The middle of 1950s witnessed a setback in the revenue collection and a lull in inter-State trading and commercial activity. The clouds of confusion generated by the conflicting decisions of the Supreme Court in *United Motors*¹ and *Bengal Immunity*² led to this declining trend. The States stood on the verge of a financial collapse.

On the basis of Article 286 of the Constitution as interpreted in the *United Motors*³ non-resident dealers had been subjected to levy of sales tax by States in respect of delivery and sale of goods within their territory. The despatching State had no part or lot in taxing such sales. They had no fiscal interest in those dealings. The tax collection from their residents went straightaway to the coffers of other States. To unearth evasion of tax the despatching State

3. Supra, n.1.
adopted a non-cooperative attitude. Lack of co-ordinated work by the States prevented effective checking of evasionary tactics. Tax dodgers had a hey day. They evaded assessment. Only honest dealers paid the tax. This paradox naturally created a demoralising effect on the honest and the sincere.

The decision of the Supreme Court in *Bengal Immunity* overruling *United Motors* showed a red signal. It tabooed taxing inter-State sale. The consequences were far-reaching. The most baffling and urgent problem was the claims of refund of tax already collected. The States had collected large amount of tax on inter-State sale on the authority of *United Motors*. Some dealers who collected tax kept the amount without paying to the exchequer. No demand could be raised by the States in respect of such collection. It was an unjust gain for those who collected and kept the same. "Judicial review has more than justified itself under our Constitution", observes Seervai, "but the *Bengal Immunity* decision emphasises the fact that there is a price for judicial review and it can be heavy".

Though rule by Ordinance is not generally considered a welcome measure in the history of Indian Constitutional

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4. Supra, n.2.
5. Supra, n.1.
6. See, Ch.VIII.
development there were instances when public interest was protected through ordinances in times of administrative emergency. The Sales Tax Laws Validation Ordinance 1956 was one such instance. It removed the ban on taxation of inter-State sale with retrospective effect, with a view to validating the levy of tax on sales from one State to another for consumption in the latter State. The States were thus absolved from payment of huge amounts by way of refund.

The validity of the Validation Act was challenged and the state of instability continued till the challenge was repelled by the Supreme Court in Sundararamier's case. The Validation Act was only a temporary stop-gap arrangement. It was necessary to find out a lasting solution and to evolve a new policy of inter-State taxation.

The Taxation Enquiry Commission in its report pointed out that sales tax, in essence, must continue to

8. The Ordinance validated levy, assessment and collection of tax between 1st April 1951 to 6th September 1955. The Ordinance was replaced by the Sales Tax Validation Act 1956. The validation of the levy was made only till the judgment in Bengal Immunity namely 6th September 1955. Therefore Article 286(2) of the Constitution remained operative after that date. Constitution (Sixth Amendment) Act was passed with effect from September 11, 1956 amending Article 286(2). For amended Article, see Appendix A.


10. For the terms of reference of the Taxation Enquiry Commission, 1953-54, Ch.III, n.35.
be a State tax. The reasons were not patent. Tersely speaking, the Commission expressed the view that States cannot do without sales tax.¹¹ In the intra-State sphere the States should be free to develop systems suitable to their varied conditions. There will then be in each State a system adopted to its own needs. Moreover, sales tax is not only one of the largest single sources of revenue to the States but also a source which has shown the greatest flexibility in terms of revenue yield.¹² It has become an integral part of the State financial system, having been in force in States for many years. The financial structure of the States would be considerably dislocated if, at this late stage, so important and flexible an item of revenue as the sales tax was removed from the State List.

