2026:DHC:7372-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 31.07.2026***

Judgment pronounced on: 02.09.2026

Judgment uploaded on: 02.09.2026

\# **CNR No. DLHC010684312006**

\+ W.P.(C) 13676/2006, CM APPL. 10593/2006

MINISTRY OF RAILWAYS .....Petitioner

Through: Mr. Chetan Sharma, ASG with Ms. Rukhmini Bobde, Ms. Archana Gour, CGSC with Ms. Ridhima Gour, Mr. Vinayak Aren, Mr. Deepu Kumar and Ms. Aishwarya Nigam, Advs.

versus

THE ASSESSING AUTHORITY & ORS. .....Respondents

Through: Mr. Balbir Singh, Sr. Adv. with Mr. Sumit K. Batra and Ms. Priyanka Jindal, Advs.

\# **CNR No. DLHC010684482006**

\+ W.P.(C) 13696/2006, CM APPL. 10622/2006

MINISTRY OF RAILWAYS .....Petitioner

Through: Mr. Chetan Sharma, ASG with Ms. Rukhmini Bobde, Ms. Archana Gour, CGSC with Ms. Ridhima Gour, Mr. Vinayak Aren, Mr. Deepu Kumar and Ms. Aishwarya Nigam, Advs.

versus

THE ASSESSING AUTHORITY & ORS. .....Respondents

Through: Mr. Balbir Singh, Sr. Adv. with Mr. Sumit K. Batra and Ms. Priyanka Jindal, Advs.

\# **CNR No. DLHC010684492006**

\+ W.P.(C) 13697/2006, CM APPL. 10624/2006

MINISTRY OF RAILWAYS .....Petitioner

Through: Mr. Chetan Sharma, ASG with Ms. Rukhmini Bobde, Ms. Archana Gour, CGSC with Ms. Ridhima Gour, Mr. Vinayak Aren, Mr. Deepu Kumar and Ms. Aishwarya Nigam, Advs.

versus

THE ASSESSING AUTHORITY & ORS .....Respondents

Through: Mr. Balbir Singh, Sr. Adv. with Mr. Sumit K. Batra and Ms. Priyanka Jindal, Advs. for GNCTD.

\# **CNR No. DLHC010684652006**

\+ W.P.(C) 13712/2006, CM APPL. 10651/2006

MINISTRY OF RAILWAYS .....Petitioner

Through: Mr. Chetan Sharma, ASG with Ms. Rukhmini Bobde, Ms. Archana Gour, CGSC with Ms. Ridhima Gour, Mr. Vinayak Aren, Mr. Deepu Kumar and Ms. Aishwarya Nigam, Advs.

versus

THE ASSESSING AUTHORITY & ORS. .....Respondents

Through: Mr. Balbir Singh, Sr. Adv. with Mr. Sumit K. Batra and Ms. Priyanka Jindal, Advs. for GNCTD.

\# **CNR No. DLHC010687922006**

\+ W.P.(C) 14233/2006, CM APPL. 11173/2006

MINISTRY OF RAILWAYS .....Petitioner

Through: Mr. Chetan Sharma, ASG with Ms. Rukhmini Bobde, Ms.

Archana Gour, CGSC with Ms. Ridhima Gour, Mr. Vinayak Aren, Mr. Deepu Kumar and Ms. Aishwarya Nigam, Advs.

versus

THE ASSESSING AUTHORITY & ORS .....Respondents
Through: Mr. Balbir Singh, Sr. Adv. with Mr. Sumit K. Batra and Ms. Priyanka Jindal, Advs. for GNCTD.

\# **CNR No. DLHC010690072006**

\+ W.P.(C) 14685/2006, CM APPL. 11551/2006
MINISTRY OF RAILWAYS .....Petitioner
Through: Mr. Chetan Sharma, ASG with Ms. Rukhmini Bobde, Ms. Archana Gour, CGSC with Ms. Ridhima Gour, Mr. Vinayak Aren, Mr. Deepu Kumar and Ms. Aishwarya Nigam, Advs.

versus

THE ASSESSING AUTHORTY & ORS .....Respondents
Through: Mr. Balbir Singh, Sr. Adv. with Mr. Sumit K. Batra and Ms. Priyanka Jindal, Advs. for GNCTD.

\# **CNR No. DLHC010690232006**

\+ W.P.(C) 14704/2006, CM APPL. 11572/2006
MINISTRY OF RAILWAYS .....Petitioner
Through: Mr. Chetan Sharma, ASG with Ms. Rukhmini Bobde, Ms. Archana Gour, CGSC with Ms. Ridhima Gour, Mr. Vinayak Aren, Mr. Deepu Kumar and Ms. Aishwarya Nigam, Advs.

versus

THE ASSESSING AUTHORITY & ORS .....Respondents

Through: Mr. Balbir Singh, Sr. Adv. with Mr. Sumit K. Batra and Ms. Priyanka Jindal, Advs. for GNCTD.

CNR No. DLHC010692282006

+ W.P.(C) 15031/2006, CM APPL. 11931/2006

MINISTRY OF RAILWAYS .....Petitioner

Through: Mr. Chetan Sharma, ASG with Ms. Rukhmini Bobde, Ms. Archana Gour, CGSC with Ms. Ridhima Gour, Mr. Vinayak Aren, Mr. Deepu Kumar and Ms. Aishwarya Nigam, Advs.

versus

THE ASSESSING AUTHORITY & ORS. .....Respondents

Through: Mr. Balbir Singh, Sr. Adv. with Mr. Sumit K. Batra and Ms. Priyanka Jindal, Advs. for GNCTD.

CNR No. DLHC010692312006

+ W.P.(C) 15034/2006, CM APPL. 11940/2006

MINISTRY OF RAILWAYS .....Petitioner

Through: Mr. Chetan Sharma, ASG with Ms. Rukhmini Bobde, Ms. Archana Gour, CGSC with Ms. Ridhima Gour, Mr. Vinayak Aren, Mr. Deepu Kumar and Ms. Aishwarya Nigam, Advs.

versus

THE ASSESSING AUTHORITY & ORS. .....Respondents

Through: Mr. Balbir Singh, Sr. Adv. with Mr. Sumit K. Batra and Ms.

Priyanka Jindal, Advs. for GNCTD.

