

- (a) either on the application of the dealer to whom it has been granted or, where no such application has been made, after due notice to the dealer, be amended by the authority granting it if he is satisfied that by reason of the registered dealer having changed the name, place or nature of his business or the class or classes of goods in which he carries on business or for any other reason the certificate of registration granted to him requires to be amended; or
- (b) be cancelled by the authority granting it where he is satisfied, after due notice to the dealer to whom it has been granted, that he has ceased to carry on business¹ [or has ceased to exist or has failed without sufficient cause, to comply with an order under sub-section (3-A) or with the provisions of sub-section (3-C) or sub-section (3-E) or has failed to pay any tax or penalty payable under this Act], or in the case of a dealer registered under sub-section (2) has ceased to be liable to pay tax under the sales-tax law of the appropriate State or for any other sufficient reason.]

(5) A registered dealer may apply in the prescribed manner not later than six months before the end of a year to the authority which granted his certificate of registration for the cancellation of such registration, and the authority shall, unless the dealer is liable to pay tax under this Act, cancel the registration accordingly, and where he does so, the cancellation shall take effect from the end of the year.

ORDER

G.S.R. 583 (E), dated 1st October, 1982².—In exercise of the powers conferred by sub-section (1) of Sec. 7 of the Central Sales-tax Act, 1956 (74 of 1956), the Central Government hereby specifies the persons mentioned in column (3) of the Schedule hereto annexed as the authorities to whom the dealers in the State of Sikkim described in column (2) of the said Schedule shall make application under the said section:

SCHEDULE

Sl.No.	Description of dealer	Description of authority
1	2	3
1.	Dealers having a single place of business, more than one place of business, or no fixed place of business, in the State of Sikkim.	³ [Deputy Commissioner of Commercial Taxes and Assistant Commissioner of Commercial Taxes, Government of Sikkim].

COMMENT

Scope of Sec. 7.—The Sales Tax Appellate Tribunal seems to have misunderstood the scope of the power of the assessing authority under Sec. 14(7) of the Kerala General Sales-tax Act and under Sec. 7 of the Central Sales-tax Act as also the Bench decision of the Kerala High Court in *Natarajan Chettiar's case*.⁴ The words "good and sufficient reasons" in the context of Sec. 14(7) of the Act only mean "appropriate" or "suitable" or "satisfactory" or "fit" and enough or adequate reasons for cancelling the registration. The Sales Tax Appellate Tribunal was in

1. Subs. by Act 61 of 1972, Sec. 4, for "or has ceased to exist" (w.e.f. 1st April, 1973).

2. Published in the *Gazette of India, Extraordinary*, Pt. II, Sec. 3 (i), dated 1st October, 1982.

3. Subs. by G.S.R. 661 (E), dated 22nd August, 1983, published in the *Gazette of India, Extraordinary*, Pt. II, Sec. 3 (i), dated 22nd August, 1983.

4. 1988 (69) S.T.C. 153.

error in distinguishing the judgment of the High Court in *Natarajan Chettiar's case*,¹ by referring to a few isolated passages out of context and even without endeavouring to understand the ratio of the decision. This is also a clear legal error. This error has led to a wrong approach to the entire question and the resultant conclusion. The Court set aside the common order of the Appellate Tribunal and remitted the matter to the Sales Tax Appellate Tribunal for a fresh consideration in accordance with law and in the light of the observations contained hereinabove.²

8. Rates of tax on sales in the course of inter-State trade or commerce.—³[(1) Every dealer, who in the course of inter-State trade or commerce—

- (a) sells to a Government any goods; or
- (b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3);

⁴[shall be liable to pay tax under this Act, with effect from such date as may be notified by the Central Government in the Official Gazette for this purpose, which shall be two per cent. of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, or, as the case may be, under any enactment of that State imposing value added tax, whichever is lower:

PROVIDED THAT the rate of tax payable under this sub-section by a dealer shall continue to be four per cent. of his turnover, until the rate of two per cent. takes effect under this subsection.]

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1)—

- (a) in the case of declared goods shall be calculated ⁵[at twice the rate] applicable to the sale or purchase of goods inside the appropriate State; ⁶[* * *]
- (b) in the case of goods other than declared goods, shall be calculated at the rate of ⁷[ten per cent.] or at the rate applicable to the sale or purchase of such goods inside the appropriate State, ⁸[whichever is higher; and]

—⁹[(c) in the case of goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally shall be *nil*, and for the purpose of making any such calculation under Cl. (a) or Cl. (b), 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.

Explanation.—For the purposes of this sub-section, a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale

1. 1988 (69) S.T.C. 153.

2. Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), *Ernakulam v. Imperial Trading Company*, 1990 (76) S.T.C. 183 at pp. 191, 192 (Ker.); *Instant, Auto Colour Lab. v. S.T.O.*, S.T.I. 1991 All. 15.

3. Subs. by Act 31 of 1958, Sec. 5, for sub-sections (1) to (4) (w.e.f. 1st October, 1958).

4. Subs. by the Finance Act, 2003 (32 of 2003), Sec. 162, dated 14th May, 2003.

5. Subs. by Act 25 of 1975, Sec. 38, for "at the rate" (w.e.f. 1st July, 1975).

6. The word "and" omitted by Finance Act, 2002, (20 of 2002), Sec. 152 (ii) (a).

7. Subs. by Act 8 of 1963, Sec. 2, for "seven per cent." (w.e.f. 1st April, 1963).

8. Subs. for words "whichever is higher" by Finance Act, 2002 (20 of 2002), Sec. 152 (ii) (b).

9. Subs. for certain words by Finance Act, 2002 (20 of 2002), Sec. 152 (ii) (c).

or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods;]

¹[(2-A)[* * * * *]]

²[(3) The goods referred to in Cl. (b) of sub-section (1)—

³[(a) * * * * *]]

(b) ⁴[* * *] are goods of the class specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or ⁵[in the tele-communications network or] in mining or in the generation or distribution of electricity or any other form of power;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in ⁶[* * *] Cl.(b) or for the packing of any containers or other materials specified in the certificate of registration referred to in Cl. (c).

