Chapter IX

INTER STATE SALE: THE COMPLEX LEGAL CONCEPT

The Constitution imposed some restrictions on the power of States to levy tax on sale or purchase of goods. One of them was on the power to levy tax on the sale or purchase in the course of inter-State sale or commerce.¹

A look at the deliberations of the Constituent Assembly while enacting Article 286(2) of the Constitution will be helpful in understanding the considerations which weighed with them in imposing the restrictions. The draft Article as originally proposed by the Ministry of Finance² sought to prohibit imposition of tax by States on sale or purchase of goods when it took place in the course of inter-State trade or commerce and with a view to resale or use for any manufacturing business or building contract.³ This proposal was not acceptable to many of the Provinces.

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¹ Article 286(2). For the text, see Appendix A.
² Article 264-A(1)(d) of the draft.
The State of Bihar objected to the scheme of exemption on many grounds. Exemption from tax on sales to dealers, manufacturers and building contractors would mean a drastic reduction of revenue of States. The industrially backward States which did not have large commercial centres would be hit by such exemption. There would be further difficulty in ascertaining whether the sales were with a view to resale or use for the purposes mentioned in the Article. Further, States, which had a system of single point levy will be hit by the provision. The Bihar Government expressed the view that the appropriate course was not to introduce a total prohibition of levy of tax on inter-State sale, but to fix a ceiling on the rate of tax. Madras and United Provinces felt that the prohibition to tax might be abused. Madras Government suggested that irrespective of the purpose to which goods were put, all sales from one State to another must be exempted. It clarified that a sale in the course of inter-State trade or commerce should mean the last sale taking place in the course of inter-State transaction. The Government of United Provinces held the view that exemption of inter-State sales effected with a view to resale or use for the stated purposes, should be granted only when the goods are actually exported to another

4. Id. at 716, 717.
5. Id. at 719, 720.
State and the goods are resold or used for the stated purpose. This change was suggested to avoid the abuse of the provision for evasive designs. The Bombay view was that unless compensatory source of revenue was made available, it could not agree with the scheme of prohibition of tax on inter-State sales.

In view of the objections of the provinces the Article was redrafted. The revised draft, by clause (2), prohibited levy of tax on sale and purchase of goods in the course of inter-State trade or commerce but authorised Parliament to lift the ban.

Draft Article 264-A corresponding to Article 286 of the Constitution was introduced in the Constituent Assembly on the morning of 16th October 1946. It was then pointed out by the members that the proposed draft was received by them only at about 9 a.m. on that day. Even the proposal to postpone the discussion of the Article to the afternoon was turned down.

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6. Id. at 730.
7. Id. at 722.
9. Mr. Naziruddin Ahmed from West Bengal stated that he had to read them on his way to the Assembly. See, C.A.D. Vol.X, p.325 (1949).
10. Sri. Mahavir Tyagi from United Province and Sri. H.J. Khawdekar from C.P. and Berar put forward the proposal to adjourn the discussion to the afternoon session. Ibid.
Naziruddin Ahmed expressed his anxiety:

"There are very intricate matters and they are reopening discussions of the House already taken... It is difficult for any one, even the fastest brain, to follow these changes. No indication is given as to what changes are to be made".11

Ambedkar, however, moved the amendment in the morning session itself. Referring to sub-clause (2) which deals with prohibition of levy of tax on sale or purchase in the course of inter-State trade, and commerce he said:

"Sub-clause (2) is merely a reproduction of Part X-A which we recently passed dealing with provisions regarding inter-State trade and commerce. Therefore so far as sub-clause (2) is concerned there is really nothing new in it. It merely says that if any sales tax is imposed it shall not be in conflict with the provisions of Part X-A".12

The discussion after moving the draft Article 264A(2) mainly centered round the propriety of imposing restrictions on the States' power to tax. The debate on the scope of the phrase 'in the course of' was scant.