\# **CNR No. DLHC010692672006**

\+ W.P.(C) 15077/2006, CM APPL. 12014/2006

MINISTRY OF RAILWAYS .....Petitioner

Through: Mr. Chetan Sharma, ASG with Ms. Rukhmini Bobde, Ms. Archana Gour, CGSC with Ms. Ridhima Gour, Mr. Vinayak Aren, Mr. Deepu Kumar and Ms. Aishwarya Nigam, Advs.

versus

THE ASSESSING AUTHORITY & ORS .....Respondents

Through: Mr. Balbir Singh, Sr. Adv. with Mr. Sumit K. Batra and Ms. Priyanka Jindal, Advs. for GNCTD.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

ANIL KSHETARPAL, J.:

1. By way of this common judgment, this Court shall dispose of ten connected Writ Petitions arising out of assessments made under the Delhi Sales Tax Act, 1975[1] for the Assessment Years 1987-88 to 1996-97. The Petitioner in all the Writ Petitions is the Ministry of Railways. The dispute concerns the levy of Sales Tax on rolling stock financed through the Indian Railway Finance Corporation Limited[2].

[1] Hereinafter DST Act.
[2] Hereinafter IRFC.

2. The Impugned assessments proceed on two distinct transactions. According to the Respondents, the rolling stock was first manufactured or procured by the Railways, which acquired ownership thereof. The Railways thereafter transferred the rolling stock to IRFC against the funds made available by IRFC. Upon acquiring ownership, IRFC leased the same rolling stock back to the Railways against lease rentals.

3. The Petitioner disputes the aforesaid characterisation. According to it, IRFC was constituted for raising resources for acquisition of rolling stock required by the Railways and the funds were made available by IRFC for the said purpose. The Railways asserts that, owing to its technical infrastructure and expertise, it undertook the manufacture or procurement of the rolling stock and performed the functions connected with its inspection, delivery and commissioning. It is contended that there was no independent sale of rolling stock by the Railways to IRFC. In the alternative, it is submitted that the alleged sale was, in any event, not exigible to Sales Tax in Delhi.

4. W.P.(C) 13676/2006, pertaining to the Assessment Year 1994-95, has been treated as the lead matter. The assessment-year-wise demands challenged in the present batch of Petitions are as under:

Assessment Years	**Assessed Amount (In ₹)**	**Concerned W.P.(C)**
1987-88	53,74,51,587	13712 of 2006
1988-89	60,25,33,200	13696 of 2006
1989-90	75,08,17,000	15031 of 2006
1990-91	82,58,81,200	15034 of 2006
1991-92	66,18,31,160	15077 of 2006

1992-93	51,50,43,960	14685 of 2006
1993-94	39,10,03,540	13697 of 2006
1994-95	24,66,40,860	13676 of 2006
1995-96	28,67,73,890	14233 of 2006
1996-97	51,99,45,220	14704 of 2006
	Total: ₹ 533,79,21,617	

5. IRFC was incorporated in December, 1986. The Cabinet Note preceding its incorporation reflects that conventional sources of financing were inadequate to meet the investment requirements of the Railways. It envisaged IRFC raising resources through market borrowings, acquiring rolling stock and leasing the same mainly to the Railways. The funds mobilised through bonds were contemplated to be utilised for acquiring assets required by the Railways, including wagons.

6. The financing arrangement was thereafter considered by the Committee of Secretaries in its meeting dated 16.12.1987. The minutes recorded that one of the principal objectives of IRFC was to purchase rolling stock and lease the same to Indian Railways. The possible incidence of Sales Tax under this arrangement was also considered, as was the feasibility of granting an exemption.

7. The parties subsequently executed a Lease Agreement dated 11.10.1996, under which IRFC is described as the Lessor and the President of India, acting through the Ministry of Railways, as the Lessee. The Agreement was executed at New Delhi and was made operative with effect from 01.04.1993. It also describes the rolling stock covered by it as being owned by IRFC.

8. Certain clauses of the Lease Agreement between the IRFC and the Railways are material to the issues arising in the present Petitions and are reproduced, insofar as relevant, as under:

> ***4(a)*** *The Lessor will be deemed to have acquired ownership of the Rolling Stock leased to the Lessee from the first day of the month in which the respective items of Rolling Stock were placed on line released to traffic. Provided that in case the payment towards the cost of the Rolling Stock so acquired by the Lessor has not been effected by the time the items of Rolling Stock were placed on line/released to traffic, interest at the rate of 12.5% p.a. shall be deducted from the lease rentals payable to the Lessor upto the time that the payment towards the cost of the Rolling Stock is finally effected.*
>
> *The months from which the respective items of Rolling Stock were placed on line/released to traffic will be obtained from the Statements furnished by the Ministry of Railways in this regard from time to time and the details there from will be transcribed into Schedule-I to this Agreement.*
>
> *<u>LESSEE'S COVENANTS.</u>*
>
> ***6(B)*** *At all times, during the continuance of this Lease, the Lessee shall*
>
> *(i) Keep the Rolling Stock in its possession and under its control.*
>
> *(ii) Affix and keep affixed the letters IRFC and/or other mark(s) on the Rolling Stock indicating and stating the sole and exclusive ownership thereof is of the Lessor, either by stencilling or by embossing on a metal plate, to be screwed on the rolling stock and not allow or permit the same to be removed or defaced.*
>
> *(iii) The Lessee shall not claim right, title or interest in the rolling stock other than that of a Lessee under this Lease Agreement and shall not deny the Lessor's ownership thereof.*
>
> ***7.*** *The Lessee expressly declares and covenants that the Lessee shall have no right, title or interest in or upon the Rolling Stock, or any part thereof, save and except the rights relating thereto, as herein expressly granted.*
>
> ***8.1.*** *The Lessor hereby appoints the Lessee as its agent for inspection, for taking delivery from the manufacturers and for commissioning of the Rolling Stock. The Lessor shall not be responsible or liable for any damage to the Rolling Stock either in the process of delivery or in transit. By accepting the Rolling Stock, the Lessee shall be deemed to have examine the Rolling Stock and to have found it complete, in proper order and condition and entirely fit for its purpose and the Lessee does not and*

will not, at any time, have any claim against the Lessor in respect of or arising out of the Rolling Stock.

