

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CENTRAL SALES TAX APPEAL NO. 13 OF 2017

(Arising order out of VAT Appeal No. 1226 of 2015 dated 12.04.2017 passed by the Maharashtra Sales Tax Tribunal, Mumbai)

State of Maharashtra

....Appellant

Through Commissioner of Sales Tax,
5th Floor, Vikrikar Bhawan, Mazgaon,
Mumbai- 400010

VERSUS

- 1. M/s. Castrol India Ltd.**
Technopolis Knowledge Park,
Mahakali Caves Road,
Andheri (E), Mumbai.
- 2. State of Andhra Pradesh,**
Through Commissioner of Commercial Taxes,
Having office at C.T. Complex,
Ground Floor, M.S. Road, Nampally,
Hyderabad- 500001.
- 3. State of Assam,**
Office of the Commissioner of State Tax,
Kar Bhawan, G.S. Road, Dispur,
Guwahati-781006.
- 4. State of Bihar,**
Office of Commissioner State Tax,
Vikas Bhawan, Bailey Road,
Patna – 800001
- 5. State of Chattisgarh,**
Head office Commercial Tax-GST
Department, North Block,
Sector 19, Atal Nagar.
- 6. Union Territory of Delhi,**
Department of Trade and Taxes,
Govt of NCT of Delhi,
Vyapar Bhawan, IP Estate,
New Delhi – 110002, India
- 7. Dadra and Nagar Haveli,**
Office of the Commissioner of State Tax,
1st Floor, Udhog Bhawan, 66KV Road,
Near Secretariat, Village Amli,
U.T. of Dadra and Nagar Haveli – 396230.
- 8. State of Goa,**
Through The Commissioner of Commercial Taxes,
Having office at Vikrikar Bhawan,
M.G. Road, Panji (Goa).
- 9. State of Gujarat,**
Through Office of the Commissioner of State Tax,
C-5 Rajya Kar Bhavan, Ashram Road,
Ahmedabad – 380009.

10. State of Haryana,

Through Excise & Taxation Department,
Haryana, Vanijya Bhawan, Plot no. 1-3,
Sector-5, Panchkula – 134151.

11. State of Jharkhand,

Through Secretary-cum-Commissioner
of Commercial Taxes, Having office at
Department of Commercial Tax,
Project Building, Dhurva,
Ranchi – 834004.

12. State of Jammu and Kashmir,

Through Office of the Commissioner of State Tax,
Railway Station Road, Bari Brahmana,
Jammu, (Jammu and Kashmir)

13. State of Karnataka,

Through Office of the Commissioner of State Tax,
Vanijya Therige Karyalaya, Kalidasa Road,
Gandhinagar, Bangalore – 560009.

14. State of Kerala,

Through Office of Commissioner of State Tax,
9th floor, Tax Tower, Killppalam,
Karamana P. O., Thiruvananthapuram.

15. State of Madhya Pradesh,

Through Office of Commissioner of State Tax,
Moti Bunglow Compound, M.G. Road,
Near Gandhi Hall, Indore-452001.

16. State of Orissa, Through

Through Office of the Commissioner of State Tax,
Baniyyakar Bhawan, Old Secretariat Compound,
Cuttack – 753001.

17. State of Punjab, Through

Through Office of The Commissioner of State Tax,
Improvement Trust Building, 3rd Floor,
Chhoti, Baradari, Patiala,
Punjab – 147001.

18. State of Rajasthan, Through

Through Office of the Commissioner of State Tax,
Kar Bhawan, Bhawani Singh Road,
Ambedkar Circle, C-Scheme, Jaipur,
Rajasthan – 302005.

19. State of Tamil Nadu,

Through Office of the Commissioner of State Tax,
Ezhilagam, Chepauk,
Chennai – 600005.

20. State of Uttar Pradesh,

Through Office of the Commissioner of State Tax,
Commercial Tax U.P.,
Commercial Tax Head Office,
Vibhuti Khand, Gomti Nagar,
Lucknow – 226016.

21. State of West Bengal,

Through Office of the Commissioner State Tax,

....Respondents

14, Beliaghata Road, Sales Tax Building,
Kolkata – 700015.

WITH

**CST/2/2018
CST/2/2020**

**CST/3/2018
CST/3/2020**

**CST/4/2018
CST/50867/2024**

**CST/1/2020
CST/50868/2024**

APPEARANCE:

Ms. Rama Ahluwalia, Advocate for the Appellant State of Maharashtra

Mr. Rohan Shah, Senior Advocate assisted by Shri Udayan Choksi and Shri Harish Suri, Advocates for M/s. Castrol India Ltd.

Mr. Abhishek Pandey Advocate for the State of Chhattisgarh

Mr. Jaivardhan Gautam, Representative for the State of Uttar Pradesh

Shri Nishe Rajen Shonker and Shri Alim Anwar, Advocates for the State of Kerala

Ms. Madhumita Bhattacharjee and Mr. Anant, Advocates for the State of West Bengal

Mr. Sahil Bhalaik and Shri Ritik Arora, Advocates for the Appellant State of Andhra Pradesh

Mr. Surjendu Sankar Das and Shri Samarpit Chauhan, Advocates for the State of Goa

Mr. Arun Gaor, E&T Department, ETO Haryana

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
 HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 16.04.2025

Date of Decision: 11.07.2025

FINAL ORDER NO's. 50989-50997/2025

JUSTICE DILIP GUPTA:

Central Sales Tax Appeal No. 13 of 2017 has been filed by the State of Maharashtra to assail the order dated 12.04.2017 passed by the Maharashtra Sales Tax Tribunal at Mumbai¹ in VAT Appeal No. 1226 of 2015 filed by M/s. Castrol India Ltd.² - respondent no. 1. The appeal has been allowed and the assessment order dated 20.10.2015 passed by the Deputy Commissioner of Sales Tax disallowing the claim of branch transfer made by Castrol under section 6A of the

1. the Sales Tax Tribunal
2. Castrol

Central Sales Act, 1956³ for the Financial Year 2009-10 has been set aside with consequential relief.

2. The remaining eight **Central Sales Tax Appeals No's. 2 of 2018, 3 of 2018, 4 of 2018, 1 of 2020, 2 of 2020, 3 of 2020, 50867 of 2024 and 50868 of 2024** have also been filed by the State of Maharashtra to assail similar orders passed by the Sales Tax Tribunal setting aside the assessment orders of the Deputy Commissioner of Sales Tax for the Financial Years 2007-8, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 that disallowed the claim of branch transfer made by Castrol under section 6A of the CST Act, and allowed the eight appeals with consequential relief(s).

3. The issue that had arisen for consideration before the Sales Tax Tribunal was whether the movement of goods from the mother warehouse of Castrol in the State of Maharashtra to the Carrying and Forwarding Agents⁴ in other States are supplies made in discharge of pre-existing purchase orders which fall within the scope of section 3(a) of the CST Act as claimed by the State of Maharashtra or are supplies in the nature of 'Stock Transfers' which fall within the scope of section 6A of the CST Act as claimed by Castrol, which claim of Castrol has been upheld by the Sales Tax Tribunal.

4. This issue was answered by the Sales Tax Tribunal in favour of Castrol in the following manner:

"20. xxxxxxxxxx. **It is the case of appellant (Castrol India) that the goods move from mother warehouse to CFA's who are their agents and purchase orders are received by CFA's from**

3. the CST Act
4. CFAs

distributors and the actual appropriation of goods takes place at the level of CFA's. In short, according to them, it is a case of branch transfer pure and simple and not a case of interstate sale.

As against this, the Department has treated the sale as interstate sale and has submitted that the CFAs have acted as mere conduit pipe, but the actual sale take place between appellant company and distributors in accordance with the existing purchase orders.

xxxxxxxxxx

26. **While considering the present case, the entire business structure of appellant should be taken into consideration.** Admittedly, appellant is the primary manufacturer and seller of lubricants. The goods manufactured by appellant are sent to different parts of the country in units of different quantities termed as SKU. **Appellant has about 300 distributors all over India and about 38 CFA's. When such large infrastructure of appellant is considered, there appears merit in the contention of appellant that for supplying goods in assured time limit, appellant requires effective software norms. This means that when the goods are dispatched from mother warehouse, the customer is not identified at that stage.**

31. xxxxxxxxxxxx. **It is pertinent to note that in this case also appellant had produced all 'F' forms and therefore appellant had discharged the initial burden cast upon it.** When this is the position, the burden has shifted upon the Department to produce the concrete evidence that the transaction is not the transaction of branch transfer but it is sale in accordance with the pre determined order. **It must be specifically stated that in the present case, the goods are standard goods.** Admittedly, no alternations can be made at the branch office. Yet such goods can be kept in the godown and supplied to the parties. **As discussed earlier, appellant, Castrol India Ltd has sale all over India and has large network of CFA and distributors and considering the constant demands of its product in the market**

and to keep up its reputation it is necessary that the products are available readily and minimum stock is maintained at CFA as well as distributor level. When this factual position is considered, there seems merit in the argument of appellant that goods move from mother warehouse to CFA not in anticipation of any pre-existing purchase order, but to maintain the inventory level and not in fulfillment of pre-existing purchase orders, but to comply with the anticipated demands. In our opinion, the appellant has successfully discharged initial burden cast upon it that it is a case of branch transfer. If Department wants to argue that it is an interstate sale, the onus lies upon the department to establish that fact.

