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STATE OF MYSORE

v.

YADDALAM LAKSHMINARASIMHAIAH SETTY AND SONS

November 10, 1964

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[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Central Sales Tax Act (74 of 1956), ss. 6, 8(2) and 9 and Mysore Sales Tax Act (25 of 1957), s. 5(3)(a)—Inter-State sale of powerloom textiles—Assessee not the first or earliest dealer in State—Liability to tax.

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The assessee was a dealer in Mysore dealing in powerloom textiles. His turnover in the course of inter-state trade was assessed and taxed by the Commercial Tax Officer, under s. 9 of the Central Sales Tax Act, 1954, before its amendment in 1958. The order was upheld by the Deputy Commissioner of Commercial Taxes and the Sales Tax Appellate Tribunal. The High Court, in revision, held that the sales were not "first sales" within the State, and that not being exigible to tax under the State Sales Tax Act (Mysore Act 25 of 1957), no tax was payable under the Central Act. The State appealed to the Supreme Court and contended that the assessee was liable to be taxed because of s. 6 of the Central Act.

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HELD : (*Per* Subba Rao and Sikri, JJ.) Though s. 6 of the Central Act is the charging section the liability to pay tax is subject to the other provisions in the Act. Section 8(2) provides that tax shall be calculated at the same rates and in the same manner as would have been done if the sale had in fact, taken place inside the appropriate State, and s. 9 provides that, under the Central Act, tax shall be levied in the same manner as the tax on the sale or purchase of goods, under the general sales tax law of the State is assessed, paid and collected. The word "levied" means "imposed" and since s. 5(3)(a) of the Mysore Sales Tax Act, read with Schedule II of that Act provides that the tax shall be levied, in the case of powerloom goods on the first or the earliest of successive dealers in the State, and the assessee was not such a dealer, no tax could be levied on him in respect of the disputed turnover. Such a construction avoids the anomaly of the State collecting tax on powerloom textiles only at a single point and the Centre, through the agency of the State authorities, collecting the said tax for and on behalf of the State at multi-points. [131 A; 132 G; 133 B, D-F, H]

Per Shah, J. (dissenting) : The High Court was in error in regarding sales other than the first sales as exempted from liability to pay tax under the Central Act, when the sales sought to be taxed, were in the course of inter-state trade or commerce. [138 C-D]

Section 6 of the Central Act charges inter-state transactions to tax. The function of s. 8(2) is to prescribe the rate and the manner of calculation of tax : it is not intended to incorporate the entire procedural and substantive State law relating to tax. Section 9(1) and (2) establish that the machinery of assessment, collection and enforcement of liability prescribed by the State statute alone is incorporated in the Central Act. Neither s. 8(2) nor s. 9 cut down the plenary charge imposed by s. 6, nor

do they attract any exemptions from tax prescribed by the State law. [136 B-E] **A**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 165 of 1964.

Appeal by special leave from the judgment and order dated January 22, 1962, of the Mysore High Court in Civil Revision Petition No. 964 of 1961. **B**

S. V. Gupte, Solicitor-General, M. S. K. Sastri and B. R. G. K. Achar, for the appellant. **C**

R. Gopalakrishnan, for the respondent.

The Judgment of Subba Rao and Sikri JJ. was delivered by Sikri J. Shah J. delivered a dissenting Opinion.

Sikri, J. This is an appeal by special leave directed against the judgment of the Mysore High Court accepting the revision petition of the respondent before us, hereinafter referred to as the assessee. **D**

The relevant facts are these. The assessee is a dealer in powerloom and handloom textiles, both within the Mysore State and in the course of inter-State trade. For the year 1957-58, the Commercial Tax Officer, Bangalore, assessed and taxed the turnover relating to powerloom textiles under s. 9 of the Central Sales Tax Act (LXXIV of 1956), hereinafter referred to as the Central Act, as it stood before its amendment by the Central Sales Tax (Second Amendment) Act, 1958 (XXX of 1958). This was upheld by the Deputy Commissioner of Commercial Taxes. The Mysore Sales Tax Appellate Tribunal also affirmed the order. The High Court, in revision, accepted the plea of the assessee that its turnover consisting of sales of textiles manufactured by means of powerlooms in the course of inter-State trade is liable to be taxed at the same rate and exactly in the same manner as they would have been taxed if they had been intra-State transactions. The High Court arrived at this conclusion because, according to it, the true construction of s. 8(2) of the Central Act is that any exemption given by a State Sales Tax Act or the point determined by it at which a sale is to be taxed applies to assessments under the Central Act. **E**
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A The assessee's plea, in brief, is that he is not the first or earliest
of the successive dealers of the disputed turnover, and, therefore,
if he had sold the goods intra-State, no tax would have been levied
on him. The reply of the Department is that this is true but, under
the Central Act he is liable to be taxed because of s. 6, and the
B point at which a turnover is taxed has nothing to do with the man-
ner of calculation of tax.