***15.** For all purposes, the items of Rolling Stock covered by this Lease Agreement as detailed in schedule-I annexed hereto should be deemed to have been appropriated at Delhi/New Delhi where the administrative offices of both the Lessor and the Lessee are located and where execution of this Agreement has taken place.*

9. The aforesaid provisions disclose four features of the arrangement which assume significance in the present Writ Petitions. First, Clause 4(a) fixes the point from which IRFC is to be regarded as having acquired ownership of the rolling stock. Secondly, while Clauses 6(B) and 7 recognise IRFC's ownership, the physical possession and control of the rolling stock remain with the Railways as lessee. Thirdly, Clause 8.1 expressly recognises an agency in favour of the Railways for the limited purposes of inspection, taking delivery from the manufacturers and commissioning of the rolling stock. Lastly, Clause 15 provides for deemed appropriation at Delhi/New Delhi of the items covered by the Lease Agreement and detailed in Schedule-I. The legal effect of these provisions upon the alleged sale and its situs shall be considered at the appropriate stage.

10. The original Assessment Order dated 31.07.2000 for the Assessment Year 1994-95 recorded that a Lease Agreement dated 07.02.1996 is stated to have been filed before the Assessing Authority. A copy of the said lease agreement does not form part of the paper books before this Court. Consequently, the terms of the Lease Agreement dated 11.10.1996 cannot, without some supporting material, be assumed to have governed every transaction during all the Assessment Years in dispute.

11. For the Assessment Year 1994-95, the original Assessment Order dated 31.07.2000 was confined to 136 wagons purchased from M/s Hindustan General Industries, Nangloi, Delhi ("HGI") for an amount of ₹16,18,40,000/-. Tax of ₹1,13,28,800/- and penalty of ₹1 crore were imposed, resulting in a demand of ₹2,13,28,800/-.

12. The earlier assessments for the Assessment Years 1987-88 to 1996-97, as also the reassessments for the Assessment Years 1987-88 to 1989-90, were challenged before this Court. By judgment dated 05.04.2004 in W.P.(C) No. 3496/1993 and connected matters, captioned ***The Ministry of Railways vs. The Sales Tax Officer and Ors***., a Division Bench of this Court had noticed the competing stands of the parties concerning the transactions between the Railways and IRFC.

13. This Court had then observed that the relevant aspects had not been examined by the Assessing Authority and that matters such as "where the sales, if any, took place, who were the purchasers, who were the manufacturers etc." required consideration. It was further noticed that Sections 23, 38 and 41 of the DST Act enabled the Assessing Authority to call for documentary evidence from other persons. The earlier Assessment Orders and reassessment orders were accordingly quashed and set aside, and the Assessing Authority was directed to decide the matter afresh, independently and in accordance with law, without being influenced by the earlier findings. No opinion was expressed on the merits.

14. Pursuant to the aforesaid judgment, fresh Assessment Orders were passed on 30.09.2004 and 01.10.2004, as applicable. In the lead Assessment Year, the fresh assessment was no longer confined to the 136 wagons procured from HGI. The Assessing Authority proceeded in respect of 2,960 items of rolling stock having an aggregate value of ₹352,32,98,000/- and raised a demand of ₹24,66,40,860/-.

15. The fresh Assessment Order states that notices under Section 41 of the DST Act were issued to the Railways as well as IRFC for production of books of account and other relevant documents and that, despite opportunities granted, the complete books and documents were not produced. The Order further attributes to an authorised representative of IRFC a confirmation that the rolling stock had been transferred from the Ministry of Railways to IRFC and that the consideration stood adjusted against funds earlier provided by IRFC.

16. The Assessing Authority thereafter proceeded on the premise that the Railways had manufactured or purchased the rolling stock, taken possession thereof and transferred ownership rights to IRFC at New Delhi against the amount received in advance from IRFC. The entire value of ₹352,32,98,000/- was treated as turnover from local sales to IRFC in Delhi.

17. The Petitioner thereafter invoked the revisional jurisdiction under Section 47 of the DST Act. *Vide* Order and judgment dated 30.03.2006, the Additional Commissioner of Sales Tax dismissed the revision petition and substantially affirmed the reasoning adopted in the fresh Assessment Orders.

18. The Revisional Authority held, firstly, that the Ministry of Railways answered the statutory description of a “dealer”, secondly, that transfer of rolling stock by the Railways to IRFC against funds advanced by IRFC constituted a “sale”, and thirdly, that the transactions were liable to Sales Tax in Delhi. In reaching these conclusions, reliance was placed upon the Railway production units, statutory D Forms, the terms of the Lease Agreement, the funds advanced by IRFC, contemporaneous Government letters and the non-production of complete books of account by the Petitioner.

19. Aggrieved by the dismissal of its Revision Petition, the Ministry of Railways thereafter instituted the present Writ Petitions in 2006. By order dated 30.08.2006, the impugned demands were stayed. Rule D.B. was issued in 2008, and the interim protection was continued till the disposal of the Writ Petitions.

20. This Court has heard learned counsel representing the parties at length and perused the paper books as well as the written submissions and synopsis filed by them.

SUBMISSIONS ON BEHALF OF THE PETITIONER

21. Ms. Rukhmini Bobde, learned counsel appearing for the Petitioner, submits that the Railways cannot be treated as a dealer in respect of rolling stock merely because it also sells scrap, condemned material, coal ash or unclaimed goods in the course of its operations. According to her, the decisions relied upon by the Respondents concern goods which admittedly belonged to the Railways and were

thereafter sold for consideration. Those decisions, it is urged, do not answer whether the financing arrangement with IRFC involved a sale of rolling stock by the Railways to IRFC.

22. Learned counsel refers to the Cabinet Note preceding the incorporation of IRFC to explain the genesis of the arrangement. She submits that IRFC was conceived as the financing vehicle which would mobilise resources, acquire rolling stock and lease the assets to the Railways. Since the Railways possessed the specialised infrastructure, manpower and technical expertise required for such assets, it undertook, according to the Petitioner, the functions connected with their manufacture or procurement, inspection, delivery and commissioning.

23. Reliance is placed upon the Lease Agreement, particularly Clause 8.1, under which the Railways was appointed as the agent of IRFC for inspection, taking delivery from the manufacturers and commissioning of the rolling stock. Learned counsel submits that the Agreement recognises IRFC as the owner and the Railways as lessee and contains no stipulation evidencing an antecedent sale of the rolling stock by the Railways to IRFC.

24. Learned counsel further disputes the treatment of the funds supplied by IRFC as consideration for an onward sale. According to the Petitioner, the funds constituted finance made available in advance for acquisition or manufacture of rolling stock and were available even before particular assets were identified and adjusted against such funds. The subsequent treatment of the rolling stock by IRFC as its

asset, including its claim of depreciation and receipt of lease rentals from the Railways, is stated to establish IRFC's ownership but not the source from which such title was acquired.