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner—

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority: or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government:]

⁷[PROVIDED THAT the declaration referred to in Cl.(a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.]

⁸[(5) Notwithstanding anything contained in this section, the State Government may, ⁹[on the fulfilment of the requirements laid down in sub-section(4) by the dealer] if it is satisfied that it is necessary so to do in the public interest, by notification in the official Gazette, and subject to such conditions as may be specified therein, direct,—

1. Sub-section (2-A) omitted by Finance Act, 2002 (20 of 2002), Sec. 152(iii)

2. Subs. by Act 31 of 1958, Sec.5, for sub-sections (1) to (4) (w.e.f. 1st October, 1958).

3. Clause (a) omitted by Act 8 of 1963, Sec.2 (w.e.f 1st April, 1963).

4. Certain words omitted by Sec.2, *ibid.*

5. Ins. by Finance Act, 2002 (20 of 2002), Sec. 152(iv).

6. The words, brackets and letter "Cl. (a) or" omitted by Act 8 of 1963, Sec.2 (w.e.f. 1st April, 1963).

7. Ins. by Act 61 of 1972, Sec.5 (w.e.f. 1st April, 1973).

8. Subs. by *ibid.*, for sub-section (5).

9. Ins. by Finance Act, 2002 (20 of 2002), Sec. 152 (v)(a).

- (a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, ¹[to a registered dealer or the Government] from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification;
- (b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce ²[to a registered dealer or the Government] by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification.]

³[(6) Notwithstanding anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to a registered dealer for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, re-conditioning, re-engineering, packaging or for use as packing material or packing accessories in an unit located in any special economic zone, or for development, operation and maintenance of special economic zone by the developer of the special economic zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf;]

(7) The goods referred in sub-section (6) shall be the goods of such class or classes of goods as specified in the certificate of registration of the registered dealer referred to in that sub-section.

(8) The provisions of sub-sections (6) and (7) shall not apply to any sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the ⁴[prescribed authority referred to in sub-section (4)] a declaration in the prescribed manner on the prescribed form obtained from the authority specified by the Central Government under sub-section (6)], duly filled in and signed by the registered dealer to whom such goods are sold.

Explanation.—For the purposes of sub-section (6), the expression "special economic zone" has the meaning assigned to it in Cl. (iii) of *Explanation 2* to the proviso to Sec. 3 of the Central Excise Act, 1944 (1 of 1944).

COMMENTS

Certificate of registration.—The blending of ore in the course of loading through the mechanical ore handling plant amounted to "processing of ore within the meaning of Sec. 8 (3) (b) and Rule 13 of the Central Sales-tax Act and the mechanical ore handling plant fell within the description of "machinery, plant, equipment" used in the processing of ore for sale. It must, therefore, follow as a

1. Ins. by Finance Act, 2002 (20 of 2002), Sec. 152 (v)(b).

2. Ins. by *ibid.*

3. Subs. by Finance (No. 2) Act, 2004, (23 of 2004), Sec. 118, dated 10th September, 2004.

4. Subs. for the words, brackets and figures "authority referred to in sub-section (6)] a declaration in the prescribed manner on the prescribed form obtained from the authority referred to in sub-section (5)", by Finance (No. 2) Act, 2004 (23 of 2004), Sec. 118, dated 10th September, 2004.

necessary corollary that if any items of goods were purchased by the assessee as being intended for use as "machinery, plant, equipment, tools, spare parts, stores, accessories, fuel or lubricants" for the mechanical ore handling plant, they would be eligible for inclusion in the certificate of registration of the assessee.

Scope.—The requirement of Sec. 8 (3)(b) and Rule 15 is that the goods must be purchased for use "in mining" and not used "in the business of mining". It is only the item of goods purchased by the assessee for the use in the actual mining operation which are eligible for inclusion in the certificate of registration under this head and these would not include goods purchased by the assessee for use in the operation subsequent to the stacking of the ore at the mining site. Where a dealer is engaged both in mining operation as also in processing the mine ore for sale, the two processes being inter-dependent, it would be essential for carrying on the operation of processing that the ore should be carried from the mining site meant for sale, the two processes being inter-dependent, it would be essential for carrying on the operation of processing that the ore should be carried from the mining site where the mining operation comes to end to the place where the processing is carried on and that would clearly be an integral part of the operation of processing, and if any machinery, vehicles, barges and other items of goods are used for carrying the ore from the mining site to the place of processing, they would clearly be goods used in processing ore for sale.²

Estoppel—Applicability of.—It appears that a circular was issued by the Additional Sales Tax Commissioner, U.P., dated 26th August, 1992 in which it was mentioned that while calculating the Central Sales-tax the additional sales-tax will not be taken into consideration. Since the department itself had decided that the additional sales tax under the U.P., Sales-tax Act will not be taken into consideration for calculating the Central Sales-tax, it is not open to the department, as long as this circular is in force, to urge that additional sales-tax has also to be added while calculating the Central Sales-tax. The department having taken a particular stand through the aforesaid circular cannot be permitted to turn around and deny the benefit to the applicant so long as this circular is in force. However, once the circular is withdrawn the additional tax has to be added from the date of such withdrawal.³

Rate of tax payable under Sec. 8 (2) (b).—The rate of tax under Sec. 8 (2) of the Central Sales-tax Act cannot be confined to the rate contemplated under Sec. 15 alone. The tax under Sec. 8 of the Central Sales-tax Act has to be paid at a rate determined on the combined reading of Secs. 15 and 16 of the Haryana Sales-tax Act.⁴

