Hon'ble High Court of Rajasthan affirmed the Order of Tribunal setting aside penalty imposed under Section 16(1)(e) of the Rajasthan Sales Tax Act (the Act). The Tribunal held that there was no attempt of concealment by the dealer and his act was bona fide, the transaction was shown in the books of accounts produced before the departmental authorities and the same was not shown in the return since the dealer contended that the transaction was not exigible to sales tax.

In view of the above, it **is** submitted that no penalty could be imposed on the Appellant, on account of bonafide belief of the Appellant that the transaction in question was not liable to tax as inter-state sale based on ground and submissions made above.

The impugned order has relied upon the decision in the case of Guljag Industries 2007 (8) VAT Reporter (4) 87 (SC), R.S. Joshi vs. Ajit Mills Ltd. AIR 1977 SC 2279, Maharana Talkies 2005 (11) Tax Update Vol.11 Part.1 Page 5 to hold that no mens rea was required in cases of economic crimes.

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(52) Mr. Lakshmikumaran, argued that decisions relied upon in the impugned order did not apply to the present case as the penal provisions considered in these case did not have an in-built requirement of mens rea to levy penalty. Whereas, in the present section 61 of the RVAT Act, there was a necessary requirement to prove mens rea on the part of the assessee on whom penalty was levied.

(52) In this regard, reliance was placed on the Hon'ble Tax Board decision in the case of **Hewlett Packard India Sales Pvt. Ltd. vs. CTO, Anti Evasion in Appeal No. 1576/2008/Jaipur** wherein it was held that no penalty could be levied under section 61 of the RVAT Act in absence of mens rea on part of the assessee.

Hence, no penalty **is** leviable on the Appellant, and the impugned order was liable to be set aside on this ground itself.

He prayed that the levy of tax and interest and penalty be set-aside.

(53) Mr Alkesh Sharma, the learned counsel, arguing for the appellant company, M/s Mount Shivalik Breweries Ltd., said that the Assessing Authority had grossly erred in assuming jurisdiction and passing the impugned best judgment assessment order converting stock transfers of beer made by the appellants to their depots in the States of Bihar and Jharkhand strengthened with F forms and illegal demand of tax, interest and penalty absolutely in an arbitrary and illegal manner was created merely on presumptions, surmises and conjectures without making any enquiry and without complying with the mandatory provisions of law.

(54) It was further submitted that the aforesaid stock transfers had been converted by the respondent Assistant Commissioner into interstate sales merely on change of opinion inasmuch as not a single transaction of alleged inter-State sale or purchase had been detected by the Assessing Authority and he had converted the entire stock transfers as interstate sale that lead to double taxation on the same goods.

(55) Shri Alkesh Sharma, the learned counsel , appearing for the appellant, M/s Mount Shivalik Ltd., further submitted that the Hon'ble Supreme Court in the case of **Shree Krishna Electricals Vs. State of**

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Tamil Nadu reported in 23 VST 249 wherein the Hon'ble Supreme Court have held that "so far as the question of penalty is concerned the items which were not included in the turn over were found incorporated in the appellant's books of accounts. Where certain items are not included in the turn over, are disclosed in the dealers' own books of accounts and the assessing authorities include these items in the dealers turn over disallowing exemption penalty cannot be levied",

(56) He argued that in his case all the transactions are appearing in their books of accounts and the deduction in respect of such branch transfers had been allowed by the assessing authority of the appellants while passing the assessment order dated 29.10.2012 for the year 2010-2011. Thus, it was only a change of opinion for which the law has been amply laid down by the Rajasthan Tax Board in the case of **M/s Honda Siel Power Product Limited Vs. Assistant Commissioner, Anti Evasion, Rajasthan 3, Jaipur reported in (2002) 3 Tax Update page 320** and in para 14 of the judgment the Rajasthan Tax Board have held as under :

"We wish to mention here that the quasi judicial authorities must make a difference between the case where the survey reveals a deliberate design on the part of the assessee not to pay tax to the State Exchequer and the cases where the assessee, without concealing anything from the return, maintains correctly his books of accounts, but only under the bonafide belief feels that, under the law, the tax is not payable by him on the sale or purchase of goods made by him. While the former case is a clear cut case of evasion of tax, the later case cannot be equated with the former. At best, it can be a case of non payment/ under payment of tax under the bonafide belief not tainted by any mischief or means rea of evading tax. The cases of former type are the legitimate domain of the officers of the Anti Evasion wing of the department but the cases of later type fall squarely within the jurisdiction of the regular AA under the law."

(57) Similar view **has** been taken by the Rajasthan Tax Board in the following cases :

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(i) M/s Rambagh Palace Hotel Private Limited Vs. CTO reported in 6 STO 220;

(ii) M/s Deys Medical Stores Limited Versus CTO, Anti Evasion reported in 10 STA 281

(iii) 1998 Tax World page 14 the Rajasthan Taxation Tribunal in the case of D.K.Woollen Industries Private Limited Versus the CTO

(iv) M/s Vasuki Electronics Private Limited Versus CTO, Anti Evasion reported in 3 STO page 1

(58) Shri Alkesh Sharma, the learned counsel, further submitted that the assessment order had been passed merely on the basis of an agreement for distribution of beer which the Company's Head Office at Delhi had executed through Shri L.K.Tiwari, Depot Manager of Bihar with the BSBCL. **Making** a mountain out of mole the Assessing Authority used it in_creating the aforesaid illegal demand. He said that an Assistant Commercial Taxes Officer (for short , "the ACTO"), posted in the Anti evasion circle, Jaipur made survey of business premises of the appellant assessee on 2.7.2013 and its depots at Patna in Bihar and Hazaribagh in Jharkhand had also been inspected. He asserted that nothing incriminating against appellant assessee was found in course of these surveys. However, on receipt of the survey reports made by the ACTO the respondent Assessing Authority issued the appellant assessee a notice under section 75(1) of the RVAT Act. In compliance to it information in form of reply was tendered by assessee's advocate **who then** issued a notice under sections 25, 55 and 61 of the RVAT Act. He submitted that past it the Assessing Authority neither conducted any enquiry nor confronted the appellant with any evidence for taking a view contrary to the stated position in the matter at hand, but came out with the impugned best judgment assessment orders passed on March 5, 2014.

Quoting section 3(a) of the CST Act that provided that "a sale or purchase of goods shall be deemed to take place in the course of inter

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state trade or commerce if the sale or purchase occasions the movement of goods from one State to another", Shri Alkesh Sharma, the learned counsel for the appellant, M/s Mount Shivalik, vigorously argued that for invoking provisions of section 3 (a) of the CST Act condition sina qua non was that the movement of the goods and their sale should be inextricably connected with each other.

He was vociferous that the respondent Revenue had interpreted the agreement for distribution as a contract for sale, without giving thought to legal compulsions that a vast difference lay between the agreement for distribution and a contract for sale. He also dealt with the procedural mechanism of the sale or supply of liquor including beer narrating that it was subject to strict control of the Excise Department of the State. Therefore, before dispatch of the beer from their factory at Behrod to their aforesaid depots in Bihar and Jharkhand they applied to the competent authorities of respective States for grant of import permit for their branches in Bihar and Jharkhand. After it was issued , it would be communicated to the factory In charge at Behrod, Rajsthan who applied to the jurisdictional Excise Officer of Rajasthan State for export of beer from their factory to the depots in Bihar or Jharkhand as the case may be. When necessary export permit was received beer cartons were transported to Patna or Ranchi.

It was further submitted that before dispatch of the beer necessary stock transfer VAT invoice and G.R showing the appellant's factory as consignor and either of the depot in Bihar or Jharkhand as consignee would be prepared along with such documents as original import permit issued by the Bihar (or, the Jharkhand) excise authorities, and the excise export pass issued by the Behrod Excise Authority along with form VAT 49 : all these documents would be given to the driver of the vehicle who after reaching there ,would hand over them to the Incharge of the respective depots. The depot Incharge would then inform the excise authority who after checking physically the quantity of the beer cartons verify the fact in the last down portion of the export pass. Thereafter the

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vehicle was unloaded in the godown, and the necessary entries made in the stock register ,also verified by the Excise authority of the respective Depot. The original excise export pass duly authenticated by the respective Excise Authority of the depot was then returned to the factory to be handed over to the Excise Officer of the factory area, who after checking the same would allow 50 per cent of the bottling fee and on the basis of that the appellants would not be required to pay the Rajasthan Excise Duty at Behrod inasmuch as that would be paid by the respective depot to the Excise authority of Bihar (or, Jharkhand).

Mr. Alkesh Sharma, the learned counsel for appellant M/s Mount Shivalik contended that each of the two depots kept sufficient quantity of beer with them on almost all the days of the year. As regard sales by the Depots at Bihar or Jharkhand the company's official in Patna (or, Ranchi) branch would request the BSBCL (or, the JSBCL) to permit them to sell certain quantity of beer to a specific depot of the BSBCL (or, JSBCL). On the basis of the request made by the Depot In charge, Patna (or, Ranchi), the BSBCL (or, JSBCL) would issue the Order For Supply (OFS) bearing therein date of issue and its validity period which was hardly three days from the date of order. It was submitted that on receipt of OFS the Depot in turn would obtain transport pass from the Excise authorities of the respective State and finally, the beer casements along with the BSBCL's VAT invoice, Road Permit, Transport Pass, OFS and G.R of the vehicle would reach retail outlets of BSBCL which, in turn , would issue Material Inward Slip (MIS) for the appellant's Branch Incharge , Bihar: a document of title confirming that the sale had been effected. The argument was advanced that if ,during the movement of beer from the depot in Bihar (or, Jharkhand) to the the BSBCL depots in Bihar and likewise in case of Jharkhand, the truck laden with beer in question met an accident or the beer was looted in the course of transit it would not be treated as sale in the absence of MIS because the respective Corporation would not owe the loss to the appellant's depots in those States. He said, that was why the depots in both the States had

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got a floating insurance cover against damage in such eventualities for each and every vehicle carrying beer cases to the depots of the Corporation in those States.

Mr. Alkesh Sharma, the learned counsel, made it a major plank of his arguments that unless **the movement of the goods** from their factory at Behrod and sale by the respective depots in the State of Bihar and Jharkhand was proved inextricably connected with each other by the respondent Assessing Authority the transactions in question cannot be treated as interstate sales.

Reading an extract from and placing reliance on case of **Kelvinator of India Vs. State of Haryana, reported in (1973) 32 STC 629,** Shri Alkesh ,learned counsel for M/s Shivalik Breweries, quoted the Hon'ble Supreme Court as having expostulated that "a sale of goods can be said to have taken place in the course of inter state trade under clause (a) of section 3 of the Central Sales Tax Act, 1956 *if* it can be shown that the sale has occasioned the movement of goods from one State to another. *A* sale in the course of inter state trade has three essentials; (i)there must be sale; (ii) the goods must actually be moved from one State to another; and (iii) the sale and movement of the goods must be part of the same transaction."

He said that the facts of the aforesaid case were that the assessee company, having its factory at Faridabad in Haryana manufactured refrigerators, deep-freezers, compressors and other similar articles. Its registered office, sales office and godown were in Delhi.. The refrigerators manufactured by the assessee were marketed under the trademarks of "Kelvinator", "Leonard" and "Gem". The assessee entered into three separate distribution agreements with three companies, S, B and G for the sale of "Kelvinator", "Leonard" and "Gem" respectively. The prices of the refrigerators were fixed as mutually agreed upon from time to time. They were not settled for individual machines but periodically. The prices quoted were ex assessee's works at Faridabad and the distributors had to pay the assessee all charges on the

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transport of the goods from the assessee's works at Faridabad to the assessee's registered office in Delhi. The purchase orders were placed by the distributors after the goods reached the head office in Delhi and the property in the goods passed at Delhi after delivery. All the goods leaving the company's factory would pass through rigorous inspection procedure laid down by the company, and would be packed in crates and delivered to the distributors packed as such. The company in no case would be responsible for any shortage or damage that might occur in further transit once the goods had been delivered and inspected by the distributors in Delhi. After the goods were manufactured in the factory, an excise clearance pass was obtained after payment of excise duty for the transport of the goods from the factory to the assessee's godown in Delhi. The excise pass was always for movement of goods in favour of self. During the transport of the goods from Faridabad to Delhi, the octroi at the barrier was paid by the assessee. The goods were received by the assessee's staff at the destination and taken in its godown. In pursuance of the orders, the Delhi staff gave delivery of the goods at Delhi to the customers under challans prepared at Delhi. The bill was raised from Delhi and the price of the goods was received by the assessee at Delhi and deposited in the assessee's account in its Delhi bank. The Tribunal held that the agency contracts entered into by the assessee with S, B and G were in fact, as well as in law contracts of sale and, therefore, the transactions between the assessee and S, B and G were inter State sales liable to tax under the Central Sales **Ta Act, 1956.** The High Court on a reference held that the Tribunal was right in its conclusion that the movement of the machines had been occasioned by the agreements between the manufacturers and the distributors and the transactions were therefore, inter state sales.