11. Ibid.
12. Id. at 326. Part X-A deals with draft Articles corresponding to Articles 301 to 304 of the Constitution. For discussion of the Constituent Assembly on these Articles see, C.A.D., Vol.IX, pp.1138-43.
The purposes of Article 286 of the Constitution are multidimensional. Control of inter-State trade, one of the objectives, was a delicate task. Establishment of a uniform pattern of control mechanism in the matter of inter-State trade and commerce throughout India was necessary for the unity of India. Encouragement for the growth of trade and commerce had to be given without discrimination. If that power was given to the States, the result at times would be disastrous. Imposing imaginative direct taxes on income of persons will reduce to some extent disparity between have and have-nots. Imposing indirect taxes like sales tax on inter-State dealings affects, on the other hand, the commercial and productive activities of the nation. If States, in their enthusiasm to reap maximum revenue, adopt the policy of killing the golden goose by introducing unbearable tax burden, trade and commerce will decline and perish. One of the constitutional goals is to avert such a crisis.

It is a lamentable fact that the constitutional provision was not clear enough to lay down precisely the circumstances under which the exemption is granted. The ambiguity of the provision led to legal battles and uncertainties.

As has been stated in chapter II, the expression 'in the course of' was not defined in the Constitution. The exact scope and ambit of the expression was the subject matter
of debate from its inception. Does the term 'in the course of inter-State trade' mean a transaction between a dealer in one State and a consumer in another State? Should the movement of goods from one State to another necessarily be the result of a prior agreement to sell? Or will it cover only a sale effected while the goods are in transit from one State to another? Will sale between parties in the same State be an inter-State sale if goods move to a destination outside the State? A plethora of questions sprang up when the constitutional provision was put to working. The judiciary had a heavy task in interpreting the provision.

It was already noticed that the scope of the expression 'in the course' came up for consideration of the Supreme Court for the first time in the Travancore cases. Principles were evolved to decide the question in the export-import context. If these principles are applied to the inter-State context there will be two categories of inter-State sales. They are sales occasioning inter-State movement and sales effected by transfer of documents while goods are in inter-State movement. Sales involving movement of goods from one State to another constitutes

13. See supra, Ch.II, n.30.
inter-State sale. A sale and resultant movement of goods from one State to another make the sale inter-State. Here the sale occasions the movement. Any other sale, however directly connected with the inter-State movement, will not be of inter-State character. A sale while the goods are in transit from one State to another is another category. Here the sale would be effected by transfer of documents of title. Such a transit sale will also be inter-State.

What is an inter-State sale was incidentally examined in the Second Travancore case. One type of transactions in that case involved movement of goods from the State of Madras to the State of Travancore-Cochin. The purchase was made outside the State of Travancore-Cochin, but delivery was effected through the ordinary commercial channels at the assessee's depot in the State of Travancore-Cochin. The Court observed that when purchase was effected outside the State and delivery made in the State through normal commercial channel the transactions would be inter-State. The inter-State character was attributed obviously because the inter-State movement of the goods was part and parcel of the transaction. The transaction was effected through commission agents. When

16. Id. at 218.
delivery is made through normal commercial channels, the inter-State movement was inseparably connected with the sale.

Will a sale between a dealer in one State and a consumer in another be inter-State? In the United Motors case\(^\text{17}\) the Advocate General of Bombay raised a view point that the expression inter-State trade and commerce in clause (2) of Article 286 may be construed as meaning dealings between a trader in one State and a trader in another, so that the clause would be applicable only to sale between such traders.\(^\text{18}\) If this was so, the ban under clause (2) could not affect the taxability of a sale by a trader in one State to a consumer in another. The Court held that such a restrictive interpretation could not be given to the expression 'inter-State trade and commerce'. According to the Court the sale by a trader in one State to a consumer in another would also be a sale in the course of inter-State trade.