During the course of arguments, Shri. C.B. Thakar had also pointed out the fact that the CFA's have paid taxes on the said goods in their respective states. This fact proves that the appellant has a clear conscience to abide by tax laws and not to evade or avoid payment of sales tax.

32. **After taking stock of entire facts of the case and considering the point that the goods sold by appellant are standard and they are sold in large quantity throughout India, appellant has large network of distributors and CFA's and he has developed a software for generating purchase orders on the basis of historical data, the inference is unmistakable that there is no inextricable link between movement of goods and purchase order. Therefore, it must be held that appellant has established its claim of branch transfer. Therefore, the assessing authority committed an error in disallowing the claim of branch transfer and wrongly treated it as of interstate sale. As a result of above, appeal needs to be allowed."**

(emphasis supplied)

5. The issue that arises for consideration in these appeals hinges on the terms of the Distributor Agreement dated 26.06.2007⁵ entered into between Castrol (described as "the Company" in the Agreement) and Western Lube Company (described as "the Distributor" in the Agreement) as also on the terms of the Agreement entered into between Castrol and CFAs.

Distributor Agreement

6. The recital to the Agreement states that the Company is a processor of Lubricating Oils and Greases and Specialty Products and as the Distributor approached the Company to purchase in wholesale quantities the products processed by or on behalf of the Company, the Company agreed to sell the products to the Distributor on the terms and conditions enumerated in the Agreement. The relevant terms and conditions contained in the Distributor Agreement are:

"2. The Distributor shall place purchase orders/indents from time to time on the Company with regard to the quantity of the products which the Distributor desires to purchase from the Company. All orders/indents for the products placed by the Distributors with the Company shall be subject to acceptance thereof by the Company.

The Company shall be entitled at any time after acceptance of an order/indent from the Distributor to cancel the same in whole or in part even though it shall have been partly executed by the Company. For this purpose, each lot of the products dispatched by the Company against an order/indent shall be the subject

5. the Distributor Agreement

matter of separate contract. The failure on the part of the Company to dispatch one lot shall not affect or vitiate the contract relating to the other lot/s of the products.

- 3. The Distributor shall purchase the products at the rates which will be fixed by the Company from time to time.**
- 4. Sales Tax, Excise and other taxes if any levied on delivery of the products to the Distributor shall be borne by the Distributor as an extra charge.**
5. It is expressly agreed that the basis of all transactions between the Company and the Distributor in pursuance of this Agreement shall be on a principal to principal basis and that nothing in this Agreement shall constitute or be deemed to constitute either party as the Agent of the other.
- 6. It is expressly agreed and understood between the parties that the Company will be free to sell the said products to other parties also.**
7. The Company reserves its right to appoint one or more Distributors to operate at any time or from time to time in the town/area where the Distributor is situated or at any other place as the Company may deem fit.
- 8.a. The Company shall arrange to dispatch the products to the Distributor through a contracted carrier and the transportation costs shall be borne by the Company.** The Company shall also insure the products in transit. Any claims relating to

damage or leakage in transit shall be reimbursed by the Company to the Distributor based on appropriate claims filed by the Company on the Insurance Company.

- b.** The Distributor shall have to provide free deliveries to all the Distributors' customers in the territory. In the event that certain volumes have to be delivered through contracted transporters, the Distributor shall book the consignment on 'Freight paid' basis.

xxxxxxxxxx

- d.** The Distributor undertakes that in respect of supplies to be made by it to the Distributor's customer/dealers, it shall not charge prices exceeding the prices recommended by the Company.
- e.** The Distributor will maintain requisite godown for storing the products sold to it representing space equivalent to 14 days stock cover- the minimum required to be maintained at any given time.
- f.** It will be the obligation of the Distributor to adopt and use the standard Computer Software package developed/recommended by the Company and a Computer and related Hardware recommended by the Company. The Distributor undertakes to transfer all data pertaining to the distribution of the products on a regular basis as may be specified by the Company from time to time.
- g.** The Distributor undertakes to produce to the Company all Invoices raised on the Distributor's customers/dealers for scrutiny to ensure that the Distributor is charging prices equal to or lower than the

recommended list price. Moreover, the Distributor undertakes to provide sales information customerwise/dealerwise on a regular basis as may be specified by the Company. The Distributor also undertakes to provide any other information as required by the Company from time to time.

- h.** The Distributor undertakes to submit information to the Company at such intervals as may be agreed regarding the total benefits which the dealers will be entitled to under the schemes of the Company such as a scheme for free supply of the products. Such free supply of the products by the Company under the scheme is based on the statement furnished by the Distributor regarding upliftment of the products by the Dealers of the Distributors during the period of the scheme and is by way of replenishing the quantity of the products which the Distributor has so supplied free to his Dealers as per the Company's scheme.

xxxxxxxxxx

- I. The Company is utilizing the services of an agency called Team HR which provides the Company Field Marketing Representatives to create and develop demand in the Distributor's markets.** This development work is undertaken with a view to increase sales volume/value and is therefore for mutual benefit of the Distributor and the Company. The Company has agreed to bear the cost of the salary of the Field Marketing Representatives. However, in consideration of the benefits which the Distributor is

going to receive under the utilization of the services of the Field Marketing Representatives the Distributor has agreed that the Company will debit the Distributor the monthly travel costs incurred by the Field Marketing Representatives which will be based upon the number of days he has worked in the Distributor's market.

xxxxxxxxxx

9. In consideration of the obligations undertaken by the Distributor pursuant to this Agreement the Distributor will be entitled to the Distributor's rebate @ 4.5% of the basic price of the products. For the said purpose basic price means the price at which the product is invoiced to the Distributor by the Company (including excise levy) but does not include any type of discounts, taxes and the said commission / rebates. This rebate shall be deducted from the respective sales invoices itself.

- 10.a **The relationship between the Company and the Distributor shall be in accordance with the terms of this Agreement and thereby, the Distributor shall not be entitled to deal with the products of the Company in any other capacity except as prescribed in this Agreement.** In order to ensure that the competition in the course of trade is not thwarted in any manner the Distributor undertakes not to trade in the Company products as a dealer by itself or through any outlet/dealer where any partner of the Distributor or any of his/her family members has substantial interest. Any partner of the distributor or

his/her family members shall be deemed to have a substantial interest in any outlet/dealer if.”

Agreement between Castrol and CFA

7. The relevant portion of the Agreement dated 03.08.2007 between Castrol and Shree Logistics, a CFA, in which Castrol has been described as the 'Company' and M/s. Shree Logistics as C&F Agent is reproduced below:

“Whereas:

The Company is engaged in the business of manufacturing and marketing lubricants, greases and other speciality products (hereinafter referred to as **“the Products”**).

The C&F Agent has represented to the Company that they have considerable experience managing the carrying and forwarding work for several Companies and are capable of discharging their responsibilities independently.

Based on the said representations of the C&F Agent, the Company has agreed to entrust its carrying and forwarding operations of the said Products to the C&F Agent.

The C&F Agent have arranged on their own a warehouse measuring 12,500 Sq ft at Plot no. 14 Mile, Amravati Road, Gondkhairi, Gram Panchayat – Nimji, Tal – Kalmeshwar Distt – Nagpur (hereinafter referred to as **“the Warehouse”**).

xxxxxxxxxxx

It is now agreed by and between the parties hereto as follows:

1. Scope of the Agreement

xxxxxxxxxxx

1.2 The Company shall consign from time to time the said Products, Raw Materials, Packing and Promotional Materials, Stores and Equipments

and any other assets belonging to the Company from its various manufacturing units and third party associates across the country, and also from its other C&F Agents to the Warehouse by Road/Rail, which the C&F Agent shall receive, stock and dispatch on behalf of and per the instructions of Company.

XXXXXXXXXXXX

4. Remuneration

- 4.1 In consideration of the C&F Agent performing the obligations agreed to be undertaken herein, the Company shall pay the C&F Agent a fixed monthly amount of Rs. 101,000/- (Rupees One Lakh One Thousand only), hereinafter referred to as 'the fixed monthly consideration'.**

Break up towards rental and operating expense would be as follow.

Rent for Providing 12,500 Sq Ft Ware house	: 50,000
Fixed Monthly Operating charges	: 51,000

Separate invoices to be raised for Rent and Operating expenses. TDS as applicable would be deducted and certificates will be issued for the same. In addition Company will reimburse the Service Tax as applicable.

XXXXXXXXXX

5. Rights & Obligations of C&F Agent

XXXXXXXXXX

- 5.14 The C&F Agent shall be responsible for the segregation of invoices customer wise and matching them with the relevant lorry receipts and dispatch documents and also for the posting of invoices and dispatch documents to the respective customers/dealers/Sales Officers.**

XXXXXXXXXX

- 5.30 The C&F Agent shall engage such staff and labour as it considers necessary for discharging its obligation under this Agreement. Further, the C&F Agent shall appoint a Supervisor on such terms and on such conditions as he may deem fit to supervise the operations of the**

warehouse and who shall be responsible for coordinating with the Company. The C&F Agent shall conduct checks on the background of all personnel deployed for Company's operations. None of the personnel engaged should be with a criminal background nor known to be having used drugs/abuse alcohol.

xxxxxxxxxxxxx

7. Duties & Obligations of the Company

7.1 The Company shall be responsible for taking out the necessary insurance policies to keep the goods indemnified during storage.