Making his point clear, he **said** that on appeal, the Hon'ble Supreme Court held that the three agreements between the assessee and the distributors were merely agreements for the distribution of refrigerators and were not agreements for sale between the parties. It

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could not be said that there was any movement of refrigerators from Faridabad to Delhi under the contract of sale. The transactions between the assessee and the distributors did not constitute sales in the course of inter State trade or commerce and therefore, there was no liability to pay tax under the Central Sales Tax Act, 1956. It was the mutual agreement between the parties at the time of the placing of the order by the distributor with the assessee which constituted the contract of sale and not the distribution agreement.

He pleaded that raison de'tre for interstate sale was movement brought about as incident of and necessitated by the contract of sale and therefore was invariably inter linked with the sale of goods. Such an essential factor of inter-State sale was altogether missing in the movements of beer from Ghunti unit of the appellant assessee in Behrod,Rajasthan to its depots in Patna, Bihar or Ranchi, Jharkhand which whenever taking place was independent of a contract of sale and thus could not be said to have fallen in the ambit of clause (a) of section 3 of the CST Act.

His contention has been that If there was no contract of sale preceding the movement of goods, the movement of goods could not be ascribed to a contract of sale nor could it be said that the sale had occasioned the movement of goods from one State to another. He argued that, in present context, the movement of beer from the appellant's factory unit at Ghunti, Behrod to its depot in Patna, Bihar or, in Ranchi, Jharkhand was not occasioned in compliance of any stipulation laid down in distribution agreement entered into between the appellant company and the BSBCL.

Shri Alkesh Sharma, the learned counsel for M/s Shivalic Breweries, Alwar argued that exactly a similar matter had came up for consideration before the Allahabad High Court in the case of **M/s Central Distillery and Breweries Limited, Meerut Vs. Commissioner of Trade Tax reported in (1999) UPTC 457** wherein the dealer revisionist was a manufacturer of country liquor, Indian Made foreign

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liquor, rectified spirit etc. having a Distillery at Meerut in the State of U.P. The revisionist was a Company having its head office at Delhi and was a registered dealer at Delhi also. The Delhi Administration invited tenders for the supply of 50 degree up (under proof) rum and in all the three years under consideration the present dealer's tender was accepted and it was granted L1-A license. Agreements for all three years were executed between the President of India through the Commissioner of Excise, Delhi and M/s Central Distillery and Breweries Limited, , Daryaganj, New Delhi.

A dispute arose over taxability of the rum supplied to the Excise Department, Delhi Administration under the agreements for three years in question. The dealer's contention was that the sales of beer to the Delhi Administration were made at Delhi from the dealer's depot and, therefore, these were sales effected within the territory of Delhi and were not interstate sales. The revenue did not accede to contention of the dealer on the premise that the dealer's manufacturing activity was at Meerut in the State of U.P and admittedly the goods in question were taken to Delhi from the State of U.P to be supplied to the Delhi Administration in pursuance of the agreements, referred to above and, therefore, the goods moved to Delhi in pursuance of the said agreements which occasioned the movement of goods from U.P to Delhi.

Reading an extract from the case of **M/s Central Distillery and Breweries Limited, Meerut Vs. Commissioner of Trade Tax (supra),** he said that the Hon'ble Allahabad High Court observed that, as indicated by the agreement, the movement of the goods to Delhi was not in pursuance of any transaction of sale but in pursuance of the licence under which the dealer was to maintain a warehouse with a minimum stock within the territory of Delhi. The agreement by itself did not bring about any sale or purchase and, therefore, the transport of goods form the distillery in U.P to warehouse in Delhi could not be treated as a movement of goods occasioned by any sale or purchase.. As stated above, the assessing officer has not probed further into the matter to find

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out if there was no buffer stock at Delhi and the goods were transported from distillery only on receipt of the orders. Therefore, there is no evidence to show that the supply of rum to the Delhi Administration in the three years resulted in any inter State sales taxable in State of U.P. The Hon'ble Allahabad High Court concluded that it was not established that the turn over under question represented inter state sales and it was therefore, not taxable as inter state sales under the Central Sales Tax Act.

The learned counsel for M/s Mount Shivalik, Mr. Alkesh asserted that above case squarely fitted on the shoulders of the appellant assessee. His distribution agreement by itself did not bring about any sale or purchase in Bihar or Jharkhand and, therefore, the transport of beer from his beer manufacturing factory in Rajasthan to godown in Patna could not be treated as a movement of goods occasioned by any sale or purchase. Further, It was an established fact that the appellant 's Patna (or, Ranchi) branch always kept ample stocks of beer of different brands of beer to be supplied to the depots of the BSBCL whenever OFS was placed on the appellant for which he had executed a distribution agreement with the BSBCL.

The learned counsel for M/s Mount Shivalik relied on the judgment of the Hon'ble Supreme Court in **State of Tamil Nadu V. Cement Distributors Pvt. Ltd. 1975 UPTC 370** which seemed to him to be more appropriate to the issue in question. In that case the dealer i.e. Cement Distributors Pvt. Ltd. was acting as an agent of the State Trading Corporation. Under the Cement Control Order all manufacturers were required to sell cement to the State Trading Corporation.The Regional Cement Officer of the State Trading Corporation in Tamil Nadu authorized the dealer M/s Cement Distributors Pvt. Ltd. to sell the quantity of cement mentioned in the authorization note to persons directed by the Regional Cement Officer of the State Trading Corporation, Calcutta. The factory which was to supply the cement was mentioned as the Dalmia Puram Factory. In pursuance of the said authorization, the cement was dispatched from Dalmia Puram to Calcutta

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Subsequently, the Regional Cement Officer, Calcutta authorised the dealer to supply the cement to Executive Engineer, Howrah Division, Calcutta. The question was whether the sale of cement to the said Executive Engineer was inter state sale or an intra state sale effected at Calcutta.

He narrated an excerpt from the aforesaid case in which the Hon'ble Supreme Court observed as under:

"In the present case, the goods are dispatched by the respondent to themselves at Calcutta according to the directions of the State' Trading Corporation. This was for consumption in Calcutta area . A letter was issued after the arrival of the goods by the Regional Cement Officer,Calcutta, authorising the respondent to sell cement. It is apparent that there was no movement of goods by the respondent-company as a result of a contract of sale between the respondent and the buyer at Calcutta. The shipment was made by the respondent company without any reference to any buyer. The movement of goods from Madras to Calcutta did not take place as a result of any contract of sale, but in pursuance of instruction contained in authorisation for transfer of stocks from Madras to Calcutta. The transactions were not inter-State sales liable to tax under the Central Sales Tax Act. The movement of goods from one State to another without any of the elements of sale' within the meaning of the Central Act cannot be subject to tax. The shipment was movement of stocks of cement belonging to the State Trading Corporation from one place to another. There was shortage of supply of cement at Calcutta. The State Trading Corporation moved stocks from Madras to Calcutta. The area of need and the availability of stocks of cement were known to the State Trading Corporation. The transactions could not be subjected to Central sales tax.

Mr. Sharma, the learned counsel, compared appellant's situation in the light of similar facts obtaining in above context that there was no movement of goods by the appellant company as a result of a contract of sale between the appellant and the buyer BSECL at Patna. Moreover, the

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dispatches of beer were made by the appellant company without any reference to any buyer. His inter-State transactions were without any element of sale and could not be subjected to tax under the CST Act.

The learned counsel for M/s Mount Shivalik dwelt on the case of M/s Tata Engineering and Locomotive Company Ltd. Vs. Assistant Commissioner of Commercial Taxes, reported in (1970) 26 STC 335, wherein was laid down law on the inter-State sales. In that case Telco had dealers in various States to whom the vehicles were supplied for sale to the buyers. The question was whether the sales effected to the dealers were inter-state sales or intra state sales. The Hon'ble Supreme Court observed that the procedure followed by the appellant to get with the proved absence of any firm orders, indicated that the allocation letters and the statements furnished by the dealers did not by themselves bring about transactions of sale within the meaning of section 2(g) of the Act. The completion of the sales to the dealers did not take place at the works at Jamshedpur, appropriation of the vehicles was done at the stock yards and it was open to the appellant till then to allot any vehicle to any purchaser and to transfer a vehicle from one stock yard to another. It could not therefore, be said that the movement of the vehicles from the works to the stock yards was occasioned by any covenant or incident of the contract of sale.

Mr.Alkesh Sharma,the learned counsel for appellant ,M/s Mount Shivalik submitted that the Hon'ble Supreme Court in the case of **Balabhagas Hulas Chand and another Vs. State of Orissa reported in (1976) 37 STC 207** at page 214 in case No.2 had clarified the legal position as to when the transaction of sale would be governed under section 3(a) of CST Act. Case No.2 is reproduced hereunder:

"A, who is a dealer in State X, agrees to sell goods to B but he books the goods from State X to State Y in his own name and his agent in State Y receives the goods on behalf of A. Thereafter the goods are delivered to B in State Y and if B accepts them a sale takes place. It will

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be seen that in this case the movement of goods is neither in pursuance of the agreement to sell nor is the movement occasioned by the sale. The seller himself takes the goods to State Y and sells the goods there. This is, therefore, purely an internal sale which takes place in State Y and falls beyond the purview of section 3(a) of the Central Sales Tax Act not being an inter State sale".

He said that the words 'occasions the movement of the goods' must have the same meaning in both sections 3(a) and 5 of the Central Sales Tax Act as held by the Hon'ble Supreme Court in case of M/s K.G.Khosla and Company Pvt. Ltd. Vs. Deputy Commissioner of Commercial Taxes reported in (1966) 17 STC 473 (SC).

Mr. Alkesh Sharma, the learned counsel averred further that in case No.2 referred to above though dealer 'A' in 'X' State had agreed to sell goods to 'B' in 'Y' State but as the goods were booked by 'A' from 'X' State to 'Y' State in his own name and the agent in 'Y' State took the delivery from common carrier on behalf of 'A' and thereafter goods were delivered to 'B' in 'Y' State and if he accepted them, as the Hon'ble Supreme Court in case No.2 have held that ,the sale then would have taken place. Applying the principle laid down in aforesaid cases by the Supreme Court and the Allahabad High Court he submitted that the despatches of beer from the appellant factory to their depots were pure and simple stock transfers, the conversion thereof as inter-State sales is abinitio illegal and without any authority of law.

It was further submitted that the Allahabad High Court in the case of **Commissioner of Sales Tax Vs. Swadeshi Metal Works reported in (1987) 66 STC 64** had the facts before it that from certain documents seized from the business premises of the assessee having its head office at Mandi Shyam Nagar, Bulandshahar, and branch office at Delhi, the assessing authority inferred that some branch transfers shown by the assessee as having been transfers to the Delhi office were not actually branch transfers, but were really inter state sales exigible to sales tax and

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accordingly, reopened the completed assessments for the assessment years 1978-79, 1979-80 and 1980-81 and levied sales tax in respect of the turn over covered by such branch transfers in the relevant three years as well as in the subsequent assessment year 1981-82. The Tribunal, however, accepted the case of the assessee that the transactions were really branch transfers. In the revision to the High Court the Hon'ble High Court held that "the tribunal after considering the material on record in detail had held that there existed a branch office at Delhi, that it was the branch office at Delhi which sold the goods received from the head office to the buyers, that all the transactions of taking advance and transferring goods to the purchasers took place at Delhi and the payments made either through crossed cheques or drafts were entered into the account books of Delhi and encashed there; and that taking of advance in some cases in the name of branch office at Delhi and thereafter supplying of goods from Delhi branch office to the purchasers could not lead to the inference that there was a contract of sale between the head office and the purchasers and the goods moved out of the State in pursuance of the contract of sale between the head office and the purchasers. These were findings of fact which could not be interfered with by the High Court in its revisional jurisdiction. Further, the department had not been able to place any material to indicate that the findings recorded by the tribunal were based on no evidence or on irrelevant consideration. The tribunal was, therefore, right in its view that the transactions in question were really branch transfers and not inter State sales".