Justice Vivian Bose who dissented with the majority in United Motors was of the view that even when the whole transaction of sale is constituted in one particular State, in the sense that every essential ingredient necessary to constitute a sale takes place there, the sale would be in the

\(^\text{18}\) Id. at 147.
course of inter-State trade or commerce. He clarified the point by an illustration. A Bombay dealer sells goods to a Madras dealer for consumption in Madras. Delivery of goods is made to the Madras dealer in Bombay. The Madras dealer carries the goods across the State in person. Justice Bose observed:

"....if that is the normal way in which trade and commerce in that particular line of goods flows across the boundary, then that would, in my opinion be a sale in the course of inter-State trade and commerce despite the facts, including delivery, mentioned above".20

This view does not however totally reject the connection between sale and inter-State movement of goods. It recognises the principle that such connection could be implied by the consent of the parties. In other words, the requirement of movement of goods outside the State could be an implied term of the contract in view of the trade practice or conduct of the parties.

In Bengal Immunity21 the majority did not examine the characteristics of inter-State sale since it was conceded

19. Id. at 166.
20. Ibid.
by the parties that the sales involved in the case were inter-State in character.22 The Court simply examined the scope of Article 286(2). What was provided in that Article was that no law of a State shall impose a levy of tax on inter-State sales or purchases "except in so far as Parliament may be by law otherwise provide. Parliament may, by lifting the ban permit States to levy tax on inter-State sales. The lifting of the ban on taxation of inter-State sales may be total or partial. What all things Parliament could do, in exercise of its legislative powers when it makes law on taxation of inter-State trade, are, however, matters relating to legislative competence of Parliament. The competence would be decided by the Court only when Parliament brings the legislation. The Court therefore abstained from further discussion on the scope of the power of Parliament. The Court observed that it need not advise Parliament in advance as to the scope of its legislative competency and on what all things Parliament may do while lifting the ban.

Justice Venkatarama Ayyar, however, in his dissenting judgment dealt with the question of inter-State sale. He

22. See supra, Ch.VIII, n.43. Das, Actg.C.J. observed at 478: "It is not necessary, for the purpose of this appeal, to enter upon a discussion as to what is exactly meant by inter-State trade or commerce or by the phrase 'in the course of', for it is common ground that the sales or purchases made by the appellant company which are sought to be taxed by the State of Bihar actually took place in the course of inter-State trade or commerce".
did so while discussing the merits of the contention that the sale to which the Explanation to Article 286(1) applied, took place in the course of inter-State trade. The argument was that the Explanation could not be construed as altering the inter-State character of the transaction. The true scope of the Explanation according to that argument was merely to shift the situs of sale from the selling State to the delivery State. Justice Venkatarama Ayyar considered the argument fallacious. The fallacy lay in thinking that after the shifting of the situs from one State to another, the sale could still be regarded as one in the course of inter-State trade. In his view a sale could be said to be in the course of inter-State trade only if two conditions concur. The first condition is a sale of goods. The second condition is that such sale

23. Id. at 583. The contention was as stated by Justice Venkatarama Ayyar: "Conceiving inter-State trade as a stream flowing from point A in the selling State to a point B in the delivery State, it was argued that what the Explanation did was to shift the situs of the sale from point A to point B, that the stream was still there, despite the shifting and that the sale therefore did not cease to be in the course of inter-State trade".

24. Justice Venkatarama Ayyar held that when the delivery of goods is made in one State and the Explanation creates a fiction that the sale also takes place in that State the sale cannot be said to be inter-State, but is intra-State. Id. at 584.
should be accompanied by a transport of goods from one State to another. Unless both these conditions were satisfied, a sale will not be in the course of inter-State trade.\textsuperscript{25}

Suppose a merchant in State A goes to State B, purchases goods there and transports them into State A. Here there is an inter-State movement of goods. But that movement is not under any contract of sale. It is independent of the sale. Hence according to Justice Ayyar, the sale is not in the course of inter-State trade or commerce. Suppose the dealer after so transporting the goods into State A sells them in State A. Then also there is no sale in the course of inter-State trade. Of course, there is a sale and a movement of goods from one State to another. But the sale is not inter-State, the movement being unconnected with the sale. This is because there was no sale at the time of transportation.\textsuperscript{26}