25. Insofar as the transactions with HGI are concerned, learned counsel points out that Sales Tax had already been paid at the stage of procurement from that manufacturer. More importantly, it is submitted that the D Forms and purchase documents relied upon by the Respondents relate to the first transaction between the manufacturer and the Railways and do not, by themselves, establish the alleged subsequent sale by the Railways to IRFC.

26. On territorial taxability, learned counsel submits that the rolling stock was manufactured or procured at different places across the country and supplied for use at Railway destinations outside Delhi. Even assuming a sale between the Railways and IRFC, it is contended that the same could not be treated as a local sale in Delhi merely because the administrative offices of the two entities were situated at New Delhi. Reliance is placed upon Section 8 of the DST Act read with Sections 3 and 4 of the Central Sales Tax Act, 1956 (hereinafter referred to as the "CST Act").

27. Learned counsel further points out that, for the lead Assessment Year, the original assessment was confined to 136 HGI wagons valued at approximately ₹16.18 crores, whereas the fresh assessment after remand brought 2,960 wagons, valued at approximately ₹352.33 crores, to tax. It is contended that the fresh assessment travelled beyond the scope of the Show Cause Notice. In any event, according

to the Petitioner, such substantial enlargement of the turnover required the alleged sale and its taxability in Delhi to be established in respect of the enlarged class of rolling stock.

28. Lastly, learned counsel submits that the Department did not adopt the same position in subsequent Assessment Years despite continuation of the financing arrangement between the Railways and IRFC. According to her, such subsequent treatment supports the Petitioner's contention that the present transactions were wrongly characterised as taxable sales.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

29. *Per contra*, Mr. Balbir Singh, learned Senior Counsel appearing for the Respondents, submits that the Ministry of Railways falls within the definition of a "dealer" under the DST Act. Reliance is placed upon the definition of "business", which expressly makes a profit motive immaterial, and upon decisions of the Supreme Court holding the Railways to be a dealer in relation to sales of scrap, unserviceable material and unclaimed goods. Learned Senior Counsel also refers to registrations obtained by the Railways as a dealer under subsequent State VAT and GST enactments, though the same are relied upon only to show the conduct of the Petitioner and not as the source of the present levy.

30. According to the Respondents, the arrangement comprised two distinct transactions. The Railways first manufactured rolling stock in its own production units or purchased the same from private manufacturers. Thereafter, the Railways transferred the rolling stock

to IRFC against the funds furnished by IRFC. IRFC consequently became the owner of the assets, claimed depreciation thereon and leased the same rolling stock back to the Railways against lease rentals.

31. Learned Senior Counsel places considerable reliance upon Clause 4(a) of the Lease Agreement, under which IRFC is deemed to have acquired ownership only from the stipulated date on which the respective item of rolling stock was placed on line/released to traffic. According to the Respondents, the Railways' possession and control of the rolling stock, its responsibility for specifications, maintenance, safety and commissioning, coupled with the subsequent vesting of ownership in IRFC, support the conclusion that the Railways first held the assets and thereafter transferred them to IRFC.

32. Reliance is further placed upon the statutory D Forms stated to have been issued in the name of the Railways as evidence that the Railways itself purchased the rolling stock from the manufacturers as further indication that it was acting as a registered dealer. Learned Senior Counsel also refers to the statement attributed in the fresh Assessment Order to the authorised representative of IRFC regarding transfer of rolling stock to IRFC and adjustment of consideration against the funds already advanced. The coeval Government letters, including communications in which the transaction was described as a sale and exemption from Sales Tax was considered or sought, is relied upon as corroborating the same understanding.

33. On territorial taxability, learned Senior Counsel submits that the sale was effected in Delhi. Reliance is placed upon the administrative offices of both the Railways and IRFC being situated at New Delhi and upon the communications quoted in the Revisional Order which refer to the proposed sale/transfer taking place at Delhi. The Respondents also rely upon Clause 15 of the Lease Agreement, which provides for deemed appropriation of the rolling stock at Delhi/New Delhi. Reliance is placed upon ***20th Century Finance Corporation Ltd. and Anr. v. State of Maharashtra***[3], in support of the aforesaid submission.

34. Lastly, the Respondents have also contended that, in the absence of any patent jurisdictional error or breach of principles of natural justice, proceedings under Article 226 of the Constitution ought not to be used for a fresh appraisal of commercial evidence. Reliance in this regard is placed upon ***Assistant Commissioner of State Tax v. Commercial Steel Ltd.***[4]**,** and ***Commissioner of Income Tax v. Chhabil Dass Agarwal***[5]**.**

ANALYSIS AND FINDINGS

35. Three questions arise for consideration. First, whether the Railways can answer the statutory description of a "dealer". Secondly, whether the transactions under consideration involved sales of rolling stock by the Railways to IRFC. Thirdly, if such sales took place, whether they were liable to tax in Delhi.

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[3] (2000) 6 SCC 12
[4] 2021 SCC OnLine SC 884
[5] (2014) 1 SCC 603

36. These questions must be answered in that order. The Railways may be capable of being a dealer without every transaction undertaken by it being a sale. Equally, the existence of a sale would not, by itself, establish that the sale took place in Delhi.

37. The Respondents have relied upon ***Commercial Steel Ltd.*** *(supra)* to contend that proceedings under Article 226 of the Constitution should not be employed for a fresh appraisal of commercial evidence. The proposition is unexceptionable. The present challenge, however, concerns the legal character of the transactions brought to tax and the statutory basis upon which they have been treated as local sales in Delhi. The assessments were made pursuant to an earlier remand by this Court, the Petitioner exhausted the revisional remedy available under the DST Act, and the present Petitions have remained pending since 2006, this Court, therefore, considers it appropriate to examine the challenge on merits.

WHETHER THE RAILWAYS CAN BE TREATED AS A DEALER

38. The first submission of the Petitioner is that the Railways cannot be treated as a "dealer" in respect of the rolling-stock transactions under consideration. If the submission is that the Railways, because it performs a public function or forms part of the Union Government, falls outside the DST Act, it cannot be accepted.

39. Section 2(c) of the DST Act[6] defines "business" in wide terms and expressly makes the existence of a motive to make gain or profit

[6]**2. Definitions.—**In this Act, unless the context otherwise requires,—
(*c*) "business" includes—

immaterial. Section 2(e)[7], while defining "dealer" as a person carrying on the business of selling goods in Delhi, also includes the Central Government when it carries on such business.