Touching upon the proposal to transferring the power to levy and collect sales tax to the centre and making provision for distributing the receipts from sales tax to the States, the Commission observed:

"The argument that the receipts from the tax can be distributed to the States and their finances not adversely affected, does not take into account the

¹². Id. at 46, 47.
many practical difficulties attendant upon the centralisation of a tax with such strong local moorings as the sales tax".13

Moreover, the Commission thought that where both the dealer and consumer were situated in the same State, the levy of tax by the Government of that State could not be objected. It is where either the dealer or the consumer is outside the State which seeks to impose tax that real difficulty is experienced.14 After dispassionately evaluating the pros and cons of the question the Commission categorically stated that sales tax, in essence, must continue to be a State tax. As a source of revenue (subject to the very minor exception in respect of newspapers) it must wholly belong to the States.15 The sphere of power and responsibility of the States, the Commission pointed out, must be said to end, and that of the Union to begin, when the sales tax of one State impinges administratively on the dealers and physically on the consumers, of another State. It has to be ensured that the sales tax system of one State does not impose an arbitrary and unregulated burden on either consumer or dealer of another State or unduly interfere with the free flow of

13. Id. at 47.
14. Id. at 53.
15. Id. at 54.
trade and commerce. In inter-State dealings complete exemption of sales outside the State places the exporting State in a disadvantageous position. The Commission explained the situation thus:

"A State with a backward economy and relying on revenue from sales tax leviable on its main source of agricultural or industrial raw materials suffers financially from this restriction."

The regulation of levy of sales tax on inter-State transaction is necessary, not a prohibition of tax on such transaction. The Commission thus felt that inter-State sales should be the concern of the Union.

However, it was not envisaged that the Central Government should maintain elaborate administrative machinery for the purpose of assessment and collection of tax on inter-State sales. The States have provided machinery for assessment and collection of local sales tax. It would be both economical to the Central Government and also convenient to the traders who would otherwise be subject to two assessing

16. Id. at 48.
17. Ibid.
authorities, if the State machinery is used for levy and collection of the central sales tax. The Commission therefore recommended that the Union responsibility for collection could be exercised using the State machinery and the revenue from inter-State taxation must be devolved on States.\textsuperscript{18}

Article 286 as it originally stood divided sale of goods into two categories. One was goods sold and delivered for consumption in another State. The other was goods sold within the State. The Commission found that this dichotomy was imperfect from the point of view of tax administration.\textsuperscript{19} The Commission felt that all sales of goods could both usefully and effectively be divided into two compartments; namely those in the course of inter-State trade and commerce and those not in the course of such trade and commerce. Inter-State sphere should be left to the Union for policy formulation. The revenue therefrom should be devolved on the respective States. The intra-State sphere should be dealt with by the States both in respect of policy and administration. The Commission hoped that this arrangement would ensure both co-ordination and adaptation to changing

\textsuperscript{18} Id. at 56-57. \\
\textsuperscript{19} Id. at 54.
needs more effectively than rigid constitutional provision supplemented by occasional judicial interpretation.\textsuperscript{20}

The Commission suggested that the receipts from the Central levy should not be credited to the Central revenues, but should be retained by the States. The intention of the central levy was not to provide a source of revenue for the Centre. The main intention was to ensure that some revenue should be accrued to the exporting State without raising unduly the burden on consumers in the importing State. The central legislation must, therefore, specify a reasonable rate at which the tax on sales in the course of inter-State trade and commerce should be levied.\textsuperscript{21}

Inter-State trade comprises (1) transactions which only registered dealers are involved and (2) transactions in which unregistered dealers are involved. Should the low rate recommended for inter-State taxation extended to dealings with unregistered dealers? The Commission emphatically rejected uniform pattern in respect of these two distinct type of dealings, and observed:

\textsuperscript{20} Ibid.
\textsuperscript{21} Id. at 57.
"Where transactions take place between registered dealers in one State and unregistered dealers or consumers in another, this low rate of levy will not be suitable, as it is likely to encourage avoidance of tax".22

Transactions involving unregistered dealers and consumers should, the Commission suggested, be taxable at the same rates which the exporting States impose on similar transactions within their own territories. The unregistered dealers and consumers involved in inter-State transactions will not then be in an advantageous position.