This view emphasises the need for linking up of transport, or movement of the goods, with the contract of sale as an essential factor of inter-State sale. A sale and

\textsuperscript{25} Id. at 583. The test was formulated by Justice Venkatarama Ayyar thus: "A sale could be said to be in the course of inter-State trade only if two conditions concur: (1) A sale of goods, and (2) a transport of those goods from one State to another under the contract of sale. Unless both these conditions are satisfied, there can be no sale in the course of inter-State trade".

\textsuperscript{26} Id. at 583, 584.
subsequent transportation of the goods outside the State, without any linkage between the two are not sufficient to characterise the transaction as inter-State. The transport must be in pursuance of a contract of sale. This theory assumed tremendous significance in later years.  

Will a sale be inter-State if the out-of-the State supplier is a registered dealer in the delivery State? Mohanlal Hargovind Das involved such a question. The assessee was a firm carrying on business in Madhya Pradesh. They manufactured and sold bidies. For their business they required finished tobacco. This was imported from Bombay. The tobacco was delivered to them in Madhya Pradesh. The assessee was assessed to tax under C.P. and Berar Sales Tax Act, 1947 on the purchase turnover of tobacco. The assessee contented that the transaction had taken place in the course of inter-State trade, and the State of Madhya Pradesh had no authority to impose tax on the transaction as it was violative of Article 286(2). The Bombay dealers who supplied the goods to the assessee were also registered dealers in Madhya Pradesh. It

27. It became the future Law. See Central Sales Tax Act 1956, Section 3. For the text, see, Appendix B. Justice Rajagopalan observed in India Coffee Board v. State of Madras, (1956) 7 S.T.C. 135 (Mad.) and 143; "Eventhough the observations of Venkatarama Ayyar constituted obiter dicta they are entitled to highest respect".
was contended on behalf of the State of Madhya Pradesh that the transactions were between two registered dealers in Madhya Pradesh and therefore the sales involved were internal sales. The Court observed that the fact that the Bombay dealers who supplied the goods were also registered dealers in Madhya Pradesh would not be sufficient to invest a transaction which was in the course of inter-State trade with the character of an intra-State transaction. The Court pointed out that merely because a dealer outside the State gets himself registered in the State as a dealer, it could not be said that whatever transactions he entered into with other dealers in the State were all intra-State transactions irrespective of the fact that they involved movement of goods across the border. The Court rightly held that the transactions were in the course of inter-State trade.

One of the points in dispute in Indian Coffee Board was the inter-State nature of certain transactions. Coffee was sold and delivered to the agents of the purchasers in the State of Madras. The coffee was bought with the definite intention of transporting it outside the State. It was in

29. Id. at 692.
30. Id. at 693.
fact transported outside the State. Antecedent to the transport the property in the goods had passed to the purchaser. The purchaser transported it out of the State as his goods. The Madras High Court held that the sale was not inter-State. The court noted the difference of the facts in this case with those in the Second Travancore case\textsuperscript{32} where after purchase by commission agents delivery of goods was made through normal commercial channels.\textsuperscript{33} In Indian Coffee Board, delivery was taken by agents of buyers and they transported the goods to out of States buyers. The court held that since all the ingredients of sale were completed in Madras and the transport was not connected with the sale, the transaction was not inter-State.\textsuperscript{34}

The Travancore-Cochin High Court was prepared in K.A. Davies v. Sales Tax Officer\textsuperscript{35} to look at the nature of the transaction from the point of view of its commercial significance.\textsuperscript{36} The buyer was from outside the State but delivery of

