Chapter XVII

CONCLUSIONS

The consequence of indirect taxation is now widely recognised. With massive dimensions, sales tax has a creative role in the economic life of the people. Needless to say that unimaginative impost may work as an engine of destruction affecting vital fabric of the economy. How to tax is, therefore, a baffling question. No wonder that there is difficulty in evolving an exemplary policy. This is increasingly realised in the realms of export and import as well as inter-State trade.

Multiple levy, by the Centre and by the States, strangulates the initiative for foreign trade. With great insight and wisdom, the architects of the Constitution therefore shaped the linchpin provision in Article 286 with the purpose of averting such a crisis. The provision prohibits the States from levying tax on sale or purchase of goods where such transaction takes place in the course of import into or export out of India. The intention is clear: incidence of a State levy should not be a hindrance to the promotion of foreign trade.
It seems that the Constituent Assembly passed the provision in haste. Members expressed doubts on the nebulous expression 'in the course of'. But these doubts were not paid due attention. Ambedkar's assurance to find out another suitable expression was not at all carried out.

In the early 1950s by interpretational device the Supreme Court liberated the constitutional provision from the narrow confines. The Court extended the coverage of immunity to a new category, namely sale and purchase taking place during the movement of goods from one country to another. Later it carved out one more category, namely, f.o.b. sales. The Court stopped at this point. This judicial restraintivism on the scope of the exemption is quite visible.

Purchase by or sale to the exporter is directly and inseparably connected with export. The Supreme Court ought to have recognised this fundamental reality while determining the ambit of the concept of export sale. Had the Court done so the course of history of taxation in this vital field would have been different. The Supreme Court should have acted as a Court of policy. Instead, the Court missed tremendous opportunities for showing the path of commercial development through judicial creativity. It could have widened the scope of the exemption. But it clung to the earlier formula.
The Taxation Enquiry Commission and the Law Commission of India had a complacent attitude. This is borne out from the fact that without studying deeply the ramifications of the issues involved, they gave a green signal for legislative adoption of judicial restraint.

The provision for exemption in the Central Act opened a Pandora's box. Judicial decisions did not indicate any consistent approach laying down guidelines. On the other hand, judicial conservatism asserted itself against the genuine interest of the export trade. Denial of tax exemption to export through canalising agency was a real blow. This is so when there was stiff international competition. It seems as though the Court had a rigid and less sensitive line of thinking.

The legislative measure to extend the immunity to transaction preceding the export was largely narrowed down by judicial interpretations. The legislative language, it is true, was ambiguous. A judicial gloss was the result. It wove more restrictions into the law. There is no rationale in laying down the condition that the purchase should be for the fulfilment of a prior export order. Even a contract with a local buyer to export must qualify for exemption. The policy must be to extend the exemption to any
sale culminating in actual export. The legislation hedged in by limitations imposed by the Supreme Court virtually nullify the full benefit of exemption to a large number of dealers. Obviously this state of affairs needs a change: the law requires a suitable amendment. It is necessary that the exemption be extended to all transactions in the chain leading to export.

India is on the brink of a crisis in foreign exchange. It is time that taxation policy is streamlined with orientation towards export. Cut in tax on export sale promotes export accompanied by more employment and prosperity.

States may not share the zeal for providing more exemption. This is so on account of the obvious loss of revenue. The anxiety of the States in the matter cannot be belittled. The States have to be compensated by the Centre in proportion to the export performance from each State. When this is done there would be no objection from States. On the other hand, the whole-hearted co-operation of the States in the export adventure is obtained. In any event, the Central Government must evolve a new strategy with the concurrence of the States. Export promotion must be viewed as a joint adventure of the industry, the Centre and the States.
In modern times no country is an island and can depend entirely on its own indigenous sources for survival. Growing interdependence among nations makes even advanced countries to rely on import. A developing country like India has to import not only essential consumer goods but also a variety of raw materials and equipments. Tax relief will doubtlessly have an encouraging impact on trade, commerce and industry. The enigma of decline of State revenue and the need for the industry to get tax concession for import can be solved only by policies formulated with insight and perception. In the import sector the law governing exemption does not appear to be in a satisfactory state. Denial of concession to the sale after import appears to be unjust. Exemption should be extended at least to the first sale or purchase after import in respect of raw materials. This would be positively helpful to industrial growth. Excessive taxation of such goods makes the industry unprofitable. Tax exemption promotes industrialisation.