It was further submitted that the Lucknow bench of the Hon'ble High Court in the case of Commissioner of Sales Tax, U.P. Vs. M/s Deys Medical Stores Manufacturing Private Limited, Allahabad, reported in 1980 UPTC 560 ,interpreting the provisions of section 3 of the Central Sales Tax Act considered the matter relating to stock transfer vis-à-vis inter state sales notwithstanding that the sales were made by the branch to a particular customer and the Hon'ble High Court held that "such transfer not required to sales tax under the Central Sales Tax Act".

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The Hon'ble High Court held that "it cannot be said that the transactions in question amount to sale in the course of inter state trade or commerce.

In fiscal matters we cannot act on mere generality. The assessing authority are bound to examine each individual transaction and then decide whether it constituted an inter- State sale liable to tax under the provisions of the Act. It may be that the opposite party in order that the brunt of taxation might be reduced to the minimum has opened depots at Calcutta and Patna, but there is nothing illegal or impermissible to a party to arrange its affairs in a manner that the liability to pay tax would not be attracted".

It was further submitted that a similar issue had come up for consideration before the Hon'ble Rajasthan Sales Tax Tribunal (now Rajasthan Tax Board) in the case of Chetna Polycots Vs. CTO, Special Circle, Alwar reported in 1980 TBR 33 and it held that "the goods were transferred to Delhi Head Office and the delivery of the goods was taken by the Delhi Office and from the Godown of Delhi office the delivery of goods were taken by the dealers of Delhi. Merely on the basis of some sign on the packing slips the transaction cannot be treated as inter-State sales. The department has nowhere established that the assessee manufactured the goods as per specifications and orders of the dealers but the fact is that the assessee has manufactured the general goods in the ordinary course of examination".

He placed reliance in the case of M/s J.K.Synthetics Limited Vs. CTO reported in (2002) 28 Tax World 238 wherein the facts of the case were that J.K.Synthetics Limited had dispatched the goods as stock transfer to their branches at Mumbai and Agra and for these branches the goods were sold later on to third parties. The assessing authority, however, treated these dispatches as inter-State sales and levied tax, interest and imposed penalty accordingly,. It further held that the sale of the goods by the branch to third parties on the date of receipt of the goods by the branch are immaterial for not treating the same as branch transfer.

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It was further submitted that the Hon'ble Madras High Court in the case of Radha Krishna Mills Limited Versus State of Tamil Nadu reported in (1973) 32 STC 166 wherein the facts of the case were that the appellant's mills in the State of Tamil Nadu dispatched to Calcutta in their own name bulk quantities of yarn which were cleared by the appellant's agent at Calcutta and the expenses were debited to them. The goods were then sold at the discretion of the agents to a few of the several buyers whose contracts were pending on the date of the dispatch at Calcutta. The assessing authority treated the transactions as inter state sales within the meaning of section 3(a) of the Central Sales Tax Act and not sales outside the State in West Bengal which would be exempt from being excluded in the assessable turn over under the Central Sales Tax Act and accordingly revised the original assessments whereunder exemptions had been granted. The appellants therefore, then filed writ petition in the High Court to quash the reassessment order. The High Court has held that "it was the depot agent who appropriated the goods towards particular contracts without reference to its principal and therefore, the transactions were intra state sales in the State of West Bengal and out of the State sales so far as the State of Tamil Nadu was concerned therefore, orders of reassessment had to be quashed"

Similar is the view which was taken by the Punjab and Haryana High Court in the case of South Punjab Electricity Corporation Limited Versus State of Haryana reported in (1976) 37 STC 35 wherein the facts of the case were that the assessee a public company with its registered office at Delhi was engaged in the manufacture and sale of cotton yarn and had its spinning mill at Rohtak. The assessee was registered as a dealer under the Punjab General Sales Tax Act, 1948, as well as the Central Sales Tax Act, 1956 at Rohtak. It maintained a sales office and godown at Delhi besides the one at Rohtak. The standard form of the contract for sale of cotton yarn entered into by the assessee's sales office at Delhi with the buyers contained, inter alia , the following conditions: "The order is subject to confirmation by the company In the event

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of the buyer requiring the company to dispatch the goods either by rail, road or sea, the goods shall be at the risk, in all respects, of the buyer from the time the goods are ready with the company and available for delivery to the carrier, after notice to that effect is issued by the company to the buyer. The goods shall be dispatched by goods train at railway or owner's risk as is acceptable to the railway authorities, but property and risk in the goods shall pass to the buyer on delivery of the goods to the carriers. The prices are net mill godown delivery and the buyer shall be responsible for all charges after the goods leave the godowns of the company. Where the prices are F.O.R destination, the company will pay railway freight by goods train upto the railway station of destination..... The legal proceedings arising out of this contract after the reference to arbitration are to be filed in the courts of Delhi irrespective of the place of signing the contract or actual payment for the goods". It was found by the sales tax authorities that bales of cotton yarn meant for each purchaser were appropriated at Rohtak before the goods left the mills so that they could be delivered only to that particular buyer and not to anybody else. The assessee produced railway receipts showing that the goods were transported from the mills at Rohtak to the Delhi sales office in the name of "self" and not in the name of any purchaser. The octroi or terminal tax at Delhi was paid by the assessee who also bore the transport charges. On the question whether the transactions could be subject to the levy of tax under the Central Sales Tax Act, 1956, by the sales tax authorities of Haryana. The High Court have held that "the goods were received at Delhi in the godown of the mills were unappropriated goods and were the property of the assessee itself. The property in those goods passed to the buyers only when appropriation of a particular number of bales meant for each purchaser was made at Delhi. The sales to local dealers of Delhi were intra state sales and not inter state sales while sales to buyers outside Delhi were inter state sales in relation to which the movement of goods commenced from Delhi and

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not from Rohtak and hence the sales tax authorities of Rohtak in Haryana had no jurisdiction to levy inter state sales tax thereon under the Sales Tax Act".

The learned counsel for the appellant M/s Mount Shivalik Breweries, Shri Alkesh Sharma reiterated that in view of the aforesaid binding judgments the depot transfers of beer by their factory at Behrod to their depots in the State of Bihar and Jharkhand stood as pure and simple stock transfers, the conversion thereof by the respondent Assessing Authority into inter-state sales was abinitio illegal and without any authority of law and the same deserved to be set aside.

He dwelt at length on the predicate that even otherwise it was a misconstrued reading of a distribution agreement into an agreement for sale by the Assessing Authority that led to conversion of the entire stock transfers of beer as inter state sales and tax was levied merely on presumptions and generalities. Therefore, in view of the aforesaid judgment of the Supreme Court in the case of Tata Engineering and Locomotive Company Limited Vs. Assistant Commissioner of Commercial Taxes , supra, the Hon'ble Supreme Court held as under ;

"Another serious infirmity in the order of the Assistant Commissioner was a matter which even the Advocate General quite fairly had to concede that instead of looking into each transaction in order to find out whether a completed contract of sale had taken place which could be brought to tax only if the movement of vehicles from Jamshedpur had been occasioned under a covenant or incident of that contract the Assistant Commissioner based his order on mere generalities. It has been suggested that all the transactions were of similar nature and the appellant's representative had himself submitted that a specimen transaction alone need be examined. In our judgment this was a wholly wrong procedure to follow and the Assistant Commissioner, on whom the duty lay of assessing the tax in accordance

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with law, was bound to examine each individual transaction and then decide whether it constituted an inter state sale exigible to tax under the provisions of the Act".

He said that the Assessing Authority further erred in levying the aforesaid interest under section 55 of the RVAT Act. He argued that when the levy of tax itself was illegal the question of levy of interest did not arise. Moreover, it was settled proposition of law that interest could be levied only from quantification of tax as held in 94 STC 422 in the case of J.K.Synthetics Vs. CTO. It was further submitted that the Supreme Court in Maruti Wires Industries Pvt. Ltd. Vs. Sales Tax Officer reported in 122 STC 410 applying the principle laid down in J.K.Synthetics case held that "in view of the law laid down by the Constitution Bench we are clearly of the opinion that the liability of the assessee appellant to pay sales tax could have arisen either on return of turn over being filed by way of self assessment or else on an order of assessment being made A failure to file return of taxable turn over may render the assessee liable for any other consequences or penalty action as provided by law but cannot attract the liability for payment of penal interest under sub section (3) of section 23 of the Act on the parity of reasoning that if a return of turnover could have been filed on due date than the tax as per return would have become due and payable on that date". The Apex Court therefore, held that "the tax payable or tax due is that amount which becomes due ex-hypothesis on the turn over and taxable turn over shown in or based on the return or as to which an order of assessment has been made". It was further submitted that the Hon'ble Supreme Court in its decision in the case of M/s E.I.D.Parry (India) Limited Vs. Assistant Commissioner of Commercial Taxes reported in 141 STC 12 held that "the Constitution Bench in J.K.Synthetic Limited case (1994) 4 SCC 276 (1994) 94 STC 422 accepted the minority view and over ruled the majority view. The Constitution Bench held that tax was payable only as per the returns. It was held that if incomplete or incorrect returns were filed it was open to the Assessing Officer to

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provisionally assess and made a demand. It was held that if that was not done then interest could not be levied on the footing that in a final assessment it was found that the returns had been incorrect. Similar view had been taken by the Punjab and Haryana High Court in the case of Laxmi Ram Diwan Dass Vs. State of Haryana reported in 30 STC 419 wherein the Hon'ble High Court held that the "interest under section 25 of the Act was chargeable only on the amount of tax payable on the basis of return, therefore, the interest levied under section 25(5) of the Act was not legal. It was further submitted that similar view had been taken in 40 VST 505 wherein it had been held that "the levy of interest was effective from the date of issue of demand notice and not from the date of filing of return". Similar view had been taken by this Hon'ble Tax Board in the case of ACTO Vs. Shyam Granite reported in 21 J.K.Jain's VAT Reporter 18 wherein the Hon'ble Board has held that the phrase 'have deposited all due tax' means, the tax due in books and returns and not tax due as per assessment order. Similar view has been taken in the case of CTO Circle C Vs. Baker Hughs Cairn Energy India Pvt. Ltd. 20 J.K.Jain's Tax Reporter 74 and 67 VST 229 by Delhi High Court. The impugned order passed by both the lower authorities are therefore, per se arbitrary, illegal and bad in law and the same deserves to be set aside.

So far as the imposition of penalty is concerned they he advanced arguments that since levy of tax itself was illegal the question of imposition of penalty did not arise. Since it was only a different interpretation on wrong facts which had been taken by the Assessing Authority. He passed the impugned order wrongly and arbitrarily converted the branch transfers into interstate sales. He submitted that all the transactions were appearing in their books of accounts and not a single transaction of alleged suppressed sale or purchase had been detected by the Assessing Authority and it was only a change of opinion on the part of the Assessing Authority that he converted the branch transfers into inter-State sales arbitrarily without examining each and

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every transaction as held by the Supreme Court in Telco's case referred to above. They submitted that the Hon'ble Supreme Court in the case of Shree Krishna Electricals Vs. State of Tamil Nadu reported in 23 VST 249 held that "so far as the question of penalty was concerned the items which were not included in the turn over were found incorporated in the appellant's books of accounts. Where certain items are not included in the turn over, are disclosed in the dealers' own books of accounts and the assessing authorities include these items in the dealers turn over disallowing exemption penalty cannot be levied", as such the penalty was illegal.

It is further submitted that in 25 STC 211 in the case of Hindustan Steel Limited Vs. State of Orissa the Hon'ble Supreme Court held that "an order imposing the penalty for failure to carry out statutory obligation is the result of a quasi criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. The penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judiciously and on consideration of all the relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to impose penalty where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute. Simply because explanation which is submitted by the dealer is not accepted by the assessing authority that would not give him the jurisdiction to levy penalty".

Supporting his stand that the present case did not qualify for levy of the penalty under section 61 of the RVAT Act, 2003, Shri Vivek Singhal, the learned counsel for M/s United Breweries, Alwar said that the Hon'ble Supreme Court in case of M/s Cement Marketing Company

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of India Limited Versus Assistant Commissioner of Sales Tax ,reported in (1980) 45 STC 197, held that "the belief entertained by the assessee that it was not liable to include the amount of freight in the taxable turnover could not be said to be mala fide or unreasonable but it was a bona fide belief and therefore, the penalty could not be imposed on the assessee under section 43 of the Madhya Pradesh Act and section 9(2) of the Central Act". Therefore, no grounds subsisted for levy of penalty under section 61 of the RVAT Act, 2003 in cases at hand for the simple reason that the appellant company never thought under genuine belief that it was liable to pay CST on its beer dispatches to the States of Bihar and Jharkhand wrongly presumed by the respondent CTD as interstate sales under section 3A of the CST Act, 1956.