40. In ***District Controller of Stores, Northern Railway, Jodhpur v. Assistant Commercial Taxation Officer***[8], the Supreme Court held that the sale of scrap and unserviceable material by the Railways was connected with or ancillary to its activity as a carrier. The Railways was consequently held to be a dealer for the purposes of the concerned sales-tax enactment.

41. The same principle was applied in ***Member, Board of Revenue, West Bengal v. Controller of Stores, Eastern Railway***[9]. The disposal of unclaimed goods was held to be incidental to the Railways' business as a carrier, while the sale of scrap and unserviceable

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(*i*) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; and

(*ii*) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;

[7] (*e*) "dealer" means any person who carries on business of selling goods in Delhi and includes—

(*i*) the Central Government or a State Government carrying on such business;

(*ii*) an incorporated society (including a co-operative society), club or association which sells or supplies goods, whether or not in the course of business, to its members for cash or for deferred payment or for commission, remuneration or other valuable consideration;

(*iii*) a manager, factor, broker, commission agent, *del credere* agent, or any mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who sells goods belonging to any principal whether disclosed or not; and

(*iv*) an auctioneer who sells or auctions goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;

[8] (1976) 1 SCC 660

[9] 1989 Supp (2) SCC 236

material was treated as covered by ***District Controller of Stores*** *(supra)*.

42. These decisions answer the question of statutory capacity. They establish that the Railways is not immune from sales-tax legislation merely because transportation is its principal function or because it is a part of the Central Government. Equally, they do not establish that every transaction involving Railway property is a sale.

43. The distinction is important. In both decisions, the goods belonged to the Railways, and their sale for consideration was not in dispute. The controversy was whether the activity of selling them brought the Railways within the definition of a dealer. Here, the anterior question is whether the rolling stock belonged to the Railways in its own right and was thereafter sold to IRFC.

44. The first issue is accordingly answered in favour of the Respondents. The Railways can very well answer the description of a dealer under the DST Act. Whether it effected the sales sought to be taxed is a separate question. Now it must be examined whether the arrangement between the Railways and IRFC involved a transfer of property in the rolling stock for consideration so as to constitute a "sale" within the meaning of Section 2(l) of the DST Act.

<u>WHETHER THE ALLEGED SALE BY THE RAILWAYS TO IRFC HAS BEEN ESTABLISHED</u>

45. Section 2(l) of the DST Act[10] defines "sale", insofar as relevant to the present case, as a transfer of property in goods by one person to another for cash, deferred payment or other valuable consideration. The levy in the present case, therefore, requires the Respondents to establish that property in the relevant rolling stock vested in the Railways and was thereafter transferred by the Railways to IRFC for consideration.

46. The passing of property depends upon the intention of the parties, gathered from the terms of their arrangement, their conduct and the surrounding circumstances. Possession of the rolling stock, responsibility for its specifications, inspection, insurance, maintenance, transportation or commissioning are therefore relevant circumstances in determining the intention of the parties, but none is conclusive of ownership. Similarly, the fact that IRFC provided finance before particular rolling stock was manufactured or identified does not determine whether such funds represented financing for acquisition of the assets or advance consideration for their subsequent purchase from the Railways.

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[10] (*l*) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or for deferred payment or for other valuable consideration, and includes—

> (*i*) a transfer of goods on hire-purchase or other system of payment by instalments, but does not include a mortgage or hypothecation of, or a charge or pledge on, goods; (*ii*) supply of goods by a society (including a co-operative society), club, firm or any association to its members for cash or for deferred payment, or for commission, remuneration or other valuable consideration, whether or not in the course of business; and
> (*iii*) transfer of goods by an auctioneer referred to in sub-clause (*iv*) of clause (*e*);

47. At this point, it is necessary to take note of the difference in transactions. Some rolling stock was obtained from private manufacturers, and some rolling stock was manufactured in production units belonging to the Railways. The same conclusion cannot necessarily be applied to both.

48. Where a private manufacturer supplied rolling stock to IRFC and the Railways acted on behalf of IRFC in procuring, inspecting, taking delivery or commissioning it, property passed from the manufacturer to IRFC. The intervention of the Railways in that process did not give rise to an intermediate sale by the Railways.

49. The position would be different if the Railways purchased rolling stock from a private manufacturer in its own right, acquired title to it and thereafter transferred that title to IRFC against the funds supplied by IRFC. In that event, the transaction between the Railways and IRFC would answer the definition of a sale. Private manufacture, alone, is therefore not conclusive. The capacity in which the Railways made the purchase is important.

50. Rolling stock manufactured in Railway production units stands on a clearer position. Where the Railways manufactured and owned identified rolling stock, adjusted its cost against the funds supplied by IRFC, and thereafter vested ownership in IRFC, the transaction contained the essential elements of a sale. The absence of a separately executed sale agreement or an invoice raised by the Railways would not alter its legal character.

51. A contract of sale need not assume any particular form. It may be gathered from the arrangement between the parties and from the manner in which they acted upon it. What matters is that the Railways transferred property which belonged to it, and did so for consideration.

52. The governing distinction is therefore not merely between private manufacture and Railway's own manufacture. It is whether the Railways held title in its own right immediately before IRFC became the owner. Railway manufacture would ordinarily establish the first part of that enquiry. In the case of privately manufactured stock, the answer depends upon whether the Railways purchased as principal or acted for IRFC.

53. The Impugned Orders did not maintain this distinction. They proceeded on the position that all rolling stock manufactured or procured through the Railway administration first belonged to the Railways and was thereafter sold to IRFC. The material relied upon by the Authorities must therefore be examined to determine how far that conclusion can be sustained.

54. The material relied upon by the Authorities is not all of the same evidentiary character. The Lease Agreement and the sample purchase documents form part of the record before this Court. The D Forms, the statement attributed to the authorised representative of IRFC, the letter dated 31.08.1999 and certain earlier governmental letters are known principally from the statements contained in the Impugned Orders.

55. Their absence as primary documents does not render those recitals irrelevant. The findings recorded by the statutory Authorities may be examined on their own terms. The difficulty arises when a recital relating to one transaction has been employed to draw a conclusion about the entire rolling stock financed over ten Assessment Years.

56. The D Forms stated to have been furnished in the name of the Railways in respect of purchases from HGI support the Respondents' case that the Railways was the purchaser from that manufacturer. The sample purchase documents also show that procurement was undertaken through Railway authorities and that sales tax was charged by the manufacturers.

57. This material concerns the first transaction, *i.e*, the supply made by the private manufacturer. It does not, by itself, establish the second transaction asserted by the Respondents, namely, a sale by the Railways to IRFC. For that conclusion to follow, the record must further show that the Railways acquired title in its own right and thereafter transferred that title to IRFC for consideration.