The formulation of policy to regulate inter-State trade is fundamental to the economic growth and consumer welfare. A sagacious taxation policy can act as a main-spring of inspiration to trading activity throughout the length and breadth of the country. The constitutional scheme originally evolved for the purpose was excellent. But the
inconsistency in judicial decisions and lack of guidelines from the Court in the early days caused considerable difficulty. The overruling by the Supreme Court of its own eminently sensible judgment was an unwise step which necessitated the Central Act. The definition of inter-State sale in this new law appears to be unsatisfactory. The phraseology 'in the course of' added to the confusion in the case of inter-State sale.

In tailoring the definition of inter-State sale Parliament was adopting the view of a particular judge of the Supreme Court. The judge made a distinction between transport of goods outside the State under the contract of sale and transport subsequent to the completion of sale. Only the former category, according to him, attained the character of inter-State sale. This view was given legislative recognition in the Central Act.

Levy of tax should be similar in all cases where there is a sale and an immediate flow of goods from one State to another. Such a scheme facilitates trade and commerce. The definition has therefore to undergo a change. The dominant theme of inter-linking of contract with movement has to be replaced by a more realistic principle. In deciding whether a contract of sale or purchase occasions the
movement of goods from one State to another, the totality of the situation or the integrality of the transaction has to be reckoned with. The sale following the transport or the transport following the sale are closely interlinked. When a person who buys goods in one State for taking it to another State, does in fact take it outside, the sale should be inter-State. Similarly, when a person takes the goods from one State to another with a view to selling it there and does in fact sell, the sale should be inter-State. Insistence on the contractual stipulation or understanding to move the goods in inter-State commerce does not take into account the realities of the situation and leads sometimes to miscarriage of justice.

The concept of inter-State sale should be given a wide interpretation. All impediments in the way of inter-State trade should be removed. More revenue to the coffers of the State should not be the consideration that reign the policy of taxation on inter-State trade. Long term perspective designed to achieve growth of trade and commerce should not give way to short term and short-sighted schemes of revenue. If revenue is the goal it is not possible to eliminate tariff wars across the border of States in a federal system like that of India. National unity and integrity are not to be sacrificed when inter-State tax policies are formulated.
Sale by transfer of documents of title while the goods are in movement from one State to another is less controversial. This is a comparatively peaceful zone. Courts have clarified the law satisfactorily in the area.

The concept of inter-State transaction through agent or through branch has created confusion. This is a twilight area. Similar transactions are viewed differently. When a dealer operates through branch or through agent in another State, transactions of sale involving movement of goods through such branch or agent must be treated as transfer of stock for sale by the branch or agent, and not inter-State sale direct to the buyer.

In interpreting an entry in the list of declared goods the judiciary should look into the purpose and philosophy of the provision. Otherwise the consumer will be the ultimate victim. Unfortunately, judicial responses do not reflect a consumer justice oriented approach.

The list of declared goods should be enlarged taking within its wing primary articles of commercial importance and essential consumer goods. This will be a useful step towards uniformity at national level of sales taxation.
There should be periodical review of the list with a view to updating it in tune with the needs of inter-State trade and commerce from time to time. The constitutional mandate for declaration of goods of special importance in inter-State trade and commerce can be fulfilled effectively only if periodical revision is made.

The present scheme for payment of central tax and refund of the State tax in respect of declared goods is inconvenient both to the tax-payer and to the tax administration. The tax paid under the State law should be set off against the tax due under the Central Act to avoid inconvenience. A reform in the law is called for.

The soul of trade is its freedom. Freedom of trade is therefore of supreme importance. There is no justification for maintaining narrow domestic tariff walls and trade barriers. In evolving the law in the field of discriminatory taxation the judiciary has acted with vision. It has rendered substantial, if not full, justice in adjudicating the complex issues.

Taxation is a question of public finance. How to tax is a problem for the planners. Law renders a
formal model for the economic programme of taxation. Ideas emerge from factors such as political conviction and intellectual acumen. The empirical study helps bringing to light the agonies of the traders, the woes of the consumers and the tyranny of the administration. The study reveals the essential need for a uniform sales tax code for the entire nation. This could be achieved in a phased manner. The maladministration of the check-post emphasises the imperative need for corrective action. The responses in the empirical study show status-obsessed contentment of the administration. However, the lawyers, economists, academicians and other segments of society desire a change. The analysis of judicial decisions also indicates the need for a change in law in the field of export, import and inter-State trade.

In fine, liberalisation of tax exemption on export-import trade and widening of the concept of 'inter-State sale' are the desiderata for betterment of the structure of sales taxation.