

GAHC010181512022



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
PRINCIPAL SEAT
W.P(C) No. 6108/2022

M/S Bharat Trading Corporation,

A partnership firm registered under the Partnership Act, 1932 having its office at 76 MS Road, Athgaon, Guwahati-781001, Assam and in the present proceedings, represented by one of its partner, Shri Tarun Jain.

.....Petitioner

-Versus-

1. State of Assam

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

2. Commissioner of State Taxes (Earlier Known as Commissioner of Taxes) Kar Bhawan, Dispur, Guwahati-781006

3. Superintendent of Taxes, Unit-C, Guwahati, Kar Bhawan, Dispur, Guwahati-781006

4. Hindustan Paper Corporation Ltd., Having its registered office in Scope Miner Complex, Laxmi Nagar, District Centre, New Delhi-110092 and in the present proceedings represented by its liquidator Mr. Kuldeep Verma who is a Registered Insolvency Professional with Insolvency and Bankruptcy Board

of India having registration No. IBBI/IPA-001-IP-P00014/2016-17/10038 and having its office at 46 BB Ganguly Street, 5th Floor, Unit No. 501, Kolkata

.....Respondents

W.P(C) No. 6111/2022

M/S Bharat Trading Corporation,

A partnership firm registered under the Partnership Act, 1932 having its office at 76 MS Road, Athgaon, Guwahati-781001, Assam and in the present proceedings, represented by one of its partner, Shri Tarun Jain.

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.....Respondents

W.P(C) No. 6112/2022

M/S Bharat Trading Corporation,

A partnership firm registered under the Partnership Act, 1932 having its office at 76 MS Road, Athgaon, Guwahati-781001, Assam and in the present

proceedings, represented by one of its partner, Shri Tarun Jain.

.....Petitioner

-Versus-

1. State of Assam

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

2. Commissioner of State Taxes (Earlier Known as Commissioner of Taxes) Kar Bhawan, Dispur, Guwahati-781006

3. Superintendent of Taxes, Unit-C, Guwahati, Kar Bhawan, Dispur, Guwahati-781006

4. Hindustan Paper Corporation Ltd., Having its registered office in Scope Miner Complex, Laxmi Nagar, District Centre, New Delhi-110092 and in the present proceedings represented by its liquidator Mr. Kuldeep Verma who is a Registered Insolvency Professional with Insolvency and Bankruptcy Board of India having registration No. IBBI/IPA-001-IP-P00014/2016-17/10038 and having its office at 46 BB Ganguly Street, 5th Floor, Unit No. 501, Kolkata

.....Respondents

W.P(C) No. 6113/2022

M/S Bharat Trading Corporation,

A partnership firm registered under the Partnership Act, 1932 having its office at 76 MS Road, Athgaon, Guwahati-781001, Assam and in the present proceedings, represented by one of its partner, Shri Tarun Jain.

.....Petitioner

-Versus-

1. State of Assam

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

2. Commissioner of State Taxes (Earlier Known as Commissioner of Taxes) Kar Bhawan, Dispur, Guwahati-781006

3. Superintendent of Taxes, Unit-C, Guwahati,
Kar Bhawan, Dispur, Guwahati-781006

4. Hindustan Paper Corporation Ltd., Having its registered office in Scope Miner Complex, Laxmi Nagar, District Centre, New Delhi-110092 and in the present proceedings represented by its liquidator Mr. Kuldeep Verma who is a Registered Insolvency Professional with Insolvency and Bankruptcy Board of India having registration No. IBBI/IPA-001-IP-P00014/2016-17/10038 and having its office at 46 BB Ganguly Street, 5th Floor, Unit No. 501, Kolkata

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

<u>Advocate for the petitioner(s)</u>	:Dr. A. Saraf, Sr. Advocate Mr. P.K. Bora, Advocate
<u>Advocate for the respondents</u>	:Mr. B. Choudhury, Standing Counsel, Finance & Taxation Department
Dates of Hearing	: 27.01.2025, 27.02.2025 & 04.03.2025
Date of Judgment & Order	: 06.06.2025

JUDGMENT AND ORDER (CAV)

The writ petitioner before this Court is a partnership firm registered under the Partnership Act, 1932 and having its Office at 76 MS Road, Athgaon, Guwahati-781001, Assam. The petitioner is a dealer engaged in sale and supply of acids and chemicals. All the partners of the petitioner firm are citizens of India and as such they are entitled to all the rights and privileges guaranteed under the Constitution of India and the laws framed thereunder from time to time. The petitioner firm at the relevant year was duly registered under the Central Sales Tax Act, 1956 (hereinafter referred to as "*the*

Act of 1956”) and is represented before this Court by one the partners.

2. For the period 2013-14, the petitioner firm made supplies of caustic soda to Hindustan Paper Corporation Ltd. namely the respondent No. 4 by way of e-way transactions and raised bills on the respondent No.4/ Company in respect of which the said company was required to issue declaration Forms “C” under the provisions of the Act of 1956.

3. It is submitted that the petitioner received an order from the Hindustan Paper Corporation Limited for supply of caustic soda. The Petitioner purchased the said item from a registered dealer outside the State of Assam and when the goods were in course of movement in inter-state trade and commerce by transfer of documents of title to the goods, supplied the same to the Hindustan Paper Corporation Limited. Such supply is a subsequent sale in course of inter-state trade and commerce. As per Section 16(2) of the Central Sales Tax Act, 1956, subsequent sale made in course of interstate trade and commerce is exempted from the payment of Central Sales Tax on the dealer furnishing a declaration Form - ‘E-1’ from the dealer making the first sale and a declaration in Form — ‘C’ from the recipient of the goods i.e. ultimate purchaser. Thereby the Petitioner was required to

produce Form — 'E-1' from dealer outside the State of Assam from whom the Petitioner purchased the caustic soda in course of interstate trade and commerce and a declaration Form — 'C' from the Hindustan Paper Corporation Limited and on production of the 'E-1' Form and 'C' Form, the Petitioner was not liable to make payment of the Central Sales Tax in respect of the supply of caustic soda to the Hindustan Paper Corporation of India.

4. It is submitted that the Petitioner raised the bills on account of supply of caustic soda by making a subsequent sale for transfer of document title of goods during the movement of the said goods during inter-state trade and commerce and procured Form — 'E-1' from the first selling dealer and clearly mentioned in the invoices issued to the Hindustan Paper Corporation Limited that the sale remain even sales transactions and the name of the first supplier of the goods was also mentioned. In the said invoices it was also clearly mentioned that the Form 'C' was to be received from the Hindustan Paper Corporation Limited.

5. It is submitted that during the year 2013-14, the Petitioner made E-1 purchases to the tune of Rs. 5,85,96,987/- (including tax) and made E-1 sales to the tune of Rs. 7,53,13,785/- to the Hindustan Paper Corporation Limited. The Hindustan Paper Corporation

submitted its 'C' Forms covering an amount of Rs. 7,42,48,275/- to the Petitioner and the balance 'C' Forms amounting to Rs. 10,65,510/- were not issued by the Hindustan Paper Corporation namely respondent No. 4.

6. It is submitted that the Petitioner was continuously following and taking up the matter with the Hindustan Paper Corporation Limited for issuance of the balance 'C' Forms through various letters and e-mails but the said 'C' Forms were not issued to the Petitioner.

7. It is submitted that the Hindustan Paper Corporation Limited vide letter dated 14.06.2017 addressed to the Petitioner in response to the e-mail dated 05.06.2017 informed that the Cachar Paper Mill, an unit of the Hindustan Paper Corporation Limited was in extreme financial crisis for the last past few years. It was stated that the Mill production had been suspended since October, 2015 due to fund crisis and scarcity of Fuel/Coal which has arisen due to ban imposed by National Green Tribunal in extraction and transportation of Coal in and from Meghalaya, which is the main fuel source to Cachar Paper Mill. It was further stated that due to sub-optimal production and prolonged suspension of production, fund crisis has deepened and the Hindustan Paper Corporation Limited could not clear the statutory dues to the State Sales Tax Authority. Consequently the

Sales Tax Department was not issuing C-Forms to the Cachar Paper Mill since November, 2015. It was further stated in the said letter that the Hindustan Paper Corporation Limited has taken up the matter to the appropriate authority for providing fund and once fund is received, the Corporation shall clear the Government dues and 'C' Form will be collected will thereafter be issued to the Petitioner.