It was further submitted that similar matter had come up for consideration before the Hon'ble Rajasthan High Court in the case of ACTO Vs. Kumawat Udyog Limited, reported in 97 STC 238, wherein the Hon'ble Rajasthan High Court while dealing with the same provisions held that section 16(1)(e) of the RST Act, 1954 was applicable only when a dealer had concealed any particulars from any return furnished by him or had deliberately furnished inaccurate particulars therein. The word "concealed" implied mental element of the dealer and simply because the assessing authority had made the assessment at a figure different from that was returned, it would not give him jurisdiction to levy penalty under section 16(1)(e). Prima facie, an entry in the books of accounts disclosing the correct nature of the transaction was sufficient to conclude that no offence had been committed, unless the assessing authority apart from giving a finding in the assessment order proved by some other evidence that failure to disclose particulars in the return was because of deliberate action by the dealer to evade tax. If an entry existed in the books of accounts and the matter related only to an interpretation of the nature of transaction and the law relating to its taxability the authorities would not be justified in levying the penalty.

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Again, he quoted Hon'ble Rajasthan High Court in the case of CTO Vs. M/s Sojatline Company, reported in (1989) 74 STC 288 , wherein relying on the judgment of the Hon'ble Supreme Court in the case of Commissioner of Income-tax Vs. Anwar Ali ,reported in (1970) 76 ITR 696, it was held that "mere rejection of the explanation of the assessee false does not automatically attract penalty in such a situation and before the penalty can be imposed it must be held that the assessee had consciously concealed the particulars or had deliberately furnished inaccurate particulars" and, argued that it was an act of arbitrary and unjust interpretation to find present cases fit for levying penalty where there was no concealment of transactions in either books of accounts or returns, and also no inaccurate particulars were furnished before the CTD, Rajasthan.

Appearing on behalf of M/s United Brewery, the learned counsel , Shri Vivek Singhal , argued that the Rajasthan High Court in the case of Lord Venkateshwara Caterers Vs. CTO Anti Evasion, reported in 19 Tax Update 85, relying on plethora of judgments opined that it was not even a case for the revenue that these transactions were not recorded in the books of accounts maintained by the assessee. It was also not the case of revenue that he had filed a return claiming said turnover to be exempt from the sale and contested this position, and that such imposition of penalty had to be preceded by a reasonable conclusion arrived at by the concerned authority that there was a conduct contumacious or a guilty intention on the part of the subject assessee in not paying the tax. Such reasonable conclusion can be arrived at only after complying with the principle of natural justice and therefore, considering the facts and circumstances of the case set aside the penalty which was so imposed by the assessing authority under section 65 of the RST Act, 1994 which **is** *para materia* to section 61 of the RVAT Act. Relying on the aforesaid judgment of the Hon'ble Supreme Court in Hindustan Steel's case and that of the Rajasthan High Court in the case of Sojatline Company

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(supra) the Hon'ble Rajasthan High Court again reiterated the same principle in the case of **Commercial Taxes Officer Vs. M/s Rajdhani Wines** reported in 87 STC 362 . He assailed that all the aforesaid cases vouchsafed that the Assessing Authorities, having no regard for cannons of law, went on wild goose chase in targeting the appellant company for slapping such illegal, huge demand of penalty.

Mr. Vivek Singhal, the learned counsel, further submitted that in its recent decision in the case of ACTO Ward 2, Hanumangarh Vs. Makkad Plastic Agencies reported in 28 Tax Update 268, the Rajasthan Tax Board after due consideration of the material on record arrived at the finding that the intention of the assessee to evade the tax was not established and therefore, the penalty imposed by the assessing officer was not sustainable. The Hon'ble Rajasthan High Court held that "the penalty under section 65 of the Act is not automatic and therefore, unless the mens rea to evade the tax on the part of the assessee is established on the basis of the material on record no penalty can be imposed. In considered opinion of this court and the facts and circumstances of the case finding arrived at by the Board after due consideration of the material on record that the respondent assessee had no intention to evade the tax cannot be faulted with. In this view of the matter the Board has committed no error in maintaining the order of the Deputy Commissioner (Appeals) deleting the penalty".

It was submitted that in the aforesaid assessment orders, levy of tax, interest may kindly be set aside and penalty quashed and the amount deposited by the appellants should kindly be ordered to be refunded along with interest as per provisions of law.

Arguing for appellant company Ms United Breweries, Alwar, the learned counsel, **Shri Vivek Singhal** said that the assessee company was a manufacturer of beverages including beer of different brands and quality, and was duly registered under the Rajasthan VAT Act, 1994 and the Central Sales Tax Act, 1956 at Bhiwadi and had Head office at

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Karnataka with branches at different parts of the country, namely at Patna in Bihar and Ranchi at Jharkhand. His company, like its counterparts discussed above, had a similar modus operandi, that is, manufacturing, bottling and marketing of beer by the Appellant company including its transfer or export was by permission and on compliance with the excise provisions of the relevant States.Beer manufactured by the appellant company could not be taken out of the excise godown without prior permission or permit of the excise authorities even if it was to be supplied to State owned Beverage Corporations of Bihar and Jharkhand.

He explained that respective states have liquor policies in force by which retail liquor shops were licensed, either by auction or by way of sale, to engage in retail sale of liquor/Beer.

The sale of liquor by the retail shops was fully regulated by the beverage corporations. The learned counsel of M/s United Breweries, Shri Vivek Singhal said that in keeping with governmental guidelines and policies, the beverage corporations monitored and facilitated retail trade activity of liquor in the State, especially with a view to preventing illicit use or illegal sale of liquor and for proper collection of revenue.

He brought point home that the State Excise Departments issued various types of permits, accepted deposit of duty and received fees for issuing necessary forms or permissions in respect of liquor trade and industry in the respective States ; on the other hand, beverage corporations were a separate government undertaking doing the role of a facilitator as evident from the fact that in compliance of rules and regulations of State Excise Law, the corporation laid down certain procedures for travelling of goods strictly along the route chart prescribed in the Excise permit with no variation therefrom and in the aftermath of infringement of the terms and conditions of the permit or other relevant rules to fix responsibility to be borne by the appellant company.

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He submitted that the appellant Company offered Bihar/Jharkhand State Beverages Corporation Limited a distribution agreement general in nature as regards distribution work irrespective of any fixed quantity, value or specific sale of beer. it was only a offer of prospect ,not a purchase or sale agreement, by which the appellant company offered to supply and deliver beer through the respective Beverage Corporation to its various depots in the States of Bihar and Jharkhand respectively.

The learned counsel for the United Breweries, Shri Vivek Singhal, narrated the nitty gritty of the relevant excise procedures and requirements to be complied with by the appellant company's branch in the State of Bihar or State of Jharkhand, like setting up godowns for storage of beer and obtaining prescribed license, 19C ,from the excise authorities for doing liquor business in the relevant State. Likewise procedural details for import, supply and marketing of beer in Bihar or ,say, Jharkhand State were similar in nature with those described above in respect of other aforementioned beverage companies.

Shri Vivek Singhal, the learned counsel, pointed out that the BSBCL and the JSBCL had exhaustively documented their policies, objectives and other functional aspects of the organizations in their respective Liquor sourcing policy (the LSP) unequivocally declaring therein supply of liquor to the corporation to be the responsibility of the appellant company, not of the Corporation itself: this fact, in his view, underlined the ultimate motto of Corporation merely as of a facilitator in the whole gamut of operations in relation to liquor trade in the State.

It was emphasized that payment of proceeds of beer sales to the appellant company was made by the BSBCL after sale in Bihar had been concluded. The learned counsel for the appellant, Shri Vivek Singhal, made out the case that only when liquor delivered by the appellant company to the depots of the Corporation had been sold to the licensed vendors by the latter did the Corporation pay appellant company proceeds of the stocks sold to retail vendors with debit notes for various charges raised against appellant's due payment – and, diverse charges

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could pertain to (i) damages/breakages to beer bottles while stored in the depot, (ii) OFS extension, (iii) Demurrage for inactive stocks, (iv) OFS cancellation or (v) Inter depot transfer order expenses.

Shri Vivek Singhal, the learned counsel of the assessee company, at the backdrop of above averment ,waxed eloquent that the case closed its ranks in favour of the assessee company dispelling any **shred of doubt** that corporation was not "owning" beer or that "property in goods had not been taken by the BSBCL". The BSBCL (or, the JSBCL) had by virtue of statute been invested with role barely of a supervising authority that monitored liquor supply within the State and in no case enjoyed status of actual sellers of beer in the State of Bihar (or, Jharkhand) and Patna and Ranchi based branches of the appellant company engaged in full fledged work of sales-promotion, delivery and shifting goods (beer) were sellers of beer in the States of Bihar and Jharkhand respectively. Moreover, the appellant supplied beer lots to the Corporation from stocks lying with its Patna or Ranchi branch depot.

It was a fact to ponder over that no order or, for that matter, any contract of sale of beer was entered into between the appellant company and the BSBCL and movement of the goods (beer) from Rajasthan to Bihar and Jharkhand took place independent of any such covenant in existence and, the branch in Patna or Ranchi always kept sufficient beer stocks in its warehouse to supply beer to the BSBCL and the JSBCL.

The appellant company paid Bihar VAT (or Jharkhand VAT) in the State treasury at the rates applicable from time to time as per provisions of the Bihar (Jharkhand) VAT Act .On the strength of VAT invoices raised by the BSBCL against the beer sales, Bihar (or, Jharkhand) VAT liability was commuted monthly to be paid on every 15th instant of ensuing month.

Regarding beer sales in Jharkhand, it was also brought to the notice that (a) till November 2012 ,only whole sellers operated in the State; (b) in December 2012 three districts of Jharkhand were brought under the JSBCL, namely: Dhanbad, Deoghar, Jamtara ; (c) from May 2013 two

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more districts came, for excisable purposes, under the jurisdiction of the JSBCL -Dumka and Godda ; (c) from July, 2013 the jurisdiction of the JSBCL was extended by the government to five more districts of Jharkhand :Ranchi, Palamu, Garwha, Latehar, Ramgarh, (d) in August, 2013 district of Hazaribagh fell under the jurisdiction of the JSBCL for the purposes of liquor trade, and finally ; (e) from October 1, 2013 the entire Jharkhand State came under the jurisdictional cover of the JSBCL. The JSBCL, at present , runs fifteen depots in the total twenty four districts of the Jharkhand State.

For brevity's sake and avoiding unnecessary repetition, the details about procurement, import ,supply and movement of beer, besides procedure of payment of beer sale proceeds in the State of Jharkhand as reeled out by the learned counsel to the appellant companies ,except situational differences, were the same as in case of Bihar, they have not been reproduced over here.

Arguing for the appellant company, the learned counsel, Shri Vivek Singhal, said that the provisions of the CST Act clearly laid down that a sale or purchase of goods would be deemed to take place in the course of inter-State trade or commerce, if the sale or purchase occasioned the movement of goods from one State to another or was effected by a transfer of documents of title to the goods during their movement from one state to another. The Central Act also provided that if any dealer claims that he is not liable to pay tax under the Central Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business and not by reason of sale, then burden of proving that the movement of goods was so occasioned, would be discharged by furnishing the declaration form "F" and other supporting documents to the assessing authority.

He elaborated that in case on hand a distribution agreement was offered by the appellant company to the BSBCL which was not in the nature of a binding contract of sale or an agreement to sell the goods; it

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was merely a standing offer to supply goods as and when an OFS (offer for sale) was signed and issued, the material, beer, was sold locally from the stock in Branch and Bihar VAT was paid. It could not therefore be alleged that the movement of the goods was in pursuance of a sale agreement executed between the appellant company and the BSBCL or the JSBCL.