Public interest—Explained.—The public interest, as referred to in sub-section (5) of Sec. 8 of the Act, will certainly include the public interest of the State concerned. If the reduction of the rate of tax results in increase of revenue and of industrial activities, providing employment in the industry as well as in the mining of limestone, it cannot be said that the notification was not issued in the public interest.⁵

No public interest in withholding the benefit for short period—Notification quashed.—The notification of 7th May, 1990 issued under the Central Sales-tax Act was withdrawn on 26th July, 1991. In the light of this fact, the Apex Court said that there was no public interest in withholding the benefit of the Incentive Scheme granting exemption from Central Sales-tax from oil industries for the short period of 7th May, 1990 to 26th July, 1991. In the case of the notification of 7th May, 1990

1. *Chowgule & Co. (P) Ltd. v. Union of India*, 1981 (47) S.T.C. 124 at p. 132 : A.I.R. 1981 S.C. 1014; *Hira Sugar Industries v. C.S.T.*, 1993 S.T.J. 209 (All.).
2. *Ibid.* at p. 132 : A.I.R. 1981 S.C. 1014; *Hira Sugar Industries v. C.S.T.*, 1993 S.T.J. 209 (All.); *Bahubali Plastic (P) Ltd. v. State of U.P.*, 1993 S.T.J. 8 (All.); *N.J. Devani Builders Pvt. Ltd. v. S.T.O.*, 1995 (99) S.T.C. 506 (Guj.).
3. *U.P. Ceramics & Potteries Ltd. v. C.S.T.*, S.T.I. 1992 All. 443 at pp. 444, 445.
4. *Sidwal Refrigeration Ind. (P) Ltd. v. State of Punjab*, 1993 (89) S.T.C. 97 at pp. 99, 100, 101 (P. & H.); *Tamil Nadu Small Scale Industries, Co-operative Society Ltd. v. State of Tamil Nadu*, 1994 (19) S.T.J. 99 at p. 100.
5. *Shree Digvijay Cement Co. Ltd. v. State of Rajasthan*, A.I.R. 2000 S.C. 680 at p. 690.

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1. *Chowgule & Co. (P) Ltd. v. Union of India*, 1981 (47) S.T.C. 124 at p. 132 : A.I.R. 1981 S.C. 1014; *Hira Sugar Industries v. C.S.T.*, 1993 S.T.J. 209 (All.).
2. *Ibid.* at p. 132 : A.I.R. 1981 S.C. 1014; *Hira Sugar Industries v. C.S.T.*, 1993 S.T.J. 209 (All.); *Bahubali Plastic (P) Ltd. v. State of U.P.*, 1993 S.T.J. 8 (All.); *N.J. Devani Builders Pvt. Ltd. v. S.T.O.*, 1995 (99) S.T.C. 506 (Guj.).
3. *U.P. Ceramics & Potteries Ltd. v. C.S.T.*, S.T.I. 1992 All. 443 at pp. 444, 445.
4. *Sidwal Refrigeration Ind. (P.) Ltd. v. State of Punjab*, 1993 (89) S.T.C. 97 at pp. 99, 100, 101 (P. & H.); *Tamil Nadu Small Scale Industries, Co-operative Society Ltd. v. State of Tamil Nadu*, 1994 (19) S.T.J. 99 at p. 100.
5. *Shree Digvijay Cement Co. Ltd. v. State of Rajasthan*, A.I.R. 2000 S.C. 680 at p. 690.

under the Rajasthan Sales Tax Act, no subsequent notification has been issued to restore the benefit of the scheme to oil extraction industries. The rationale, therefore, on the basis of which the notification of 7th May, 1990 under the Central Sales Tax Act was set aside, is not available while considering the notification of 7th May, 1990 under the Rajasthan Sales Tax Act.¹

Under notification case of exemption clearly made out.—Liability to pay tax arose on commencement of production and business on 10th January, 1984 whereafter exemption from payment of sales tax was claimed under the notification. Without regard to the fact whether the assessing authority was entitled to go behind the certificate of eligibility issued by the Directorate of Industries, the entitlement of the respondent for exemption from payment of tax under the notification was clearly made out.²

³**[8-A. Determination of turnover.**—(1) In determining the turnover of a dealer for the purpose of this Act, the following deductions shall be made from the aggregate of the sale prices, namely:

(a) the amount arrived at by applying the following formula:

$$\frac{\text{rate of tax} \times \text{aggregate of sale prices}}{100 + \text{rate of tax}};$$

PROVIDED THAT no deduction on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer, in accordance with the provisions of this Act, has been otherwise deducted from the aggregate of sale prices.

Explanation.—Where the turnover of a dealer is taxable at different rates, the aforesaid formula shall be applied separately in respect of each part of the turnover liable to a different rate of tax;

(b) the sale price of all goods returned to the dealer by the purchasers of such goods—

- (i) within a period of three months from the date of delivery of the goods, in the case of goods returned before the 14th day of May, 1966,
- (ii) within a period of six months from the date of delivery of the goods, in the case of goods returned on or after the 14th day of May, 1966:

PROVIDED THAT satisfactory evidence of such return of goods and of refund or adjustment in accounts of the sale price thereof is produced before the authority competent to assess or, as the case may be, re-assess the tax payable by the dealer under this Act: and

(c) such other deductions as the Central Government may, having regard to the prevalent market conditions, facility of trade and interests of consumers, prescribe.

(2) Save as otherwise provided in sub-section (1), in determining the turnover of a dealer for the purposes of this Act, no deduction shall be made from the aggregate of the sale price.]

