A STATE OF UTTAR PRADESH & ORS.

v.

KASTURI LAL HAR LAL

AUGUST 3, 1987

B [SABYASACHI MUKHARJI AND G.L. OZA, JJ.]

Central Sales Tax Act, 1956—Sub-ss. (1) and (2) of s. 9—Read with s. 3(b)—'Appropriate State' having jurisdiction to impose and collect Central Sales Tax on sale of goods effected by transfer of documents of title to goods during their movement from one State to another.

C

Section 3 of the Central Sales Tax Act, 1956 stipulates that 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 D **one State to another. Sub-s. (1) of s. 9 provides that the tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the** E **movement of the goods commenced and sub-s. (2) thereof provides that the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any penalty, etc.**

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The respondent, a dealer in coal, had effected certain transactions by endorsing *Bilties* (Railway Receipts made out in its name to various parties in Uttar Pradesh while the goods relating to the *Bilties* were in a state of movement from Bihar to Uttar Pradesh. The bills connected with such *Bilties* had also been prepared by the respondent which had G **realised the money from the purchasing parties. The Sales Tax Officer, Lucknow was of the view that the sale of coal effected in this manner came under inter-State sale and as such was liable under section 3(b) of the Central Sales Tax Act, 1956. Disagreeing with the contention of the respondent that the goods having been sold to an unregistered dealer, the respondent too being not a registered dealer during the particular** H **year, there was no question of imposition of any sales tax, the Sales Tax**

Officer imposed the liability under that provision which was challenged by the respondent by a writ petition. The High Court, allowing the petition, set aside the order of assessment. A

Dismissing the appeal,

HELD: The Sales Tax Officer in Uttar Pradesh was not the appropriate authority either to impose or collect the duty on inter-State sale. [764G] B

(i) Sub-s.(1) of s. 9 confers jurisdiction to make the levy and collect the tax on the State where the movement of the goods commences, and so the determinative test for discovering the jurisdiction of a particular State, in an inter-State sale, is the place where the movement of the goods commences. The words "appropriate Government" given in sub-s. (2) of that section must necessarily refer to the State which by s. 9(1) has been conferred jurisdiction to levy and collect the tax. [763D-E] C D

(ii) It is clear from an analysis of the scheme of the Central Sales Tax Act, 1956 that it is the Central Government which imposes tax on inter-State sale but it is collected by the Government in accordance with the provisions of sub-s. (2) of s. 9 of the Act in the State. It is clear from sub-s. (2) of s. 9 that the "appropriate State" imposes and collects the tax on behalf of the Government of India. In order to be a sale or inter-State transaction the sale must occasion the movement of goods. In the instant case, there were Railway receipts which were endorsed in favour of the parties in U.P. It is by that endorsement that title was transferred to the purchasers and that transaction occasioned the movement of the goods, in other words, caused inter-State sales to take place, namely, the sale which occasions the movement of goods from one State to another, from the State of Bihar to the State of U.P. [762E-G] E F

(iii) The proviso to s. 9(1) can apply only if the sale is by a registered dealer. Here the admitted position is that the dealer is not a registered one. It was urged on behalf of the revenue that inasmuch as s. 7 required every dealer to obtain registration within the prescribed period and in the event of not obtaining such a registration, penal consequences ensue under s. 10, the words "registered dealer" as used in the proviso to s. 9 do not refer necessarily to a dealer who has obtained registration under s. 7, but to a dealer who should have obtained such a registration. In other words, counsel tried to import the equitable maxim by stating an argument in the manner that if registra- G H

tion in the facts of a particular case was compulsory then such registration should be deemed to have been made as by law enjoined that it should have been made. Equity, it was said, "looks upon a thing as done which ought to have been done". But that is not the position in a fiscal statute. The fiscal statute with which we are concerned recognises registration and non-registration and imposes liabilities on registration and consequences for non-registration. It is not, therefore, possible to look upon a thing as done which ought to have been done for which Legislature has separately featured differently in a fiscal statute of this nature. The Act provides machinery provisions for the imposition and realisation of the Central Sales Tax. It must be read in a commonsense point of view. [763E-H; 764A-B]

(iv) Sub-s. (2) of s. 6 provides that where a sale of goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to the Government or to a registered dealer other than the government, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act. The proviso stipulates that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time, a certificate as mentioned therein. In this case, the subsequent sale if there be any in U.P. did not occasion the movement of the goods. It is therefore, not subject to inter-State sales tax. [764D-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5(NT) of 1975.

From the Judgment and Order dated 15.9.1971 of the Allahabad High Court in Civil Misc. Writ Petition No. 5324 of 1970.