The Commission further recommended that in cases where no tax was levied for sale of goods, or a lower rate of tax levied by the exporting State, the tax to be collected by it on the inter-State sale of those commodities should be similarly exempted or, as the case may be, taxed at the same lower rate.23 The Commission with a view to reducing the burden of tax, suggested that no purchase tax should be levied by the State on the specified goods on which a central tax on inter-State trade has already been levied.24

22. Ibid.
23. Id. at 58, 61.
24. Id. at 61.
Specific recommendations made by the Commission on the policy to be pursued in regard to taxation of goods declared by Parliament to be of special importance\(^{25}\) have been dealt with in a separate chapter.\(^{26}\)

For the effective implementation of these proposals, the Commission suggested draft amendments to the Constitution. In the Union List a new entry was proposed to be inserted so as to enable Parliament alone to legislate on taxes on sales or purchases other than newspapers taking place in the course of inter-State trade or commerce.\(^{27}\) Consequential amendments were suggested to entry 54 in List II of Seventh Schedule and to Articles 269 and 286. The Commission also suggested amendment for investing Parliament with power to formulating principles to determine when a sale or purchase takes place outside a State or in the course of inter-State trade and commerce.

The Constitution (Sixth Amendment) Act 1956\(^{28}\) was passed for implementing the proposals made by the Taxation Enquiry Commission. By virtue of Article 269(3), newly

\(^{25}\) Constitution of India, Article 286(3).
\(^{26}\) See Ch.XIV, infra.
\(^{27}\) For the text of the amendments suggested. See Appendix C.
\(^{28}\) For the amended provision of Article 286, see, Appendix A.
inserted, Parliament has been authorised to formulate by law principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.\(^{29}\)

Parliament was invested with exclusive power to make laws imposing tax on the sale or purchase of goods in the course of inter-State trade or commerce.\(^{30}\) The amount collected by way of such tax was to be assigned to those States which levied the tax.\(^{31}\) Parliament thus became the paramount authority in the field of taxation of inter-State sale.

Parliament reappraised the situation in the light of the constitutional change and in the wider perspective of national economy. Taxing inter-State sale is a vexed problem.

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29. Article 269(3), newly inserted by the Constitution (Sixth Amendment) Act 1956, is as follows: "269(3). Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce".

30. By the Constitution Sixth Amendment Act 1956, a new entry was added to List I of the Seventh Schedule as under: "92A. Taxes on the sale or purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-State trade or commerce".

31. Article 269(g) inserted by the Constitution (Sixth Amendment) Act 1956 was as follows: "269. Taxes levied and collected by the Union but assigned to the States:—(g) Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce".
There are a host of factors which are significant in moulding tax policy. Freedom of trade and commerce is one. Denial of power to the States to impose tax on inter-State transactions is another. The need for reducing tax burden on the consuming public is yet another. Factors which cripple industrial units have to be avoided. If this is not done there will be loss of production leading to less employment opportunity. While exercising the power vested in it, Parliament had to take into account these aspects.

The Ministry of Law referred to the Law Commission the question of formulating the principles for determining when a sale or purchase takes place in the course of inter-State trade or commerce. The Law Commission took note of the main purpose behind the recommendation of the Taxation Enquiry Commission to the effect that the power to tax inter-State transaction be vested in Parliament and that it be empowered by law to formulate the principles for deciding when a sale or purchase takes place in the course of inter-state trade or commerce. The idea behind the recommendation was that the rate of tax on inter-State transactions should

be fixed by Parliament in the interest of the country as a whole. It was also necessary that the principles for determining the inter-State nature of the transaction should be fixed by Parliament. An ordinary enactment could avoid the rigidity of a constitutional provision. It could be varied to suit the needs from time to time.