8. It is submitted that since the Hindustan Paper Corporation Limited did not issue the 'C' Form and the assessment proceedings were taken up by the Assessing Authority, the Petitioner vide letter dated 05.08.2017 informed the Superintendent of Taxes that the Hindustan Paper Corporation was yet to issue the 'C' Forms against the sales made to the Hindustan Paper Corporation Limited for the various assessment years. The Superintendent of Taxes accordingly on receipt of the said letter, vide letter dated 22.09.2017, addressed to the Manager Finance, Hindustan Paper Corporation Limited, Nagaon Paper Mill and enquired about the Petitioner's claim of non-issuance of 'C' Forms by the Hindustan Paper Corporation Limited. In the said letter, it was stated that every registered dealer is required to submit statutory Form 'C' for inter-state sales of taxable goods and it is to be submitted for every quarter ending for which they can claim exemption under sub-section (2) of Section 6, read with Rule 12(4)/concessional rate of tax under sub-Section (4) of Section 8 of

Central Sales Tax Act, 1956 read with Rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957. It was further stated in the said letter that If the dealer fails to submit such statutory forms before the Assessing Officer within the stipulated time, his claims will not be entertained and such sales will be treated to be sale to unregistered dealer and levy-able of existing rate of VAT as per law. The Superintendent of Taxes was requested to confirm the matter whether the dealer's claims of such huge pending amounts of 'C' Form with Hindustan Paper Corporation Limited, Jagiroad against 'E-1' sales is genuine and further that if the same is correct, inform the reason of non-issuance of statutory forms so that the assessing authority can be proceed with the higher authority and if claim of the Petitioner is not genuine, then assessment will be completed as per the provision of Central Sales Tax, Act, 1956.

9. It is submitted that the Superintendent of Taxes, Guwahati, Unit C without awaiting for the reply from respondent No. 4 thereafter completed the assessment of the petitioner company for the period 2013-14 and vide order of assessment dated 05.05.2019 imposed an amount of Rs. 7, 58, 759/- on account of tax, interest and penalty.

10. It is submitted by the learned Senior counsel for the petitioner that in the meantime the National Company Law Tribunal in Company Appeal (AT) Insolvency No. 585/2019 dated 02.05.2019 passed an order of liquidation in respect of the Respondent Corporation and liquidator was appointed. The Tribunal vide order dated 26.08.2020 in I.A. No. 3150/2020 directed the liquidator to convene a meeting of committee of stakeholders and place the scheme for its consideration and also directed the liquidator to file the status report \containing the outcome of the meeting. The meeting of the Stakeholder Consultation Committee was held on 02.09.2020 in which meeting the proposal/scheme submitted by MCL was not found to be feasible by the financial creditors, employees/workmen and the operational creditors. The Government of Assam also submitted two letters seeking one month time as the State Government was making efforts with the Central Government for revival of closed mills and another letter dated 29.01.2020 seeking additional time to work out details of its proposal.

11. It is submitted that the National Company Law Tribunal vide order dated 26.04.2021 directed the liquidator to follow the decision of the NCLAT in Company Appeal (AT) Insolvency No. 585/2019 to sell the corporate debtor as going concern. The two units of the Respondent Corporation, namely, Nagaon Paper Mill and Cachar

Paper Mill were non-operational since March 2017 and October, 2015 respectively. Accordingly the liquidator took steps to sell the Respondent Corporation as a going concern as per Regulation 32E of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulation, 2016. Ultimately the State of Assam took over the assets of both the paper mills of the Respondent Corporation by paying a sum of Rs. 375 crores through a transparent bidding process and thereby the State of Assam became the owner of the two paper mills of the Respondent Corporation.

12. It is submitted that the impugned demand raised on the Petitioner by the order of assessment 05.05.2019 is for non-submission of the 'C' Forms by the petitioner which were to be furnished by the Hindustan Paper Corporation Limited.

13. It is submitted that the 'C' Forms were to be procured by the Hindustan Paper Corporation Limited from the Taxation Department of the State of Assam and the Taxation Department of the State of Assam was not issuing the said 'C' Forms to the Hindustan Paper Corporation Limited because of the pending tax demand against the said Corporation. In so far as the Petitioner is concerned, the Petitioner having made the supply to Hindustan Paper Corporation Limited on the condition that 'C' Forms be supplied by the

Respondent Corporation and the impugned demand raised on the Petitioner being for failure to submit the 'C' Forms which were not supplied by the Hindustan Paper Corporation Limited and the said Corporation having been taken over by the State of Assam, the Taxation Department of the State of Assam were liable to supply the said 'C' Forms to the Hindustan Paper Corporation Limited so the said 'C' Forms may be supplied to the Petitioner for onwards submission of the same before the assessing authority or the State of Assam is liable to be directed to exempt the Petitioner, by issuing an appropriate Notification under Section 8(5) of the Central Sales Tax Act, 1956, from the liability of submission of the 'C' Forms in respect of the transaction of sales made to the Hindustan Paper Corporation Limited in respect of which the Hindustan Paper Corporation Limited could not supply the 'C' Forms.

14. As the C-Forms were not received and the Orders of Assessment were getting barred by limitation, the Superintendent of Taxes, Guwahati, Unit-C completed the assessment of the petitioner Company for the period 2014-15 and vide order of assessment dated 05.05.2019 imposed an amount of Rs. 2,73,120/- on account of tax, interest and penalty. The said Order of Assessment is subject-matter of challenge in W.P(C) No. 6111/2022.

The C-Forms were also not received for the assessment year 2015-16 and as the Orders of Assessment were getting barred by limitation, the Superintendent of Taxes, Guwahati, Unit-C completed the assessment of the petitioner company for the period 2015-16 and vide order of assessment dated 08.05.2019 imposed an amount of Rs. 36,58,393/- on account of tax, interest and penalty. The said Order of Assessment is subject-matter of challenge in W.P.(C) No. 6112/2022.

The C-Forms were also not received for the assessment year 2016-17 and as the Order of Assessment were getting barred by limitation, the Superintendent of Taxes, Guwahati, Unit-C completed the assessment of the petitioner company for the period 2016-17 and vide order of assessment dated 08.05.2019 imposed an amount of Rs. 1,10,94,281/- on account of tax, interest and penalty. The said Order of Assessment is subject matter of challenge in W.P.(C) No. 6113/2022.

15. All these writ petitions having been filed by the same petitioner but in respect of the transactions covered by different periods raises the similar questions of law as such these writ petitions are taken up together for hearing and disposal.

16. The learned Senior counsel for the petitioner submits that the petitioner purchased the item namely caustic soda from a registered dealer outside the State of Assam in course of inter-State trade and commerce and when the goods were in course of movement in the course of inter-State trade and commerce, supplied the same to the Hindustan Paper Corporation Limited by transfer of document title of the goods as a subsequent sale in course of inter-State trade and commerce.

17. It is submitted that as per Section 6(2) of the Central Sales Tax Act, 1956 the subsequent sale made in course of inter-State trade and commerce is exempted from the payment of Central Sales Tax on the dealer furnishing a declaration Form- 'E-1' from the dealer making the first sale of inter-State trade and commerce and declaration in Form- 'C' from the recipient of the goods i.e. ultimate purchaser. The petitioner was required to produce Form- 'E-1' from dealer outside the State of Assam from whom the petitioner purchased the caustic soda in course of inter-state trade and commerce and a declaration Form- 'C' from the Hindustan Paper Corporation Limited. On production of the 'E-1' Form and 'C' Form, the petitioner was not liable to make payment of the Central Sales Tax in respect of the supply of caustic soda to the Hindustan paper Corporation of India.

18. It is submitted that the impugned demand raised on the Petitioner by the order of assessment 05.05.2019 is for non-submission of the 'C' Forms by the Petitioner which were to be furnished by the Hindustan Paper Corporation Limited. It is submitted that the 'C' Forms were to be procured by the Hindustan Paper Corporation Limited from the Taxation Department of the State of Assam and the Taxation Department of the State of Assam had declined to issue the said 'C' Forms to the Hindustan Paper Corporation Limited because of the pending tax demand against the said Corporation. In so far as the Petitioner is concerned, the Petitioner having made the supply of goods to Hindustan Paper Corporation Limited on the condition that 'C' Forms be supplied by the Respondent Corporation and the impugned demand raised on the Petitioner being for failure of the petitioner to submit the 'C' Forms which were not supplied by the Hindustan Paper Corporation Limited and that the said Corporation having been taken over by the State of Assam pursuant to orders passed by the NCLT/NCLAT during the insolvency proceedings, the Taxation Department of the State of Assam is liable to be directed to exempt the Petitioner, by issuing an appropriate Notification under Section 8(5) of the Central Sales Tax Act, 1956, from the liability of submission of the 'C' Forms in respect of the transaction of sales made to the Hindustan Paper Corporation

Limited in respect of which the Hindustan Paper Corporation Limited could not supply the 'C' Forms.