The relevant sections of the Central Act are as follows :

C "6. Liability to tax on inter-State sales :—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 effected by him in the course of inter-State trade or
commerce during any year on and from the date so
D notified.

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

E (1) Every dealer who, in the course of inter-State
trade or commerce sells to a registered dealer goods of
the description referred to in sub-section (3) shall be lia-
ble to pay tax under this Act, which shall be one per
cent of his turnover :

F Provided that, if under the sales tax law of the appro-
priate State, the sale or purchase of any goods by a dealer
is exempt from tax generally and not in specified cases
or in specified circumstances or is subject to tax (by
whatever name called) at a rate or rates which is or are
lower than the rate specified in sub-section (1), the tax
payable under this Act on the turnover in relation to sale
of such goods in the course of inter-State trade or com-
G merce shall be nil or shall be calculated at the lower rate,
as the case may be.

H (2) The tax payable by any dealer in any case not
falling within sub-section (1) in respect of the sale by
him of any goods in the course of inter-State trade or
commerce shall be calculated at the same rates and in
the same manner as would have been done if the sale had,
in fact, taken place inside the appropriate State; and for

the purposes of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

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9. Levy and collection of tax.—(1) The tax payable by any dealer under this Act shall be levied and collected in the appropriate State by the Government of India in the manner provided in sub-section (2).

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(2) The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, appeals, reviews, revisions, references, penalties and compounding of offences, shall apply accordingly.

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(3) The proceeds (reduced by the cost of collection) in any financial year of any tax levied and collected under this Act in any State on behalf of the Government of India shall, except insofar as those proceeds represent proceeds attributable to Union territories, be assigned to that State and shall be retained by it; and the proceeds attributable to Union territories shall form part of the Consolidated Fund of India.”

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Section 6 of the Central Act is the charging section. Subject to the other provisions contained in the Act, every dealer is liable to pay tax under the Act on all sales effected by him. It will be noticed that the liability is not absolute but subject to the other provisions of the Act. If the effect of another provision is to take away the liability, effect will have to be given to it. Section 8 prescribes the rates of tax to be levied. It is common ground that s. 8(1) does not apply to the facts of the case, but the proviso is important as it indicates that in some cases falling within the proviso the rate may be nil. In other words, notwithstanding s. 6, the dealer may not be liable to pay any tax if

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A he comes within the proviso to s. 8(1). It follows that the scheme of the Act is not that every transaction in inter-State trade must bear some tax.

B Section 8(2) provides for the method of calculating the tax; under that sub-section, the tax shall be calculated at the same rates and in the same manner as would have been done if the sale had, in fact, taken place inside the appropriate State. The expression "in the manner" may give rise to two conflicting views, namely, (i) it is concerned only with the calculation of the tax, and (ii) it deals not only with the calculation of the rates but also the manner of levy of the tax. But s. 9(1) dispels the ambiguity for it says that the tax payable by any dealer under the Central Act shall be levied and collected in the appropriate State by the Government of India in the manner provided in sub-section (2); and sub-s. (2) of s. 9 empowers the appropriate State authorities to assess, collect and enforce payment of any tax payable by any dealer under the Central Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected. The expression "levy" means "impose". Under s. 5(3)(a) of the Mysore Sales Tax Act, 1957, hereinafter called the State Act, tax shall be levied in the case of the sale of any of the goods mentioned in col. (2) of the Second Schedule by the first or the earliest of successive dealers in the State, who is liable to tax under that section, a tax at the rate specified in the corresponding entry of Col. (3) of the said Schedule on the turnover of sales of such dealer in each year relating to such goods. When s. 9(1) says that under the Central Act tax shall be levied in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected, it is reasonable to hold that the expression "levied" in s. 9(1) of the Central Act refers to the expression "levied" in s. 5(3)(a) of the State Act. There is no reason why the Central Act made a departure in the manner of levy of tax on the specified goods which are taxed only at a single point under the State Act : if any such radical departure was intended, the Central Act would have expressly stated so. The Central Act was passed to levy and collect sales-tax on inter-State sales to avoid confusion and conflict of jurisdictions; the tax is also collected only for the benefit of the States. Therefore, the construction we accept avoids the anomaly of the State collecting tax on powerloom textiles only at a single point and the Centre, through the agency of the State authorities, collecting the said tax for and on behalf of the State at multi-points.