The Law Commission pointed out that two aspects had to be born in mind while formulating the principles. Unlike the position in the case of export import trade the question was not one of exemption from tax. But the position was one of taxation of the inter-State transaction by the Union the proceeds of which were to be assigned to the States. While imposing tax an important consideration had always to be kept in mind, namely, the interest of the trade and commerce which under the constitutional policy had to be free. This will be possible if the tax burden was limited by the Union.33

The Law Commission took the view that only a transaction which in fact occasioned the movement of goods from one State to another State should be characterised as inter-State transaction. Transactions within the State contemplating subsequent inter-State movement should not be treated as inter-State dealings. The test was similar to

33. Id. at 3.
the one formulated to decide the question when a sale or purchase shall be in the course of export or import.\textsuperscript{34}

One may however note that the above mentioned two tests may not necessarily be common. This is because the purpose of control on the two transactions are different. The incidences are different. The purpose of regulation of export is to capture foreign market. In the context of import the purpose is to make available things absolutely necessary for the country at the minimum possible cost. The incidence of the regulation is therefore by way of total exemption from tax liability. In the context of inter-State trade the purpose of regulation is to facilitate inter-State commerce by limiting the tax burden. The incidence of regulation is not by way of exemption from tax but by way of regulated imposition of tax in a reasonable way. The tests can therefore be different.

The Law Commission distinguished a sale in the course of inter-State trade from an intra-State trade. A sale or purchase becomes inter-State when such sale or purchase itself occasions the movement of goods from one State to another. For instance, 'A' buys goods in State 'B' and

\textsuperscript{34} Id. at 4.
then takes it to State 'C'. In the view of the Law Commis-

sion the same would be the result even if 'A' had the
intention to take the goods to State 'C' after purchase,
because even then the sale to 'A' does not by itself occa-
sion the movement of goods to State 'C'. But when 'A' buys
goods in State 'B' and requires the seller to deliver the
goods to a carrier for transmission to State 'C' and to
deliver him the goods there, the sale becomes inter-State.
Because there is a movement of the goods in pursuance of
the contract. The sale occasions the movement of goods
from one State to another. 35

Another problem that arises in the context is the
nature of the sale effected during the course of movement of
goods from one State to another. For example, in a sale be-
 tween 'A' in State 'B' and 'C' in State 'D', goods move from
State 'B' to State 'D'. While the goods are so in transit
'C' in State 'D' may sell it to 'E' in the same State by
transfer of documents of title. Will be transaction between
'C' and 'E' in State 'D' be inter-State? The Law Commission
took the view that it should be. 36 Will not then transact-
ion which is in fact intra-State, be converted into inter-
State by transfer of documents of title? For example in the

35. Id. at 5.
36. Ibid.
illustration, 'E' can sell to 'F' and 'F' to 'G' and so on, all persons in the same State, by transfer of documents of title and the transactions will be inter-State in character. The Law Commission did not consider it a serious problem. It observed that it is unlikely that dealers would resort to such dealings.37 Proceeding on the basis that all such inter-State sales would be taxed, the Law Commission said,

"We are not inclined to attach much importance to this suggestion as in any case the sale or purchase will not escape taxation altogether and it is unlikely that dealers would resort to such attempt in order to save inter-State and intra-State tax".38

Suppose such subsequent inter-State sales are not taxable.39 Then the dealers will be at an advantageous position by effecting sales by transfer of documents of title. This is because, if the sale is inter-State there is no liability, whereas if the sale is local there is liability. In other

37. Ibid.
38. Ibid.
39. The development of the law had created such a situation. Exemption was granted to such subsequent inter-State sales in 1958 by the Central Sales Tax (Second Amendment) Act, 1958 which added sub-section (2) to Section 6 of the Act. For the text of Section 6, see Appendix B.
words if the subsequent sale is effected by transfer of documents of title there will be no liability, but if the sale is effected after taking delivery of goods liability to pay tax under the local sales tax law would arise. In such a situation there will be a tendency for the dealers to effect sales by transfer of documents of title to escape liability for payment of sales tax under the sales tax law of the State.

Even if such a situation arises, the question still is whether sale effected by transfer of documents of title should be characterised as inter-State. The answer should be in the affirmative. This is because such sale cannot be treated as local sale, but should be treated as inter-State since the sale is effected before the termination of the inter-State movement of the goods, which stamps the inter-State character on the sale.