Prithvi Raj, Mrs. Rekha Joshi and Ashok K. Srivastava for the Appellants.

Manoj Swarup, Ms. Lalita Kohli and Pramod Swarup for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. The question involved in this appeal is whether the respondent herein M/s. Kasturi Lal Har Lal is liable to the State of Uttar Pradesh for payment of the Central Sales Tax in respect of the transactions of sale of coal. The Sales Tax Officer in this case passed an order making the respondent liable for the payment of tax on certain transactions during the period from 1st October, 1965 to 31st March, 1966 amounting to Rs.9,08,548.81 and tax liability was imposed at the rate of 2% thereof amounting to Rs. 18,170-98. The Sales Tax Officer found that the assessee carried on business in coal. The Sales Tax Officer noted that the Bilties, concerning this kind of sale of coal had been prepared in the name of the dealer. The dealer endorsed these Bilties (R.Rs) and gave these to the diverse parties in U.P. The parties in U.P. on receiving these Bilties got the goods released. The dealer admitted that the Bilties (R.Rs.) having been endorsed to the parties in U.P. were given to them at the time, while the goods were in the state of movement between Bihar and U.P. The bills connected with Bilties (R.Rs.) of this kind had also been prepared by the dealer and the money had been realised by the dealer from the purchasing parties. The Sales Tax Officer was of the view that the sale of coal effected in that manner came under inter-state sale and as such was liable under section 3(b) of the Central Sales Tax Act, 1956, by transfer of document when the goods were in movement. It was the case of the dealer that the goods had been sold to an unregistered dealer and he too was not a registered dealer for the year 1965-66. Therefore, there was no question of imposition of any Sales Tax. The Sales Tax Officer did not agree with this view and imposed liability for the said Rs.18170-98. Challenging the said imposition an application was moved before the High Court under Article 226 of the Constitution by the dealer. The application was allowed and the order of assessment was set aside.

The High Court having considered the facts and circumstances of this case noted that the main contention raised on behalf of the assessee was that inasmuch as the movement of the goods had started from the State of Bihar, the tax if any, payable on such sales, was assessable in Bihar and the Sales Tax Officer, Lucknow had no jurisdiction to make the order of assessment. The High Court in the light of Section 9(1) of the Central Sales Tax Act was of the view that the "appropriate State" would be the Sales Tax Officer in Bihar and as such the imposition was not possible in the manner it was done. The assessee succeeded before the High Court on this ground. The question for determination is whether that is so?

A The High Court noted that in the previous case of *Karam Chand Thapar and Bros. (Coal Sales) Ltd.* v. *The Sales Tax Officer, Moradabad and others,* (Civil Miscellaneous Writ No. 4356 of 1969) the High Court had taken the same view on more or less identical facts on 24th of July, 1970. We were told at the Bar that in the said matter leave had been granted under Article 136 of the Constitution by this B Court. We wanted to know whether the matter had been disposed of by this Court and if so what was the fate of the same and had adjourned this appeal on this account. Neither the assessee nor the revenue has been able to enlighten us on this point.

Under the Central Sales Tax Act, 1956 (hereinafter called 'the C Act'), Section 2(a) stipulates that the "appropriate State" means (i) in relation to a dealer who has one or more places of business situate in the same State, that State; (ii) in relation to a dealer who has places of business situate in different States, every such State with respect to the place or places of business situate within its territory. On the other hand clause (b) of section 2 defines "dealer" to mean any person who D carries on (whether regularly or otherwise) the business of buying and selling, in the manner indicated in sub-clause (b). It is not confined to a registered dealer only. Section 3 is the charging section and is in Chapter II dealing with the formulation of principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import E or export. Section 3 stipulates that 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. There are two explanations to that section and explanation 1 provides that where F goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. Explanation 2 enjoins that if the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from G 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. Section 6 deals with the liability to tax on inter-State sales. Section 6(1) provides that 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 in the course of inter-State trade or commerce during H any year on and from the date so notified. Sub-section (1A) of section

6 provides that a dealer shall be liable to pay tax under the Act on sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State. Sub-section (2) of section 6 stipulates that notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by transfer of documents of title to such goods to the Government or to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under the Act. Sub-section (2) of section 6 provides that no such subsequent sale shall be exempt from tax under that sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,—(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in the prescribed form obtained from the prescribed authority; and (b) if the subsequent sale is made (i) to a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8, or (ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of sub-section (4) of section 8. Sub-section (1) and sub-section (2) of section 9 of the Act are material for our present purpose and read as follows:

> "9(1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced;
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> (2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of

A India, assess, re-assess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law
B of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided
C family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

D Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section."