7.2 The Company shall obtain the sales tax and excise bonding registration.

7.3 The ownership of the goods entrusted to the C&F Agent in the course of operations of this Agreement shall continue to vest with the Company.

7.4 The Company shall be responsible for the disposal of leaky and dented stock on regular basis.

7.5 The Company shall not be responsible or bound by any encumbrances made by the C&F Agent on the goods supplied.

7.6 The necessary stationary required for operations bearing the Company's name or logo will be provided by the Company.

7.7 The Company's authorized representatives shall be entitled to check the stocks and records maintained by the C&F Agent and to inspect all books of accounts, register, vouchers, documents and statements maintained by the C&F Agent.

xxxxxxxxxxxxx

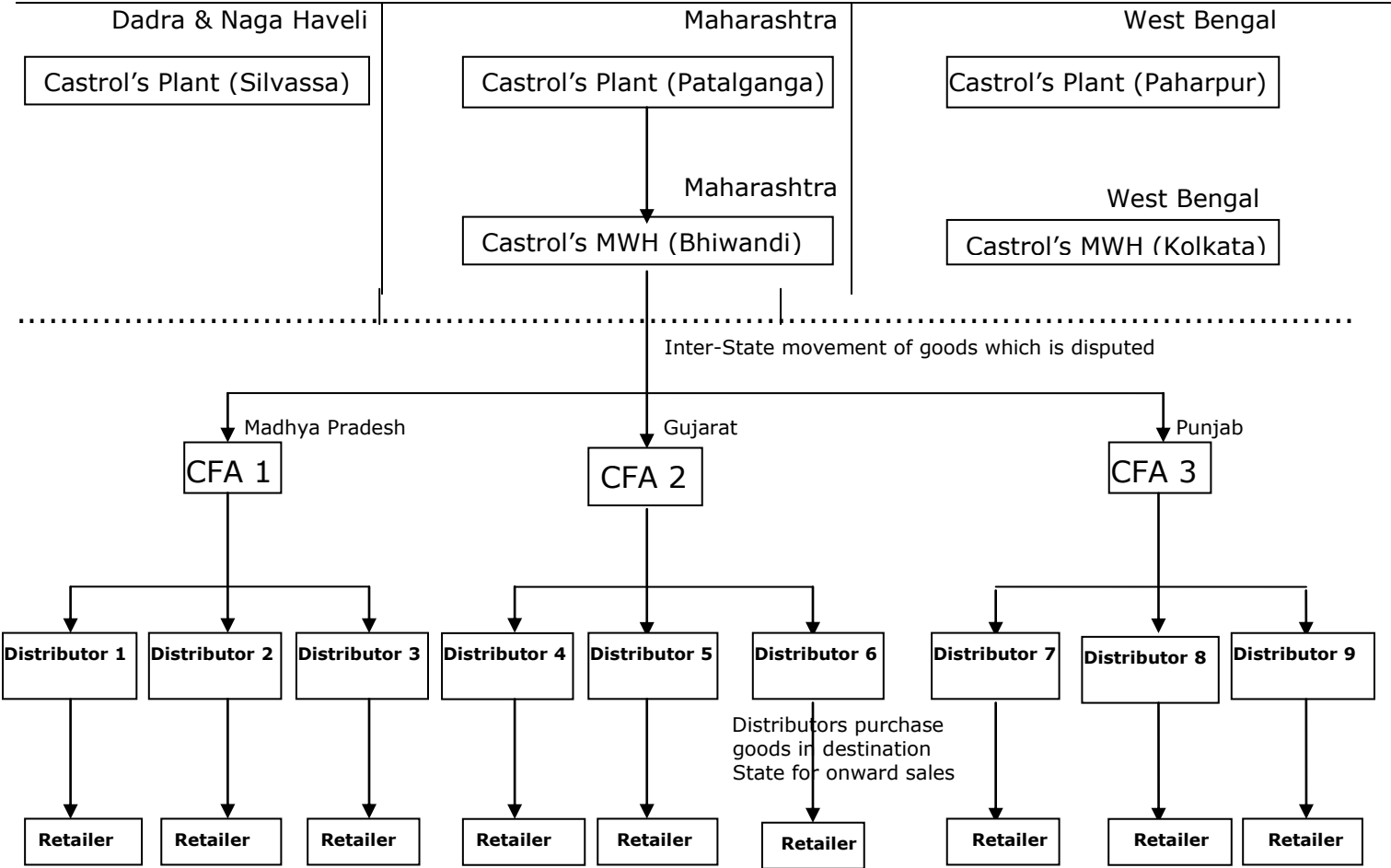
7.10 If the C&F Agent is required to pay any penalty while acting as the agent of the Company for any act for which the Company is responsible, the Company shall make good of the amount of penalty imposed on the C&F Agent.

7.11 The Company shall indemnify and keep the C&F Agent indemnified against all costs, charges, expenses, losses, claims and demands against the C&F Agent incurred or suffered by the C&F Agent and its principal officers and directors due to the breach of the Company of any of the Company’s representations, warranties and obligations under this Agreement.”

(emphasis supplied)

8. The appellant has also submitted a Supply Chain Map that elaborately demonstrates the movements of the goods from the plant of Castrol at Patalganga in the State of Maharashtra to the mother warehouse of Castrol at Bhiwandi also in the State of Maharashtra, and then to the CFAs in the States of Gujarat, Madhya Pradesh and Punjab. The map also shows how the Distributors purchase goods in the destination States for onward sale to retailers. This Supply Chain Map is reproduced below:

Supply Chain Map



9. Ms. Rama Ahluwalia, learned counsel for the appellant State of Maharashtra pointed out from the Distributor Agreement that the Distributor has to maintain at all times a minimum quantity of the products as mutually agreed by the Castrol and the Distributor, and whenever the Distributor effects a sale of the products as per the Automated Order Generation Distributor Replenishment Model of Castrol, a computerized purchase order is automatically generated for the quantity of the products sold by the Distributor so as to ensure that the Distributor maintains a stock, as mutually agreed by Castrol and the Distributor, at any point of time. Learned counsel also pointed out that the Distributor agreed to be bound by the automatically generated purchase order, but Castrol will accept such purchase order subject to Castrol being satisfied about the availability of credit limit and if there is availability of credit limit, goods are sent to the Distributor (customer) on the basis of pre-existing purchase order. Learned counsel stated that during the course of verification by the Sales Tax Department, it was found that the Head Office had taken advances from some Distributors, and it had also collected blank signed cheques from some Distributors, which cheques were deposited in the bank after delivery of goods. This work was outsourced by Castrol to Deutsche Bank and one link of the system was given to the Bank for that work. Learned counsel further pointed out that the movement of goods to the Distributor is from the warehouses of the handling agents called CFAs appointed in each State (other than the State of Maharashtra) as per the Agreements entered into with those CFAs. However, a minute perusal of the

Agreements would reveal that the Distributors and CFAs do not have a choice of working independently. CFAs send goods to the Distributors as directed by Head Office through the system, whereafter the Distributor sells the goods to customers and raises sales invoice through the system provided by Castrol. The Sales Executives of the Distributors collect purchase orders from retailers and garages through the system provided by Castrol, and Castrol gives a Log in ID to Distributors and their Sales Executives. These facts indicate strong control of the Head Office over all the activities of CFAs and Distributors. In fact, as CFAs are completely under the control of Castrol and dispatch goods as per the instructions of Castrol, they merely act as a conduit. The dispatch plan contains SKU wise quantity details and details of the CFAs location. This also proves that the movement of goods is inextricably linked to sales. The ERP system of Castrol tie together a multitude of business processes and enables the flow of data between them. The sales activity done through CFAs is merely an arrangement of sales or system developed by Castrol for PAN India activity. The Distributors are identified before movement of the goods and the goods are in turn routed through the CFAs. Thus, section 3(a) of the CST Act is attracted, and Castrol is liable to pay central sales tax on the movement of goods from the State Maharashtra to other States. Learned counsel also pointed out that in B2B business model of Castrol, a potential individual customer places an order by e-mail. The outsourcing agency of Castrol collects this purchase order and punches this order manually in the system. Confirmation mails are sent to the customer, whereafter the concerned CFAs located nearby deliver the goods to the customers.