The Law Commission finally formulated the principles for determining the inter-State character of a sale or purchase. The Commission recommended that 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. The Commission clarified that where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of transit sale under 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. 40

Article 286 prohibited levy of tax on outside sale. The purpose of such prohibition was to avoid the evil of multiple taxation of the same transaction by different States. The Law Commission therefore addressed itself to the task of laying down principles for determining when a sale or purchase takes place outside the State. The problem it had to decide was therefore one of giving situs to the sale by picking up any one among the various possible ingredients of sale. The Commission was of the view 41 that the location of the goods shall be the suitable text for determining the situs. The location of the goods is easily ascertained. The only problem is the fixation of the point of time at which the location of the goods is to be taken for the purpose of the situs. It was fixed at the time of

40. Supra, n.32 at p.5.
41. Id. at 6,7.
making of the contract of sale in the case of specific or ascertained goods. In the case of unascertained goods the time of their appropriation to the contract of sale was taken to be decisive of the situs. It happens in the commercial world that in respect of unascertained or future goods the seller or buyer may make an appropriation of the goods and put them in the course of transit without the assent of the other party. In such a case the location of the goods at the time of assent may be different from its location at the time of appropriation. In such cases, the Commission observed, the location of the goods at the time of assent was irrelevant and it was the location at the time of appropriation that was the decisive factor. It may also happen that a single contract of sale may cover goods in different States. How to fix the situs in such case? The Commission found a solution by suggesting that such sale should be regarded as separate contract in relation to the goods located in different States. The position was clarified that when a sale is, in accordance with the above principle, deemed to have taken place inside a State it shall be deemed to have taken place outside all other States. The Commission recommended accordingly.42

42. Id. at 8. The principles enunciated by the Law Commission were as follows:- 1. A sale or purchase of goods shall be deemed to take place where the goods are—(a) in the case of specific or ascertained goods, at the time of the contract of sale is made; and (b) in the case of unascertained (contd...)

The Central Act was passed by Parliament with a view to implementing the constitutional mandate. Principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce were formulated. The recommendation of the Law Commission in this respect was accepted. The provision in the Act clarified that where the movement of the goods commenced and terminated in the same State, the movement is not inter-State merely because of the fact that in the course of such movement goods might have been passed through another State.

In enacting the law, Parliament accepted the distinction made out by the judiciary between transport of goods outside the State as part of the sale and transport subsequent to the completion of the sale. Manifestly, the judge-made law in this regard received legislative approval.

(f.n.42 contd.)

or future goods, at the time of their appropriation to the contract of their sale by the seller or by the buyer, whether the assent of the other party is prior or subsequent to such appropriation. Explanation:- When there is a single contract of sale or purchase of goods situated at more places than one the above provision shall apply as if there were separate contracts in respect of the goods at each of such places.
2. When a sale or purchase of goods is determined in accordance with sub-clause (1) to be within a State, such sale or purchase shall be deemed to have taken place outside all other States".

43. For the important provisions of the Act, see, Appendix B.
The Central Act laid down principles for determining when a sale or purchase of goods takes place outside a State. It gives importance to the situs of the goods. Under the Constitution sale outside the State cannot be taxed by the State; State can tax only inside or local sale. The Act avoids competing claims of States and multiple levy of tax when two or more States have a connection or nexus with a sale on account of some element of the sale taking place within its territorial limit. It defines when a sale or purchase shall be deemed to take place inside a State. In so defining the Act adopted the recommendations of the Law Commission.

The Central Act creates a charge on every dealer who effects sale of goods in the course of inter-State trade or commerce. No tax is levied on inter-State purchases. The Act provides for registration of dealers. Registration ensures accountability and confers certain benefits: Administratively it may not be feasible to locate the numerous dealers, big, medium and small. So the burden is placed on the dealers to get themselves registered. The registered

44. Central Sales Tax Act 1956, Section 4. In formulating the principles the Act adopted the recommendations of the Law Commission.
45. Id., Section 6.
46. Id., Section 7.
dealers were under obligation to maintain true and correct accounts. They can enjoy concessional rate of tax if they comply with the conditions prescribed for the purpose. A higher rate of tax is provided in respect of inter-State sales between persons other than registered dealers. In respect of goods exempt from tax under the local law or is subject to a lower rate of tax under it the rate of tax on sale in the course of inter-State trade or commerce is calculated at the same rate and in the same manner as would have been done if the sale had in fact taken place inside the 'appropriate' State. The assessment and collection of tax are to be made using the sales tax machinery of the State Government. The State Government is authorised to give exemption or reduction in the rate of tax.