It is clear from the analysis of the scheme of the Act that the
E Central Government imposes tax and it is by the Central Government the tax is imposed for inter-State sale but it is collected by the Government in accordance with the provisions of sub-section (2) of section 9 of the Act in the State. It will be clear from sub-section (2) of section 9 that the "appropriate State" imposes and collects the tax on behalf of the Government of India. The question is which is the "appropriate
F State" in a transaction of the nature or the type with which we are concerned where tax on inter-State sale was sought to be imposed. In order to be a sale or inter-State transaction the sale must occasion the movement of goods. Here in the instant case, it appears that there were Railway receipts which were endorsed in favour of the parties in U.P. It is by that endorsement that title was transferred to the pur-
G chases and that transaction occasioned the movement of the goods, in other words, caused inter-State sales to take place, namely, the sale which occasions the movement of goods from one State to another from the State of Bihar to the State of U.P.

Counsel for the revenue sought to urge at one point of time that
H as the railway receipts were endorsed in U.P. in favour of different

parties such a sale would not be an inter-State sale that would have occasioned the movement of goods. If that is the position here which counsel for the revenue sought to urge then a tax on such sales as an internal sale might have been levied under the U.P. Sales Tax Act. But that would not be the case of sale on a transaction which occasions the movement. For this purpose section 9 provides for the collection and levy by the "appropriate Government". The "appropriate Government" means in relation to a dealer who has one or more places of business situate in the same State, that State or in relation to a dealer who has places of business situate in different States, every such State with respect to the place or places of business situate within its territory. It is not the position in the instant case. It was contended on behalf of the revenue that in the State of Uttar Pradesh, the concerned Sales Tax Officer was fully competent to make the assessment. The High Court was of the view that this argument proceeded on an omission to consider the opening words of section 2 which is the definition clause, and which makes the definitions given thereunder subject to the context. Sub-section (1) of section 9 confers jurisdiction to make the levy and collection of the tax on the State where the movement of the goods commences, and so the determinative test for discovering the jurisdiction of a particular State, in an inter-State sale, is the place where the movement of the goods commences. The words "appropriate Government" given in sub-section (3) of that section must necessarily refer to the State which by section 9(1) has been conferred jurisdiction to levy and collect the tax. The provisions must be harmonised. It was next contended that the case of the respondent fell within the ambit of the proviso to Section 9(1). We have noted that the provisions of the proviso can apply only if the sale is by a registered dealer. Here the admitted position is that the dealer is not a registered one. It was urged on behalf of the revenue that inasmuch as section 7 of the Act required every dealer to obtain registration within the prescribed period and in the event of not obtaining such a registration, penal consequences ensue under section 10 of the Act, the words "registered dealer" as used in the proviso to section 9 do not refer necessarily to a dealer who has obtained registration under section 7, but to a dealer who should have obtained such a registration. In other words, counsel tried to import the equitable maxim by stating an argument in the manner that if registration in the facts of a particular case was compulsory then such registration should be deemed to have been made as by law enjoined that it should have been made. Equity, it was said the maxim long time ago "looks upon a thing as done which ought to have been done." But that is not the position in a fiscal statute. The fiscal statute with which we are concerned recognised registration and

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A non-registration and imposes liabilities on registration and consequences for non-registration. It is not, therefore, possible to look upon a thing as done which ought to have been done for which Legislature has separately featured differently in a fiscal statute of this nature. The Act provides machinery provisions for the imposition and realisation of the Central Sales Tax. It must be read in a commonsense point of view.

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It is clear here that registration of dealer is important because the proviso states that in the case of sale of goods during their movement from one State to another, the sale subsequent to first sale in respect of the same goods being also a sale which fell under sub-section (2) of section 6, the tax shall be levied and collected on a subsequent sale which had been effected by a transfer of documents of title to such goods by a registered dealer in the State from which the registered dealer obtained or as the case may be could have obtained the form prescribed in clause (a) of sub-section (4) of section 8 of the Act in connection with purchase of such goods. Sub-section (2) of section 6 provides that where a sale of goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to the Government or to a registered dealer other than the government, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act. The proviso stipulates that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time, a certificate as mentioned therein. In this case, the subsequent sale if there be any in U.P. did not occasion the movement of the goods. It is therefore, not subject to inter-State sales tax.

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In that view of the matter we are of the opinion that the Sales Tax Officer in U.P. was not the appropriate authority either to impose or collect the duty on inter-State sale. The High Court was right in the view it took. This appeal must therefore, be dismissed with costs.

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H.L.C. Appeal dismissed.