19. It is further submitted that on the one hand the Petitioner had not received the sales consideration in respect of the supply of goods made to the Hindustan Paper Corporation Limited and on the other hand, the sales made to the Hindustan Paper Corporation Limited has been treated to be sales made to unregistered dealers and tax have been imposed at the rate as applicable to the unregistered dealers and interest also levied on the same. It is submitted that as per the provisions of the Central Sales Tax Act, 1956, a dealer can avail the concessional rate of tax for supply of goods during the inter-state trade or commerce to a registered dealer only on furnishing of declaration Form 'C' and the Petitioner having supplied the goods to the Respondent Corporation who was a registered dealer under the Central Sales Tax Act, 1956 at the relevant point of time with a clear understanding that 'C' Forms would be supplied to the Petitioner, it was obligatory on the part of the Hindustan Paper Corporation Limited to have supplied the 'C' Forms to the Petitioner for onward submission to the State Tax Department for availing the benefit of exemption under Section 6(2) of the Act of 1956. It is pertinent to mention herein that the Petitioner in the bills raised had only charged the taxes at a concessional rate on a clear

understanding that the Hindustan Paper Corporation Limited can supply requisite 'C' Forms in support of the said sales made to the Respondent Corporation. The Respondent Corporation expressed its difficulties in issuing the 'C' Forms on the ground that the Taxation Department had not issued the 'C' Forms to the Corporation for its failure to clear its outstanding tax demand. It is the case of the Petitioner that cannot be made liable to pay tax as applicable to the unregistered dealer when the Petitioner made the supply to the Respondent Corporation on a clear understanding that the 'C' Forms shall be supplied to the Petitioner. The said Corporation now having been taken over by the Government of Assam and the tax demand raised on the Petitioner being on account of failure to submit the 'C' Forms which were to be furnished by the Respondent Corporation, it is the duty of the State of Assam to supply the 'C' Forms to the Petitioner so that the Petitioner may submit the same before the assessing authority in order that the demand raised on the Petitioner in the order of assessment for non-furnishing of the 'C' Forms may be wiped off.

20. It is submitted that in the peculiar facts and circumstances of the case as the tax demand by the taxing authorities is on account of non-furnishing of the 'C' Forms which is now owned by the State of

Assam and under such circumstances, the State of Assam may by invoking the power under Section 8(5) of the Central Sales Tax Act, 1956 may issue an proper notification granting relief to the Petitioner for furnishing of the 'C' Forms in respect of the sales made to the Respondent Corporation.

21. Referring to the Central Sales Tax Act, 1956, the learned Senior counsel submits that the Notification under Section 8(5) of the Central Sales Tax Act, 1956 is to be issued in public interest and in the present case, public interest will be better served if the said Notification is issued inasmuch as on the one hand the Petitioner had not received the sale consideration for the sale of the products to the Respondent Corporation including the concessional rate of tax charged by it and on the other hand the Petitioner has been made liable to pay huge amount of tax calculated to the rate applicable to the un-registered dealers for no fault of the Petitioner inasmuch as the Respondent Corporation expressed not to supply the 'C' Forms and sought for some time as the said 'C' Forms were not supplied to the Respondent Corporation by the Taxation Department for the non-payment of dues by the Respondent Corporation. Under such circumstances, the State of Assam, who is the owner of the Respondent Corporation now is liable to be directed by the Court to take necessary steps for granting exemption to the petitioner from

furnishing of the 'C' Forms in respect of the sales made by the Petitioner to the Respondent Corporation.

22. It is submitted that the petitioner cannot be made liable to pay the demand raised vide assessment orders dated 05.05.2019 and 08.05.2019 for failure on part of the respondent No. 4 to furnish the pending C Forms to the petitioner. The said pending 'C' Forms were to be procured by the respondent No. 4- Hindustan Paper Corporation Limited from the Taxation Department of the State of Assam and which Form-'C' were not issued by the Taxation Department of the State of Assam to the Hindustan Paper Corporation Limited because of the pending tax demand against the said Corporation. Since there was no fault or negligence on part of the petitioner the impugned order of assessment dated 05.05.2019 is illegal, arbitrary and the same is liable to be set aside and or quashed.

23. In support of his contentions, he has referred to an order passed by the Assam Board of Revenue in M/S Radiant Manufacturers Private Limited Vs. The Deputy Commissioner of Taxes (Appeals) Guwahati in Case No. 40 STA/2013 & 41 STA/2013. Referring to the said order, Dr. Saraf submits that where the facts reveal that it was indeed an inter-State sale under the provisions of

the Act of 1956 and the benefit accrued to the petitioner has been denied merely because the 'C' Form required to have been supplied by the respondent No. 4 were not furnished because the same were not issued by the Department because of certain tax issues relating to the said company, that should not debar the authorities from granting the benefit to the petitioner as available under the provisions of the Act of 1956.

24. It is submitted that the nature of the inter-State sales has not been denied by the authorities and therefore the denial of the benefits accrued to the petitioner under the provisions of Section 8 of the Act of 1956 cannot be curtailed as there is no fault of the petitioner which had led to the non-issuance of the 'C' forms to the respondent No. 4. In view of the arguments made, it is submitted that the impugned order is illegal, arbitrary and the same is liable to be set aside and quashed and the State Government be also directed to take necessary steps for granting exemption to the petitioner from furnishing 'C' Forms in respect of the sales made by the petitioner to the respondent corporation.

25. The respondents have contested the case by filing affidavit in opposition disputing the claims made by the petitioner.

26. It is submitted by the respondents that the reference to Section 8(2)(A) and Section 8(2)(B) in the writ petitions are misplaced as the same has already been omitted from the statute and has no relevance in respect of the facts of this case. It is submitted that reference to Sections omitted from the statute are nothing but an attempt to mislead the Court. The respondents dispute the case projected by the petitioner and further dispute the contention of the petitioner that the transaction of sale was covered under the provisions of Section 6(2). It is stated that the petitioner had admitted that it had received order for supply of caustic soda from the Hindustan Paper Corporation and thereafter it had purchased the said item from the registered dealer outside the State and when the goods were in the course of movement in the inter-State Trade and Commerce, by transfer of document title to the goods, the same were supplied to Hindustan Paper Corporation and therefore this transaction cannot be said to be covered under Section 6(2). Referring to Section 6(2), it is submitted by the respondents that the facts narrated in the present case make it amply clear that the instant transaction cannot be said to be a transaction covered under Section 6(2) of the Act of 1956. It is further submitted that the petitioner is aware regarding the declaration in Form-C which is mandatory under the provisions of the Act to avail the benefits

prescribed. It was incumbent on the petitioner to obtain the duly signed C forms from the purchaser and the same was required to be furnished by the seller namely the petitioner to the prescribed authority within a period of three months from the end of the period to which the form relates as per Rule 12(7) of the CST (Registration and Turnover) Rules, 1957 (hereinafter referred to as "*the Rule of 1957*"). The respondents therefore submit that the mandatory provisions prescribed under the Act of 1956 and the Rules of 1957 as required have not been complied with by the petitioner and consequently the impugned demands came to be issued and therefore in view of the submissions made does not call for any interference by the Court.

27. It is submitted that the concession under Section 8(5) of the Act of 1956 can be granted by the State Government if it is necessary to do so in public interest, however, in the facts of the present case such an exercise is not called for as there is no public interest involved. The benefit is to be conferred by the State under provisions of Section 8(5) is not to confer benefit only to a private individual. Although in terms of the Judgment of the Apex Court rendered in *Shree Digvijay Cement Company Limited Vs. State of Rajasthan and ors*, reported in (2000) 117 STC 395 (SC) wherein the

power of the State Government to waive the condition of submission of 'C' form or 'D' Form was held to be available, but in view of the amendment by Section 152 of the Finance Act of 2002, the State Government now cannot waive the requirement. Therefore the prayer for issuance of notification under Section 8(5) of CST Act cannot be permitted as it is not in accordance in law. It is submitted that if the petitioner wishes to avail the benefit prescribed under the statute, then the procedure prescribed must also be fulfilled.

28. In rejoinder, the learned Sr. counsel reiterates his submissions made earlier. It is further submitted that the petitioner was regularly following up the matter with the Hindustan Paper Corporation for collection of the pending 'C' forms. He has referred to the enclosures in the writ petition in support of his contentions that the letter and E-mails have already been issued to the corporation and the Corporation in turn had assured for furnishing the 'C' Forms as early as possible. It is submitted that only through the communication dated 14.06.2017 issued by the Hindustan Paper Corporation that the petitioner came to be aware about the non-payment of taxes by the Corporation resulting in non-issuance of 'C' forms by the Department to the Corporation and in turn the same could not be supplied to the petitioner. This information was not known to the

petitioner prior to the communication dated 14.06.2017. It is further submitted that the assessments for the Financial Year 2013-14, 2014-15, 2015-16 and 2016-17 were completed almost after five years. There was no pre-assessment communication or reminder issued by the Tax Department for submission of pending 'C' forms. As such, the department also appeared to have been sitting over the matter. It is further submitted that as on date the assets and liabilities of the respondent No. 4 Corporation have already been taken over by the State and therefore they are required to exempt furnishing of the 'C' forms by the petitioner under the provisions of law.