The Central Act declares goods which are of special importance in inter-State trade or commerce in compliance with the constitutional provisions.

It would be seen that judiciary had evolved principles governing inter-State trade and commerce while interpreting constitutional provisions contained in Article 286(2)

47. Id., Section 8.
48. Id., Section 9(2).
49. Id., Section 8(3).
50. For a discussion on this aspect see, Ch.XIV.
before its amendment in 1956. According to the Supreme Court, Section 3 of the Central Act is a legislative recognition of those principles.

On enactment of the law, the responsibility fell upon the judiciary to find out the contours and to give meaning and content to the concept. Section 3 of the Act takes within its ambit two kinds of inter-State sale or purchase. One is sale occasioning the movement. The other is transit sale. A transaction could be taxed if two conditions concur: namely, there must be a sale and such sale must be inter-State.

The scope of the levy of tax under the Central Act came up for the consideration of the Supreme Court in Tata Iron. The company had its registered office in Bombay. Its head sales office was in West Bengal. The factories were in

51. In Cement Marketing Co. of India v. State of Mysore, (1963) 14 S.T.C. 175 Justice Kapur of the Supreme Court observed at p.182: "In Section 3 of the Central Sales Tax Act (Act 74 of 1956) the legislature has accepted the principle governing inter-State sales as laid down in Mohanlal Hargovind's case, (1955) 6 S.T.C. 687". See also the observations of Justice Sarkar in State Trading Corporation v. State of Mysore, (1963) 14 S.T.C. 416 at 419.
Bihar. The company was a registered dealer under the Central Act in West Bengal. It was also a registered dealer under the State sales tax law in Bihar. The company filed return in respect of the sale liable to tax under the Central Act in West Bengal. The sale from Jamshedpur had not been included in these returns. According to the company such sale from Jamshedpur was liable to tax not in West Bengal but in Bihar since the situs of sale was in Bihar. The sale from Bihar fell into two categories. Sale which occasioned inter-State movement of goods and also sale which was effected by transfer of documents of title. The West Bengal sales tax authority took the position that in respect of sale by transfer of documents of title the situs of sale was the place where the documents were transferred. The goods being located in the State of Bihar at the time of contract and appropriation, the company took the stand that the State of West Bengal had no jurisdiction to assess the transaction. However the assessing authority made the assessment and called upon the company to pay the tax, though tax under the Central Act on the same transaction was paid in Bihar.

An inter-State sale becomes taxable falling either under the concept of occasioning the movement of goods or under the concept of transit sale by transfer of documents of title to the goods. The levy under the former arises when
the sale occasions the movement from one State to another and
under the latter when the sale is effected by transfer of
documents of title during inter-State movement of goods. Can
the same sale fall under both? The Supreme Court answered it
in the negative.53 The Court held that Section 3(a) covers
sales in which the movement of goods from one State to another
was the result of a covenant or incident of the contract of
sale.54 The property in the goods may pass in either State,
namely the State from which the movement commences or the State
in which the movement ends.