1. State of Rajasthan v. Mahaveer Oil Industries, A.I.R. 1999 S.C. 2302 at p. 2305: 1999 (4) S.C.C. 357; Digvijay Cement Co. Ltd. v. State of Rajasthan, 1999 (4) S.C.C. 330 at p. 330.
2. Commissioner of Sales Tax, M.P. v. Madhya Bharat Papers Ltd., A.I.R. 2000 S.C. 667 at pp. 670, 671: J.T. 2000 (1) S.C. 174.
3. Ins. by Act 28 of 1969, Sec.5 (retrospectively).

COMMENT

Trade discount.—The amount allowed as trade discount could not be included in the taxable turnover.¹

²[**9.]. Levy and collection of tax and penalties.**—(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 Cl. (a) or Cl. (b) of Sec. 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:

⁴[**PROVIDED THAT**, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods and being also a sale which does not fall within sub-section (2) of Sec. 6, the tax shall be levied and collected—

(a) where such subsequent sale has also effected 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 for the purposes of Cl. (a) of sub-section (4) of Sec. 8 in connection with the purchase of such goods, and

(b) where such subsequent sale has been effected by an unregistered dealer in the State from which such subsequent sale has been effected.]

(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 India, assess, re-assess, collect and enforce payment of tax, including any ⁵[interest or penalty], payable by a dealer under this Act as if the tax or ⁴[interest or penalty] payable by such a dealer under this Act is a tax or ⁴[interest 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 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 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, ⁶[refunds, re-assess, penalties] ⁷[charging or payment of interest], compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

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.

1. Deputy Commissioner of Agricultural Income-tax, and Sales-tax (Law) Board of Revenue (Taxes), Ernakulam v. Aluminium Industries Ltd., Kundara, A.I.R. 1980 S.C. 839 at p. 839.

2. Subs. by Act 31 of 1958, Sec. 6, for the original Sec. 9 (w.e.f. 1st October, 1958).

3. Subs. by Act 28 of 1969, Sec. 6, for Sec. 9 (retrospectively).

4. Subs. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 6 (w.e.f. 7th September, 1976).

5. Subs. by Finance Act, 2000 (No. 10 of 2000), Sec. 119 for "penalty" (w.e.f. 12th May, 2000).

6. Subs. by Act 61 of 1972, Sec. 6, for "refunds, penalties" (w.e.f. 1st April, 1973).

7. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 6 (w.e.f. 7th September, 1976).

¹[(2-A) All the ²[provisions relating to offences, interest and penalties] including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions relating to matter provided for in Sees. 10 and 10-A of the general sales-tax law of each State shall, with necessary modifications, apply in relation to the assessment, re-assessment, collection and the enforcement of payment of any tax required to be collected under this Act in such State or in relation to any process connected with such assessment, re-assessment, collection or enforcement of payment as if the tax under this Act were a tax under such sales-tax law.]

³[(2-B) If the tax payable by any dealer under this Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax and all the provisions for delayed payment of such tax and all the provisions relating to due date for payment of tax, rate of interest for delayed payment of tax of the general sales tax law of each State, shall apply in relation to due date for payment of tax, rate of interest for delayed payment of tax, and assessment and collection of interest for delayed payment of tax under this Act in such States as if the tax and the interest payable under this Act were a tax and an interest under such sales tax law.]

(3) The proceeds in any financial year of any tax, ⁴[including any interest or penalty], levied and collected under this Act in any State (other than a Union territory) on behalf of the Government of India shall 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.]

COMMENTS

Imposition of penalty.—It is possible that even where the incorrectness of the return is claimed to be due to want of care on the part of the assessee and there is no reasonable explanation forthcoming from the assessee for such want of care, the Court may, infer deliberations and the return may be liable to be branded as a false return. But where the assessee does not include a particular item in the taxable turnover under a *bona fide* belief that he is not liable so to include it, it would not be right to condemn the return as a "false" return inviting imposition of penalty. Therefore, in the instant case, it was held that the assessee could not be said to have filed "false" returns when it did not include the amount of freight in the taxable turnover shown in the returns and the Assistant Commissioner of Sales-tax was not justified in imposing penalty on the assessee under Sec. 43 of the Madhya Pradesh General Sales-tax Act, 1958 and Sec. 9, sub-section (2) of the Central Sales-tax Act, 1956.⁵

Refund of tax not allowed.—In spite of the order of the Apex Court, the appellant has not produced any material to indicate that the burden of the tax was not passed on to the consumers, so that the appellant could claim refund of the tax which was paid under protest. This alone is sufficient to disentitle the appellant to claim the refund after the decision in *Mafatlal Industries Ltd. v. Union of India*.⁶

1. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 6 (w.e.f. 7th September, 1976).
2. Subs. by Finance Act, 2000 (No. 10 of 2000), Sec. 119, for the words "provisions relating to offences and penalties" (w.e.f. 12th May, 2000).
3. Ins. by Finance Act, 2000 (No. 10 of 2000), Sec. 119.
4. Subs. by *ibid*, for "including any penalty".
5. Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales-tax, Indore, A.I.R. 1980 S.C. 346 at p. 348.
6. J.T. 1999 (4) S.C. 283; Bombay Tyres International Ltd. v. Collector of Central Excise, Indore, J.T. 1998 (4) S.C. 437 at p. 437.