Thus, in B2B business model also, a customer is known to Castrol though the goods are delivered by the CFAs located near the customer. Section 3(a) of the CST Act is, therefore, also attracted in this case, and these transactions would be inter-State sale. To support the aforesaid contentions, learned counsel for the appellant placed reliance on the following decisions:

- (a) **Hyderabad Engineering Industries vs. State of Andhra Pradesh⁶;**
- (b) **IDL Chemicals Limited vs. State of Orissa⁷;**
- (c) **English Electric Company of India Ltd. vs. The Deputy Commercial Tax Officer and Others⁸;**
- (d) **Oil India Ltd. vs. The Superintendent of Taxes and Other;**
- (e) **State of Maharashtra vs. M/s. Beardsell Limited⁹;**
- (f) **Balabhagas Hulaschand vs. State of Orissa¹⁰;**
and
- (g) **Venkataraman Krishnamurthy and another vs. Lodha Crown Buildmart Pvt. Ltd¹¹.**

10. Shri Rohan Shah, learned senior counsel appearing for Castrol assisted by Shri Udayan Choksi and Shri Harish Suri, before making submissions, pointed out relevant facts which are as follows:

- (i) The goods in question are 'lubricants' under different 'Brand Names' and of different packing sizes and quantity. Each variety of lubricants is treated as a Stock Keeping Unit¹². Castrol deals with over 1,000 SKUs at any point in time. The goods in question are standardised, branded and Off-the-Shelf Products;

6. (2011) 4 SCC 705
 7. (2007) 14 SCC 386
 8. (1976) 4 SCC 460
 9. Central Sales Tax Appeal No. 86 of 2016
 10. (1976) 2 SCC 44
 11. Civil Appeal No. 971 of 2023
 12. SKU

- (ii)** The goods are manufactured in the manufacturing plant of Castrol at Patalganga in the State of Maharashtra. The goods are then moved from the Plant at Patalganga to the mother warehouse of Castrol at Bhiwandi also in the State of Maharashtra. This movement is an internal stock transfer within the State of Maharashtra;
- (iii)** From the mother warehouse at Bhiwandi, 'Branch Transfers' are made to various CFAs of Castrol located in different States. In total there were 38 CFAs in 21 States during the Financial Year 2009-10. As against all of these transfers, F-Forms have been received from the relevant CFAs and presented to the Sales Tax Authorities in the State of Maharashtra;
- (iv)** The issue in controversy is as regards the movement of goods from the mother warehouse of Castrol in Bhiwandi to the CFAs in the relevant States. It is this movement from the mother warehouse to the CFA that the State of Maharashtra is claiming to be an 'Inter-State sale' liable to central sales tax under section 3(a) of the CST Act;
- (v)** There is a similar arrangement for distribution in respect of the Manufacturing Plant at Paharpur, for which the mother warehouse is in Calcutta and further supplies are made to various CFAs in different States. The said supplies made by the mother warehouse at Calcutta have not been disputed by the State of West Bengal, and have been treated as 'stock transfers' in terms of section 6A of the CST Act.
- (vi)** Each CFA holds inventory at its location. The extent of inventory of each SKU stored by each CFA is as per the

'Normative Stocking Levels' fixed by Castrol. Such 'Inventory Norms' are prescribed keeping in mind the Monthly Forecast of Sales. However, divergences between Monthly Forecast Sales and Actual Sales may exist in the States. On account of uncertainties and with a view to maximize all commercial sales opportunities, the entire supply and distribution framework from the mother warehouse to CFAs works on the basis of maintaining Normative Inventory Levels. The movement of goods from the mother warehouse to the CFAs, therefore, occurs to address these preset and pre-determined Normative Inventory Levels. The movement of goods from the mother warehouse to the CFAs is not as a consequence of any pre-existing purchase orders from the Distributors;

- (vii)** When a CFA receives orders from the Distributors, the CFA makes an appropriation of the relevant SKU from the stock held at the CFA location towards fulfilling and discharging the order. The appropriation of goods towards any purchase order, happens only at the CFA location. Relevant to the sale made by the CFA, VAT is paid in the relevant destination State where the CFA is located. This method of appropriation by the CFA and the payment of VAT in the relevant destination State is applicable in the context of all sales made to the Distributors;
- (viii)** Castrol had 38 CFAs in 21 States, about 300 Distributors and 80,000 Retailers in 2009-10;
- (ix)** From the CFAs, sales are also made to other customers like the Large Industrial Consumers, such as – (1) Large Manufacturing Companies who require lubricants in their

manufacturing process and maintenance of machines, (2) Large Car Manufacturing Companies and their workshops who are required to fill their engines with lubricants (pre-delivery of the vehicles) and subsequent servicing, and (3) various other Large Consumers, including Transport Companies;

- (x)** All predictive planning is undertaken with a view that all potential sales opportunities occurring across India can be fully addressed by Distributors and Retailers. All plans referred are based purely on internal projections. Demand Plans are prepared every month with a 12-month running forecast. They are based on anticipated SKU-wise demand for each CFA location using historical data only. These are then aggregated at the Company Level. All movements of goods are planned to ensure that the Normative Level of Stock Inventory of each SKU at each CFA is maintained;
- (xi)** Goods move from the Patalganga Plant to the Bhiwandi mother warehouse on a daily basis. Concurrently, movement of goods also happen from the mother warehouse to the CFAs all over India which is scheduled by the Supply-Chain Team on the basis of their Dispatch Plan. The Dispatch Plan is created by an Automated Tool which considers the Distribution Plan for each CFA location and dispatches against the Distribution Plan on a month-to-date basis;
- (xii)** The movement of goods from the mother warehouse is by way of 'stock transfers', and not by way of a 'sale'. 'Production' and 'movement' of goods to the CFA location

is made in anticipation of the demands to maintain the Inventory of CFA at Normative Levels;

- (xiii)** Movement of goods from the mother warehouse to CFAs occurs as per the Distribution Plan / Dispatch Plan even on days when there is already an existing inventory of SKU at the relevant CFA and there are no pending orders for that SKU from any Distributors in the system;
- (xiv)** The inventory at any CFA is merely stock held at the CFA location which remains unappropriated to a particular order from a Distributor till the "Picking List" is created by the CFA for each delivery to be made on a day;
- (xv)** The holding of inventory at the CFA location is central to supply chain model of Castrol. Goods arrive at the CFA location in a continuous stream for replenishment of stocks;
- (xvi)** The typical period for delivery from a CFA to a Distributor is 0-3 days in 75% of cases. Many transactions of sale to Distributors are delivered on the same day. A typical transport period for movement of goods from the mother warehouse to CFA is 3-10 days. It is, therefore, impossible to service Distributor orders by moving the goods from the mother warehouse;
- (xvii)** The daily allocation for deliveries / sales to be made by the CFAs, is made by JD Edwards allocation tool and is tentative in many respects:
 - (i) It can be reset by a subsequent order;
 - (ii) Orders can be cancelled by a the customer for reasons such as closure of office for holidays, or revised expectation or by Castrol for credit-related reasons, as set out in the Distributor Agreement;

- (iii) The CFA determines the final allocation after considering the availability and efficiency of transportation; and
 - (iv) Goods received at a CFA location may be transferred to another CFA location in another State.
- (xviii)** Appropriation towards any Purchase Order to the Distributor is done only from the stock which is available at the CFA location;
- (xix)** The holding of inventory at the CFA location, being central to supply chain model of Castrol, goods of a given SKU arrive at the CFA location in a continuous stream for replenishment of stocks. In other words, the goods are put in the stream of trade, and not in the stream of sale.
- (xx)** An automated allocation is required since any CFA deals with an average of about 600 orders monthly from the various customers, and each order has on an average 4-5 SKUs. Additionally, the request dates from customers could range anywhere between 2-15 days. Given that the combination could be fairly complicated and manual allocation will be time consuming, the allocation tool in JD Edwards (ERP system) provides an objective and system-driven basis of allocation, whereby the appropriation of goods at the CFA location is made on the basis of prioritisation linked to the delivery request date of the Distributor or customer, which is the last date by when the Distributor or a customer expects the goods to be supplied/invoiced to him;
- (xxi)** Castrol sells 16 million litres of lubricants per month all over India and has storage capacity for only

approximately 0.3 million litres at the manufacturing plants and approximately 4 million litres at the mother warehouses, out of which 2.4 million litres is at Bhiwandi mother warehouse and 0.8 million each at Silvassa and Paharpur mother warehouses. The total storage capacity at all the CFAs, on the other hand is 20 million litres. Therefore, it is physically impossible for Castrol to hold inventory at the plants or mother warehouses. Castrol has 8 lakh sq. ft. of warehousing space in total, of which only 2.2 lakh sq. ft. is at the mother warehouse, which clearly evidences that the storing of inventory takes place at the CFA location, based on the norms that have been set; and

(xxii) The stock transfer from the mother warehouse to CFAs are in bulk quantities. The sales by the CFAs to the Distributors and customers are in much smaller quantities. These are also in different quantities from the volumes being moved to the CFAs. This is linked to the fact that a CFA services multiple Distributors and customers and the movement of goods is also in the regular course towards replenishment of stocks at their normative levels. There is co-mingling of the stocks maintained at CFA, given that CFAs receive goods from multiple mother warehouses and other CFAs;

11. Based on the aforesaid factual aspects, learned senior counsel appearing for Castrol submitted that there is nothing in the terms of the Agreements with the Distributors that may construe an 'agreement to sell' of any specific goods pre-identified in such Agreement. There is also nothing in the Agreements with the

Distributors that may even remotely suggest that the movement from the mother warehouse of Castrol in the State of Maharashtra is towards discharge of a specific order from the Distributors. The entire framework of operations carried out in relation to the Distributor Agreements, unequivocally establishes that against any order of a Distributor, goods are allocated and supplied at the CFA location in the State of the Distributor. The goods allocated to any order of the Distributor are, therefore, goods already available with the CFA in the State where the Distributor conducts its business. Learned senior counsel, therefore, submitted that the movement of the goods from the mother warehouse of Castrol in the State of Maharashtra to the CFAs in other State are supplies in the nature of 'Stock Transfers', which fall within the scope of section 6A of the CST Act. Learned senior counsel also submitted that the findings recorded by the Sales Tax Tribunal have not been specifically challenged in the appeals that have been filed by the State of Maharashtra. Learned senior counsel also placed various evidences from the records to support the contentions advanced and these shall be referred to the appropriate stage. To support the submissions, learned senior counsel also placed reliance on the following decisions:

- (i) **Tata Engineering and Locomotive Co. Ltd. vs. Assistant Commissioner of Commercial Taxes, and Another¹³;**
- (ii) **Kelvinator of India Ltd. vs. The State of Haryana¹⁴;**
- (iii) **Sahney Steel and Press Works Ltd. And another vs. Commercial Tax Officer and Others¹⁵;**

13. (1979) 26 STC 354 (S.C.)