29. In so far as the submissions of the respondents regarding the amendment of Section 8(5) of the CST Act with effect from 11.05.2022 and that the power to grant exemption under Section 8(5) is subject to fulfillment of the requirement under 8(4), the learned senior counsel for the petitioner submits that the power to grant exemption by the State Government is not affected even after the amendment. It is submitted that even after the amendment of Section 8(5) of the Act of 1956, the power of the State Government to grant total or partial exemption in respect of the inter-State sales covered by Section 8(2) of the Act is not affected. In this regard the

petitioner presses into service a Judgment of Bombay High Court rendered in *M/S. Prism Cement Limited and Another vs. State of Maharashtra and Others*, Writ Petition No. 6475 of 2009.

30. The learned counsel for the parties have been heard. Pleadings have perused. The Judgments pressed into the bar has also been carefully perused.

31. The facts in this matter are not disputed. For convenience a brief reference to the facts is also required. The petitioner is a dealer engaged in the sale and supply of acid and chemicals. In response to an order received from Hindustan Paper Corporation namely respondent No. 4 for supply of caustic soda, the petitioner purchased the said item from the registered dealer outside the state of Assam and when the goods were in the course of movement in the course of inter-State trade and Commerce by transfer of document titled to the goods, the sale was completed to the Hindustan Paper Corporation. Pursuant to the sale made by the petitioner, bills on account of the sale and supply of the goods were raised. In the invoices where were raised, there was a mention that the sale was E-1 sales transactions and the name of the first supplier of the goods were also mentioned and it was also mentioned that the 'C' Forms were to be received from respondent No. 4- Hindustan Paper

Corporation. According to the petitioner inspite of regular follow-ups with the respondent No. 4 regarding the supply of 'C' Forms, the same were not released. Subsequently by communication dated 14.06.2017 issued by the respondent No.4- Hindustan Paper Corporation in response to an E-mail dated 05.06.2017 issued by the writ petitioner, it was informed that the Corporation was in extreme financial crisis for the last few years and that the mill production has been suspended since October, 2015 due to fund crisis and scarcity of fuel/coal which had arisen due to ban imposed by the National Green Tribunal in extraction and transportation of coal in and from Meghalaya, which was the main source of fuel to the paper mill. Since Form 'C' could not be submitted by the petitioner in support of the sales stated to have been made, the assessment proceedings were initiated by the authorities concerned and the benefit claimed by the petitioner stood rejected by the impugned order passed for the respective assessment years.

32. In order to appreciate the submissions made before this Court, it will be necessary to refer to the provisions of the Act.

33. Section 3 of the Central Sales Tax Act, 1956 provides for levy of taxes when sale and purchase takes place in the course of inter-state trade and commerce. Section 3 of the CST Act, 1956 formulates

the principles for determining when sale and purchase of goods is said to take place in course of interstate trade and commerce.

Section 3 is reproduced below for the sake of convenience:

"Section 3. 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."

34. Section 6 of the CST Act is the main charging provision under the Act. Section 6 provides for the liability to pay tax on interstate sales. Section 6 of the CST Act is reproduced herein below:

"6. Liability to tax on inter-State sales.— [(1)] Subject to the other provisions contained in this Act, every dealer shall, with effect from such date⁴ as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales [of goods other than electrical energy] effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

[Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5 is a sale in the course of export of those goods out of the territory of India.]

[(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.]

[(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this subsection unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,—

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made to a registered dealer, a declaration referred to in subsection (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,—

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than three percent, or such reduced rate as may be notified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 8 (whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in this subsection.]

[(3) Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to any official, personnel, consular or diplomatic agent of—

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar international body,

entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be, has purchased such goods for himself or for the purposes of such mission, consulate, United Nations or other body.

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of interState trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be.]

[(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 case 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 despatch of such goods 1 [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 related shall be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale."

35. Section 8 of the CST Act, 1956 deals with rates of tax on sales in the course of inter state trade and commerce. Relevant part of section 8 is reproduced below:

8. Rates of tax on sales in the course of inter-State trade or commerce:--

(1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section(3); shall be liable to pay tax under this Act, which shall be three per cent, of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the Sales Tax Law of that State, whichever is lower; Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section.*

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State.

Explanation:- For the purposes of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law:

(3) The goods referred to in sub-section (1):---

(a) (Deleted from 1st April 1963);

(b) are goods of the class or classes specified in the Certificate of Registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any Rules made by the Central Government in this behalf, for use by him in the manufacture of processing of goods for sale or in the telecommunications network or] in mining or in the generation or distribution of electricity or any other form of power;

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

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

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed Form obtained from the prescribed authority.

Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

5) Notwithstanding anything contained in this section, the State Government may [on the fulfillment of the requirements laid down in sub-section (4) by the dealer] if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette and subject to such conditions as may be specified therein direct,—

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

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

<i>(6)</i>	<i>***</i>	<i>***</i>	<i>***</i>
<i>(7)</i>	<i>***</i>	<i>***</i>	<i>***</i>
<i>(8)</i>	<i>***</i>	<i>***</i>	<i>***</i>

36. A perusal of the above provisions reveal that Section 3 of the CST Act makes it clear that the conditions and circumstances laid

down as necessary and essential for a sale to be in the course of inter-State trade or commerce under section 3(a) are:

- (i) firstly, there must be a completed sale of goods, i.e., any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration; and
- (ii) secondly, such sale should occasion the movement of goods from one State to another State, meaning that the relevant contract of sale provides that goods will be so moved from one State to another and that by reason of the sale.

With regard to Section 3(b) of the Act, an inter-State sale is one which is effected by transfer of documents of title to the goods in the course of its movement from one State to another. Where the property in the goods has passed before the movement has commenced, the sale will evidently not fall within clause (b). Accordingly, a sale effected by transfer of documents of title after the commencement of movement and before its conclusion as defined by the two termini set out in Explanation 1 and no other sale will be regarded as inter-State sale under this clause. Explanation 2 makes it clear that where the movement of goods, occasioned as a result of a

sale from one place to another within one and the same State but nevertheless, for actual transport, the goods have necessarily to pass through another State, it cannot result in a sale in the course of inter-State trade or commerce. This remains an out and out intra-State sale governed by the local sales tax law of the State concerned. But where movement of the goods, occasioned as a result of the sale, takes place from one State to another, not only has the original sale taken place in the course of inter- State trade or commerce but also every connected transaction shall be deemed to be in the course of inter-State trade or commerce if it is effected by transfer of the railway receipt or other document of title to the goods at a time after the goods have been delivered to the common carrier or other bailee for transmission and before the same are taken delivery of, from such common carrier or other bailee. It may be noted that while section 3(a) concerns a sale effected before actual despatch of the goods, section 3(b) applies to a sale effected after such despatch but before actual delivery of the goods.

37. Therefore as discussed above, there are two types of inter-State sales which are charged to tax under the Central Sales Tax Act, one, coming under section 3(a) thereof, that is, sale occasioning movement of goods from one State to another, and the other,

coming under section 3(b) of the Central Act, being sales effected by transfer of documents of title to the goods during their movement from one State to another. The first category enjoys exemption under Section 6(1) and the second under section 6(2).

Section 6(2) was introduced in section 6 in order to avoid the cascading effect of multiple taxation. A subsequent sale falling under section 6(2), which satisfies the conditions mentioned in the proviso thereto, is exempt from tax as the first sale has been subjected to tax under section 6(1). Hence, in order to attract section 6(2), it is essential that the concerned sale must be a subsequent inter-State sale effected by the transfer of documents of title to the goods during the movement of the goods from one State to another and it must be preceded by a prior inter-State sale. It is only then that section 6(2) may be attracted in order to make the subsequent sale exempt from levy of central sales tax. However, the proviso to section 6(2) prescribes further conditions and it is only on fulfillment of those conditions that the subsequent sale stands exempted. If those conditions are not satisfied then, notwithstanding the fact that the sale is a subsequent sale, the exemption would not be admissible to such subsequent sales.

38. Similarly Section 8 deals with rates of tax on sales in the course of inter-state trade or commerce. For the purpose of rates, the section makes a classification between (i) inter-State sales to Government on prescribed forms, (ii) inter-State sales made by a dealer to a registered dealer of goods specified in his certificate of registration or of packing materials, etc., and (iii) inter-State sales other than (i) and (ii) aforesaid.

The transactions of sales in the course of inter-State trade or commerce have been sub-divided in the following categories for the purpose of levy of tax under this section:-

(a) sales of goods, which under the relevant State law are generally exempt from tax, are to be exempted from tax; [Sec. 8(2A)]

(b) sales of goods, which are under the relevant State-law taxable at a rate lower than 4 per cent are to be taxed at the State-rate; (Sec. 8(2A)).