58. Clause 8.1 of the Lease Agreement has a limited but material bearing upon this enquiry. It appoints the Railways as IRFC's agent for inspection, taking delivery from manufacturers and commissioning the rolling stock. The clause does not establish that the Railways acted as IRFC's agent when entering every procurement contract. At the same time, it prevents physical receipt or possession of the stock from being treated as conclusive proof of ownership in the Railways.

59. The absence of an agency fee does not carry the matter further. Section 185 of the Indian Contract Act, 1872 expressly provides that consideration is not necessary for the creation of an agency. The Revisional Authority was therefore not justified in rejecting the plea of agency that the Petitioner raised merely because IRFC did not separately remunerate the Railways for performing the functions entrusted to it.

60. The communication dated 27.08.1992 describes rolling stock obtained from outside agencies as having been procured on behalf of IRFC. The document was issued after the tax dispute had arisen. Nevertheless, its description of the arrangement is consistent with the agency recognised in the Lease Agreement.

61. No uniform conclusion can therefore be drawn merely from the fact that procurement was undertaken through the Railway administration. Where the private manufacturer supplied the rolling stock to IRFC and the Railways acted on its behalf, there was only one sale, *i.e.* that made by the manufacturer. Where the Railways purchased the stock in its own right and subsequently transferred it to IRFC, there were two.

62. The second stage of the Respondents' case finds some support in the statement attributed by the Assessment Order to the authorised representative of IRFC. According to the Order, the representative confirmed that the rolling stock had been transferred by the Railways to IRFC and that the consideration was adjusted against the funds already supplied by IRFC.

63. The Assessing Authority was entitled to take that statement into account. Its reach, however, must remain confined to what the Order records. The underlying statement has not been produced, and the Order does not identify the items of rolling stock to which it related. Nor does it indicate whether the word "transferred" was used to describe a transfer of title by the Railways as owner or merely the allocation of rolling stock against the finance provided by IRFC.

64. The letter dated 31.08.1999, as referred to in the Assessment Order, likewise supports the existence of an adjustment between the funds advanced by IRFC and identified rolling stock. Advance payment is capable of constituting consideration for a sale, the fact that the money was received before the goods were identified does not prevent that conclusion. The letter does not, however, establish that every item adjusted against those funds previously belonged to the Railways.

65. The position of rolling stock manufactured in Railway production units is materially different. Such stock was brought into existence by the Railways in its own establishments. Clause 4(a) further proceeds on the basis that IRFC acquired ownership only from the stipulated date on which the particular item was placed on line or released to traffic.

66. Read together, these circumstances show that IRFC was not treated as the owner of Railway-manufactured stock throughout the process of manufacture. The Railways held the stock before ownership vested in IRFC. When identified stock was thereafter

adjusted against the funds supplied by IRFC and treated as the property of IRFC, property passed from the Railways to IRFC for consideration.

67. Such transaction would answer the definition of a sale under Section 2(l) of the DST Act. Its legal character would not depend upon the execution of a separate sale agreement or the raising of an invoice by the Railways. The arrangement, the adjustment of the consideration and the passage of title are sufficient.

68. IRFC's claim of depreciation and its receipt of lease rentals reinforce the conclusion that it became the owner of the stock and thereafter leased it to the Railways. Those circumstances do not independently prove the source of IRFC's title. In the case of Railway-manufactured stock, however, that source is supplied by the antecedent ownership of the Railways.

69. The same conclusion would apply to privately manufactured stock where the Railways is shown to have purchased as principal and thereafter transferred the stock to IRFC. It would not apply where the Railways procured the stock on behalf of IRFC and never acquired title in its own right.

70. The Authority in the Impugned Orders does not make this separation. The entire value of rolling stock financed through IRFC was treated as turnover arising from sales by the Railways without identifying how much represented stock manufactured by the Railways, stock purchased by the Railways in its own right, or stock procured on behalf of IRFC.

71. The difficulty is especially evident in the lead Assessment Year. The original assessment concerned 136 wagons procured from HGI for ₹16,18,40,000. After remand, the assessment was enlarged to 2,960 items of rolling stock valued at ₹352,32,98,000. The enlarged amount was brought to tax without a corresponding separation of the source and title history of the additional stock.

72. The failure of the Petitioner and IRFC to produce the complete records sought by the Assessing Authority was a serious matter. The Authority was entitled to draw an adverse inference and, where necessary, undertake a best-judgment assessment.

73. An adverse inference may assist in determining disputed facts. But it cannot make legally different transactions identical. Nor can a best-judgment assessment dispense with identifying the class of transactions which constitutes the taxable turnover.

74. The finding of sale can therefore be sustained in relation to rolling stock shown to have been manufactured and owned by the Railways before its transfer to IRFC. It can also extend to privately manufactured stock shown to have been purchased by the Railways in its own right and thereafter transferred to IRFC. It cannot extend to stock procured by the Railways on behalf of IRFC.

75. Since the Impugned Orders brought all three classes to tax together, the assessment of the entire financing amount as turnover from sales by the Railways cannot be sustained in its present form. The remaining question is whether the transactions which do constitute sales were taxable in Delhi.

WHETHER THE SALES WERE LIABLE TO TAX IN DELHI

76. The question of territorial taxability arises only in respect of transactions which answer the description of sales by the Railways. Once such a transaction is established, Section 6 of the DST Act becomes material.

77. Section 6 of the DST Act[11] places upon the dealer the burden of proving that, in respect of any sale effected by it, no tax is payable under the Act. The provision does not assist in proving the existence of a sale. It operates after that threshold has been crossed.

78. This sequence is consistent with the decision in ***Haleema Zubair, Tropical Traders v. State of Kerala***[12], the Supreme Court while considering a reverse-burden provision under a sales-tax enactment, held that its operation presupposed, firstly, a transaction of sale and, secondly, a dealer as one of the parties to that transaction. Section 6 operates on the same sequence. The existence of the sale sought to be taxed must first be established, once that threshold is crossed, the burden of proving non-liability, including a claim falling under Section 8 of the DST Act, lies upon the dealer.

[11] **Burden of proof.—**The burden of proving that in respect of any sale effected by a dealer he is not liable to pay tax under this Act, shall lie on him.