\textsuperscript{32} Supra, n.15.
\textsuperscript{33} Supra, n.31.
\textsuperscript{34} Ibid at p.144. The same view was taken in State of Madras v. Indian Coffee Board, (1956) 7 S.T.C. 522 (Mad.).
\textsuperscript{35} (1956) 7 S.T.C. 829.
\textsuperscript{36} Ibid. The court quoted at p.830 the following observations of Dixon, J. in Clements and Marshall Proprietary Ltd. v. Field Peas Marketing Board, (1947) 76 C.L.R. 401: "We should consider the commercial significance of transactions and whether they form an integral part of the continuous flow or course of trade, which, apart from the theoretical legal possibilities, must commercially involve transfer from one State to another".
the goods was effected to the agent of the buyer within the State. The court held that the sale did not take place in the course of inter-State trade or commerce as the sale and the subsequent transport were not linked together. The court found that even when looked at from the point of view of commercial significance of the transaction it did not form "an integral part of a continuous flow or course" of inter-State trade or commerce.37

In Kerala Arecanut Company38 the assessee acted as commission agent both for sellers and non-resident buyers. The assessee purchased arecanut, paid the price and despatched the goods outside State. It was not contended that the transportation across the State frontier was a term of the contract of sale. The question for determination was whether, in the absence of such a term, the purchase can be considered to be in the course of inter-State trade or commerce. The court answered the question negatively. It was held that the assessee was liable to pay purchase tax, he being the last purchaser within the State. Referring to the view39 of Justice Bose in United Motors the court remarked that it meant only that in interpreting a contract of sale its 'commercial significance' and the 'normal way in which trade and commerce in that

37. Id. at 830.
38. Kerala Arecanut Company v. State of Travancore-Cochin, (1957) 8 S.T.C. 817 (Ker.).
39. Supra, n.20.
particular line of goods flows across the boundary' should not be forgotten. The court pointed out that Justice Bose was emphasising a mode of construction and a way of approach rather than postulating a rule to the effect that even if the contracts of sale do not require or necessarily involve transportation across the State boundary, the sale should none-the-less be considered as taking place in the course of inter-State trade or commerce.

A similar situation arose in Agarwalla and Bros. The assessee claimed deduction, from their turnover, of the value of jute despatched to mills outside the State of Orissa under instructions of the buyer. He contended that the transaction was inter-State. The assessee sold the goods to a dealer in Madhya Pradesh. But delivery of goods was given inside the State of Orissa. Subsequently the goods were despatched outside the State under instructions of the buyer. It was stated that the assessee was merely a commission agent of the outside mills. It was said that he charged only a commission. But the books of accounts revealed a different story. The accounts evidenced outright sale. The Orissa High Court held that the sale by the assessee to the dealer

40. Supra, n.38 at p.822.
42. Id. at 42.
in Madhya Pradesh was completed within the State and that it could not be said that the subsequent movement was occasioned by the sale. The transaction was not inter-State in character.

In Bhadraiah Setti\textsuperscript{43} the assessee sold goods to Mysore Starch Manufacturing Co. carrying on business in Mysore State. The contention was that the sale was effected in the course of inter-State trade and therefore was exempted from tax under Article 286 of the Constitution. The sale between the assessee and the buyer was effected in Andhra Pradesh. The goods were booked by the buyer, by rail, to a station outside the State. The buyer figured both as consignor and consignee. The Andhra Pradesh High Court held\textsuperscript{44} that the sale was completed within the State of Andhra Pradesh and since the transport was made by the buyer the transaction was purely internal and liable to be taxed under the State law.

A person purchases goods locally. The purchase is made with the intention of selling them outside the state. He does in fact so sell them. Can such purchase be characterised as inter-State? This was the question before the Supreme Court in Endupuri Narasimham\textsuperscript{45}. The assessee carried on business in