(c) sales of declared goods which are not covered by section 8(1) [i.e. which are not made to Government or are made to registered dealer in whose certificate of registration they have not been specified] are to be taxed at

twice the rate applicable to such goods in the relevant State; [Sec. 8(2) (a)]

(d) sales to (i) Government when supported by "D" Form certificates or (ii) to registered dealer other than Government, in whose certificate of registration the same have been specified and who furnish the prescribed Form C' Declarations are to be taxed at four per cent; [Sec. 8(1)]

(e) sales, other than the above, when the State rate is equal to or less than 10 percent are to be taxed at 10 per cent; [Sec. 8(2)(b)] and

(f) sales, other than the above, when the State-rate is higher than 10 per cent are to be taxed at the higher State-tax rate; [Sec. 8(2)(b)]

The concessional rate of 4% is provided for (when the goods sold are taxable under the State sales tax law at a rate of 4% or more than 4 %) on inter-state sales made to

(i) the Government; or

(ii) a registered dealer other than the Government-

(a) if the class or classes of goods purchased are specified in the purchasing dealer's certificate of registration and the goods under such purchase are

intended for resale by him; or, subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale; or, subject to any such rules, for use by him in mining or in the generation or distribution of electricity or any other form of power;

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

(c) in the case of containers or other packing materials not specified in the registration certificate of the purchasing dealer, if the goods purchased are intended for being used as containers or packing materials for the packing of any goods specified in the purchasing dealer's certificate of registration or for the packing of any containers or other materials specified in the certificate of registration.

39. The general rate of tax is prescribed under section 8(2). But a dealer selling goods to a registered dealer in the course of inter-State trade or commerce of the description referred to in section 8(3) is

liable, under section 8(1) (b), to pay a tax at a concessional rate, four percent, on that part of his turnover. In order to qualify for that rate of tax, dealer has to furnish to the prescribed authority within the prescribed time, etc., a declaration duly filled and signed by the registered dealer to whom the goods are sold. Such a declaration must contain the prescribed particulars in the prescribed form obtained from the prescribed authority. If the selling dealer fails to furnish the declaration in the prescribed form (C-Form) he is liable to pay tax at the general rate provided for in section 8(2).

40. Section 8(4) controls the applicability of section 8(1). The benefit of a concessional rate under section 8(1) is conditional upon the assessee producing and furnishing a prescribed declaration in C Form in the prescribed manner and within the prescribed time, etc. Non-compliance with the provision of furnishing the C Form declaration will inevitably deprive the assessee of the benefit of taxation at the concessional rate.

41. Under section 8(4) of the Central Sales Tax Act, 1956, a dealer would be entitled to pay tax at the rate fixed under the Central Act in respect of an inter-state sale, only upon furnishing to the prescribed authority in the prescribed manner a declaration duly filed and signed by the dealer to whom the goods are sold after obtaining the

prescribed form from the prescribed authority. Rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957, lays down that the declaration and certificate referred to in section 8(4) shall be in Forms C and D. Therefore, to get the benefit of reduced rate of tax under the Central Act, a dealer has, to furnish a C Form duly filled and signed by the dealer to whom the goods are sold.

42. Upon due examination of the provisions as extracted above what is seen is that there is a power on the State Government to issue a Notification exempting the 'C' Forms or 'D' Forms as the case may be in public interest where the State Government feels that such a notification is required. The writ petitioner claims that such exemption is called for in the facts of the present case as there is no dispute that the sale has been effected to the respondent No. 4 and the respondent No. 4 inspite of assurances given, failed to furnish the 'C' Forms as the same were not issued by the Department for the failure of the respondent No. 4 to meet its outstanding tax liabilities towards State Government. A plain reading of the provisions of exemption as prescribed under Section 8 makes it clear that such exemption is to be issued by the State Government in public interest. In so far as the writ petitioner is concerned, the denial of the benefit of reduced rate of taxation for the failure to furnish the 'C' Forms

cannot be construed to be of public interest in order for the State to invoke its powers under Section 8 of the CST Act 1956. Public interest will require any event which will confer any benefit to the people at large or atleast a particular community. Under this provisions of the statute, the hardship suffered by the petitioner for non-supply of 'C' Forms and thereby payment of taxes at higher rates cannot be termed to be a matter of public interest. Such submissions of the petitioner therefore cannot be accepted and the same are therefore rejected.

43. For the purpose of the present proceedings, the impugned order dated 05.05.2019 passed by the respondent authorities in respect of the petitioner for the period 2013-14 is taken up as a reference as similar orders were passed in respect of the other assessment years and which are also assailed in the other writ petitions. The text of the order is relevant and is therefore extracted below:

"Date 05/05/2019

Assessment Order

The case of M/S Bharat Trading Corporation Guwahati taken for scrutiny assessment for P.E. 2013-14 as per CT's Circular 5/15. Issued notices for productions of required books of accounts along with all statutory forms in support of sales. Sri Tarun Kumar Jain A/R of the firm appeared before me and produced some sales documents including statutory forms of verifications. On verification it appears that, the dealer deals Ferric Alum, Custic Soda, Bleaching Powder, Ammonium Bi-carbonate Sodium By-carbonate etc and sold the same to registered dealer against form "C" amounting Rs. 7560363.00. He submitted 40 Nos offline Form "C" for Rs. 6523336.00 and 06 Nos. On line "C" for Rs. 1037027.00 out of 40 offline "C" Form 05 is found obsolete as per Notification issued by Commissioner of taxes, Manipur by vide No. Tax/4(31)/CST/2012/113 dated

25.07.2012 value amounting Rs. 3467294.00. And hence the said sales taken as sales to unregistered dealer with 14.5% tax elements. The other manual "C" forms could not be verified in system and hence the process of cross verification is taken with Ex-State through Apex office. The TIN & CST No. of the said dealer verified in TINSXYS and found in active. The e-declaration is found in order. On scrutiny of monthly returns, it appears that the dealer made inter-state sales during this period as per returns amounting Rs. 12140393.00 and out of its only Rs. 4093069.00 covers by required valid Form "C". Hence balance amounts Rs. 8047324.00 taken as sales to Lin-registered dealer. The sales figure in the monthly returns tally with books of accounts. The dealer made E-1 transactions purchase amounting Rs. 58596987.00 against 11 Nos. E-1 form and sold to HPC, Nagaon, submitted 08 Nos. Form "C" amounting Rs. 74248275.00. The balance amounts Rs. 1065510.00 count as sales to others.

The dealer sold goods to registered dealer inclusive of 2%, 5%, 13.5% & 14.5% tax elements and hence per centum is allowed US 8A(1)(a) of CST Act'56.

In absence of any other information assessment is completed US 9(2) of CST Act'56 as follows-

1. Gross Turnover	Rs.92554189.00	
2. Less Us 6-A 1 i.e Stock transfer	Rs. 0	
3. Balance sales	Rs. 92554189.00	
4. Less U/s 6(2) (E-1 sales) [75313785-1065510]=	Rs. 74248275.00	
5. Balance sales	Rs. 0	
6. Less U/s 5 4 i.e. Export	Rs. 0	
7. Net Inter State turn over	Rs. 17240404.00	
7 A 2% sales to registered dealer	Rs. 4093069.00	
Less U/s 8A 1 a	Rs. 80256.00	
B. Sales to Others	Rs. 13147355.00	
i. 5% tax with 2% tax elements.	Rs. 3467294.00	
Less U/s 8A (1) (a)	Rs. 67986.00	
ii. 5% tax with 5% ax elements.	Rs. 1267623.00	
Less Us 8A (1)(a)	Rs. 60363.00	
iii. 13.5% tax with 13.5% tax elements.	Rs. 1011974.00	
Less Us 8A(1)(a)	Rs. 120367.00	
iv. 14.5%, tax with 14.5% tax elements	Rs. 6301160.00	
v. Less Us 8A(1)(a)	Rs. 152143.00	
vi 14.5%, tax without tax elements.	Rs. 1099284.00	
vii. 14% tax without tax elements (E-1)	Rs. 1065510.00	
8. Net taxable Turn over on	Rs. 17824799.00	TAX

7. A	Rs. 4012813.00	80256.00
7.B (i)	Rs. 3399308.00	169965.00
(ii)	Rs. 1207260.00	60363.00
(iii)	Rs. 891607.00	120367.00
(iv)	Rs. 6149017.00	152143.00
(v)	Rs. 1099284.00	159396.00
(vi)	Rs. 1065510.00	154499.00
<i>Total Tax assessed</i>	Rs. 896989.00	
<i>Adjustment with VAT if an</i>	Rs. 0	
<i>Tax Payable</i>	Rs. 896989.00	
<i>Tax Paid</i>	Rs. 502662.00	
<i>Balance Payable</i>	Rs. 394327.00	
<i>Interest levied [1580+357852] 60.5m</i>	Rs. 359432.00	
<i>Penal imposed</i>	Rs. 5000.00	
<i>Total payable</i>	Rs. 758759.00	