Applicability.—According to the Central Sales-tax Act, 1956, a dealer was to be assessed in respect of his transactions in the State from which the movement of goods of the assessee commenced. But the authorities who are empowered to assess such tax while making the said assessment on behalf of the Government of India would be determined in accordance with the Central Sales-tax law of the appropriate State where such movement takes place. As in the instant case, the movement of the assessee's goods took place from the State of Bihar the relevant provision applicable to this case is rule 12 of the Central Sales-tax Rules, 1957. In view of the said rule the provisions of Bihar Sales-tax Act, 1959, and the rules framed thereunder would govern the field in the instant case. Therefore, in the instant case, as the movement of the goods took place in the State of Bihar for the purpose of making assessment under Central Sales-tax Act, the provisions of Bihar Sales-tax Act, 1959, would apply.¹

Constitutional validity of sub-section (2-A) of Sec. 9 as amended by the Central Sales-tax (Amendment) Act, 1976.—There is no dispute in this case about the validity of the tax payable under the Act during the period between 1st January, 1957 and the date of commencement of the Amending Act. It has to be presumed that all the tax has been collected by the dealers from their customers. There is also no dispute that the law required the dealers to pay the tax within the specified time. The dealers had also the knowledge of the provisions relating to penalties in the general Sales-tax laws of their respective States. It was only owing to the deficiency in the Act pointed out by the Supreme Court in *Khemka & Co. v. State of Maharashtra*,² the penalties became not payable. In this situation, where the dealers have utilized the money which should have been paid to the Government and have committed default performing their duties, if Parliament calls upon them to pay penalties in accordance with the law as amended with retrospective effect it cannot be said that there has been any unreasonable restriction imposed on the rights guaranteed under Art. 19 (1) (f) and (g) of the Constitution even though the period of retrospectivity is nearly nineteen years. Sub-section (3) of Sec. 9 of the Amending Act which provides that the provisions contained in sub-section (2) thereof would not prevent a person from questioning the imposition or collection of any penalty or any proceeding, act or thing in connection therewith or for claiming any refund in accordance with the Act as amended by the Amending Act read with sub-section (1) of Sec. 9 of the Amending Act. Explanation to sub-section (3) of Sec. 9 of the Amending Act also provides for exclusion of the period between 27th February, 1975, i.e. the date on which the judgment in *Khemka & Co. v. State of Maharashtra*³ was delivered up to the date of the commencement of the Amending Act in computing the period of limitation for questioning any order levying penalty. In those proceedings the authorities concerned are sure to consider all aspects of the case before passing orders levying penalties. The contention that the impugned provision is violative of Art. 19 (1) (f) and (g) of the Constitution, has, therefore, to be rejected.⁴

Once a sale is *prima facie* found to be an inter-State sale, the tax shall be collected in the State from which the movement of the goods commenced in view of Sec. 9 (1) of the Central Sales Tax Act, 1956. Thus, in the case of inter-State sale, any act to realise tax from citizen under the State Sales-tax Act, will be *ultra vires* being in violation of the fundamental rights guaranteed under Art. 19(1)(g) of the Constitution. A citizen who is aggrieved will have a right to seek relief by a petition under Art. 226 of the Constitution of India.⁵

1. Assistant Superintendent of Sales-tax v. Sunil Kumar Roy, 1978 Tax.L.R. 2146 at p. 2148; Selected Brick Co. v. C.S.T., U.P., S.T.I., 1993 All. 126; Krishna Nand Garg v. C.S.T., S.T.I., 1992 All. 299; C.S.T. v. Neelam Pencil Factory, S.T.I. 1991 All. 164.

2. 1975 U.P.T.C. 378: 1975 (35) S.T.I. 571 (S.C.): 1975 (3) S.C.R. 753.

3. 1975 (35) S.T.C. 571 (S.C.): 1975 (3) S.C.R. 753.

4. Shiv Dutt Rai Fateh Chand v. Union of India, 1983 U.P.T.C. 920 at pp. 943, 944; Birendra Singh and Co. v. C.S.T., 1994 U.P.T.C. 177 at p. 179; Chhote Lal Jai Prakash v. C.S.T., 1994 U.P.T.C. 85 at p. 87.

5. Guljag Industries Ltd. v. State of Rajasthan, (2003) 129 S.T.C. 3 at p. 12 (Raj.).

Jurisdiction to tax turnover.—The assessee was a dealer in coal. The dispute in the case relates to sales effected by transfer or documents of title to the goods during their movement from the colliery outside U.P. The assessee's contention was that since he was not a dealer registered under the Central Sales tax Act, the assessing officer had no jurisdiction to tax the assessee. The assessing officer relying on the amendment made in Sec. 9 of the Central Sales-tax Act by Amending Act No. 103 of 1976 rejected this contention of the assessee. Assistant Commissioner (Judicial) as well as the Additional Judge (Revision) following the decision in the case of *Commissioner of Sales-tax v. Sadanand Arya Coal Depot*,¹ held that the amendment was not of retrospective nature and did not confer jurisdiction on the assessing officer to tax the turnover. In view of the decision of the High Court in the case of *Commissioner of Sales-tax v. Sadanand Arya Coal Depot*,² the judgment of the Additional Judge (Revision) suffers from no defect.³

Exempted unit—Deposit of tax.—In the instant case, the memorandum of appeal was accompanied by an application under Sec. 20(5) of the Punjab General Sales Tax Act, 1948, requesting the appellate authority to entertain the appeal without prior payment of the tax. A similar application was filed under Sec. 9(2) of Central Sales Tax Act, 1956. The appellate authority without considering the fact that the petitioner was an exempted unit disallowed the request of the petitioner and required it to deposit different sums of money. *Held*, it is more than clear that the petitioner is an exempted unit and the period of exemption was not yet over nor had the amount been exhausted and, therefore, the High Court held that the authorities below were not justified in requiring the petitioner to deposit the assessed amount before entertaining its appeals.⁴

Rejection of Account Books as it was not maintained in accordance with Sec. 12 (2) of the U.P. Sales Tax Act—Not proper.—Merely because the account books were not accepted for purpose of U.P. Sales tax Act as up-to-date stock Register was not maintained as required under Sec. 12 (2) of the U.P. Sales tax Act. The account books under the Central Sales tax cannot be rejected, there was no material indicated in the order of the Tribunal for rejection of account books. Unless there was a suppression made by the assessee in the inter-State sale, the account books rejected under the U.P. Sales Tax Act cannot be a ground for rejecting the books of account under the Central Sales Tax Act.⁵

[9-A. Collection of tax, to be only by registered dealers.—No person who is not a registered dealer shall collect in respect of any sale by him of goods in the course of inter-State trade or commerce any amount by way of tax under this Act and no registered dealer shall make any such collection except in accordance with this Act and the rules made thereunder.]