1. **That relevant provisions of the Central Sales Tax Act, 1956 were quoted which are reproduced hereunder:**

Section 2(g) "Sale", with its grammatical variations and cognate expressions means any transfer of property in goods by one person to another for cash or deferred payment or for any 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;***
- ***(v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;***
- ***(vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, but does not include a mortgage or hypothecation of or charge or pledge on goods;***

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2(h) "Sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged; PROVIDED that in the case of a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, the sale price of such goods shall be determined in the prescribed manner by making such deduction from the total consideration for the works contract as may be prescribed and such price shall be deemed to be the sale price for the purpose of this clause;

"3. when is a sale or purchase of goods to take palce 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

(i)occasions the movement of goods from one State to another ; or

(ii)or is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation I – 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 commerce at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation II – 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."

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Section 6A Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale

(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the cae may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of dispatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purposes of this Act to have been occasioned otherwise than as a result of sale.

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Explanation – In this section, "assessing authority", in relation to a dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act.(SS)

The learned counsel of the appellant company further contended that section 3 of the CST Act stipulated in no uncertain terms that a transaction of sale or contract of sale should be connected with the movement of goods which, If devoid of contract of sale, would not attract section 3 of the CST Act. In present context goods were transferred to the branches of the appellant company in Patna and Ranchi beyond the ken of orders from any quarters, nor was Patna bound movement of beer from Rajasthan occurred in response to a contract of sale, whereas this movement ought to have been part and parcel of the same transaction.

On assail was the haste of the Assessing Authority who, without any presumptive evidence on record and being short of examining every related transaction, presumed movement of goods, beer, to be a follow up of contract to sale and overnight stock transfers were morphed into inter-State sales as if from nowhere by a magic wand.

In support of appellant's contention the case of **Union of India V. Maddala Thathaiah**, reported in AIR 1966 SC 1724, The Hon'ble Supreme Court was cited as having held that the acceptance of the tender did not amount to placing the order for any definite quantity of jaggery on a definite date and, therefore, did not amount to a contract in the strict sense of the term in view of the provisions requiring a deposit of security and the placing of the formal order.

Drawing a parallel between the facts of above case and case at hand, Shri Vivek Singhal, counsel for M/s United Breweries asserted that the distribution agreement signed by the appellant with the BSBCL (or, the JSBCL) could not by analogy be construed as a contract of sale.

Shri Vivek Singhal , the learned counsel, quoting the Hon'ble Apex Court in the case of **Balabhagas Hulaschand v. State State of Orissa**, reported in [1976] 37 STC 207, as having laid down the cardinal

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principles of an inter-State sale that postulated *an agreement to sell containing a stipulation, express or implied regarding movement of goods from one State to another* and, secondly, *movement of goods should be caused in pursuance of that agreement from one State to another*; and ultimately, a concluded sale be effected in the State to which the goods were sent and it be different from the State from which the goods moved.

The learned counsel for M/s United Breweries contended that the appellant's case was outside the purview of the parameters set out for classification of sale as an inter-State sale by the Hon'ble Supreme Court in the aforesaid judgment, since over here the appellant company undertook only dispatch of goods from one State to another State earning it a distinction neither of "sale" nor "agreement to sell" and nor "any agreement " or sale occasioned the movement of goods(beer) to Bihar or Jharkhand.

According to the learned counsel for United Breweries, Shri Vivek Singhal the decision of the Hon'ble Supreme Court in the case of **M/s Ashok Leyland Ltd. V. State of Tamil Nadu and another**, reported in 2004-(134)-STC-0473-SC, helped assessee company wriggle its way through the guillotine of the Assessing Authority in as much as stock transfer transactions initially approved in the assessment orders passed earlier and confirmed by virtue of acceptance of forms F are concerned. In view of the above verdict of the Hon'ble Supreme Court the assumption of jurisdiction and initiation of proceedings are totally without jurisdiction.

He countered the respondent Revenue's stand that the agreement between the appellant company and the BSBCL sealed the nature of inter-State beer dispatches as inter-State sales between the BSBCL and the appellant company registered both in Rajasthan and Bihar for VAT purposes, quoting an excerpt from it " that as per distribution agreement offered to the Corporation, the Corporation is under no obligation to procure any specified minimum, quantities of any brand of FMFL/IMFL

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BEER/WINE during the period of currency of the distribution agreement offered. The quantity to be procured from time to time shall depend upon the demand for the product. Further, the corporation shall not be under any legal compulsion to procure all or any brands produced by a particular manufacturer/supplier."

He further emphasized that the alleged agreement to sale was in the nature of a liquor distribution arrangement for a year's duration in the areas of the State where the corporations were authorized by the governments of the States for the purpose of regulating supplies of liquor.

The Agreement to Sale was under fire when the learned counsel for M/s United Breweries outright rejected it as an agreement of purchase of goods, albeit accepted it as a standing offer in the manner of a distribution agreement with the BSBCL and the JSBCL. He said that no document had been brought to light as evidence of it being a purchase agreement. The goods had been stock transferred in regular course of business and were not subject to any purchase orders, reference or requirement from any party.

He pointed out that the delivery of the goods was taken at the branches in Patna or Ranchi and loading, unloading charges , freight of goods, were all borne by the appellant company. The insurance of the goods was made by the appellant company since the goods (beer) in transit belonged to it and further argued that no transfer of property in the goods ever took place in the whole process.

He said that the appellant had requested for the document **or** of **beer** from the appellant's factory in Rajasthan to its branch in, either Patna or Ranchi or both the places, but no such document or evidence was forthcoming from the respondent Assessing Authority which wrongly interpreting the terms and conditions of the distribution agreement considered it as having occasioned the movement of gods under a contract of sale.

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The learned counsel for M/s United Breweries was emphatic showing a supply chart based on the movement of goods that the appellant company had been regularly transferring goods irrespective of any order or purchase contract placed on it.

That the applicant branch is maintaining the office and is having a staff and the stock of goods is also maintained at the branch in bulk. That at the branch the goods are dispatched to the depot of corporation on the basis of the sale invoice issued by the branch The goods which are in the depot are the property of the applicant company. This supply by the branch is on the basis of the VAT invoices issued by the branch as per the provisions of the Bihar/Jharkhand Value Added Tax Act and the due tax as per the State of Bihar is 50% which is collected and deposited for the local sale made by the branch.

The learned counsel for M/s United Breweries re iterated that the distribution agreement offered had no in built clause for concluding a sale or stipulating any specific sale in pursuance of which it could be alleged that there was any movement of goods from one State to another.

Shri Vivek Singhal, the learned counsel for M/s United Breweries asserted that the distribution agreement offered to the beverage corporation did not specify quantity, amount, time or value of sale of goods, it could not at any cost therefore be presumed a contract of sale and at the most was confined to the extent of distributing beer to the beverage corporation in the State of Bihar or Jharkhand on yearly basis in keeping with the provisions of the LSP of the respective State towards regulating wholesale and retail sale of liquor in the State.

He charged that reply submitted by the appellant companies was not properly considered nor any verification or enquiry was made and in absence of specific reasons revealed, the assessments were made arbitrarily with the result that submissions of the appellant company came to a naught.

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He brought to the notice that the enquiry made from the branch office in Patna and Ranchi did not reveal that there was any contract in pursuance of which the goods were stock transferred.

The learned counsel for M/s United Breweries concluded that in the facts and circumstances of the case levy of tax, interest and penalty in the aforesaid assessment orders may be set-aside.

Appearing for the respondent Assessing Authority, Mr N K Baid, defined section 25 of the RVAT Act and defended assumption of jurisdiction under it by the Assessing Authority and argued that such an action on the part of the Assessing Authority had nothing to with revisionary powers in respect of an order passed under section 24 of this Act which the Assessing Authority had allegedly been charged to have invoked without any authority of law He further elaborated that the assumption of jurisdiction under section 25 was assumed by the Assessing Authority when he had sufficient reasons to believe that the appellant had avoided tax by not paying it in accordance with law and the action of the Assessing Authority in passing an order under section 9 of the CST Act read with section 25 of the RVAT Act by addressing the impugned issue which was not taken up for consideration in the earlier assessment orders passed under section 9 of the CST Act read with section 24 of the RVAT Act lay within four corners of law. It was rather a rightful exercise in law after having properly considered reply and submission made by the appellant company in this behalf.

Mr. N K Baid, the learned counsel for the respondent Revenue contended against the argument of the learned counsels for the appellants that the contents of the form F had not been found false or incorrect and neither the transactions had been examined and simply on presumption the transactions had been considered as interstate sales which was entirely illegal and unjustified. He argued that proper enquiry in the appeals at hand was made and cases made out , notices were issued to the appellants and the replies submitted by them were taken into account before action under section 9 A of the CST Act read with section 25 of the R VAT Act was contemplated against the appellant assessees .

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Mr. N K Baid, the learned counsel, appearing for the respondent Assessing Authority, averred that the burden of proof that the impugned turnover belonged to inter-State depot transfers had of course been discharged by submission of F forms and related stock transfer invoices, copies of transit documents, etc., by the appellants however the Assessing Authority had a case made out that impugned inter-State stock transfers were actually inter-State sale transactions after a detailed enquiry and armed with ample reasons, not on presumption, proceeded ahead with passing impugned assessment orders converting inter-State transfers as transactions of sale in the course of inter-State trade, without having taken recourse to rejection of these forms.

Citing the case of **M/s Hyderabad Engineering Vs State of Andhra Pradesh**, Mr. Baid said that the Hon'ble Apex Court had therein enunciated the principle that when the department did not take advantage of presumption under section 3(a) of the CST Act, but came out with a positive case of inter-State sale in the course of inter-State trade and commerce to make it liable to tax under Section 6, the Declaration in Form "F" **UNDR** Section 6A would be of no avail.

Replying to the initial objections raised on the validity and soundness of the show cause notice, Shri NK Baid, the learned counsel for the respondent Revenue, said that the show cause notice was specific and contained details on which the CTD built up its case. Besides, the impugned order set at rest contention of the Appellants that the order passed was devoid of reasons because it was solely on the basis of show cause notice issued by the department that the appellant had submitted a detailed reply. Also, the Appellant was given proper opportunity of being heard before the impugned assessment orders saw the light of the day. He said that the material was brought on record to substantiate the stand that the appellant Companies were a party to the 'Agreement for Sale' which in changed circumstances they now called it an 'Agreement for Distribution' ,though they were well versed with the fact that it was an Agreement for Sale.

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Arguing on behalf of the respondent Assessing Authorities, the learned government counsel, Mr. Ram Karan Singh , said that the appellant companies had exhaustively described procedure for transport of beer lots in Patna and Ranchi depots coming from their manufacturing units in Rajasthan and termed entire operations as branch transfers conveniently forgetting that arrival of goods in Patna depot was not an act of their own volition, nor was it independent of any order to this effect as claimed by the appellant assesses because an Order for Supply from the BSBCL was first procured by the appellant companies pursuant to an Agreement to Sale already executed with the BSBCL (or, the JSBCL). The appellant companies denied this document to be an Agreement to Sale and described it rather an Agreement to Distribution. Veracity of this claim was questioned by the Government counsels on the ground that epilogue to the Liquor Sourcing Policy (LSP) 2008-09 unequivocally declared that BSBCL was the whole seller of liquor in the State of Bihar and executed sourcing of all kinds of Foreign Made Foreign Liquor (FMFL), IMFL (brandy, whisky, rum, gin, vodka, etc.,), Beer & Wine.

Mr. Ram Karan Singh ,the learned counsel for the respondent Revenue, said that the LSP enjoined upon the manufacturers of FMFL, IMFL, Beer & Wine, who were registered in Bihar that they could offer firm price for those products, brands, which they wanted to market in Bihar. The mystery over the fact whether BSBCL executed an 'Agreement for sale' or an 'offer for distribution' of beer in the State with the appellant assesses was verily unveiled by this declaration of aforesaid policy. It proved that an exercise in terms of quality, brands, price, etc., of goods (beer) was undertaken by the appellants before execution of 'Agreement for sale' with BSBCL prior to the latter placing Order for Supply of beer on the appellant assesses. The learned counsel to the Government Shri RK Singh raised an query for what purpose such a marathon exercise was undertaken to carry out so called branch transfers, instead of inter-State sale of beer from the units of the

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appellant assessees in Rajasthan to Patna or Ranchi branch, when beer was ultimately delivered, F O R destination, at the BSBCL depots in far flung areas of the State at the fixed landed price including all state duties, central duties and Commercial Tax by the appellants.

Performa format of all such Order for Sales (OFS) was the same, for the BSBCL used it for placement of orders for beer supply on all manufacturers and suppliers desirous to supply liquor and beer to the BSBCL.