Which type of sale is covered by Section 3(b) of the
Act, i.e., transit sale? A sale in which the property in the
goods passed before the movement of goods from one State to
another does not fall under it. Similarly a sale in which the
property in the goods passed after the termination of the move­
ment of goods will also not fall under Section 3(b). This is
because the transit sale is one which is effected by transfer

53. Supra, n.52 at 666. Justice Shah, speaking for the Court
observed at p.667: "In our view, therefore, within clause (b)
of Section 3 are included sales in which property in the
goods passes during the movement of goods from one State to
another by transfer of documents of title thereto: Clause
(a) of Section 3 covers sales, other than those included in
clause (b), in which the movement of goods from one State
to another is the result of a covenant or incident of the
contract of sale, and the property in the goods passes in
either State". See also, Ch.XII, n.26.
54. Id. at 667.
of documents of title to the goods during their movement from one State to another. The Court therefore clarified that a sale effected by transfer of document of title after the commencement of movement and before its conclusion alone will be inter-State sale under Section 3(b).55

Which State is entitled to levy and collect the tax when a sale is effected by transfer of documents of title? Where does the situs of such a sale lie? Is it the State, in which the documents of title were transferred? The Court held that, in the absence of an indication to that effect in the statute, the place where the documents were transferred could not be taken to be the place of sale. Were it so, the Court pointed out rightly, large scale evasion of the tax could ensue. It is possible that the documents may be handed over outside India. In such a case the inter-State sale becomes one not taxable by any State in India. What is then the test to decide the question? The Court found the answers in Section 4 of the Central Act.56 Applying that provision in the case of ascertained goods the sale took place in the State in which the goods were located at the time of the contract of sale. In the case of unascertained goods the sale took

55. Id. at 666.
56. For the text of the provision, see Appendix B.
place in the State in which the goods were located at the time of their appropriation to the contract of sale.57

The purpose of denial of power to the States to levy tax on inter-State sale was to avoid multiple taxation. The Central Act could not therefore have intended to tax the same transactions twice. Under the Act the tax payable is a certain percentage of the turnover.58 The tax being only a certain percentage of the total sale price, it can be taxed only once. When the Act provides that the tax shall be collected by the appropriate State, it indicates that it is collected by one State only.

The decision in Tata Iron introduced the doctrine of 'incident' in the concept of inter-State sale. A sale becomes an inter-State sale if the movement of goods from one State to another is under a covenant or an incident of the contract

57. Supra, n.52 at 672. After formulating the principles the Court did not proceed to examine, in the absence of complete details of the modus operandi of the business transaction of the company, whether the sale involved in the case in respect of which assessment proceedings were initiated by the Commercial Tax Officer, Calcutta were those falling under Section 3(a) or Section 3(b) and whether the State of West Bengal or State of Bihar was entitled to levy.
of sale. The idea of movement as an 'incident', however, is not seen in the test formulated by the minority in *Tata Iron*. According to the minority a sale occasions the movement of the goods only when the terms of contract provide that the goods would be moved. Simply because the contract between parties does not expressly provide for the movement of goods, one cannot totally disregard the nature of the transaction if it impliedly provides for the movement. It is a matter of common knowledge that very often transactions are governed in the business world by a course of conduct or by implication or understanding between the parties. In such circumstances there may not be express contract providing for the movement of goods. Denial of inter-State character of the transaction for that reason will be a miscarriage of justice.

The concept of movement as an incident of the contract in the majority judgment has widened the ambit of the provision.

Another important wholesome development brought about by *Tata Iron* is the declaration that though there may be two inter-State sales falling under both the limbs of Section 3, there would be only one sale exigible to tax. Had

59. *Supra*, n.52 at 670.
it not been so confined, the result would have been that certain sale could be taxed under both. Taxes could be imposed when there is a movement of goods as a result of a contract and also when a sale is effected by transfer of document of title during their movement from one State to another. This has been rightly prevented by this decision.

When one looks at the legal principles originally enunciated by the judiciary and subsequently approved by the legislature, one sees that the common thread woven in the concept of inter-State sale, whether it be a transit sale or non-transit sale, is the movement of goods from one State to another. So in order to ascertain whether there is an inter-State sale as understood in law the preliminary question is whether there is movement of goods from one State to another. If the answer to this question is in the affirmative, in the case of non-transit sale it has to be ascertained further whether such a movement was the result of covenant or incident of the contract. In transit sale there is no scope for enquiry about contract; what is to be ascertained is only whether the sale is effected by a transfer of documents of title to the goods.