[9-B. Rounding off of tax, etc.—The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise, it shall be ignored :

PROVIDED THAT nothing in this section shall apply for the purpose of collection by a dealer of any amount by way of tax under this Act in respect of any sale by him of goods in the course of inter-State trade or commerce.]

1. 1976 U.P.T.C. 816.

2. *Ibid.*

3. *Commissioner of Sales-tax v. Atma Ram and Sons*, 1983 U.P.T.C. 1027 at p. 1028.

4. *Samra Steel Products (P.) Ltd. v. Excise & Taxation Officer-Cum-Assessing Authority*, (2003) 129 S.T.C. 25 at p. 26-27 (P. & H.).

5. *Anand Bartan Udyog v. C.S.T., S.T.I.*, 1993 S.T.J. 132 at p. 138.

6. Subs. by Act 31 of 1958, Sec. 6, for the original section.

7. Ins. by Act 61 of 1972, Sec. 7 (w.e.f. 1st April, 1973).

10. Penalties.—If any person—

- (a) furnishes a certificate or declaration under sub-section (2) of Sec. 6 or sub-section (1) of Sec. 6-A or sub-section (4) ¹[or sub-section (8)] of Sec. 8. which he knows, or has reason to believe, to be false; or ¹
- (aa) fails to get himself registered as required by Sec. 7 or fails to comply with an order under sub-section (3-A) or with the requirements of sub-section (3-C) or sub-section (3-E) of that section;
- (b) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration; or
- (c) not being a registered dealer, falsely represents when purchasing goods in the course of inter-State trade or commerce that he is a registered dealer; or
- (d) after purchasing any goods for any of the purposes specified in ²[Cl. (b) or Cl. (c) or Cl. (d)] of sub-section (3) ³[or sub-section (6)] of Sec. 8 fails, without reasonable excuse, to make use of the goods for any such purpose;
- (e) has in his possession any form prescribed for the purpose of sub-section (4) ⁴[or sub-section (8)] of Sec. 8 which has not been obtained by him or by his principal or by his agent in accordance with the provisions of this Act or any rules made thereunder;
- ⁵[(f) collects any amount by way of tax in contravention of the provisions contained in Sec. 9-A;]

he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with both; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

COMMENTS

Penalty imposed by the Sales-tax Officer—Whether could be set aside.—In the instant case it is admitted to the parties that none appeared before the Tribunal at the time of hearing of the appeal. It was submitted that the Tribunal while reversing the order of the Assistant Commissioner (Judicial) has not taken into account three facts which were taken into account by the Assistant Commissioner (Judicial); *Firstly*, that the assessee had shown the sale of photographic goods in the first-three quarterly returns submitted by it; *secondly* the fact that the registration certificate issued to the applicant was not cancelled for which a notice was issued, which was modified by order, dated 17th February, 1981 and not earlier; and *thirdly*, the assessee never claimed that it was doing service work and not job work. Since the assessee was not represented before the Tribunal, the said facts could not be brought to the notice of the Tribunal, but since the Tribunal was reversing the findings of the Assistant Commissioner (Judicial), it was expected to have adverted to all the materials on record and that having not been done by the Tribunal, it appears that the appeal has not been properly disposed of. The order passed by the Tribunal was set aside and it was directed to decide the appeal afresh in the light

1. Ins. by Finance Act, 2002 (20 of 2002), Sec. 153 (i).

2. Subs. by Act 61 of 1972, Sec. 8, for "Cl. (b)" (w.e.f. 1st April, 1973).

3. Ins. by Finance Act, 2002 (20 of 2002), Sec. 153 (ii).

4. Ins. by Finance Act, 2002 (20 of 2002), Sec. 153 (iii).

5. Ins. by Act 31 of 1958, Sec. 7 (w.e.f. 1st October, 1958).

of the observation made and also after affording an opportunity of hearing to the assessee.¹

Imposition of penalty—Sustainability of.—The assessee in the instant case, purchased certain goods ex U.P. and furnished Form C in pursuance of certain works contract. It delivered these goods to others and did not utilise them itself. The law as such at the relevant time was that when an assessee entered into works contract in pursuance of the said contract and delivered goods to others, it amounted to contract of sale. The High Court has so decided in the case of *Commissioner of Sales tax v. Ram Singh and Sons*,² decided on 29th January, 1975. So at the time when the assessee entered into the transactions in question it could reasonably think that it entered into the sales in Uttar Pradesh. The law laid down by the High Court has been differently interpreted by the Supreme Court in *Ram Singh and Sons v. Commissioner of Sales-tax*³ decided on 7th December, 1978. The Supreme Court held that on a works contract entered into there is no sale. On the basis of this declaration of law a penalty has been imposed on the assessee. At the time when the assessee furnished Form C it was not guilty as the law was unsettled. Thus, the order imposing the penalty was set aside.⁴

⁵[10-A. **Imposition of penalty in lieu of prosecution.**—⁶[(1)] If any person purchasing goods is guilty of an offence under Cl. (b) or Cl. (c) or Cl. (d) of Sec. 10, the authority who granted to him or, as the case may be, is competent to grant to him a certificate of registration under this Act may, after giving him a reasonable opportunity of being heard, by order to writing, impose upon him by way of penalty a sum not exceeding one-and-a-half times ⁷[the tax which would have been levied under sub-section (2) of Sec. 8 in respect of the sale to him of the goods, if the sale had been a sale falling within that sub-section :]

PROVIDED THAT no prosecution for an offence under Sec. 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this section.]