For illustration, one such OFS bearing no. MOTI 1314003732 was analyzed and it revealed the following information :

(i) The BSBCL placed Supply Order, bearing no. MOTI 1314003732 , dated May 23, 2013 , on M/s Mount Shivalik Industries Limited, Patna, Bihar for supply of its Product Thunderbolt Platinum Strong Beer – MSIL in pack size of 650 ML at Rate / CB (Rs.) 722.43 in Quantity of 600 Cases having BL 4680 for the amount of Rs 433458 /- to Depot Manager, IMFL, BSBCL Ltd., Depot Motihari at destination, Motihari in three days of issue of this Order until the validity date of May 26,2013.

(ii) Thereupon, the **Collector** who is Secretary to Commissioner, Excise, granted an Import Permit, no. 3732 / 2013- 14 ,dated May 23, 2013 to the Bihar State Beverage Corporation that stated that the Bihar State Beverage Corporation, Motihari Depot or its agent : M/s Mount Shivalik Industries Limited, Patna, Bihar would "purchase" 600 cases in pack size of 650 ml in at 4680 BL thunderbolt platinum Strong beer-msil paying excise duty for " importing " it in the State of Bihar & Orissa .

(iii) Thereafter, the appellant assessee's branch, M/s Mount Shivalik Industries Limited, Patna, Bihar sold the above goods, 600 cases in pack size of 650 ml in at 4680 BL thunderbolt platinum Strong beer-msil to the Bihar State Beverage Corporation, Motihari Depot on the strength of Import Permit, no. 3732 / 2013- 14 ,dated May 23, 2013

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and issued invoice no.208 dated May 26, 2013 for Rs 288972/- plus VAT at @ 50 % at Rs.144486/-, total invoice amount for Rs 433458/-

In another illustration, M/s Carlsberg India Pvt Ltd., Patna was issued import pass, dated 12.03.2013, to " purchase liquor "- Turbo Strong Premium Beer, 650 ML, 1150 C/s, 8970 gallon "from Carlsberg India Pvt Ltd, Agro Park, District Alwar, Rajasthan" " for importing in Bihar and Orissa".

Advancing arguments further Mr. Ram Karan Singh, the learned counsel for the Revenue said that the above illustration proved that BSBCL was the actual purchaser of beer from Rajasthan based manufacturing units of the appellant companies because, in respect of brands manufactured or imported from outside the state, the prerogative of declaring and recording the price for sale to retailer and, the maximum retail selling price of such products was vested with the BSBCL and the manufacturing appellant company was asked to quote the landed price only.

In reply to arguments of Mr. Laxamikumaran and other learned counsel that clause 10.1 of the Liquor Sourcing Policy 2008-09 Order For Supply (OFS) would be construed as agreement to sell under sub-section 3 of section 4 of the Sale of Goods Act 1930 Mr Ram Karan Singh , the learned counsel for the respondent said that the Clause 10.1 did not vitiate the Agreement entered into between appellant companies and the BSBCL (or, the JSBCL) which to all intents and purposes was an 'Agreement for sale' and the OFS was but an instrument born out of the wedlock of the 'Agreement for Sale' between BSBCL and appellant companies to carry out liquor supply as per terms and conditions in respect of the 'Agreement for Sale'.

Mr. N.K. Baid, the learned counsel for the revenue, contended that though it was statutory requirement of the State excise laws that the beer bottles from Rajasthan en route Bihar should bear a label of 'for sale only in Bihar', but it proved the point that liquor was moved from Rajasthan to Bihar in pursuance of the agreement for sale between the

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BSBCL and appellant assessee and the label fixing was not the resultant effect of the Order for Supply of beer placed by the BSBCL with the appellant asessee registered in Bihar for the simple reason that OFS was the creature of Agreement for Sale and by itself it did not convey anything more than quantity of beer and place of import and delivery, etc.,

To the charge of Mr Lakshmikumaran and other learned counsels for the appellant companies that the distribution agreement offered to the BSBCL or the JSBCL in terms of the LSP of that State was irrespective of any quantity, any amount, any time or any value of sale of goods, for the reason that it was not a purchase or sale agreement, and it made the appellant company only make a valid offer to supply and deliver the beer through the respective Beverage Corporation to its various depots in State of Bihar on yearly basis, Mr. NK Baid said that the Agreement to Sale was executed between the BSBCL in terms of the Clause 4.2 of LSP of that State that desired that manufacturers including suppliers located outside the state shall submit a copy of the permission for the manufacture of the brands proposed to be supplied, approval for labels as granted by the competent excise authorities of that state and the authorization for exporting from that state to Bihar.

Advancing arguments further, Mr. Ram Karan Singh, the learned counsel for the Government said that acting on the directive of Clause 5.9 of the LSP, BSBCL went to the extent of fixing the margin of Corporation to be calculated in such a way that it was not in excess of 5% of the MRP and likewise retailers margin did not exceed 15% of the MRP thereby confirming the adjuncts of the Agreement to Sale and regulating liquor trade in respect of sale price of liquor.

Mr. Singh was assertive that it spoke volumes on the nature of beer transactions under dispute as it turned out to be that there were only two players in the field, one was BSBCL and other was the appellants' companies, as such it proved that instant cases were made out on the

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solid foundation that what occurred between the two after fixing maximum market retail price and retail margins was a transaction of interstate sale.

Mr. Ram Karan Singh, asserted that beer supplies to the BSBCL were made only when the OFS was issued by the Corporation taking into account stock requirement of depots **(Rule 6.2 of the LSP)** with rider that the corporation was not obliged to procure any specified minimum quantities of any brand of beer during the period of currency of the contract as the order for quantity was dependent upon the demand for the product and not simply because they had signed this Agreement and had made an offer.

Mr. Ram Karan Singh asserted that if above order was not a contract to sale what else was required to make it likewise. Beer was supplied by the manufacturing units of the appellant companies from Rajasthan to the BSBCL in Bihar only after the BSBCL had issued Order for Sale. The liquor trade is a restricted trade in which contract of sale of beer between the government run BSBCL and the private players cannot be given a free run. The manufacturing bodies could not of their own make branch transfers of beer. Even phrase depot transfer of goods in present context is a misnomer because depots in Patna,(or, Ranchi) and other places in State of Bihar (Jharkhand) are designated warehouses of the Corporations. The appellant companies manufactured beer in Rajasthan and in present context sold it in Bihar and Jharkhand under the watchful eyes of the excise departments of Rajasthan and Bihar (Jharkhand) to the BSBCL or the JSBCL as the case may be. Of course, the appellant companies had their branch offices in Patna and Ranchi, but any godown over there was a designated warehouse of the Corporation. As per Clause 6.7 of the LSP, in respect of supplies from within state or outside the State, the appellant company, after the issue of OFS., deposited the Import Fee, Excise Duty and other applicable duties or fees for their respective brands with the Excise Department and obtained required transport permit to ensure delivery. Unloading of the

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goods at the depots was the responsibility of the appellant company. the consignments had to be dispatched under valid permit issued in the name of the M/s Bihar Beverages Corporation Ltd., Patna by the competent authority. He said that Clause 12(9) of the LSP proclaimed that **"The manufacturers or Importers shall be liable to pay VAT as per provisions of the Act and at rates applicable in Bihar VAT Act."**

He said It shows that the BSBCL and JSBCL, undertakings of the Governments of the States of Bihar and Jharkhand conduct the liquor sourcing policy in their respective States. They are dealing in the liquor trade in the respective States right from the start: from receiving tenders from the appellant companies, giving permission for specific alcoholic brands to be manufactured, approving labels, declaring and recording the sale price to retailers including maximum retail selling price, fixing the margin of Corporation and retailers, receiving statutory deposits of import fee, excise duty and other applicable duties or fees for the different brands of liquor and alcoholic beverages from the manufactures or suppliers, deciding issues as of sanctioning liquor import passes and providing export passes both ways, approving travel route charts, issuing transport permits to ensure delivery, supervising loading and unloading of beer on arrival at the depots, stacking liquor goods including beer cartons in designated warehouses of the BSBCL/JSBCL within the territorial demarcations of the States of Bihar and Jharkhand, handling matters related to transport and depot stock damages and pilferages, monitoring intra- State depot transfers, receiving Bihar VAT paid invoices against the beverages from the appellants to the retail vendors in the State, commuting VAT and other taxes to the end point of making payments to the appellants, etc,.

Arguing on behalf of the respondent Revenue, Mr. Ram Karan Singh said that the issue of INTER-STATE SALE VIS-À-VIS INTRA-STATE SALE was an admixture of fact and law. The facts of present

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cases need analysis in the light of the provisions of the section 3 of the CST Act,1956. Inter State sale or purchase is carved out of and separated from inside sales or purchases for the purpose of situs of taxation. If the movement of goods from one State to another is the result of a covenant or an incident of the contract of sale then the sale is an inter-State sale. If a contract of sale contains a stipulation for the movement of the goods from one State to another, the sale would certainly be an inter State sale.

Arguing on behalf of the respondent Revenue the learned counsel, Mr. Ram Karan Singh said that in perspective of Section 3(a) of the CST Act, it was not sine qua non of a contract of sale itself to provide for an express covenant or stipulation therein to cause movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale under reference. He said the aforesaid Agreement to sale, though wrongly dubbed distribution Agreement was made by BSBCL with the appellant manufactures for supply of liquor from their manufacturing units in Rajasthan to BSBCL at their designated warehouses located at various places in Bihar at fixed Landed Price, *FOR*, destination, at BSBCL warehouses. Clause 2D of LSP, under caption: General, defined "Landed Price at BSBCL warehouses meant all inclusive of EDP, freight handling, insurance, State/Central levies, duties, fees, & excise duty and Commercial tax.", and sale was considered to have been concluded, as per Clause 9.1 of LSP, when beer was delivered by the manufacturer at the depots of the Corporation and included stacking of the liquor in the depots. He contended that all this proved that movement of beer from manufacturer assessees' units in district Alwar, Rajasthan to the depots of BSBCL was a movement of goods occasioned by aforesaid contract of sale entered into between BSBCL and the appellants.

Mr. Ram Karan, counsel to respondents, relied on several cases discussing their core issues, which are as under:

M/s Tata Iron and Steel Co. Limited v/s .S.R. Sarkar [1960] 11 STC 655 (SC), which held that a sale occasioned the movement of goods from one State to another within the meaning of section 3(a) of the

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Central Sales Tax Act, 1956, when the movement was the result of covenant or incident of the contract of sale. A sale could be an inter-State sale, even if the contract of sale did not itself provide for the movement of goods from one State to another but such movement was the result of a covenant in the contract for sale or was the incident of that contract. If it could be clearly inferred from the contract that both the parties had contemplated inter-State movement of goods consequential to or as an incident of the contract, Section 3(a) of the CST Act was attracted. To ascertain whether a sale was an inter-State sale or not, two tests were applied, one of which was that a sale or purchase took place in the course of inter-State trade having had to occasion movement of the goods from one State to another, and the other was that a sale or purchase was made by transfer of documents of title to goods during the movement of the goods from one State to another.

'Inference from the contract regarding inter-State movement

Even if a contract of sale does not contain a stipulation for the inter State movement of goods, a reasonable inference may be drawn that the parties to the contract well know that the fulfillment of the contract is possible only if the goods in question are moved from one State to another.

In State Trading Corporation of India Limited v State of Mysore [1963] 14 STC 188, the Hon'ble Supreme Court held that although a contract of sale of cement did not itself contain any covenant that the supply had to be made from any particular factory, as the contract was subject to the terms of the permit which provided that the supply had to be made from one or other factory situated outside Mysore State, the contract must be deemed to have contained a covenant that the cement would be supplied in Mysore form a place situated outside its border and a sale under such a contract would clearly by an "inter-State sale" as defined in section 3(a) of the Central Sales Tax Act, 1956.

In Commissioner of Vat, New Delhi v State of Haryana [2009] 23 VST 10 (CSTAA), the assessee undertook certain bituminous road works

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pursuant to contracts related to improvement of roads awarded by Government department, corporations and other authorities. The contract were entered into by the assesee's main registered office at Gurgaon. The bituminous mixture was prepared at the hot-mix plant near Gurgaon in Haryana State owned and operated by the asessee. The mixture had to conform to the specifications laid down in the contracts. The Hon'ble Supreme Court held that in order to constitute an inter-State sale within the meaning of section 3(a) of the Central Sales Tax Act, 1956, there need not be an express covenant or stipulation in the contract. If it can be clearly inferred from the contract that both the parties contemplated inter State movement of goods consequential to or as an incident of the contract, section 3(a) was attracted. In other words, if the inter-State movement was necessarily incidental to the implementation of the contract, that would satisfy the requirement of section 3(a). In this case inter-State movement of the goods was clearly under contemplation of the parties and the reasonable presumption drawn was that the parties had known that execution of the contract could not materialize unless goods in question were brought from outside Delhi, for reason that hot operations were banned in the territory of Delhi under directions of the Hon'ble Supreme Court.