There has been considerable difference of opinion among the High Courts about the true construction of s. 8(2), but none of them have relied on s. 9 of the Central Act. Therefore, it is not necessary to refer to cases cited before us. A

For the foregoing reasons we hold, though for different reasons, that the order of the High Court is correct. In the result, the appeal is dismissed with costs. B

Shah, J. The High Court of Mysore has held that sales which were not "first sales" within the Mysore State being not exigible to tax under the Mysore Sales Tax Act, no tax was payable thereon under the Central Sales Tax Act, 1956. C

The provisions of the Central Sales Tax Act in force at the relevant time may be briefly referred to. Section 6 imposes upon every dealer, subject to the other provisions contained in the Act, liability to pay tax under the Act on all sales effected by him in the course of inter-State trade or commerce during any year. Section 7 provides for registration of dealers. Section 8 deals with the rates of tax on sales in the course of inter-State trade or commerce. By sub-s. (2), as it stood at the relevant time, it was provided : D

"The tax payable by any dealer in any case not falling within sub-section (1) in respect of the sale by him of any goods in the course of inter-State trade or commerce shall be calculated at the same rates and in the same manner as would have been done if the sale had, in fact, taken place inside the appropriate State and for the purpose of making any such calculation any such dealer shall be deemed to be dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law." E

Section 9 provided for levy and collection of tax. It provided : F

"(1) The tax payable by any dealer under this Act shall be levied and collected in the appropriate State by the Government of India in the manner provided in sub-section (2). G

(2) The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any H

- A rules made under this Act, assess, collect and enforce payment of any tax payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected; and for the purpose they may exercise all or any of the powers they have under the
- B general sales tax law of the State; and the provisions of such law, including provisions relating to returns, appeals, reviews, revisions, references, penalties and compounding of offences, shall apply accordingly.

(3) ”

- C The turnover of the respondents sought to be taxed arises out of transactions of sale of handloom and powerloom cloth effected by them in the course of inter-State trade or commerce. Under the Mysore Sales Tax Act, 1957, sale of these goods was liable to tax under s. 5(3)(a) read with Entry 7 in Sch. II of the Act, at a single point on sale by the first or the earliest of successive
- D dealers in the State. It is common ground that the respondents are not the first or the earliest of successive dealers in the State in respect of the transactions sought to be taxed. Section 6 charges to tax sales in the course of inter-State trade or commerce of every dealer, but the Act does not prescribe the rates at which tax is to be levied, nor does it set up machinery for assessment, collection and enforcement of liability to pay tax, charged upon
- E inter-State sales of dealers. By s. 8(2) tax payable by the dealer in respect of his sales not falling within sub-s. (1)—and the turnover in the present case is not in respect of sales falling within sub-s. (1)—has to be calculated *at the same rates and in the same*
- F *manner* as would have been calculated, if the sale had taken place inside the appropriate State. The clause in terms only deals with calculation of the tax—the rate at which and the manner in which the tax has to be calculated—under the State law : it does not attract any exemptions from tax prescribed by the State law.

- G Use of the expression “in the same manner” in s. 8(2) has not the effect of assimilating the procedural and the substantive provisions relating to the imposition, levy and collection of tax as are provided by the State law in the matter of collection of tax under the Central Sales Tax Act. The Legislature has not said so in express terms, and there is no implication to that effect in the scheme of the Act. Section 9(1) invests the appropriate State
- H Government with authority to levy and collect tax, in the manner provided by sub-s. (2). By sub-s. (2) of s. 9 the Legislature has expressly provided that the tax has to be assessed, collected and

payment has to be enforced under the general sales tax law of the appropriate State on behalf of the Government of India. The scheme devised by the Legislature is fairly clear. Section 6 charges inter-State transactions to tax. The function of s. 8(2) is to prescribe the rate and the manner of calculation of tax : it is not intended to incorporate the entire procedural and substantive State law relating to tax. By sub-s. (2) of s. 9 the machinery for assessment, collection and enforcement of liability to pay tax is set up. Neither s. 8(2) nor s. 9(2) cuts down the plenary charge imposed by s. 6. It is true that s. 9(1) directs that the tax payable by a dealer shall be levied and collected, in the manner provided in that sub-section. The sub-section, however, does not charge turnover to tax : the turnover stands already charged by s. 6. Again the inter-relation of the two sub-sections of s. 9 clearly establishes that the machinery of assessment, collection and enforcement of liability prescribed by the State statute alone is incorporated in the Central Sales Tax Act. I am, therefore, unable to hold that under sub-sections (1) and (2) of s. 9, the power conferred upon the authority competent to assess the tax in the same manner as the tax on the sale or purchase of goods under the general sales tax law includes the power to admit to exemptions provided by the State law, inter-State sales—taxable under the Central Sales Tax Act.