⁸[(2) The penalty imposed upon any dealer under sub-section (1) shall be collected by the Government of India in the manner provided in sub-section (2) of Sec. 9—

- (a) in the case of an offence falling under Cl. (b) or Cl. (d) of Sec. 10, in the State in which the person purchasing the goods obtained the form prescribed for the purposes of Cl. (a) of sub-section (4) of Sec. 8 in connection with the purchase of such goods;
- (b) in the case of an offence falling under Cl. (c) of Sec. 10, in the State in which the person purchasing the goods should have registered himself if the offence had not been committed.].

11. Cognizance of offences.—(1) No Court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with previous sanction of the Government within the local limits of whose jurisdiction the offence has been committed or of such officer of that Government as it may, by general or special order, specify in this behalf;

1. *Sahdev v. Commissioner of Sales tax*, U.P., 1986 A.T.J. 148 at p. 150.

2. 1975 U.P.T.C. 133.

3. 1979 U.P.T.C. 548.

4. *Ram Singh and Sons v. Commissioner of Sales-tax*, U.P. 1983 U.P.T.C. 964 at pp. 964, 965.

5. Ins. by Act 31 of 1958, Sec. 8 (w.e.f. 1st October, 1958).

6. Section 10-A re-numbered as sub-section(1) of that section by Act 28 of 1969, Sec. 7 (w.e.f. 1st October, 1958).

7. Subs. by Act 61 of 1972, Sec. 9, for certain words (w.e.f. 1st April, 1973).

8. Ins. by Act 28 of 1969, Sec. 7 (w.e.f. 1st October, 1958).

and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

(2) All offences punishable under this Act shall be cognizable and bailable.

12. Indemnity.—No suit, prosecution or other legal proceeding shall lie against any officer of Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

13. Power to make rules.—(1) The Central Government may, by notification in the official Gazette, make rules providing for—

(a) the manner in which applications for registration may be made under this Act, the particulars to be contained therein, the procedure for the grant of such registration, the circumstances in which registration may be refused and the form in which the certificate of registration may be given;

¹[(aa) the form and the manner for furnishing declaration under sub-section (8) of Sec. 8;]

(b) the period of turnover, the manner in which the turnover in relation to the sale of any goods under this Act shall be determined, and the deductions which may be made ²[under Cl. (c) of sub-section (1) of Sec. 8-A] in the process of such determination;

(c) the cases and circumstances in which, and the conditions subject to which, any registration granted under this Act may be cancelled;

³[(d) the form in which and the particulars to be contained in any declaration or certificate to be given under this Act ²[the State of origin of such form or certificate and the time within which any such certificate or declaration shall be produced or furnished;]

(e) the enumeration of goods or class of goods used in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power;

(f) the matters in respect of which provisions may be made under the proviso to ⁴[sub-section (2)] of Sec. 9;

(g) the fees payable in respect of applications under this Act.]

⁵[(h) the proper functioning of the Authority constituted under Sec. 19;

(i) the salaries and allowances payable to, and the term and conditions of service of, the Chairman and Members under sub-section (3) of Sec. 19;

(j) any other matter as may be prescribed.]

⁶[(2) Every rule made by the Central Government under sub-section

1. Ins. by Finance Act, 2002 (20 of 2002), Sec. 154 (aa).

2. Ins. by Act 61 of 1972, Sec. 10 (w.e.f. 1st April, 1973).

3. Subs. by Act 31 of 1958, Sec. 9, for "Cl. (d)" (w.e.f. 1st October, 1958).

4. Subs. by Act 28 of 1969, Sec. 8 for "sub-section (3)" (retrospectively).

5. Ins. by (Amendment) Act 2001, (41 of 2001), Sec. 2.

6. Subs. by Act 61 of 1972, Sec. 10, for "sub-section (2)" (w.e.f. 1st April, 1973).

(1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

(3) The State Government may make rules, not inconsistent with the provisions of this Act and the rules made under sub-section (1), to carry out the purposes of this Act.

(4) In particular and without prejudice to the powers conferred by sub-section (3), the State Government may make rules for all or any of the following purposes, namely:

(a) the publication of lists of registered dealers, of the amendments made in such lists from time to time, and the particulars to be contained in such lists;

¹[(aa) the manner in which security may be furnished under sub-section (2-A) or sub-section (3-A) or sub-section (3-C) of Sec. 7 and the manner in which and the time within which any deficiency may be made up under sub-section (3-E) of that section;]

(b) the form and manner in which accounts relating to sales in the course of inter-State trade or commerce shall be kept by registered dealers;

(c) the furnishing of any information relating to the stocks of goods, of purchases, sales and deliveries of goods by, any dealer or any other information relating to his business as may be necessary for the purposes of this Act;

(d) the inspection of any books, accounts or documents required to be kept under this Act, the entry into any premises at all reasonable times for the purposes of searching for any such books, accounts or documents kept or suspected to be kept in such premises and the seizure of such books, accounts or documents;

²[(e) the authority from whom, the conditions subject to which and the fees subject to payment of which, any form of certificate prescribed under Cl.(a) of the first proviso to sub-section (2) of Sec. 6 or of declaration prescribed under sub-section (1) of Sec. 6-A or sub-section (4) of Sec. 8 may be obtained, the manner in which such forms shall be kept in custody and records relating thereto maintained and the manner in which any such form may be used and any such certificate or declaration may be furnished ;

(ee) the form and manner in which, and the authority to whom, an appeal may be preferred under sub-section (3-H) of Sec. 7, the

1. Ins. by Act 61 of 1972, Sec. 10 (w.e.f. 1st April, 1973).

2. Subs. by *ibid*, Sec. 10, for Cl. (e) (w.e.f. 1st April, 1973).

procedure to be followed in hearing such appeals and the fees payable in respect of such appeals;]

(f) in the case of an undivided Hindu family, association, club, society, firm or company, or in the case of a person who carries on business as a guardian or trustee or otherwise on behalf of another person, the furnishing of a declaration stating the name of the person who shall be deemed to be the manager in relation to the business of the dealer in the State and the form in which such declaration may be given;

(g) the time within which, the manner in which and ¹[the authorities to whom] any change in the ownership of any business or in ²[the name, place or nature] of any business carried on by any dealer shall be furnished.