Delivery point : Place of passing of property in goods

If a sale occasions the movement of goods from one State to another, it is an inter-State sale irrespective of the State where the property in the goods passes to the buyer under the Sale of Goods Act, 1930 or where the seller and purchaser reside. The goods at the time of movement should be specified and meant for the particular buyer. The property in goods can pass in either State and yet the sale can be an inter-State sale. When the movement of goods from one State to another is an incident of the contract of sale, it is a sale in the course of inter-State trade falling under section 3(a) of the Central Sales Tax Act, 1956. It does not matter in which State the property in the goods passes. What is decisive is whether the sale is one which occasions the movement of

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goods from one State to another. The inter-State movement must be the result of a covenant express or implied in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce that the covenant regarding inter-State movement must be specified in the contract itself. It will be enough if the movement is in pursuance of and incidental to the contrct of sale. From a delivery point in the exporting State, there can be intra-State sale, inter-State sale or export of the goods. Where the delivery point is in the importing State, there can be either stock transfer of the goods or inter-State sale from the exporting State. That is, either the goods can be consigned to the person making it or to any other person; or there can be inter-State sale of the goods, if the movement of the goods is in pursuance of the contract of sale.

Where movement of goods is implicit in the sale :

Where the purchase and transport are parts of one transaction and cannot be dissociated and also there is no break between the purchase and movement of goods to another State, it is immaterial whether the sale/purchase takes place within exporting State or importing State. So long the movement of goods is an incident of the sale/purchase, it amounts to an inter-State sale/purchase. It is sufficient if the movement of goods is implicit in the sale.

Contractual obligation of the purchasing dealer to take goods outside state

State of Bihar v. Tata Engineering & Locomotive Co. Ltd. [1971] 27 STC 127 (SC – Five-Judge Bench)

The respondent-company, which carried on the business of manufacturing and selling trucks, bus chassis and spare parts thereof, had its head office in Bombay and its factory in Jamshedpur in Bihar. It had appointed several dealers all over India. Under the agreements between

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the company and the dealers, each dealer was assigned a territory in which alone he could sell the trucks, bus chassis and spare parts purchased from the company and the dealer was forbidden from selling them outside his territory. The dealers placed their intents, paid the price of the goods and obtained delivery orders from the Bombay office of the company. The trucks, bus chassis and spare parts were delivered in Bihar to the dealers to be taken to the territories assigned to them. Under the contracts the dealers were required to remove the trucks, bus chassis and spare partsw delivered to them in the State of Bihar to places outside the State. The goods were so removed. The sales were held to be inter-State sales.

DCM Limited v. Commissioner of sales Tax [2009] 21 VST 417 (SC)

The selling dealer sold ex-works in Delhi chemicals to registered dealers who were under a contractual obligation to sell them in their assigned territory outside Delhi. Under the contract with the purchasing registered dealers, each dealer was assigned an exclusive territory and was obliged to take the chemicals outside Delhi where they were to be sold. The obligation of the purchasing dealer under the contract with the seller to take the goods outside the State indicated the control of the selling dealer over the movement of the goods. The purchasing dealers were obliged contractually to remove the goods from Delhi to their assigned territories and the goods were actually so removed. The sales were held to be "inter-State sales" within the meaning of section 3 of the Central Sales Tax Act, 1956.

Co-operative sugars (Chittur) Ltd. v. State of Tamil Nadu [1993] 90 STC 1 (SC)

The appellant, a co-operative sugar factory, had its sugar factory in the Kerala State. The appellant was permitted by Government Order issued by the Government of Tamil Nadu to draw sugarcane in Coimbatore and pollachi Taluks of the State. It was also provided in the Government Order that the appellant should pay sales tax to Tamil Nadu on the sugarcane supplied on the specific basis. The appellant opened its

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offices in Coimbatore and pollachi and took delivery of the sugarcane from the farmers They also arranged the transport of sugarcane to the appellant's factory in Kerala under cover of delivery note which showed the appellant itself as the seller and the buyer. It was held by the Supreme Court that the purchase made by the appellant were inter-State purchases. The appellant was permitted to purchase sugarcane in Coimbatore and Pollachi taluks only with a view to and exclusively for the purpose of transporting it to its factory in Kerala. The movement of goods from Tamil Nadu to Kerala was occasioned by the sale by the farmers or purchase by the appellant whichever way one looked at it. The movement of sugarcane from Tamil Nadu to Kerala was an incident of and was inextricably connected with the sale/purchase.

Contractual obligation of the selling dealer to take goods to another State for delivery

Oil India Limited v. Superintendent of Taxes [1975] 35 STC 445 (SC)

Oil India Limited (OIL) had its head office in the State of Assam and was engaged in the business of prospecting petroleum and also producing and transporting crude oil from the State of Assam pursuant to the prospecting licence and mining lease granted by the State of Assam. In pursuance of an agreement, OIL supplied crude oil to the refinery of the Indian Oil Corporatin (IOC) situated in Bihar through pipe-lines constructed and woned by the OIL.The construction of pipe-line was undertaken by OIL in pursuance of the agreement and for th specific rurpose of tansporting crude oil to barauni in Bihar form Assam. Delivery of crude oil was taken by IOC after measurement at its Barauni Refinery. The movement of crude oil from the State of Assam tot the State of Bihar was an incident of the contract of tsale and therefore the sales to refinery at barauni were held to be sales in the course of inter-State trade.

Indian Oil Corporation Limited v Union of India [1981] 47 STC 1 – (SC)

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The appellant agreed to supply naptha from its Barauni refinery in Bihar, to Indian Explosives Limited at its factory at Kanpur in Uttar Pradesh. A pipeline was laid by IOC from Barauni to Kanpur and from there to its IOC depot and further to the factory fence of Indian Explosives. The source of supply was the seller's refinery at Barauni in Bihar and the destination was the huyer's factory at Kanpur (U.P.) the sales were held to be inter-State sales.

After hearing the counsel for both the parties, studying judgments of the Hon'ble Courts (cited supra) and the record placed before us, we set out in the matter as given herein under :

At the outset, we agree with counsel for the Revenue that show cause notice issued was a detailed one and reply and submissions were properly given consideration, and proper opportunity of even personal hearing was given and speaking orders were passed.

Amidst rival contentions of the counsel, what transpires is that all essential conditions of section 3(a) of the CST Act are witnessable in the present case. On the authority of M/s TELCO Vs Assistant Commissioner, (supra) they could be deduced from Agreement to sale (supply) of beer between BSBCL and the appellants, necessitating and occasioning movement of beer from appellants manufacturing units in Rajasthan to Bihar on the premise of same transaction.

The interstate movement of beer in instant cases was preceded by Agreement to sale and interstate sale related to it was inextricably interwoven with corresponding beer movement from district Alwar, Rajasthan to Patna, Bihar. The facts here are distinguishable from those of Central Distilleries and Breweries (supra), on the authority of case applicable in present scenario, that is M/s Indian Oil Corpn. Ltd., (supra). It is manifest that interstate movement of beer from Alwar to Patna did not break there but after a brief interval continued to finally terminate at different BSBCL depots in Bihar. It did not rupture the inextricate relationship between the movement of goods and sale, because sale could only be made to BSBCL by the sole seller, appellant manufactures. With no third party involvement in the whole scheme of sales, such a brief stoppage of movement of beer at Patna at appellants depot at Patna for a while did not impact the nature of interstate sale because at the most it was a transit halt of the goods in question.

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The respondent Assessing Authorities have made out a case that in relation to the movement of beer stocks round the year from the appellant assesses' manufacturing units situate in district Alwar of Rajasthan to their branch offices at Patna and Ranchi was not result of bare stock transfers of beer but rather sales thereof to the various retail outlets of the BSBCL (or, JSBCL) spread across the State of Bihar (or, Jharkhand) made in course of the inter-State trade and commerce, between appellants and BSBCL.

The facts of present cases require analysis in the light of the provisions of the section 3 of the CST Act, 1956. It is a simple fact that Inter State sale or purchase is carved out of and separated from inside sales or purchases for the purpose of situs of taxation. It is to be explored whether the movement of beer from the State of Rajasthan to the State of Bihar (or, Jharkhand) was the result of a covenant or an incident of the contract of sale entered to between the authorized representative of appellant company and Bihar State Beverage Corporation Limited, if it were so, the sale was an inter-State sale.

We may have a look at the provisions of the LSP which are contextually relevant in the present case and reproduced as under :

1.The clause 3.1 of the LSP stipulates that **manufacturers desirous of supplying liquor to the BSBCL for subsequent supply to buyers** shall submit certain documents, before their offer can be considered and action initiated, one of them being (iv) is, as follows:

" an agreement as in the format in Annexure 4 duly executed by the authorized signatory of the manufacturer/ supplier in a stamp paper of denomination of Rs.100/-

2. Clause 4.1 of the LSP says that labels of brands proposed to be supplied / marketed in Bihar by a manufacturer / supplier located in or outside the state have to be approved by the Excise Commissioner, Bihar, Patna. Such an approval shall be obtained by the manufacturer / supplier and submitted to the Corporation.

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3 Clause **4.2** of the LSP lays down that manufacturers / suppliers located outside the state shall submit a copy of the permission for the manufacture of the brands proposed to be supplied, approval for labels as granted by the competent excise authorities of that state and the authorization for exporting from that state to Bihar.

4. Clause 5 of the LSP says that a statement for each brand of FMFL/IMFL/BEER/WINE indicating information for label registration of a brand of FMFL/IMFL/BEER/WINE shall be submitted .

5. Clause **5.5 (A) (i)** of the LSP determines that the price, which will be offered now, shall be valid, at the option of the offerer.

6. Clause 5.5(ii) of the LSP says that In respect of brands manufactured in Bihar or imported from outside the state the corporation is required to declare the price for sale to retailer and the maximum retail selling price of such products. Manufacturer shall quote the landed price.

7. Clause 5(B) stipulates that the landed prices quoted should be F O R destination. The manufacturer / supplier has to incur the entire expenditure till the consignment is received and stacked at the destination i.e., designated depots of the Corporation or any other location within Bihar, as specified in the permit. Unloading of the goods at the depots shall be the responsibility of the manufacturer / supplier located both inside and outside the State of Bihar, the consignments have to be dispatched under valid permit issued in the name of the M/s Bihar Beverages Corporation Ltd., Patna by the competent autohority.

8. In respect of stocks of FMFL/IMFL/BEER/WINE, imported from outside the State or procured from within the State, all the bottles are to be affixed with holograms if it is supplied by the Excise Commissioner, Govt. of Bihar.

9. Clause 5(C) The price quoted shall be uniform irrespective of the location of the destination within Bihar.

10. Clause 5.6 says that (a) The offerer shall quote only for the brands for which the labels are approved by the Excise Commissioner, Govt. of Bihar, as on the date of submission of offer.

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11. Clause 5.8 of the LSP cautions manufacturers to note that they are required to work out the Landed cost and the maximum retail selling price, taking due note of the provisions of the different notifications with respect to duties, fees issued by the Excise Department or the Excise Commissioner, Government of Bihar under the Bihar Excise Act and rules framed there under.

12. Clause 5.9 of the LSP fixes the margin of Corporation to be calculated in such a way that it is not more than 5% of the M.R.P. Likewise retailers margin will also be calculated in such a way that it is not more than 15% of the MRP.

13. Clause 5.16 of the LSP declares there shall be a **Purchase Committee** duly constituted by Govt. of Bihar which will fix the price of 'brands quoted.

14. Clause Rule 6.1 of the LSP provides for the mechanism of issuance of OFS : Manufacturers / Supplies to the Corporation shall be based on the OFS issued by it. The corporation shall issue OFS based on the stock requirement of depots after duly considering the quantity held, the sales trend and requests of the manufacture / supplier, if any. To facilitate the process, the manufacture / supplier may indicate the requirement of its brands, and pack sizes in various depots. However, the corporation reserves its right to decide the quantity for which OFS can be issued.