14. (1973) 32 STC 629 – S.C.

15. (1985) 60 STC 301 (S.C.)

- (iv) **State of Maharashtra vs. M/s CMS Computers Ltd.¹⁶;**
- (v) **Keltech Energies Limited vs. The State of Maharashtra and Ors¹⁷;**
- (vi) **Carlsberg India Pvt. Ltd. vs. State of Rajasthan and Ors.¹⁸**

12. Learned counsel appearing for the other respondents supported the submissions made by the learned senior counsel appearing on behalf of Castrol and submitted that the appeals should be dismissed.

13. The submissions advanced by the learned counsel for the appellant and the learned senior counsel for appearing on behalf of Castrol and the learned counsel appearing for other States have been considered.

14. What has to be determined in this appeal is as to whether the movement of the goods from the mother warehouse of Castrol in the State of Maharashtra to the CFAs in other States are supplies made in the discharge of pre-existing purchase orders which fall within the scope of section 3(a) of the CST Act as claimed by the State of Maharashtra, or are supplies in the nature of 'Stock Transfers' which fall within the scope of section 6A of the CST Act as claimed by Castrol.

15. To appreciate this issue, it would be appropriate to examine sections 3, 6 and 6A of the CST Act and the relevant portions of these sections are reproduced below:

16. **Central Sales Tax Appeal No. 01 of 2017 decided on 03.01.2025**
 17. **(2024-VIL-752-CESTAT-DEL-CST)**
 18. **Central Sales Tax Appeal No. 21 of 2014 decided 21.10.2024**

"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.

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 date 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.

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 **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 relates shall be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale.**

*****"

(emphasis supplied)

16. The provisions of sections 3 and 6A of the CST Act were examined at length by the Supreme Court in **Hyderabad Engineering Industries vs. State of Andhra Pradesh**¹⁹ and the relevant portions of the judgment are reproduced below:

"20. **For a sale to be in the course of inter-State trade or commerce under Section 3(a), two conditions must be fulfilled. There must be sale of goods. Such sale should occasion the movement of the goods from one State to another. A sale would be deemed to have occasioned the movement of the goods from one State to another within the meaning of clause (a) of Section 3 of the Act when the movement of those goods is the result of a covenant or incidence of the contract of sale, even though the property in the goods passes in either State.** With a view to find out whether a particular transaction is an inter-State sale

19. (2011) 4 SCC 705

or not, it is essential to see whether there was movement of the goods from one State to another as a result of prior contract of sale or purchase.

21. **Section 6-A of the Central Act provides that if any dealer claims that he is not liable to pay tax under the Central 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 and not by reason of sale, then the burden of proving that the movement of goods was so occasioned shall be on the dealer. It also provides the mode of discharge of that burden of proof.**

22. **What follows from a conjoint reading of these provisions is that every dealer is liable to pay tax under the Central Act on the sale of goods effected by him in the course of inter-State trade or commerce during the year of assessment. Where the department takes advantage of the presumption under Section 3(a) and/or to show that there has been a sale or purchase of goods in the course of inter-State trade or commerce and if the assessee disputes that there has been a sale or purchase of goods in the course of inter-State trade or commerce, then the assessee can rebut the presumption by filing declaration in form 'F' under Section 6A of the Central Act to prove that the movement of goods was occasioned not by reason of sale but otherwise than by way of sale. When the department does not take advantage of the presumption under Section 3(a) of the Central Act, but shows a positive case of inter-State sale in the course of inter-State trade or commerce to make it liable to tax under Section 6, the declaration in Form 'F' under section 6A would be of no avail.**

23. **It is an accepted position in law that a mere transfer of goods from a head office to a branch office or an inter-branch transfer of goods,**

which are broadly brought under the phrase 'Branch transfers' cannot be regarded as sales in the course of inter-State trade, for the simple reason that a head office or branch cannot be treated as having traded with itself or sold articles to itself by means of these stock transfers.

(emphasis supplied)

17. What transpires from the aforesaid decision of the Supreme Court in **Hyderabad Engineering** is that for a sale to be in the course of inter-State trade or commerce under section 3(a), there must be a sale of goods and such sale should occasion the movement of the goods from one State to another. To find out whether a particular transaction is an inter-State sale or not, it is essential to see whether the movement of the goods from one State to another is a result of a prior contract of sale. Under section 6A, if the dealer claims 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 and not by reason of sale, then the burden of proving that the movement of goods was so occasioned shall be on the dealer. The mode of discharge of this burden of proof has also been provided in the form of a declaration in form 'F'. Mere transfer of goods from a head office to a branch office or inter-branch transfer of goods which broadly come under the phrase 'branch transfers' cannot be regarded as sale in the course of inter-State trade for the simple reason that a head office or branch cannot be treated as having traded with itself or sold articles to itself by means of stock transfers. When the 'sale' causes or has the effect of occasioning the movement of goods from one State to another, irrespective of whether the movement of goods is provided for in the

contract of sale or not, or whether the order is placed with any branch office or any head office which resulted in the movement of goods, if the effect of such a sale is to have the movement of goods from one State to another, an inter-State sale would ensue and would result in exigibility of tax under section 3(a).

18. In the present case, the Sales Tax Tribunal took into consideration the entire business structure of Castrol and the fact that for supplying goods in an assured time limit Castrol requires effective software norms. The Sales Tax Tribunal also took into consideration the fact that the goods are standard goods and to cater to the constant demands of the product in the market and to keep its reputation it has to ensure that the products are readily available, for which stock has to be maintained with CFAs as well as Distributor. The Sales Tax Tribunal, then recorded a categorical finding of fact that the goods move from the mother warehouse of Castrol in the State of Maharashtra to the CFAs in other State not in anticipation of any pre-existing purchase order, but to maintain the inventory level. The Sales Tax Tribunal, therefore, held that Castrol established its claim of branch transfer of goods from the mother warehouse to the CFAs.

19. To appreciate whether the movement of the goods from the mother warehouse of Castrol in the State of Maharashtra to the CFAs located in other States are supplies made in the discharge of pre-existing purchase orders or are supplies in the nature of 'Stock Transfer', it would be necessary to understand the Distributor Agreement, the Agreement between Castrol and CFA, and the business module explained by Castrol.

20. The Distributor Agreement clearly provides that though the Distributor shall place purchase orders from the time to time on Castrol with regard to the products which the Distributor desires to purchase, but Castrol shall arrange to dispatch the products to the Distributor through a contracted carrier. The Agreement also provides that the Distributor will maintain requisite godown for storing the products sold to it representing space equivalent to 14 days stock cover, which is the minimum required to be maintained at any given time. The Agreement between Castrol and CFA provides that the CFA will have to arrange on their own a warehouse measuring 12,500 sq ft and Castrol shall consign from time to time the products from its various manufacturing units, and also from its other CFAs to the warehouse of CFA and the CFA shall receive the stock and dispatch it on behalf of and per the instructions of Company. For this purpose the CFA will be paid a monthly amount of Rs. 101,000/-. The CFA shall also be responsible for the segregation of invoices customer wise and match them with the relevant lorry receipts and dispatch movements. The Agreement also provides that the ownership of the goods entrusted to the CFA in the course of operation of the Agreement shall continue to vest with Castrol. It also provides that the representatives of Castrol shall be entitled to check the stocks and records maintained by the CFA.