Draw assessment order and issued demand notice

Note:- Tax Paid Challans, C forms, E-1 Forms verified as per Statement

*Superintendent of Tax
Guwahati Unit-C"*

44. A plain reading of the order reflects that out of 40 offline 'C' Forms submitted, 5 are found to be obsolete in respect of a value amounting to Rs. 34,67,294/- and therefore the sales were treated to be sales to unregistered dealer at the rate applicable. The other manual 'C' Forms could not be verified in the system and hence the process of cross-verification is taken with Ex-State through Apex Office. The TIN & CST No. of the dealer was duly verified and found to be active. The E-declaration was found to be in order. In so far as the sales made to the respondent No. 4 is concerned, purchases made under E-1 were found to be amounting to Rs. 5,85,96,987/- against 11 Nos E-1 form and sold to HPC, Nagaon and for which 08

Nos of 'C' Forms amounting to Rs. 74248275/- were submitted. As the balance amounts were not found to be covered by the 'C' Forms although the reduced rate of taxation was claimed by the petitioner, these claims were rejected and by the assessment order, a demand including penalty and interest was imposed on the petitioner.

45. The benefit under Section 6(2) of the Act as sought to be claimed by the petitioner will accrue to a seller only when the dealer selling the goods furnishes to the prescribed authority in the prescribed manner, declaration duly filled and signed by the registered dealer to whom the goods are sold. This form is described under Rule 12 of the CST Rules of 1957 to be Form 'C'. The format in which the 'C' Forms are to be issued by the purchaser and submitted to the prescribed authority are also appended to the Rules of 1957. The Form 'C' is to be submitted in triplicate. These 'C' Forms are to be procured from the prescribed authority by the dealer who purchases the goods in the course of inter-State Trade and Commerce and counter sign the same and thereafter furnish it to the seller who supplied the goods in the course of inter-State sale. The State authorities however are empowered not to grant the 'C' Forms to the purchasing dealer, if the State authorities are of the view that tax as assessed is found to be payable and outstanding from such a

dealer. This is precisely the situation which has arisen in the facts of the present case. The respondent No. 4 had substantial outstanding taxes liable to be paid to the State of Assam, Finance Department. This fact is admitted by the respondent No. 4 in the communication addressed to the petitioner which is enclosed to the writ petition. As a consequence thereof, the 'C' Forms were refused to be issued by the department till such payments are cleared by the respondent No. 4. The supply of caustic soda by the petitioner in the meanwhile was effected on the requisition made by the respondent No. 4. This sale is stated to be conducted by the transfer of title deeds while the goods were in transit. It is also stated that the petitioner at the time of effecting the sale to the respondent No. 4 was not aware of the pending tax liabilities of the respondent No. 4 and because of which the state authorities had refused to issued the 'C' Forms to Respondent No. 4 and consequently the same were not furnished to thee petitioner by the respondent No. 4. In so far as the petitioner is concerned in the bills which were submitted, it was shown to be a sale duly covered by 'C' forms which however, although mentioned therein were not submitted before the Department as the relevant 'C' Forms were yet to be issued by respondent No. 4 and consequently received by the petitioner for onward submission to the prescribed authority.

46. It is therefore seen that there is no dispute raised by the respondent State authorities that the sales were effected to the respondent No. 4 by the petitioner. The respondent No. 4 inspite of notice being issued is not before the Court and meanwhile it is informed that the respondent No. 4 has been wound up in liquidation and the assets and liabilities have also been taken over by the State through its appropriate department. As such as on date there is no question of the respondent No. 4 issuing these 'C' Forms in respect of the supplies and sales made by the petitioner. The petitioner has also claimed that the financial status of the respondent No. 4 was not known to the petitioner at the time of the supply of the caustic soda as requisitioned by the respondent No. 4 or that the corporation has gone into liquidation. Under such circumstances, the question now that is before the Court is whether the failure on the part of the purchaser/dealer to furnish adequate 'C' Forms will deprive the seller, the benefits available under the statue. As have been discussed above, it is seen that the failure to furnish 'C' Forms by the petitioner in support of the sales claimed to have been made by the petitioner cannot be attributed to the petitioner. The communication of the respondent No. 4 enclosed to the writ petition as well as the contention of the petitioner reveals that the 'C' Forms were not duly supplied by the respondent No. 4 to cover the sales made by the writ

petitioner to the respondent No. 4. This position is also not disputed by the respondents. This leads to a very peculiar situation whereby the petitioner is being deprived of the benefits prescribed under the provisions of the Act of 1956 without any fault that can be attributed to it. The 'C' Forms are mandatorily required to be issued by the prescribed authority namely the State respondents and which can also be refused to be issued by the State authorities if there are pending dues found to be outstanding towards payment of tax. This fact is equally admitted by the respondent No. 4 in their communications. The State respondents had also made an enquiry with the respondent No. 4 in respect of the claims made by the petitioner but which remained unresolved because of non-furnishing of any reply by the respondent No. 4. Under such circumstances whether the benefits due to the petitioner under Section 6(2) of the Act of 1956 in respect of sales which are otherwise not disputed can be curtailed for non-furnishing of 'C' Forms by the purchaser dealer where the sales effected by the petitioner are not disputed or denied by the purchasing dealer or by the assessing officer.

47. A perusal of the provisions of the Act reveals that under Section 7, the dealer has to take necessary steps for getting itself registered. This duty to get itself registered begins with the liability

of the dealer to pay tax under the Act. The application for registration is to be made in the prescribed form and once the same is accepted by the authorities and found to be in confirmation with the prescribed format and the necessary fees are deposited the registration is issued to the dealer. In terms of the definition prescribed under Section 2(B), a dealer is defined as a person who carries on whether regularly or otherwise the business of buying, selling, supplying or distributing goods, directly, indirectly for cash or for valued payment or for commission, remuneration or other valuable consideration and also includes the local authority, a factor, broker, commission agents etc, an auctioneer.

48. As discussed above, the sales made by the petitioner to the respondent No. 4 has not been disputed either by the respondent authorities or by the respondent No. 4. Although the respondent No. 4 is not represented in the present proceedings, the communication issued by the respondent No. 4 clearly reveals it's admission that the sales were indeed effected by the petitioner and which sales were in the course of inter-State Trade and Commerce. The stand of respondent No. 4 reflected in the said communication is also not questioned by the respondent authorities. Although the respondent authorities dispute that the sale was not effected by the petitioner as

claimed under Section 6(2) of the Act of 1956. The fact remains that there is no dispute that the sales were made pursuant to the goods being procured from a dealer outside the State of Assam and for which the prescribed Forms namely Form E-1 was duly furnished. What steps were taken by the respondent authorities to verify the claims of the petitioner that the goods were procured during the course of inter-State Trade and Commerce is not seen from the pleadings available before the Court. Consequently it has to be accepted that the claim of the petitioner that the goods were procured in the course of inter-State Trade and Commerce from a dealer outside the State of Assam is accepted by the respondents. Therefore, the objections raised by the respondents that it is not a sale under Section 6(2) cannot be accepted.

49. Under the provisions of the CST Act, 1956, it is seen that although the purposive intent of the Statute is to impose Sales Tax on the transactions prescribed on such rates as applicable, yet at the same time there is a clear legislative intent discernable that where benefits accrue to a dealer, the same shall be available subject to fulfillment of the norms prescribed. Under such circumstances, where the sales stated to have been made by the selling dealer to the respondent No. 4-Corporation are not disputed and also where these

items claimed to be purchased by the petitioner from outside the State and for which the supporting E-1 Form declarations are also furnished are not questioned by the department, the only conclusion that can be arrived at is that the goods were indeed purchased in the course of inter-State Trade and Commerce by the petitioner from outside the State of Assam and which purchased was duly supported by the E-1 Form declaration. The goods have been claimed to be sold to the respondent No. 4 by transfer of title deeds before the goods were received by the dealer. Under such circumstances, non-furnishing of the declaration Form-'C' by respondent No. 4 in respect of purchases made from the petitioner and which are not denied cannot preclude the petitioner from being granted the benefit of exemption from payment of tax under Section 6(2). It is also to be noted that in the impugned order, the assessing authority has also not disputed or doubted the purchase made through E-1 transaction or that these purchases which were made under E-1 transaction were not sold by effecting transfer of the title goods as claimed by the petitioner. Such findings are not seen in the impugned order. Therefore, the contention raised by the respondents disputing the claim of the petitioner that the sales were not made under Section 6(2) and thereby disputing the claims of the petitioner that he is entitled to benefit under Section 6(2) cannot be accepted.