[12] Civil Appeal No. 6707/2008 decided on 19.11.2008

79. Section 8 of the DST Act[13] sets out the grounds upon which a sale is excluded from the levy. It declares that the Act shall not impose or authorise the imposition of tax upon a sale taking place in the course of inter-State trade or commerce, outside Delhi, or in the course of import or export. The Explanation requires those questions to be determined in accordance with Sections 3, 4 and 5 of the CST Act.

80. The effect of Sections 6 and 8 must be kept distinct. Section 6 identifies the person who must prove non-liability. Section 8, read with the provisions of the CST Act, supplies the legal tests by which that claim must be proved.

81. Section 3(a) of the CST Act treats a sale as taking place in the course of inter-State trade or commerce where it occasions the movement of goods from one State to another. The movement must arise from a covenant of the contract of sale or be an incident of that contract. That is the principle explained in ***Tata Iron and Steel Co. Ltd. v. S.R. Sarkar***[14].

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[13] **8. Certain sales and purchases not liable to tax .-** Nothing in this Act or the rules made thereunder shall be deemed to impose, or authorise the imposition of a tax on any sale or purchase of any goods when such sale or purchase takes place-
(i) in the course of inter-State trade or commerce; or
(ii) outside Delhi; or
(iii) in the course of the import of the goods into, or export of the goods out of, the territory of India.
Explanation .- Sections 3, 4, and 5 of the Central Sales Tax Act, 1956 (74 of 1956) shall apply for determining whether or not a particular sale or purchase takes place in the manner indicated in clause (i), clause (ii) or clause (iii) of this section.

[14] (1961) 1 SCR 379

82. Section 4 of the CST Act[15] operates subject to Section 3[16]. In the case of specific or ascertained goods, the sale is treated as taking place in the State where the goods were situated when the contract of sale was made. In the case of unascertained or future goods, the relevant place is where the goods were situated when they were appropriated to the contract with the requisite assent.

83. The Petitioner relies upon the fact that the rolling stock was manufactured or procured at different places across the country and was dispatched for use at Railway destinations outside Delhi. Those facts are relevant, but they do not establish that the alleged sale by the Railways to IRFC occasioned that movement.

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[15] **4. When is a sale or purchase of goods said to take place outside a State -**
(1) Subject to the provisions contained in section 3, when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States.

(2) A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State -
(a) in the case of specified or ascertained goods, at the time the contract of sale is made; and
(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

Explanation - Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of this sub-section shall apply as if there were separate contracts in respect of the goods at each of such places.

[16] **3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce -** A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase -
(a) occasions the movement of goods from one State to another; or
(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation 1. Where goods are delivered to a carrier or bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.
Explanation 2. Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

84. The distinction between the two transactions again becomes important. Movement from the premises of a private manufacturer to a Railway destination may have been occasioned by the manufacturer's contract. That movement cannot, without further material, be attributed to the separate sale alleged between the Railways and IRFC.

85. For the second transaction to qualify as an inter-State sale, the Petitioner was required to connect the movement of the identified rolling stock with the sale by the Railways to IRFC. Alternatively, to establish a sale outside Delhi under Section 4 of the CST Act, it had to show where the identified goods were situated at the relevant statutory point.

86. The complete procurement contracts, statements of appropriation, schedules of rolling stock and transaction-wise records were not produced. The Petitioner did not identify which sale occasioned movement from one State to another, where the goods were situated when the relevant contract was made, or where future or unascertained goods were situated when appropriated.

87. The fact that production units or private manufacturers were situated outside Delhi did not, by itself, discharge that burden. Place of manufacture and place of sale are not necessarily the same. Nor does the subsequent use of the rolling stock outside Delhi establish where the sale took place.

88. The Revisional Authority relied upon the location of the Head Offices of the Railways and IRFC in New Delhi, the administrative and financial control exercised from Delhi, the coeval correspondence,

Clause 15 of the Lease Agreement and the failure of the Petitioner to show that the transactions had been assessed in any other State.

89. Some qualification of that reasoning is necessary. The location of the parties' Head Offices does not, alone, determine whether a sale was inter-State or where the goods were situated for the purposes of Section 4 of the CST Act. Administrative control over a production unit situated outside Delhi cannot notionally bring the goods produced there into Delhi.

90. The absence of an assessment by another State is equally inconclusive. A sale does not become taxable in Delhi merely because no other State has brought it to tax. Taxability must arise from the statute as applied to the transaction.

91. Clause 15 also cannot be treated as conclusive. It forms part of the Lease Agreement between IRFC as lessor and the Railways as lessee, whereas the transaction sought to be taxed is the antecedent sale by the Railways to IRFC. A stipulation in the lease deeming appropriation to have taken place at Delhi does not, by itself, establish appropriation under the contract of sale.

92. The clause is subject to a further limitation. The Lease Agreement available before this Court was executed on 11.10.1996 and made operative from 01.04.1993. In the absence of an identical stipulation governing the earlier period, Clause 15 cannot bear upon the Assessment Years 1987-88 to 1992-93. Schedule I to the Lease Agreement, which was to identify the rolling stock covered by the Agreement, is also not before this Court.

93. The communications quoted in the Revisional Orders stand on a somewhat different footing. The letter stated to be dated 15.07.1987 records that IRFC proposed to purchase the rolling stock at Delhi and that the sale would be completed there. The Railway Board Note dated 06.03.1989 similarly describes the rolling stock as being deemed to have been sold by the Railways to IRFC at Delhi.

94. These letters do not override Sections 3 and 4 of the CST Act. They are nevertheless relevant to the manner in which the arrangement was understood by the concerned authorities. In the absence of transaction-wise material to the contrary, the Authorities were entitled to consider them while examining whether the Petitioner had discharged the burden placed upon it.

95. The reliance placed by the Respondents upon ***20th Century Finance Corporation Ltd.*** *(supra)*, must also be kept within its proper limits. That decision concerned the deemed sale arising from a transfer of the right to use goods under Article 366(29-A)(d) of the Constitution. The present levy concerns an ordinary sale involving a transfer of property in rolling stock.

96. In ***State of A.P. v. National Thermal Power Corporation Ltd***.[17], the Supreme Court reiterated that the situs attributed to a transaction is immaterial once the sale answers the statutory test of an inter-State sale. Neither State legislation nor a contractual stipulation can convert an inter-State sale into an intra-State sale.

[17] (2002) 5 SCC 203

97. That principle would apply if the Petitioner established that the sale by the Railways to IRFC occasioned inter-State movement. The present record does not establish that connection in respect of the transactions which otherwise answer the description of sales by the Railways.