21. Castrol has also provided the factual position in detail and this has not been controverted by the appellant.

22. What has been emphasized by Castrol is that the goods are standardised, branded and Off-the-Shelf Products and are not products that are specially produced for the Distributors or the

customers. Each variety of lubricants is treated as Stock Keeping Unit (SKU), which are over 1,000. The goods are manufactured in the manufacturing plant of Castrol at Patalganga in the State of Maharashtra from where they are moved to the mother warehouse of Castrol at Bhiwandi also in the State of Maharashtra. This movement has been described to be an internal stock transfer within the State of Maharashtra. Thereafter, the goods are transferred from the mother warehouse of Castrol in the State of Maharashtra to various CFAs of Castrol located in different States. Castrol has stated that these are branch transfers against which F-Forms have been received from the CFAs and have been presented to the Sales Tax Authorities in the State of Maharashtra. Each CFA holds an inventory at its location as per the 'Normative Stocking Levels' fixed by Castrol. Such 'Inventory Norms' have been prescribed by Castrol taking into consideration the monthly forecast of sales but as there can be a variation in the monthly forecast of sales, this Normative Inventory Level is worked out in order to maximize all commercial sales opportunities and the movement of goods takes place from the mother warehouse to the CFAs in accordance with this Normative Inventory level. It is also seen that when a CFA receives an order from the Distributor, it makes an appropriation of the goods from the stock held at the location of CFA and on sale to the Distributor VAT is paid in the State where it is located. Castrol also prepares plans every month, basis the anticipated SKU-wise demand for each CFA location using historical data. The movement of goods are, therefore, planned to ensure that the Normative Level of Stock Inventory for each SKU at each CFA location is maintained. The goods move from the

manufacturing plant of Castrol at Patalganga to the mother warehouse on a daily basis and also on a daily basis from the mother warehouse of Castrol to the CFAs all over India on the basis of the Dispatch Plan which is created by an Automated Tool. The production movement of goods to the CFAs location is made in anticipation of the demand to maintain the CFAs inventory at their Normative Levels. In fact, the inventory at any CFA is merely the stock held at the CFA location which remains unappropriated to a particular order from a Distributor till the "Picking List" is created by the CFA for deliveries to be made each day. The goods arrive at the CFA location in a continuous stream for replenishment of stocks. Thus, this movement of goods cannot be as a consequence of any pre-existing purchase order from the Distributor.

23. It has been stated by Castrol that a typical period for delivery from a CFA to a Distributor is about 0-3 days in 75% of the cases and in fact many of the deliveries to the Distributors are made on the same day. Castrol has also stated that since the transport period for movement of goods from the mother warehouse to CFA is about 3-10 days, it is impossible for the CFA to service the Distributors if the goods have to move from the mother warehouse of Castrol. Castrol has also stated that since each CFA may have to deal with an average of about 600 orders monthly from customers and each order has on an average 4-5 SKUs, an automated allocation is required which is provided by JD Edwards. Castrol has also stated that it is physically impossible for Castrol to hold inventory at the plants of mother warehouses till a purchase order is raised at the CFAs location. Castrol has stated that there is co-mingling of the stocks maintained

by CFA for the reason that the CFA may receive goods not only from the mother warehouse but also from other CFAs.

24. Learned senior counsel for Castrol, during the course of hearing of the appeal, also placed a Tabular Summary in respect of the CFA located in Delhi. With regard to the information available for the month of January 2010 in respect of SKU under the Heading 'Particulars/Month', learned senior counsel referred to the Heading "stock transfers outside State". This is in the course of stock transfers from the CFA in Delhi to CFAs in other States. In this connection, learned senior counsel referred to the following deals:

- (i) 13.01.2010: 1800 litres are transferred from the CFA in Delhi to CFAs in other States;
- (ii) 19.01.2010: 1350 litres are transferred from the CFA in Delhi to CFAs in other States;
- (iii) 21.01.2010: 1350 litres are transferred from the CFA in Delhi to CFAs in other States;
- (iv) 25.01.2010: 1980 litres are transferred from the CFA in Delhi to CFAs in other States;
- (v) 29.01.2010: 1350 litres are transferred from the CFA in Delhi to CFAs in other States; and
- (vi) 31.01.2010: 1800 litres are transferred from the CFA in Delhi to CFAs in other States.

25. It would be seen that in totality the movement of goods from the Delhi CFA to CFAs in other States in the month of January 2010 was 9,630 litres. This clearly establishes that the movement from the mother warehouse to the CFA is not meant only for supply to Distributors, as in many instances the goods received at one CFA location can be transferred to another CFA location where there is

greater demand or a shortfall in maintaining a Normative Inventory Level.

26. Castrol has also stated that it is the CFA who has to decide which dispatches will actually be made on a given day and for this the CFA prepares a "Picking List", which is a customer-wise listing of goods that will be dispatched. It is only at this stage of creation of a 'Picking List' by the CFA that appropriation of goods, out of the CFA inventory, takes place in respect of a particular Purchase Order.

27. In this connection, learned senior counsel also referred to a document which is in respect of CFA that shows the 'Picking List' which is illustrative of how a CFA allocates different packs namely Barrel, Drum and Cartons, and creates a truck-load to be delivered to one of the Distributors. It is seen that a total of 9,814.9 litres was delivered to a Distributor as a combination of Barrels (5) Drums (128) and Cartons (480), resulting in 613 packages of a total of 981.49 litres. It has also been stated that similar exercises are carried out by the CFA's all over the country on a daily basis allocating and appropriating goods of different SKUs in different pack sizes in respect of order received from different Distributors. This exercise is done at the CFA location. This clearly establishes that the goods which move from the mother warehouse to the CFA are not correlated to any pre-existing order from the Distributor. The allocation and appropriation towards an order placed by the Distributor is done by the CFA on the day of delivery.

28. The aforesaid factual business module of Castrol has not been disputed by the State of Maharashtra but an inference is sought to drawn from the same factual position that the movement of goods

from the mother warehouse of Castrol in the State of Maharashtra to the CFAs in other States are supplies made in the discharge of pre-existing purchase orders.

29. It is, therefore, not possible to accept the contention that has been advanced by the learned counsel for the appellant that the Distributors are identified before movement of the goods from the mother warehouse of Castrol and the goods are merely routed through the CFAs. As noted above, each CFA holds an inventory at its location as per the 'Normative Stocking Levels' fixed by Castrol keeping in mind the Monthly Forecast of Sales. The movement of the goods from the mother warehouse to the CFAs, therefore, occurs to address the preset and pre-determined Normative Inventory Levels and not as a consequence of any pre-existing purchase orders from the Distributors. In fact, when CFAs receive orders from the Distributors an appropriation of the relevant SKU from the stock held at the CFA location is made by the CFA. This predictive planning is undertaken with a view to address all potential sales opportunities. The goods move from the manufacturing Plant of Castrol to the mother warehouse of Castrol on a daily basis and the goods also move from the mother warehouse of Castrol to the CFAs on the basis of their Dispatch Plan created by an Automated Tool. The movement of goods from the mother warehouse to the CFAs is by way of stock transfer and not by way of sale. There is nothing on the record that may even remotely suggest that the movement of goods from the mother warehouse of Castrol in the State of Maharashtra to the CFAs in other States is towards discharge of a specific purchase order from the Distributors. The contention of learned counsel for the appellant

that since Castrol accepts the purchase orders only when it is satisfied about the credit limit of the Distributor it would mean that goods are sent to the Distributor on the basis of pre-existing purchase order cannot also be accepted in view of the above factual position.

30. The inevitable conclusion, therefore, that follows is that the movement of goods from the mother warehouse of Castrol to the CFAs in other States is not because of any pre-existing purchase order of the Distributor and would not fall within the scope of section 3(a) of the CST Act.

31. To support the contention that movement of goods from the mother warehouse of Castrol in the State of Maharashtra to the CFAs in other States are supplies made in the nature of 'Stock Transfers', which fall within the scope of section 6A of the CST Act, learned senior counsel for Castrol placed reliance on certain decisions. Learned counsel for the appellant also placed reliance upon certain decisions to support the contention that the aforesaid movements of goods are supplies made in discharge of pre-existing purchase orders, which fall within the scope of section 3(a) of the CST Act.

32. In **Tata Engineering Locomotive**, which has been relied upon by learned counsel for the Castrol, Tata Engineering was carrying out business of manufacturing trucks at Jamshedpur in the State of Bihar. The appellant maintained stockyard in different States for the purpose of more effective distribution of the vehicles to the dealers. The sale of the vehicles to the dealers was affected as well as to other users in different States from the stockyards. An issue arose as to whether sale took place in different States where the stockyards

were situated. The Supreme Court noticed that the sales office of the appellant in Bombay instructed the Jamshedpur factory to transfer vehicles to the stockyard in various States after taking into consideration the requirement of customers in various States. The stocks at the stockyards were distributed to the dealers from time to time. The Supreme Court found that the transfer of vehicles from the factory to various stockyards was a continuous process and was not related to the requirement of any particular customer. The stockyard appropriated the vehicles to the contract of sale out of the stocks available with it. Until such appropriation was made, the vehicles could be sold to any customer and, therefore, it was concluded that the transaction of sales of vehicles cannot be treated as inter-state sale from Jamshedpur factory but would be a local sale in the State where the stock yards were located.

