

## STATEMENT OF OBJECTS AND REASONS

Sales tax laws enacted in pursuance of the Government of India Act, 1935 as also the laws relating to sales tax passed after the coming into force of the Constitution proceeded on the footing that the expression "sale of goods", having regard to the rule as to broad interpretation of entries in the legislative lists, would be given a wider connotation. However, in *Gannon Dunkerley's* case (A.I.R. 1958 S.C. 560), the Supreme Court held that the expression "sale of goods" as used in the entries in the Seventh Schedule to the Constitution has the same meaning as in the Sale of Goods Act, 1930. This decision related to works contracts.

2. By a series of subsequent decisions, the Supreme Court has, on the basis of the decision in *Gannon Dunkerley's* case, held various other transactions which resemble, in substance, transactions by way of sales, to be not liable to sales tax. As a result of these decisions, a transaction, in order to be subject to the levy of sales tax under entry 92A of the Union List or entry 54 of the State List, should have the following ingredients, namely, parties competent to contract, mutual assent and transfer of property in goods from one of the parties to the contract to the other party thereto for a price.

3. This position has resulted in scope for avoidance of tax in various ways. An example of this is the practice of inter-State consignment transfers, i.e., transfer of goods from head office or a principal in one State to a branch or agent in another State or *vice versa* or transfer of goods on consignment account, to avoid the payment of sales tax on inter-State sales under the Central Sales Tax Act. While in the case of a works contract, if the contract treats the sale of materials separately from the cost of the labour, the sale of materials would be taxable, but in the case of an indivisible works contract, it is not possible to levy sales tax on the transfer of property in the goods involved in the execution of such contract as it has been held that there is no sale of the materials as such and the property in them does not pass as moveables. Though practically the purchaser in a hire-purchase agreement gets the goods on the date of the hire-purchase, it has been held that there is sale only when the purchaser exercises the option to purchase at a much later date and therefore only the depreciated value of the goods involved in such transaction at the time the option to purchase is exercised becomes assessable to sales tax. Similarly, while sale by a registered club or other association of persons (the club or association of persons having corporate status) to its members is taxable, sales by an unincorporated club or association of persons to its members is not taxable as such club or association, in law, has no separate existence from that of the members. In the *Associated Hotels of India* case (A.I.R. 1972 S.C. 1131), the Supreme Court held that there is no sale involved in the supply of food or drink by a hotelier to a person lodged in the hotel.

4. In the *New India Sugar Mills* case (A.I.R. 1963 S.C. 1207), the Supreme Court took the view that in the transfer of controlled commodities in pursuance of a direction under a Control Order, the element of

volition by the seller, or mutual assent, is absent and, therefore, there is no sale as defined in the Sale of Goods Act, 1930. However, in *Oil and Natural Gas Commission Vs. State of Bihar* (A.I.R. 1976 S.C. 2478), the Supreme Court had occasion to consider its earlier decisions with regard to the liability of transfers of controlled commodities to be charged to sales tax. The Supreme Court held that where there are any statutory compulsions, the statute itself should be treated as supplying the consensus and furnishing the modality of the consensus. In *Vishnu Agencies Vs. Commercial Tax Officer* (A.I.R. 1978 S.C. 449), six of the seven Judges concurred in over-ruling the decision in *New India Sugar Mills* case while the seventh Judge held the case to be distinguishable. It is, therefore, considered desirable to put the matter beyond any doubt.

5. The various problems connected with the power of the States to levy a tax on the sale of goods and with the Central Sales Tax Act, 1956 were referred to the Law Commission of India. The Commission considered these matters in their Sixty-first Report and, recommended *inter alia* certain amendments in the Constitution if as a matter of administrative policy it is decided to levy tax on transactions of the nature mentioned in the preceding paragraphs.

6. Device by way of lease of films has also been resulting in avoidance of sales tax. The main right in regard to a film relates to its exploitation and after exploitation for a certain period of time, in most cases, the film ceases to have any value. It is, therefore, seen that instead of resorting to the outright sale of a film, only a lease or transfer of the right to exploitation is made.