15. Clause Rule 6.2 of the LSP holds that the Quantity to be procured from time to time shall depend upon the demand for the product. Further, the corporation shall not be under any legal compulsion to procure all or any brands produced by a particular manufacture / supplier, **simply because they have signed this Agreement and have made an offer.**

16. Clause Rule 6.4 of the LSP declares that two copies of the OFS will be issued for the exact quantity that the supplier / manufacture proposes to transport. It is, therefore, imperative that manufacture / supplier indicate their dispatch plan for issue of OFS. The OFS shall be signed by either of the authorized signatories of the Corporation.

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17. Clause Rule 6.7 of the LSP sets out that In respect of supplies from within state or outside the State, the manufacture / supplier or their authorized representatives shall, after the issue of OFS , deposit the Import Fee, Excise Duty and other applicable duties or fees for their respective brands with the Excise Department and obtain required transport permit to ensure delivery.

18. Clause2 GENERAL D.Landed Price defines Landed Price at BSBCIL ware house means all inclusive of EDP, Freight, handling, Insurance, State/Central levies, duties, fees & excise duty and Commercial Tax.

A. In this regard, It is imperative to go through the agreement entered into between the appellant and the BSBCL under the terms and conditions of the LSP as described in its Circular no.675/BSBCL, dated 12.03.2008 (extended for the relevant years : 2009-10 ,2010-11, 2011-12, 2012-13 and 2013-14).

B. At the background of above, It is apparent that the appellant **manufacturers who were desirous of supplying liquor to the BSBCL for subsequent supply to buyers** in reference to the aforesaid Clause 3.1 of the LSP submitted certain documents, before their offer was considered and action initiated by BSBCL. We find that in terms of Clause 3.1 (iv) of the LSP, an Agreement was struck between the two parties to the issue, the BSBCL and the appellant company, the introductory part of which is reproduced as under:

"This Agreement made at Patna...of 2008 between **the Bihar State Beverage Corporation Limited** (hereinafter called the Corporation) having its head office at....Patna represented by .... which term shall mean and include its executors,.....etc.,of the ONE PART AND **M/s Shivalik Industres Limited** represented by Shri L K Tiwari (hereinafter called manufacturer / supplier , the term including supplier) which term, unless repugnant to the context, shall mean and include its executors, administrators, successors in interest, assigns, ets., of the OTHER PART

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In all matters connected with and in relation to all matters of liquor supplies to the Corporation for the year 2008-09 in the territory of the State of Bihar and witnessed ", amongst other stipulations, under sub clause 1 of clause 1 "that the quantity of liquor to be procured and distributed shall be determined by the Corporation from time to time, keeping in view the demand for liquor manufactured / supplied by the manufacturer / supplier "

4. This Agreement entered into between the BSBCL and the appellant companies having manufacturing units in Alwar, Rajasthan and the branches at Patna in Bihar and Ranchi in Jharkhand is the *cause celebre* in the present context, enabling appellants' beer sales in the State of Bihar (or, Jharkhand) through the instrument called 'Order for Supply ' issued by the BSBCL to the appellant's branch at Patna in Bihar,

5. The appellant assesses hold the above Agreement not as an Agreement for Sale of beer but an Agreement for distribution of beer in the State of Bihar.

6. Agreement to Sale or contract to sale, or in opinion of the appellants an Agreement to Distribution was implemented when OFS was issued by BSBCL, leading to import of beer from the manufacturing units of the appellant assesses and supply of which was as usual shown as having been stock transferred to Patna (or, Ranchi) branch of the appellants which in turn sold beer to the designated Depots of the BSBCL located in various towns of Bihar. The plea of the appellants that the beer by way of stock transfer, independent of any order, was continually transferred to the Patna branch of the appellants, where it was unloaded and stacked in the godown of the appellant company at Patna. When an OFS was issued by BSBCL for supply of beer to any of its depots located in any of the towns or city of Bihar, they raised the VAT invoice for such a sale and arranged transport for carrying beer to the designated depot of the BSBCL. This way, the sale of beer in Bihar was a local sale, and the bogey of inter-State sale raised by the respondents was a wild goose chase.

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In the background of the above facts, it is found that the respondent Assessing Authority was right in assuming jurisdiction under section 25 of the RVAT Act, because he had sufficient reason to believe that the appellant had avoided paying CST on impugned transactions. On the authority of finding in case of M/s Hyderabad Engineering Vs State of Andhra Pradesh (supra), the respondent Assessing Authority rightly considered that it had not taken advantage of the presumption under Section 3(a) of the CST Act, but had rather made a positive case of inter-State sale in the course of Interstate trade and commerce that rendered declaration in Form "F" under section 6A irrelevant.

At the back drop of aforesaid analysis of facts and legal position, it is decided that impugned transactions were verily interstate sales under Section 3(a) of the CST Act, in which aforesaid Agreement to sale executed between BSBCL and appellants acted as contact to sale and caused interstate sales that occasioned movement of beer from district Alwar, Rajasthan to Patna, Bihar.

As regards, the imposition of interest under section 55 of the RVAT Act on the impugned interstate sale transactions, the learned counsel of the appellants had argued that interest was payable on the tax due in the books and returns and not the tax due as per assessment orders, whereas counsel for the respondent said it was due when leviable and payable. We find that the assessing authority levied tax on the impugned transactions which made the interest thereon payable. The assessing authority has correctly imposed interest.

As regards penalty imposed under Section 61 of the RVAT Act it could be levied in any of the following circumstances :

(a) Concealment of particulars from any return; or

(b) Deliberately furnishing inaccurate particulars in any return; or

(c) Concealment of any transaction of sale or purchase from accounts, registers or documents; or

(d) Avoidance or evading tax in any other manner

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It was argued that the appellants had no intention to evade tax on the impugned transactions shown as stock transfers which were in reality transactions of interstate sales. Of course, it is an undisputed fact that impugned stock transfer transactions were declared and disclosed by the Appellant in the returns furnished with the VAT Authorities and further the disputed stock transfer transactions were well recorded and accounted for in the books of accounts maintained by the appellant companies.

The learned counsel for M/s Carlsberg India (P)Ltd, Mr. Laxamikumaran had argued that the appellant was under a bonafide belief that the transactions in question were a stock transfer transaction: the bonafide of the Appellant was based on the ratio decendi of decisions and case laws cited above, specifically, the case of Central Distilleries & Breaweries (Cited supra), wherein under similar facts and circumstances the Hon'ble Allahabad High Court was said to have held transactions identical to the Appellants to be in the nature of stock transfer and not inter-state sales.

The learned counsel for M/s Mount Shivalik Industries Ltd, Mr. Alkesh Sharma, and Mr. Vivek Singhal for M/s United Breweries had emphasized that stock transfers of the appellant were converted into interstate sales by the Assessing Authority merely on presumptions and conjectures, based on a change of opinion inasmuch as not a single transaction of alleged sale or purchase had been detected by the Assessing Authority and which led to double taxation on the same goods. Relying upon the judgment of the Hon'ble Supreme Court in the case of M/s Shree Krishna Electricals vs State of Tamil Nadu (supra), they wanted that unjust levy of penalty under section 61 of 2003 Act be set aside. They had argued that Hon'ble Apex Court had held in the aforesaid case that "so far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's books of accounts. Where certain items are not included in the turn over, are disclosed in the dealers own books of

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accounts and the Assessing Authorities include these items in the dealers turnover disallowing exemption penalty cannot be levied", and submitted on this account that in their case all the transactions were appearing in the appellant's books of accounts and the deduction in respect of such branch transfers had been allowed, therefore there was no ground for imposing penalty in such cases.

In the humble opinion of the Bench, the facts of the present case differ from the facts prevailing in the aforesaid case of M/s Shree Krishna Electricals, wherein the assessee had not included certain items in the turnover but they were found entered in his books of accounts. Here, it is a case of the malafide intention of the appellants in consciously depriving the state of Rajasthan of their due tax revenue under Central Sales Tax by concealing the nature of inter-state transactions under the garb of stock transfers made from the State of Rajasthan to the State of Bihar (or , Jharkhand). The facts of the present cases are distinguishable from those of the aforesaid cases cited above. In the present context, they are not based on commodity and turnover but on nature of sales which has been deliberately misrepresented in the books of accounts and disclosed in returns as branch transfer Instead of as interstate sales.

Going by the facts and legal pronouncements as aforesaid hereinabove, we have come to the conclusion that agreement for supply of Beer to the BSBCL by the appellants was an agreement to sale which was duly executed between the BSBCL and the appellant companies having their manufacturing units in district Alwar Rajasthan and branch offices in Patna in year 2008, which inter alia, had agreed upon the terms and conditions in respect of the fix Landed Price for supply and delivery of beer by the manufacturer to destinations of the designated warehouses in Bihar. The BSBCL in its liquor sourcing policy clearly defines the Landed Price as "Landed Price at BSBCL warehouse means all inclusive of EDP, Freight handling Insurance, State / Central levies, duties, fees & excise duty and Commercial Tax". The wording of Landed Price is quite revealing inasmuch as tax provisions are the concerned, it uses the word

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commercial tax which includes both state VAT & Central Sales Tax, the relevant document has not excluded Central Sales Tax from the ambit of the Landed Price. Nor has it confined itself to the local VAT in the state of Bihar. Appellant companies were asked to offer the firm prices for their liquor products on the basis of the Landed Price which included local Bihar VAT @50% on the sale of liquor products including beer to the designated depots of BSBCL in territories of Bihar. None debarred them from the inclusion of due CST applicable on such interstate sales of beer from their units in Alwar to the designated depots of BSBCL. Mere interruption of sales during the course of transit at their branches in Patna could not divert the nature of interstate sale effected between the appellants and BSBCL. So far as the liability to pay 50% VAT on local sales in Bihar is concerned it could have been taken care of by their inside sale mechanism in the state of Bihar on which the Board would not like to dwell upon as it would amount to exceeding its jurisdiction.

The charge that a single stock transaction has been converted into interstate transaction would lead to double taxation on the same product because the appellant had deposited VAT @50% on such transaction as local sale in state of Bihar is not correct proposition because the appellant is trying to coalesce the interstate sale from Bihar to Rajasthan into subsequent local sale in the state of Bihar in one transaction which in fact were two different sale transactions: one , interstate sale of beer between the appellant assessee and BSBCL and second local sale in the state of Bihar regarding which the respondent Revenue had no right to interfere in or advise on inasmuch as workability and applicability of local VAT on subsequent sale in other state was concerned. It was exclusively in the domain of appellant and BSBCL.

It would be worthwhile to go through Clause 5.7, Clause 5.8 and Clause 5.9 of the Liquor Sourcing Policy:

Clause 5.7 "The offerer shall quote the prices for their products on competitive basis keeping in view the existing prices of similar brands".

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Clause 5.8 "Manufacturers may please note that they are required to work out the Landed cost and the maximum retail selling price, taking due note of the provisions of the different notifications with respect to duties / fees issued by Government of Bihar (Excise Department) / Excise Commissioner under Bihar Excise Act and rules framed there under. The corporation reserves the right to decide the extent of incidental overhead to be allowed for Bihar. Incidental overhead will include all other fees / levies / cost applicable other than the EDP".

Clause 5.9 "The margin of Corporation shall be calculated in such a way that it is not more than 5% of the M.R.P. Likewise retailers margin will also be calculated in such a way that it is not more that 15% of the MRP".

From the analysis of above Clauses emerges a picture that the appellants were allowed to fix Landed Cost and maximum selling price in which they could have included CST as well, apart from making provision for local VAT in Bihar which the appellants may have already done, as component of price quoted. However, Clause 5.9 in that case might have curtailed their profit margins. But that is not a point in consideration before us from the view point of applicability of Incidence of Central Sales Tax on the impugned transactions. In conclusion it comes about that the supply of beer to the BSBCL by the appellants from the initial stage was a premeditated deliberate exercise to excise CST on the inter-State sale transactions by the appellants in flagrant violation of conditions as exhibited in the aforesaid Agreement, implications of which were well known to the appellants right from the beginning when such interstate sales were deliberately disclosed as branch transfer transactions by them. In fact ,the ratio decidendi was in favour of Assessing Authorities in respect of imposition of penalty under section 61 of the RVAT Act in the impugned asseesment orders and is , therefore, upheld.

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On the basis of aforesaid analysis of factual and legal matrix of the impugned assessment orders, the bench upholds tax, interest and penalty therein and dismisses the aforesaid appeals.

Order Pronounced.

(SUNIL SHARMA)
MEMBER

(RAKESH SRIVASTAVA)
CHAIRMAN