50. The object of the Act of 56 is to levy and collect sales tax by the Union on a class of sales made. These are interstate sales. Interstate sales are of two types as defined under Sec 3 namely - Sec 3(a) and Sec 3(b). Whether a particular sale is an inter sale is to be determined by Section 3 only and no other provision. Section 3 of the Act of 1956 defines the class of sales which shall be deemed to be sales in the course of inter-State trade or commerce. Under the CST Act, 1956, tax is leviable on the sale of goods and not because of the movement of the goods. The movement of the goods is only material for the purpose of deciding whether the sale took place in the course of inter-State trade or commerce or whether such sale was purely an intra-State transaction. The name given to a transaction by the parties concerned does not decide the nature of the transaction. In order to make a transaction taxable under the CST Act, 1956, the transaction must be a "sale" as defined in Section 2(g) taking place in the course of inter-State trade or commerce in any of the manner provided for in clause (a) or clause (b) of Section 3. Where a sale is covered under Section 3. Under Section 6(3) any subsequent sales made in the state can also be considered to be a continuation of the sale under Section 3 and in which event there will be no tax on this subsequent sale under the CST so as to avoid cascading effect. This therefore means that the subsequent sale

(within the state) is to be considered to be a continuation of the first sale (purchased by the dealer making the subsequent sales) which was in the course of interstate trade & commerce. The subsequent sale is therefore also out of the purview of State Sales Tax. Once it is established that the subsequent sale is also a sale under section 3 the benefit under section 6(2) will be available to the dealer subject to furnishing of the prescribed C-forms. However, whether this benefit under section 6(2) will be denied to the dealer for its failure to submit C-forms even when there is no dispute that the subsequent sales is in continuation of a sale under Section 3 of the Act of 1956 is not specifically provided for under the Act of 1956. But what is clear from the provisions is that whether a sale is in the course of interstate trade has to be determined by section 3 only. Sections 6, 8 or 9 or any other provision does not define or determine interstate sales. As such in the facts of the present case where it is not disputed by the assessing officer that the first sale is an interstate sales or that the subsequent sale is not in continuation of the first sale or that it is a completely different transaction which occurred within the state and is not connected to the First sale, the benefits under section 6(2) cannot be curtailed for non furnishing of the C-forms which default again cannot be saddled upon the petitioner alone as respondent No. 4 failed to furnish the said C-forms. The E-

1-forms submitted by the dealer containing all particulars is also not in question. In the scheme of the Act Returns in respect of sales made by a dealer for a particular period are to be submitted by the dealer. In order to support claims of sales under section 3 necessary particulars including Form-E-1, corresponding Form- C are also to be furnished by the dealer. The CST Act does not provide for a situation as to what will be consequences when the purchasing dealer fails to provide for any C-forms in case of any interstate sales.

51. These averments made by the writ petitioner are disputed by the respondents in their affidavit. According to the State respondents, the sale claimed to have been made by the petitioner to respondent No. 4 is not covered under Section 6(2) of the CST Act as the sale order was received and the buyer of the product was identified before the purchase order was placed by the petitioner and in order to escape payment of appropriate tax, the petitioner has tried to project that the sale made to the respondent No. 4 is covered under Section 6(2) of the CST Act. As such, there is no infirmity in the assessment made by the assessing officer. It is disputed by the respondents that the same is an inter-State Sale covered under Section 6(2) of the Act of 1956. Therefore, the question which is required to be answered by the Court is whether in order for a sale to be covered under Section 6(2) of the Act what are

the parameters required to be fulfilled. A careful perusal of Section 6(2) reveals that it begins with a non-obstantive clause that notwithstanding the provisions of Sub-Section 1 or Sub-Section 1(A) of Section 6 where a sale of any goods in the course of inter-State Trade or Commerce has either occasioned the movement of goods from one State to another or has been effected by transfer of the documents of title to such goods during the movement from one State to another, any subsequent sale during such movement effected by transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in Sub-section 3 of Section 8, shall be exempt from tax under the said Act. Sub-section 3 of Section 8 specifies the classification of goods or classes of goods which are to be considered for liable for payment of tax under Section 8(1) of the said Act. In other words, in order for any transaction to be covered under Section 6(2) it must satisfy the following:-

- (a) It must be a sale of goods in the course of inter-State Trade or Commerce;
- (b) and it has occasioned movement of goods from one State to another or it has been effected by transfer of documents of title to such goods;

- (c) and that these goods fit the description as prescribed under Sub-Section 3 of Section 8.

52. In order to examine the contention of the respondent State that the sale effected is not covered under Section 6(2), it will require reference to the impugned assessment order. A perusal of the impugned assessment order reflects that the assessing officer did not question the claims of the petitioner that the goods supplied to respondent No. 4 were procured from outside the State. The claim of the petitioner that the returns reflected inter-State sale made by the petitioner during the concerned period was also never questioned by the assessing officer. This is clearly evident from a perusal of the impugned assessment order. However, since a part of the sales claimed to have been made in the course of inter-State sale were not supported by the corresponding Form 'C', the assessing officer considered these sales as sales made to non-registered dealers or sale which are not covered by Form-'C'. The assessment order does not reflect that at any point in time there was any issue raised by the assessing officer questioning the very claim of the petitioner that the sales made to respondent No. 4 did not originate from purchases made in the course of inter-State Trade and commerce.

53. As discussed above, a perusal of the provisions of CST Act 1956 clearly reflects that all sales in the course of inter-State Trade or Commerce are either affected under Section 3(a) or under Section 3(b). Section 8 prescribes the rates on sales in the course of inter-State Trade or Commerce. Section 8(1) of the Act provides for reduced rate of tax in respect of sales made in the course of inter-State Trade or Commerce subject to satisfaction of the conditions prescribed in Section 8(3). Section 8(4) provides that in order to avail the benefit of Section 8(1), the conditions prescribed in Section 8(4) of furnishing a declaration is to be satisfied by the dealer.

54. Section 6 on the other hand affixes the liability to pay tax in the manner provided. Section 6(2) however curves out an exception in respect of subsequent sales made within the State where the goods which were sold within the State were procured from outside the State and are supported by the prescribed forms namely Form E-1. Ordinarily, the tax to be imposed under the Act of 1956 are only in respect of those sales which are made in the course of inter-State Trade or Commerce whereas the sales made within the State are covered by the respective State legislation namely Assam General Sales Tax Act as it then was prior to the same being repealed under the Assam VAT Act and now the Goods and Service Tax Act, 2017. Therefore, the contention raised by the respondents that the claim of

the petitioner to be covered under the benefit of Section 6(2) is not available as the petitioner had already accepted the contract to deliver goods to respondent No. 4 and therefore it was not the case of sales which was made by affecting transfer of documents of title of the concerned goods during their movement from outside the State and into the State of Assam cannot be accepted. This argument is fallacious as Section 6(2) covers sales made in the course of inter-State Trade and Commerce which are occasioned by movement of goods from outside the State into the State of Assam as well as sales by effecting transfer of the documents of title of the goods during their course of movement from outside the State into the State of Assam. There is no dispute as have been discussed above, as can be seen in the impugned assessment order that the movement of goods from outside the State into the State of Assam was accepted to be occasioned in the course of inter-State Trade or commerce and which sales are therefore covered under Section 3 of the Act. No such dispute has been raised by the assessing officer as can be seen in the impugned assessment order that such sale did not occasion movement of goods from outside the State and into the State of Assam. The form E-1 submitted by the petitioner was also accepted by the assessing officer and there was no dispute raised.

55. As such where it is not disputed by the assessing officer that there was movement of goods from outside the State into the State of Assam, it has to be accepted that such sales were sales in the course of inter-State Trade and Commerce. There is also no finding in the impugned assessment order that the subsequent sales made by the petitioner to the respondent No. 4 are not covered under Section 6(2) of the Act of 1956. The only ground for denying the benefit that would accrue to a dealer under the provisions of Act of 1956 for payment of CST was the non-furnishing of the Form 'C' in respect of the portion of the sales made to the respondent No. 4.

56. As such where the movement of goods from outside the State of Assam and into the State was not questioned by the assessing officer as also the subsequent sales made to respondent No. 4, it has to be held that the subsequent sales made to respondent No. 4 is covered under Section 6(2) and would be exempt from payment of Central Sales Tax. The only shortfall in the entire transaction is the absence of valid 'C' Forms which were required to be furnished by the respondent No. 4 in respect of these sales made by the petitioner. This fact is also explained by the communications executed between the petitioner as well as the respondent State Department. The respondent No. 4 in the meantime went into liquidation and its assets and liabilities were also taken over by the

State. The question whether the sales made to respondent No. 4 is a subsequent sales under Section 6(2) having not been disputed by the assessing officer, the benefit available to the petitioner under Section 6(2) cannot be curtailed in the peculiar facts and circumstances of the case, merely because the 'C' Forms were not furnished by the petitioner and which was a result of non-issuance of valid 'C' Forms by the respondent department to the respondent No. 4 because of outstanding tax liabilities on the part of respondent No. 4. This fact is also not clearly disputed by the assessing officer or by the respondents. Under such circumstances, it has to be held that where a benefit is found to accrue to a petitioner under the provisions of the statute, the same cannot be curtailed when the basis of making the claim is not called into question or is in dispute.