\begin{itemize}
\item \textsuperscript{43} Bhadraiah Setti v. State of Andhra, (1959) 10 S.T.C.222 (A.P.)
\item \textsuperscript{44} Id. at 229.
\end{itemize}
Orissa. The business consisted of purchase of goods like caster seeds and turmeric and of selling them to dealers outside the State. The purchase made by the assessee was assessed to sales tax under the State sales tax Act. The assessee challenged the validity of the levy. He contended that the purchase was made in the course of inter-State trade and that the levy of tax contravened Article 286(2). The goods were purchased for sale to dealers outside the State and that they were in fact so sold. It was argued that therefore the purchase was inter-State. The transactions subjected to tax were made wholly inside the State. The taxable event was sale by persons in the State to persons in the same State. The subject matter of the sale, namely the goods, was also in the State. Is the fact that the purchaser sold the goods subsequently to dealers outside the State relevant so as to give the purchase an inter-State character? This question was answered in the negative by the Court. The transaction of sale by the assessee to dealers outside the State was separate from the sale or purchase by the assessee. The tax was imposed not on the former, but on the latter. The levy not being on the sale by the assessee to persons outside the State, but on the purchase by him inside the State, was held to be valid. Because clearly the sale by the assessee to

46. Id. at 284. This decision was followed in Himatsingka Timber Co. v. State of Orissa, (1966) 18 S.T.C. 235 (S.C.).
persons outside the State was in the course of inter-State trade and hence not taxable under Article 286(2); the sale to the assessee or the purchase by him in the State was purely local in nature and hence not hit by Article 286(2).

Mohanlal Hargovind Das \textsuperscript{47} also involved purchase of goods and subsequent sale outside the State. The goods purchased were delivered inside the State of Madhya Pradesh. But the Court held that the purchase was inter-State.\textsuperscript{48} In Endupuri Narasimham \textsuperscript{49} also there was a purchase of goods and sale of goods outside the State subsequently. But, in that case the purchase was held to be a local transaction.\textsuperscript{50} Where does the difference lie which made the purchase in the former case inter-State and that in the latter intra-State. There were material differences between the two cases. In Mohanlal Hargovind Das the purchase was from dealers in Bombay. Under the contract of sale the goods were transported from the State of Bombay to the State of Madhya Pradesh and delivered to the assessee at Madhya Pradesh. The purchase therefore involved an inter-State movement of the goods. In Endupuri Narasimham the purchase by the assessee was from persons in the State of

\textsuperscript{47} Supra, n.28.
\textsuperscript{48} Supra, n.30.
\textsuperscript{49} Supra, n.45.
\textsuperscript{50} Supra, n.46.
Orissa and the goods were in the State of Orissa. The purchase therefore involved no movement of goods from one State to another. In order that a sale or purchase might be inter-State there must be a sale and a transport of goods from one State to another under the contract of sale.\footnote{The test was evolved by Justice Venkatarama Ayyar in the dissenting judgment in Bengal Immunity Co. v. State of Bihar, (1955) 6 S.T.C. 446 at 583. See supra, n.25.} This test\footnote{The Supreme Court approved this test. See, Endupuri Narasimham v. State of Orissa, supra, n.45.} was not satisfied in Endupuri Narasimham. Hence the purchase was, unlike that in Mohanlal Hargovind, intra-State.

The principle that a sale and a movement of goods from one State to another are not enough to constitute a sale into an inter-State one, but the movement must be resultant of the sale itself, found application in Krishna and Co.\footnote{(1961) 12 S.T.C. 640 (A.P.).} The assessee had purchased goods within the State. After purchase the assessee transported the goods in vehicles arranged by him. The seller was in no way connected with the transport. The purchase was completed within the State. The goods moved out of the State as the goods of the assessee. The court held that the purchase was not inter-State. It was observed that though there was a movement of goods across the frontiers of the State, the movement was not the direct result of the sale. It was held that the mere fact that there is
movement of goods was not sufficient to constitute the inter-State trade and that in addition it should be under the contract of sale.