7. There were reports from State Governments to whom revenues from sales tax have been assigned, as to the large scale avoidance of Central sales tax leviable on inter-State sales of goods through the device of consignment of goods from one State to another and as to the leakage of local sales tax in works contracts, hire-purchase transactions, lease of films, etc. Though Parliament could levy a tax on these transactions, as tax on sales has all along been treated as an item of revenue to be assigned to the States, in regard to these transactions which resemble sales also, it is considered that the same policy should be adopted.

8. Besides the above mentioned matters, a new problem has arisen as a result of the decision of the Supreme Court in *Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi* (A.I.R. 1978 S.C. 1591). States have been proceeding on the basis that the *Associated Hotels of India* case was applicable only to supply of food or drink by a hotelier to a person lodged in the hotel and that tax was leviable on the sale of food-stuffs by a restaurant. But over-ruling the decision of the Delhi High Court, the Supreme Court has held in the above case that service of meals whether in a hotel or restaurant does not constitute a sale of food for the purpose of levy of sales tax but must be regarded as the rendering of a service in the satisfaction of a human need or ministering to the bodily want of human beings. It would not make any difference whether the visitor to the restaurant is charged for the meal as a whole or according to each dish separately.

9. It is, therefore, proposed to suitably amend the Constitution to include in article 366 a definition of "tax on the sale or purchase of goods"

by inserting a new clause (29A). The definition would specifically include within the scope of that expression tax on—

- (i) transfer for consideration of controlled commodities;
- (ii) the transfer of property in goods involved in the execution of a works contract;
- (iii) delivery of goods on hire-purchase or any system of payment by instalments;
- (iv) transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration;
- (v) the supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
- (vi) the supply, by way of or as part of any service, of food or any drink for cash, deferred payment or other valuable consideration. (See clause 4).

10. A new entry is sought to be inserted in the Union List in the Seventh Schedule, as entry 92B, to enable the levy of tax on the consignment of goods where such consignment takes place in the course of inter-State trade or commerce. (See clause 5).

11. Clause (1) of article 269 is proposed to be amended so that the tax levied on the consignment of goods in the course of inter-State trade or commerce shall be assigned to the States. Clause (3) of that article is proposed to be amended to enable Parliament to formulate by law principles for determining when a consignment of goods takes place in the course of inter-State trade or commerce. (See clause 2).

12. Clause (3) of article 286 is proposed to be amended to enable Parliament to specify, by law, restrictions and conditions in regard to the system of levy, rates and other incidents of the tax on the transfer of goods involved in the execution of a works contract, on the delivery of goods on hire-purchase or any system of payment by instalments and on the right to use any goods. (See clause 3).

13. The proposed amendments would help in the augmentation of the State revenues to a considerable extent. Clause 6 of the Bill seeks to validate laws levying tax on the supply of food or drink for consideration and also the collection or recoveries made by way of tax under any such law. However, no sales tax will be payable on food or drink supplied by a hotelier to a person lodged in the hotel during the period from the date of the judgment in the *Associated Hotels of India* case and the commencement of the present Amendment Act if the conditions mentioned in sub-clause (2) of clause 6 of the Bill are satisfied. In the case of food or drink supplied by restaurants this relief will be available only in respect of the period after the date of judgment in the *Northern*

India Caterers (India) Limited case and the commencement of the present Amendment Act.

14. The Bill seeks to achieve the above objects.

**R. VENKATARAMAN.**

NEW DELHI;

The 18th March, 1981.

**PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117  
AND 274 OF THE CONSTITUTION OF INDIA**

[Copy of letter No. 28/3/80-ST, dated the 19th February, 1981 from Shri R. Venkataraman, Minister of Finance to the Secretary, Lok Sabha].

The President, having been apprised of the subject matter of the Bill further to amend the Constitution of India, has been pleased to recommend under clause (1) of article 117 and clause (1) of article 274 of the Constitution, the introduction of the Bill in Lok Sabha.

**AVTAR SINGH RIKHY,**

**Secretary.**