33. The Allahabad High Court in **Central Distillery & Breweries Ltd. vs. Commissioner of Trade Tax, U.P., Lucknow**²⁰ also considered whether inter-State sales had taken place or only stock transfer had taken place. The facts of this decision reveal that the revisionist was a manufacturer of liquor and had a distillery at Meerut in the State of Uttar Pradesh. The Head Office of the revisionist was situated at Delhi. The Delhi Administration invited tenders for supply of rum and the tender of the revisionist was accepted. Agreements were executed between the Commissioner of Excise in Delhi and the revisionist in terms of which the Collector of Excise, Delhi had to place fortnightly orders at the Delhi office of the revisionist for supply of liquor specifying the date by which particular quantities should be

20. (1999) 115 STC 296 (All)

supplied to the retail vendors. The import of liquor to Delhi was to be under the import permits issued by the Collector and the revisionist was also required to observe the provisions of the Delhi Liquor License Rules, 1976. The issue that arose for consideration was regarding the taxability of the liquor supplied to the Delhi Administration by the revisionist under the Agreements. The contention of the revisionist was that the sale of beer to the Delhi Administration was made at Delhi from the depots of the dealers in Delhi and, therefore, these sales were affected within the territory of Delhi and were not inter-State sales. The contention of the department, however, was that since the manufacturing activity of the revisionist was at Meerut within the State of Uttar Pradesh and as the goods were taken from the State of Uttar Pradesh to the Union Territory of Delhi pursuant to Agreements, the goods moved to Delhi in pursuance of the Agreements which occasioned the movement of goods from the State of Uttar Pradesh. Thus, according to the department, the transaction amounted to an inter-State sale within the meaning of section 3(a) of the Central Sales Tax Act. Though the contention of the department had been accepted by the authorities, but it was held not be an inter-State sale by the Allahabad High Court and the observations are:

"9. As is evident from the terms of the agreement, the intention of the parties was to bring about intra-State sales at Delhi from warehouse of the dealer that it was required to establish within the territory of Delhi where the dealer was required to maintain a buffer stock of atleast two trucks without any guarantee of any purchase being actually made by the Delhi Administration. As and when the Delhi

Administration would make the purchases, the dealer who was to be a L1-A licensee would supply the goods and replenish the stocks and the things would go on like that during the currency of the agreement. Therefore, as is indicated by the agreement, the movement of the goods to Delhi was not in pursuance of any transaction of sale but in pursuance of the licence under which the dealer was to maintain a warehouse with a minimum stock within the territory of Delhi. The agreement by itself did not bring about any sale or purchase and, therefore, the transport of goods from the distillery in U.P. to warehouse in Delhi could not be treated as a movement of goods occasioned by any sale or purchase. **The sale, as stated above, took place only when any order was actually placed by the Collector of Central Excise, Delhi.** As stated above, the assessing officer has not probed further into the matter to find out if there was no buffer stock at Delhi and the goods were transported from the distillery only on receipt of the orders. Therefore, there is no evidence to show that the supply of rum to the Delhi Administration in the three years resulted in any inter-State sales taxable in State of U.P. **The findings of the authorities below are based on a misconception about the nature of the agreements dated 27th of December, 1984 which, as stated above, did not bring about any sale or purchase.** The Tribunal's finding, therefore, that the disputed turnover was taxable as inter-State sales suffers from a legal error and is hereby set aside. I hold that it is not established that the turnover, referred to above, represented inter-State sales and it was, therefore, not taxable as inter-State sales under the Central Sales Tax Act."

(emphasis supplied)

34. The facts of **Kelvinator of India**, which has also been relied upon by learned senior counsel for Castrol, are that it had its factory at Faridabad in Haryana where it manufactured refrigerators which were marketed under three brand's namely Kelvinator, Leonard and

Gem, and for each brand there was a separate distribution channel, and property in the goods remained with the company till delivery to the Distributors in the State of Delhi. The Supreme Court held as follows:

"In our opinion, the three agreements between the appellant and the distributors were merely agreements for the distribution of goods and were not agreements of sale between the parties. It cannot, in our opinion, be said that there was any movement of refrigerators from Faridabad to Delhi under a contract of sale."

35. In **CMS Computers**, also relied upon by learned counsel for Castrol, this Tribunal noticed the factual position in paragraph 19 of the order, which is reproduced below:

"19. It is seen that CMS Computers has clients at various places in the country. It undertakes an Annual Maintenance Contract for the maintenance of computers, scanner and printers. **To appreciate the contentions that have been advanced, it would be appropriate to examine the relevant clauses of the Annual Maintenance Contract. It reveals that though the contract has been executed by the head office of CMS Computers and the Life Insurance Corporation of India, but CMS Computers is required to carry out onsite comprehensive maintenance of the computer systems and all the tools, test equipment and fixtures required for the onsite comprehensive maintenance of equipments have to be provided by CMS Computers.** During the period of Annual Maintenance Contract, CMS Computers has to keep the systems in 100% working condition by rectifying the problems and replacing the faulty components. In order to ensure that the systems are kept 100% working during the period of the Annual Maintenance Contract, it is necessary for CMS Computers to ensure that all the parts are kept in store at the branch level from where the calls are attended. It cannot be said from a perusal of the Annual Maintenance Contract that after a fault

has been identified, the spare parts are purchased from the head office. CMS Computers is obliged under the said contract to maintain adequate inventory for this purpose. **The contract does provide for maintaining sufficient stock of hardware based on data of past years so that there is no down time. The contract also does not provide that this stock has to be procured on inter-state basis only, for the stock can be procured locally also. According to CMS Computers, it ordinarily keeps that much of "minimum order level" buffer stock at its branches as is sufficient to last for a period of thirty to forty-five days and the materials to the branch are transferred to replenish the buffer stock. The buffer stock is used by the branch offices for the annual maintenance requirements.** The parts so sent can be used by the branch offices for maintenance of the machines of the customers. **Thus, the movement of spares from the State of Maharashtra to other States is not pursuant to the Annual Maintenance Contract, nor is the movement of goods an incidence of the Annual Maintenance Contract. Some of the stock transfer notes may have the names of the customers, but that is only for internal purposes. If standard goods are continuously and in a routine manner transferred to a branch situated in other States, irrespective of any particular order received by the branch, then such transactions have to be treated as branch transfer transactions."**

(emphasis supplied)

36. On the basis of these facts, this Tribunal held:

"31. xxxxxxxxx. In the present case, as noticed above, it has been found as a fact that the movement of the goods from the State of Maharashtra to the branch offices situated in other States was by way of stock transfer and not by way of sale under the Annual Maintenance Contract.

32. The State Tribunal, after a careful consideration of the terms of the Annual Maintenance Contract and the factual position, recorded a categorical finding of

fact that the movement of goods from the State of Maharashtra to other States was not in pursuance of the Annual Maintenance Contract. **The State Tribunal found that CMS Computers was required to maintain inventory at branch level on the basis of the consumption in the corresponding quarter of the previous year and there is no clause in the contract that spare parts that are replaced have to be invoiced separately and they are covered by the Annual Maintenance Contract. The State Tribunal also found that the goods were standard components and were not tailor made for the customers."**

(emphasis supplied)

37. This Tribunal in **CMS Computers** also distinguished the decision of the Supreme Court in **English Electric**, which has been relied upon by the learned counsel for the appellant, in the following manner:

"23. The aforesaid decision of the Supreme Court in English Electric would not come to the aid of the State of Maharashtra. It is seen that the Bombay buyer wrote to the Bombay branch of the appellant asking for lowest quotation. The factory of the appellant was situated in Madras. The buyers order was sent by the Bombay branch to the Madras branch, which quoted the price FOR Madras. The Bombay branch then wrote to the Bombay buyer quoting the FOR Madras price and also informed that the delivery would be ex-works Madras. The Bombay buyer then placed an order with the Bombay branch. The Bombay branch instructed its Madras factory to dispatch the goods directly to the buyers and the goods were then sent to the buyer under these instructions. It is in this context that the Supreme Court held that the movement of the goods from Madras to Bombay was part of the same transaction. **The Supreme Court, therefore, held that the Bombay branch merely acted as an intermediary between the Madras factory and the buyer."**

(emphasis supplied)

38. Learned counsel for the appellant placed reliance on paragraph 47 of the decision of the Supreme Court in **Hyderabad Engineering** which is reproduced below:

"47. We have already noticed the relevant clauses in the 'sales agreement'. A close reading of the clauses would clearly indicate that the parties have agreed to discharge certain obligations cast on them under the agreement. The agreement provides for the products to be supplied, sales zone, to organize sales and service for UIL to make purchases and sell products as an independent principal, selling prices to be informed from time to time, payments against purchases to be made within a particular time and the goods to be delivered to UIL either at the assessee's factory or at its regional godowns. **Clause 8 of the agreement, if it is read with other clauses, makes it clear that there is stipulation for the movement of the goods from the factory to the godowns situated in different places to be delivered to UIL. It is because of these covenants, the assessee is obliged to move the goods from its factory to the godown situated in other States to fulfill its part of the contract."**

(emphasis supplied)

39. This Tribunal in **CMS Computers** also distinguished the decision of the Supreme Court in **Hyderabad Engineering** in the following manner:

25. Paragraph 47 of the aforesaid judgment of the Supreme court in Hyderabad Engineering interprets clause 8 of the Agreement and provides that if this clause is read with other clauses of the Agreement then it would mean that there is a stipulation for the movement of goods from the factory to the godowns in different States to be delivered and it is because of these covenants that the assessee is obliged to move the goods from its factory to the godowns situated in other States to fulfill its parts of the contract. This judgment would, therefore, not come to the aid of the

State of Maharashtra for the simple reason that the clauses of the present Annual Maintenance Contract which are stated to be the reason for movement of the goods from the State of Maharashtra to other States does not envisage such a situation.”