57. As have been discussed above, there is no dispute raised by the respondent authorities that the goods which were ultimately supplied to the respondent No. 4 did not occasion movement from outside the State. Neither the assessing officer nor the respondents in their affidavits filed raised any dispute that the goods supplied by the petitioner to the respondent No. 4 were never procured from outside the State. Although the assessing officer did not raise any such dispute but the respondents in their affidavit filed before this Court had disputed the claim of the petitioner that it is not a sale

covered under Section 3(b) as the petitioner was aware that goods were required to be supplied to respondent No. 4 and were therefore procured by the petitioner.

58. Purpose of Section 6 is to ensure that sales under Section 3 are inter-state sales even in cases where there is subsequent sale within the state. This subsequent sales within the state cannot be taxed by the state. In order to avail benefits under section 6(2) it must be shown that the goods were procured from outside the state and it had occasioned movement in the course of interstate trade. To support such claim, transfer of documents of title to the goods must be shown. There is no finding by Assessing Officer that the goods were already procured by the petitioner and that the subsequent sales made to respondent No. 4 was a separate transaction. This is sought to be projected by the respondents by their affidavit in opposition for the first time. Therefore when the subsequent sales have been made the transfer of title to the goods has to be deemed to have been made.

59. However, where the respondents dispute that this is not a sale effected under Section 3(b) then the burden would lie on the respondents to show that the claim made by the petitioner is an incorrect claim and would therefore not be available to the petitioner.

This view of this Court to that extent is fortified by Judgment of the Apex Court rendered in *Commissioner of Sales Tax, UP, Lucknow and ors. Vs. Suresh Chand Jain, Tendu Leaves Dealer, Lalitpur and ors*, reported in 1988 (Supp) SCC 421 wherein it was held that where the assessee asserts to have made a sale either as a local sale or as a inter-State sale then the onus to disprove the assessee would lie on the revenue. There is one more aspect that needs to be referred in this matter which is that the power of the State to impose tax has to be within the parameters prescribed Article 286 of the Constitution of India. Any tax which may be imposed has to be strictly in terms of Article 286 of the Constitution of India. Under the powers which can be traced back to Article 286 of the Constitution of India, the legislature has enacted the Central Sales Tax Act, 1956. Under the provisions of this Act read with the Rules any tax on sales relating to inter-State Trade and Commerce will be in the domain of the Union of India but it is to be collected by the Department of sales tax or finance as the case may be of that State within whose territorial jurisdiction, such inter-State Trade and Commerce in respect of those particular goods are effected. The power of the State to impose its State taxes is only restricted to those sales which are strictly within the territory of that State and which are excluded from the purview of Section 3 of the CST Act, 1956. In the facts of the present

proceedings, there is no finding by the assessing officer that the subsequent sales made to the respondent No. 4 were intra State Sales effected within the State of Assam and were therefore outside the purview of the Act of 1956. However, the only ground for denial of the benefit of the exemption available under Section 6(2) of the Act of 1956 is that in the absence of valid 'C' Forms required to be furnished by the petitioner. Therefore, what is clear is that the State respondents are not considering the subsequent sales made to respondent No. 4 to be a sale under the State Sales Tax laws. It is also not disputing the claim of the petitioner that the goods which were sold or supplied to respondent No. 4 were not procured from outside the State and are supported by the relevant Form E-1. Under such circumstances, it is clear that the goods which were supplied to respondent No. 4 by the petitioner were goods which had occasioned movement from outside the State and into the State of Assam and are therefore covered under Section 3 of the CST Act of 1956. From a bare reading of the provisions of Section 6(2), it is seen that *the benefit under 6(2) is not restricted to those sales which were made by transfer of the documents of title to the goods during the transit of such goods*, but it will cover all such goods which occasion movement of goods from outside the State in the course of the inter-State Trade and Commerce which are covered under Section 3 of the

Act of 1956. Where the procurement of goods in the course of inter-State Trade and Commerce by the petitioner is not disputed, the benefit conferred under Section 6(2) on subsequent sales cannot be denied to an assessee merely because the 'C' forms were not furnished that to for the inability of such Forms to be supplied by the respondent No. 4 because of their tax liabilities towards the State Department. The 'C' Forms are essentially documents to support the claim of an assessee that the sale had occasioned under Section 3 of the CST Act of 1956 and thereby movement of goods occasioned during the course of inter-State Trade and Commerce. Where this fact is established beyond doubt the consequential benefits available to an assessee under the provisions of the Act cannot be curtailed or denied. As such, the claim of the petitioner of the benefit under Section 6(2) cannot be curtailed for non-furnishing of declaration 'C' Forms where the assessing officer does not dispute the assertion of the petitioner that the goods which were supplied or sold to the respondent No. 4 had occasioned movement from outside the State of Assam appears to the Court to have sufficient merit. The impugned assessment order also does not reflect that the benefit available to the petitioner was denied because the assessing officer declined to accept the claim of the petitioner that the subsequent sales of goods did not originate by movement of goods from outside

the State of Assam and are therefore not covered under Section 3 of the CST Act of 1956. This objection has been sought to be raised by the respondents in their affidavit. Needless to say that an assessment order passed by competent Officer of the Department cannot be improved by subsequent affidavits filed by the State. The findings of the assessing officer has to be accepted and understood from a mere reading of the assessment order which is under challenge in the present proceedings. A reference in this case may be made to the celebrated Judgment of the Apex Court rendered in *Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi* reported in (1978) 1 SCC 405 that where it was held that “Orders are not like old wine becoming better as they grow older”.

60. Coming to the Judgments pressed into service on behalf of the petitioner, in M/S Radiant Manufacturers Pvt Ltd. Vs. The Deputy Commissioner of Taxes (Appeals) Guwahati in case No. 40STA/2013 & 41STA/2013 in a appeal preferred by the assessee against the assessment order where assessing officer declined to grant the benefit or inter-State sales made which were not supported by ‘C’ Forms. The Board of Revenue disagreeing with the findings of the assessing officer declining to accept such portion of sales to be inter-

State sales and accordingly the Revenue Board disagreed with such findings and deleted the such imposition of taxes. It is not disputed in the bar that no further appeal has been preferred by the Department against this order. This position is accepted by the respondents.

61. Again in M/S Prism Cement Ltd (Supra), while considering the powers of the State Government to grant exemption to tax under Section 8(5) pursuant to the amendments carried out in the Finance Act 2002, the Bombay High Court rejected the arguments of the Revenue that the amendments carried out by the Finance Act 2002 restricts the power of the State Government to grant total/partial exemption under Section 8(5) of the Act of 1956 in respect of inter-State sales covered under Section 8(1). The Bombay High Court held that even after the amendment of Section 8(5) by the Finance Act, 2002 the State Government in public interest may subject to fulfillment of the requirements of Section 8(4), applicable to the transactions covered under Section 8(1), grant total/partial

exemption from tax payable on inter-State sales covered under Section 8(1) as also under Section 8(2) of the CST Act.

62. In view of all the above discussions, it has to be held that the claim of the writ petitioner must be allowed. The benefits claimed under Section 6(2) must be given its full effect in respect of the transactions undertaken by the petitioner. The findings of the assessing officer in W.P(C) No. 6108/2022 treating Rs. 1065510.00 to be sales to others in the absence of valid 'C' Forms are interfered with and set aside. Similarly the findings of the assessing officer in W.P.(C) No. 6111/2022; W.P(C) No. 6112/2022 and W.P(C) No. 6113/2022 treating Rs. 1090929.00; Rs. 15952027.00 and Rs. 51027523.00 respectively to be sales to others in the absence of Valid 'C' Form are also interfered with and set aside. The sales made by the petitioner to that extent shall be treated to be subsequent sales in the course of inter-State trade and commerce and full benefit thereon shall be granted to the petitioner as is available to the petitioner under Section 6(2) of the Act of 1956. The impugned

orders therefore are interfered with and set aside to the extent the benefit in respect of sales made to respondent No. 4 as subsequent sales under Section 6(2) was denied. The impugned demands are also therefore set aside and quashed. The petitioners are entitled to be granted the full benefit available under Section 6(2) of the Act of 1956 for the sales made to respondent No. 4.

63. The writ petitions are therefore allowed and disposed of. Interim orders, if any, stand merged. Pending I.As are also disposed of.

JUDGE

Comparing Assistant