98. The deficiencies in the reasoning of the Revisional Authority therefore do not, by themselves, establish the Petitioner's plea of non-liability. Once a sale by the Railways stood established, Section 6 of the DST Act required the Petitioner to prove that the transaction fell within Section 8 of the DST Act. A general reference to manufacture, dispatch or use outside Delhi was insufficient for that purpose.

99. This Court is consequently unable to accept the Petitioner's contention that the transactions established as sales must be excluded from the Delhi levy. The conclusion reached by the Revisional Authority on taxability does not call for interference in respect of that class of transactions, though the broader proposition that every item of rolling stock financed through IRFC constituted a local sale in Delhi cannot be sustained.

100. Territorial taxability is therefore not an independent ground for setting aside the transactions otherwise shown to be sales by the Railways. The defect in the Impugned Orders lies in their failure to segregate those transactions from the rolling stock procured by the Railways on behalf of IRFC.

CONCLUSION AND DIRECTIONS

101. The result is neither that the entire financing arrangement was taxable nor that it lay wholly outside the DST Act. Transactions involving rolling stock owned by the Railways and thereafter transferred to IRFC for consideration constituted sales. Transactions in which the Railways procured rolling stock on behalf of IRFC did not constitute sale.

102. The composite demands cannot be affirmed because the Impugned Orders did not segregate these transactions. They treat the entire rolling stock financed through IRFC as having first belonged to the Railways and thereafter been sold to IRFC. That conclusion cannot be sustained.

103. This Court cannot itself undertake the required segregation. The source of each item of rolling stock, the capacity in which it was procured, the manner in which its cost was adjusted against IRFC funds and the point at which ownership vested in IRFC are matters lying principally within the records of the Railways and IRFC.

104. The Court is conscious that the matters had earlier been remanded on 05.04.2004. That remand required the Assessing Authority to determine whether a sale had taken place, where it had taken place, and whether the rolling stock had been purchased from the manufacturers or from the Railways. The fresh assessments did not produce the necessary segregation.

105. A further unrestricted remand would therefore be neither useful nor appropriate. It would reopen, nearly four decades later, the same enquiry which the earlier remand had required the Authorities to undertake. At the same time, the transactions found to constitute sales cannot escape assessment merely because the taxable and non-taxable classes were brought together.

106. There is also an institutional feature of the dispute which cannot be overlooked. IRFC was created by the Union Government to finance railway assets required by the Ministry of Railways. Yet the sales-tax consequences of that arrangement have remained the subject of litigation between public authorities since the Assessment Year 1987-1988.

107. The possible incidence of sales tax was considered by Committees of Secretaries in 1987 and 1989. During the pendency of these Petitions, this Court had made sincere efforts through its Orders dated 04.07.2007, 14.09.2007 and 05.03.2008 to enable the concerned authorities to resolve the matter at an appropriate level. Those efforts unfortunately did not bring the dispute to an end.

108. Liability to tax must, of course, be determined under the statute. It cannot be created, waived or compromised merely because the contesting parties are public authorities. Even so, continuation of this inter-governmental dispute through another unrestricted round of assessment and litigation would serve little public purpose when the governing legal principles have now been settled and the remaining exercise is principally one of identification and computation.

109. The Court therefore considers it appropriate to afford the concerned authorities one final, time-bound opportunity to place their records together, segregate the transactions in accordance with this judgment and resolve, to the extent permissible in law, the surviving questions of classification and computation.

110. Accordingly, the Assessment Orders dated 30.09.2004 and 01.10.2004, as applicable to the respective Assessment Years, and the Revisional Orders dated 30.03.2006 are set aside. The matters are remitted to the Commissioner, Trade and Taxes, Government of NCT of Delhi, for the limited determination directed hereinafter.

111. Within four weeks from the date of this judgment, a meeting shall be convened between:

i. Member (Finance), Railway Board, or a senior officer nominated by the Ministry of Railways;

ii. Principal Secretary (Finance), Government of NCT of Delhi;

iii. Commissioner, Trade and Taxes, Government of NCT of Delhi; and

iv. Chairman and Managing Director or Director (Finance), IRFC.

112. The officers shall jointly prepare an assessment-year-wise statement identifying:

i. rolling stock manufactured in Railway production units and transferred to IRFC;

ii. rolling stock purchased from private manufacturers by the Railways in its own right and thereafter transferred to IRFC;

iii. rolling stock procured by the Railways on behalf of IRFC;

iv. the value attributable to each class;

v. the documents or other material supporting the classification; and

vi. the amounts deposited by the Petitioner and presently retained by the Respondents.

113. The officers shall make a *bona fide* effort to arrive at an agreed classification and computation within the framework of this judgment. A jointly signed statement shall be placed before the Commissioner, Trade and Taxes, within eight weeks. If agreement cannot be reached upon any transaction or Assessment Year, the statement shall identify the point of disagreement and briefly record the respective positions.

114. Upon receipt of the statement, the Commissioner, Trade and Taxes, shall place the matters before an Assessing Authority competent to exercise jurisdiction under the applicable enactment. The Assessing Authority shall afford the Petitioner and IRFC a reasonable opportunity of producing the relevant records and of being heard.

115. The fresh exercise shall remain strictly confined to identifying the transactions falling within the three classes specified in paragraph 112 and computing the liability arising from the transactions found to constitute sales. It shall not reopen the legal conclusions recorded in this judgment concerning the status of the Railways as a dealer, the circumstances in which a transfer to IRFC constitutes a sale, or the burden of proving non-liability under Sections 6 and 8 of the DST Act.

116. The fresh determination shall also remain confined to the turnover forming the subject matter of the respective Assessment Orders set aside by this judgment. It shall not result in any further enlargement of the assessed turnover.

117. The Assessing Authority shall pass separate, reasoned orders for each Assessment Year within twelve weeks from the date on which the statement contemplated in paragraph 113 is placed before the Commissioner. The tax and other statutory consequences, if any, shall be determined in accordance with law and the findings recorded in this judgment.

118. The amounts deposited by the Petitioner and presently retained by the Respondents shall remain subject to the fresh assessment orders. Any liability determined thereunder may be adjusted against those deposits. Any amount found to be in excess shall be refunded to the Petitioner within eight weeks from the date of the respective fresh assessment order.

119. No recovery pursuant to the fresh assessment orders shall be effected for four weeks from the date on which the orders are communicated to the Petitioner. The Petitioner shall be at liberty to avail such remedy against those orders as may be available in law.

120. The Writ Petitions are disposed of in the aforesaid terms. All pending applications also stand disposed of.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 02, 2026
sp/ad