40. In **Keltech Energies**, relied upon by learned counsel for Castrol, the factual position has been highlighted by the Tribunal in paragraph 5 in the following manner:

“5. Some of the subsidiaries of Coal India like ECL, BCCL and CCL are located at significant distances from the Nagpur Unit in the State of Jharkhand and State of West Bengal and it takes about fifteen days for the explosives to reach the aforesaid destination States from the Nagpur Unit. The appellant contends that since it is not possible to supply the explosives directly from the Nagpur Unit of the appellant to such collieries, the appellant has to maintain licensed stock depots for the explosives in the States of Jharkhand and West Bengal to facilitate the supply of explosives to these subsidiaries. The appellant further contends that each of the aforesaid individual subsidiaries of Coal India like ECL, BCCL and CCL place indents on the depots/branches of the appellant in the two States and the depots/branches of the appellant sell the explosives supplied from the Nagpur Unit to the subsidiaries. The appellant, on such sale, paid the applicable local VAT in the two States. This claim of the appellant of branch transfer from the Nagpur Unit to the depots was not accepted by the Deputy Commissioner and this order was upheld in the appeal filed by the appellant before the Joint Commissioner (Appeals) as also by the Sales Tax Tribunal.”

(emphasis supplied)

41. The Tribunal ultimately held:

“43. It, therefore, follows from the aforesaid discussion that the appellant is merely stock

transferring the goods to its depots and it is only when the subsidiaries of Coal India place indents on the appellant and the goods are supplied by the appellant that the sale takes place. The sale does not take place on the basis of the Running Contract dated 28.11.2008. It cannot, therefore, be said that the movement of packaged explosives from the manufacturing unit of the appellant at Nagpur in the State of Maharashtra to the depots of the appellant in the State of Jharkhand and the State of West Bengal has resulted in a sale taking place during the course of inter-state trade or commerce. It is clearly a case of branch transfer of goods by the appellant to its depots in the States of Jharkhand and West Bengal."

(emphasis supplied)

42. In **Carlsberg India**, relied upon by learned counsel for the Castrol, this Tribunal noted the factual position in paragraphs 8 and 54 of the decision which are reproduced below:

"8. Carlsberg alleges that in order to comply with the requirement of maintaining a minimum stock of beer at the local depots in the State of Bihar and also to ensure delivery of beer to the Corporation within the validity period prescribed in the OFS, it effected inter-state stock transfers of beer from its factory in the State of Rajasthan to its depots in the State of Bihar from time to time through Form-F, depending on an estimated market demand. Thereafter, in pursuance of the OFS placed by the Corporation on the local depots of Carlsberg in the State of Bihar, the goods were sold from the said depots to the Corporation. Accordingly, Carlsberg treated transfer of beer from its factory in the State of Rajasthan to its depots in the State of Bihar as stock-transfer. Carlsberg believed that such movement of goods was not occasioned by reason of any sale agreement. The sale of goods from its depots in the State of Bihar to the Corporation in terms of the OFS issued by the Corporation was treated by Carlsberg as local sale in the State of Bihar, on which local VAT at the rate of 50% was paid.

XXXXXXXXXXXX

54. In the present case, in terms of the Liquor Policy of the State of Bihar, the Corporation is under no obligation to procure any specified minimum quantities of beer. **The Corporation issues the OFS on the local depots of the appellants situated in the State of Bihar for supply of specified quantity of beer. The OFS have a validity period within which the goods are required to be delivered to the Corporation.** Clause 10.1 of the Liquor Policy clearly provides that the supply of beer to the Corporation against OFS shall be construed as an agreement to sell under section 4(3) of the Sale of Goods Act. Clause 5A of the License also requires Carlsberg to maintain a minimum stock of liquor at its depots in the State of Bihar as prescribed by the Corporation from time to time and to recoup the stock within seven days in case it goes below the minimum limits. **Carlsberg is, therefore, justified in asserting that in order to comply with the requirement of maintaining a minimum stock at the local depots in the State of Bihar and also to ensure the delivery of beer to the Corporation within the validity period prescribed in the OFS, it has to effect inter-state stock transfer of beer from its factory in the State of Rajasthan to its depots in the State of Rajasthan from time to time through Form-F, depending on estimation of market demand and that it is only when OFS is placed by the Corporation on the depots of the appellants in the State of Bihar that the goods are sold.** Thus, it is the OFS that concludes the contract of sale between Carlsberg and the Corporation. The movement of goods from the State of Rajasthan to the depots of Carlsberg in the State of Bihar, therefore, cannot be said to have been occasioned by reason of any sale agreement. The appellants treated the sale from its depots in the State of Bihar to the Corporation in the State of Bihar as sale and paid local VAT."

(emphasis supplied)

43. This Tribunal ultimately held as follows:

"55. There can, therefore, be no manner of doubt that the movement of goods from the manufacturing units of the appellants situated in the State of Rajasthan to the depots of the appellants in the State of Bihar or the State of Jharkhand was not occasioned by any prior contract of sale or agreement to sell. The appellants had merely stock transferred beer from the manufacturing units of the appellants situated in the State of Rajasthan to the depots of the appellants situated in the State of Bihar or the State of Jharkhand. The movement of goods did not occur from the State of Rajasthan to the State of Bihar or the State of Jharkhand pursuant to the Master Agreement or the Liquor Policy."

(emphasis supplied)

44. In **IDL Chemicals**, which has been relied upon by the learned counsel for the appellant, the Supreme Court concluded that the contract was a contract of sale based on the fixed quantities of the explosives that were to be sold by IDL Chemicals to Coal India and were enumerated in the contract itself. It was also noticed that the contract placed an obligation on the collieries of Coal India to purchase all their explosives from IDL Chemicals only and the collieries could only purchase explosives as per the fixed quantities in the contract and not on a rolling basis as per their requirement. It is in such circumstances that the Supreme Court concluded that the contract amounted to a contract of sale. This decision would, therefore, not come to the aid of the appellant.

45. In **Oil India**, also relied upon by the learned counsel for the appellant, refers to an agreement between Oil India and the Government of India for the supply of oil produced in Assam to be sold to a refinery at Barauni in Bihar through a pipeline specially

constructed by the seller running from its location in Assam to the refinery at Barauni. In view of these facts, the Supreme Court held that as the construction of the pipeline was undertaken in pursuance of the agreement and with the specific purpose of transporting crude oil to Barauni, this would mean that the parties contemplated that there should be an inter-State movement of goods. This decision, therefore, does not come to the aid of the appellant.

46. In **Balabhagas Hulaschand**, also relied upon by learned counsel for the appellant, there was an agreement to sell raw jute between the appellant and buyers in Calcutta. When this agreement was entered into the jute was not in existence as it was being grown. Once grown, the jute was to be sent to Calcutta from places in Orissa, it being understood that the sale would only conclude at Calcutta once the raw jute was ultimately accepted by the buyers. It is in the context of these facts that the Supreme Court considered whether or not the term 'sale of goods' in section 3 of the CST Act includes an 'agreement to sell', and ultimately concluded in the affirmative, based on the combined effect of its interpretation of section 3 of the CST Act and section 4 of the Sale of Goods Act, 1930. This decisions, therefore, does not help the appellant.

47. The decision of this Tribunal in **Beardsell** would also not come to the aid of the appellant. It is seen from the decision that the goods were customized for the building requirement of the customers and the site engineers of Beardsell had to visit the customer site to understand the specifications and requirements after which orders were placed specifying the dimensions required. These structures were used by Beardsell for manufacture of the goods. Beardsell had

also admitted before the Customs, Excise & Service Tax Appellate Tribunal, in an Excise Appeal filed by Beardsell that the movement of goods had been occasioned from the manufacturing unit in the State of Maharashtra to its branches in other States because of the orders placed by the customers at the branch office.

48. In **Venkataraman Krishnamurthy**, which has also been cited by learned counsel for the appellant, the issue that arose for consideration before the Supreme Court was whether a contract, being a creature of agreement between the parties, is to be interpreted by giving the actual meaning to the words contained in the contract. It is in this context that the Supreme Court observed that it is not permissible for the Court to make a new contract. This decision also would not come to the aid of the appellant as the Sales Tax Tribunal has not made out a new contract.

49. What follows from the aforesaid decisions referred to above is that when stockyards/warehouses are maintained in different States for the purpose of more effective and timely distribution of the goods then when goods are distributed from the stockyards/warehouses to the dealers from time to time, more particularly when the supply to the stockyards/warehouses is a continuous process and not related to the requirement of any particular customer or order placed by the customer and the appropriation of goods are made out of the stocks available in the stockyards/warehouses, the supplies made to the stockyards/warehouses by the manufacturer cannot be termed as inter-State sales. The supplies made from the stockyards/warehouses to the Distributors would be a local sale in the State where the stockyards/warehouses are situated. Until the goods are appropriated

by the stockyards/warehouses from out of the stocks available with them, they continue in the inventory of the stockyards/warehouses. Thus, supplies made to the stockyards/warehouses are merely stock transfers.

50. From the factual position that has emerged and the various decisions referred to above, it clearly transpires that the movement of the goods from the mother warehouse of Castrol in the State of Maharashtra to the CFAs located in other States are supplies in the nature of 'Stock Transfers', which fall within the scope of section 6A of the CST Act and are not supplies made in the discharge of pre-existing orders which fall within the scope of section 3(a) of the CST Act.

51. There is, therefore, no infirmity in the order passed by the Sales Tax Tribunal holding that the movement of goods from the mother warehouse of Castrol to the CFAs is by way of stock transfers and not for discharging pre-existing purchase orders.

52. All the nine appeals filed by the State of Maharashtra would, therefore, have to be dismissed and are dismissed.

(Order pronounced on **11.07.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)