This view has been taken in several cases which have come before the Madras, Kerala and Andhra Pradesh High Courts, in *S. Mariappa Nadar and others v. The State of Madras*⁽¹⁾ it was held by the Madras High Court that tax leviable under s. 8(2) was on the turnover under the Central Sales Tax Act, and not under the Madras General Sales Tax Act. There was, in the view of the Court, nothing in s. 8(2) which provided that the inter-State nature of the transaction was taken away and the transaction became intra-State. The Act did not declare that the transaction shall be deemed to be one inside the State. The local sales tax law applied to it only to the extent to which it was specifically directed. Therefore by the terms of s. 8 the assessee was not entitled to exclude from the turnover the inter-State sales. The Court also held that the phrase "in the same manner" in s. 9(3) [which was substituted for the original sub-s. (2) of s. 9, by the Central Sales Tax (Second Amendment) Act, 1958] did not make applicable all the incidents of the local sales tax law to the assessment under the Central Sales Tax Act. The phrase merely contemplated that the procedure of making an assessment, collection

(1) [1962] 13 S.T.C. 371.

A of tax, and the provisions relating to the determination of turnover shall be the same as laid down in the local Sales Tax Act.

In *M. Abbas and Company v. The State of Madras*⁽¹⁾ it was held by the Madras High Court that for the purpose of attaching liability to sales tax under s. 8(2) the fact that in respect of that transaction the dealer may not be liable under the local sales tax law (goods sold being subject only to a single point levy under the local sales tax law) is of no consequence.

B The principle of *Mariappa's case*⁽²⁾ was applied by the Kerala High Court in *Parvathi Mills (Private) Ltd v. The State of Kerala*⁽³⁾, in which excise duty paid to the Central Government by a dealer and collected from his customers was not permitted to be excluded from the turnover by the application of rule 7(1) of the General Sales Tax Rules, 1950, framed under the local Sales Tax Act. It was observed in that case that the expression "in the same manner" in s. 9(2) of the Central Sales Tax Act did not attract the application of the rule which justified the exemption.

C The Andhra Pradesh High Court in *Sri Surya Trading Firm and others v. The State of Andhra Pradesh*⁽⁴⁾ held that an assessee dealing in handloom cloth and whose inter-State sales fell under s. 8(2) of the Central Sales Tax Act, 1956, was not entitled to the benefit of the exemption granted to handloom cloth under the notification issued by the State Government on December 13, 1957, in exercise of the powers conferred under s. 9(1) of the Andhra Pradesh General Sales Tax Act, 1957. The fiction created by s. 8(2) of the Central Sales Tax Act, 1956, was only for the limited purpose of calculating the rate, and the position of a dealer under s. 8(2) could not be equated with that of a dealer governed by the Andhra Pradesh General Sales Tax Act, 1957, for every purpose.

D In *The State of Mysore and another v. Mysore Paper Mills Ltd*⁽⁵⁾ the Mysore High Court also approved of the principle of *Mariappa's case*⁽²⁾ and *Parvathi Mills' case*⁽³⁾ and held that by the use of the expression "in the same manner" in s. 9(3) [which was substituted for the original s. 9(2) by the Central Sales Tax (Second Amendment) Act, 1958] all the incidents of the local sales tax law to the assessment under the Central Sales Tax Act are not applied: what is contemplated by that phrase is that the procedure of making an assessment and collection of tax is the same as in the local Sales Tax Act.

(1) (1962) 13 S.T.C. 433.

(2) (1962) 13 S.T.C. 371.

(3) (1962) 13 S.T.C. 927.

(4) (5964) 15 S.T.C. 176.

(5) (1964) 15 S.T.C. 176.

In my view these cases correctly interpret the words of s. 8(2) and s. 9(2) of the Central Sales Tax Act as they stood before its amendment in the year 1958. These cases, it is true, did not expressly deal with the interpretation of s. 9(1) of the Central Sales Tax Act, but in my judgment, for reasons already stated, the machinery incorporated by sub-ss. (1) & (2) of s. 9 of the Central Sales Tax Act from the State statute only relates to assessment, collection and enforcement of liability to tax. A

In my view the High Court was in error in regarding sales other than the first sales exempt from liability to pay tax under the Central Sales Tax Act when the sales sought to be taxed were in the course of inter-State trade or commerce. C

ORDER

In accordance with the Opinion of the majority this Appeal is dismissed with costs. D