In Bapputy\textsuperscript{54} the contract was for supply of sleepers to the railway. Delivery of the goods was to be made at Railway yard in Kerala. The assessee had to arrange for the loading of goods into railway wagons and book them to the consignee. The sleepers could be reinspected at any time within two months after they had been passed initially. The assessee was given 90 per cent of the value on production of the railway traffic receipt. The claim of the assessee that the transaction was exempted under Article 286(2) did not succeed, as according to the Kerala High Court, the title passed with the delivery of sleepers at railway station within the Kerala State and the later movement according to the Court was for the better enjoyment of the goods. The agreement, the court held\textsuperscript{55}, did not put the sleepers into the channel of inter-State trade and that the journey started after the goods had been delivered. In so deciding, the court did not correctly appreciate the factual situation. The movement was necessitated as a result of the contract. The goods were railed to

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55. Id. at 727.
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destination outside the State in fulfilment of a contractual condition. But the court merely based the decision on the wrong premise of passing of property.

Tests similar to those evolved in the export context were applied in Khaitan Minerals⁵⁶ to decide the inter-State nature of sales. The full facts of the case were not available to the court. The turnover in dispute related to sales of manganese ore. The goods were in Mysore when the contract of sale was made. The ore had to be analysed by an expert and after approval it had to be stored at railway sidings in Mysore. The railway weighment was final. The buyer arranged for transportation of the goods though rail. Accordingly goods moved to destinations outside the State. One of the contentions raised in the case was that the sale should be considered inter-State and the levy of the tax was prohibited by Article 286(2).

The court observed that sale or purchase for the purpose of inter-State trade was not a sale or purchase in the course of inter-State trade. A sale in the course of inter-State trade must necessarily be put through by transportation of the goods outside the State. A sale or purchase

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becomes inter-State when it occasions the inter-State trade or commerce. The sale or purchase must, in other words, be inextricably bound up with inter-State trade or commerce and must form an integral part of it. Since the full facts were not available the court remanded the case to the Tribunal for disposal in accordance with the principles of law.

Evidently, principles similar to these evolved in the export-import context have been applied in this case. The Court had already developed a theory distinguishing a sale for export from a sale in the course of export.

One of the questions that came up for consideration of the Supreme Court in Singareni Collieries was the inter-State nature of the sale of coal involved in the case. Coal was a controlled commodity. Its supply was regulated by the Coal Commissioner. The assessee was engaged in the business of mining coal and supplying it to the consumers. Under the Colliery Control Order, the price of coal was fixed by the Central Government. The colliery owners were prohibited from

57. Id. at 520.
58. See supra, Ch.III.
selling coal to a consumer unless an allotment was made by the Deputy Coal Commissioner. The Central Government could issue directions to the colliery owner regulating the disposal of his stock. The Commissioner could also order that coal despatched to any person be diverted and delivered to another person specified in the order. No colliery owner could despatch any coal except under the authority of the Central Government. The course of transactions involved was that the Coal Commissioner addressed the colliery owner authorising him to despatch, on request of the consumers, coal not exceeding the quantities specified, during the periods and according to the schedule specified in the latter. The schedule contained the names of the persons to whom coal was to be supplied. Intimation about this was given to the consumer, who addressed the colliery requesting for despatch of the coal so allotted. The consumer gave despatch instructions regarding the booking and the collection of price. The colliery, owner then loaded the coal in railway wagons, made a sale note mentioning the price f.o.r. and despatched the goods with 'freight to pay'. On such loading the property in the goods and the risk passed to the consignee.

Were these sales inter-State? The Court relying on the observations of Justice Venkatarama Ayyar in *Bengal Immunity* held the transactions to be inter-State. The Court
observed that in these sales coal was transported outside the State in pursuance of allotment orders. Since compliance with allotment orders resulted in a contract of sale and there was inter-State movement in pursuance thereof the Court held the transaction to be in the course of inter-State trade.

The concept of inter-State sale projected in the dissenting judgment of Justice Venkatarama Ayyar in [Bengal Immunity] thus gradually attained strength. It received the approval at the hands of the Supreme Court and found application in subsequent cases. The principles which thus got themselves firmly embedded in the case law through the process of judicial interpretation helped future concretisation of the law through the legislative process.

60. Id. at 209.