(5) In making any rule under this section ³[the Central Government or, as the case may be, the State Government] may direct that a breach thereof shall be punishable with fine which may extend to five hundred rupees and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

CHAPTER IV

GOODS OF SPECIAL IMPORTANCE IN INTER-STATE TRADE OR COMMERCE

14. Certain goods to be of special importance in inter-State trade or commerce.—It is hereby declared that the following goods are of special importance in inter-State trade or commerce:

⁴[(i) Cereals, that is to say,—

- (i) paddy (*Oryza sativa* L);
- (ii) rice (*Oryza sativa* L);
- (iii) wheat (*Triticum vulgare*, *T. Compactum*, *T. Sphaerococcum*, *T. Durum*, *T. Aestivum*, *L.T. Discococcum*);
- (iv) jowar or milo (*Sorghum vulgare pers*);
- (v) bajra (*Pennisetum typhoideum* L);
- (vi) maize (*Zea mays* D);
- (vii) ragi (*Elusine coracana gaertn*);
- (viii) kodon (*Paspalum scrobiculatum* L);
- (ix) kutki (*Panicum miliare* L);
- (x) barley (*Hordeum vulgare* L);

⁵[⁶[(i-a)] coal, including coke in all its forms, but excluding charcoal:

PROVIDED THAT during the period commencing on 23rd day of February, 1967 and ending with the date of commencement of Sec. 11 of the Central Sales-tax (Amendment) Act, 1972 (61 of

1. Subs. by Act 31 of 1958, Sec. 9 for "the authorities to which" (w.e.f. 1st October, 1958).

2. Subs. by *ibid.*, Sec. 9 for "the nature" (w.e.f. 1st October, 1958).

3. Subs. by Act 61 of 1972, Sec. 10, for "the State Government" (w.e.f. 10th April, 1973).

4. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 7.

5. Subs. by Act 61 of 1972, Sec. 11, for Cl. (i) (retrospectively).

6. Re-numbered by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 7.

1972), this clause shall have effect subject to the modification that the words "but excluding charcoal" shall be omitted;]

(ii) cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste;

¹[(ii-a) cotton fabrics covered under heading Nos. 52.05, 52.06, 52.07, 52.08, 52.09, 52.10, 52.11, 52.12, 58.01, 58.02, 58.03, 58.04, 58.05, ²[58.06], 59.01, 59.03, 59.06 and 60.01 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).

(ii-b) cotton yarn, but not including cotton yarn waste;]

³[(ii-c) crude oil, that is to say, crude petroleum oils and crude oils obtained from bituminous minerals (such as, shale, calcareous rock, sand) whatever their composition, whether obtained from normal or condensation oil-deposits or by the destructive distillation of bituminous minerals and whether or not subjected to all or any of the following processes:

- (1) Decantation;
- (2) de-salting;
- (3) dehydration;
- (4) stabilization in order to normalize the vapour pressure;
- (5) elimination of very light fraction with a view of returning them to the oil-deposits in order to improve the drainage and maintain the pressure;
- (6) the addition of only those hydrocarbons previously recovered by physical methods during the course of the above-mentioned processes;
- (7) any other minor process (including addition of pour point depressants or flow improvers) which does not change the essential character of the substance];

⁴[(ii-d) Aviation Turbine Fuel sold to a Turbo-Prop Aircraft.

Explanation.—For the purpose of this clause, "Turbo- Prop Aircraft" means an aircraft deriving thrust, mainly from propeller, which may be driven by either turbine engine or piston engine].

(iii) hides and skins, whether in a raw or dressed state;

⁵[(iv) iron and steel, that is to say,—

- (i) ⁶[pig iron, sponge iron and] cast iron including ⁷[ingot moulds, bottom plates,] iron scrap, cast iron scrap, runner scrap and iron skull scrap;
- (ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);

1. Subs. by Finance Act, 1988 (26 of 1988), Sec. 85 (a), for item (ii-a) as amended by Act 14 of 1961, Sec. 14.

2. Ins. by Finance Act, 1989 (13 of 1989), Sec. 50 (a).

3. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976).

4. Ins. by Finance Act, 2001 (14 of 2001, Sec. 139 (a).

5. Subs. by Act 61 of 1972, Sec. 11, for Cl. (iv) (w.e.f. 1st April, 1973).

6. Subs. for words "pig iron and" by Finance Act, 2001 (14 of 2001), Sec. 139 (b).

7. Subs. by Act 38 of 1978, Sec. 3 and Second Schedule.

- (iii) skelp bars, tin bars, sheet bars, hoe-bars and sleeper bars;
- (iv) steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths);
- (v) steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections);
- (vi) sheets, hoops, strips and skelp, both black and galvanized, hot, and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in rivetted condition;
- (vii) plates both plain and chequered in all qualities;
- (viii) discs, rings, forgings, and steel castings;
- (ix) tool, alloy and special steels of any of the above categories;
- (x) steel melting scrap in all forms including steel skull, turnings and borings;
- (xi) steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings;
- (xii) tin-plates, both hot dipped and electrolytic and tinfree plates;
- (xiii) fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, heavy and light crane rails;
- (xiv) wheels, tyres, axles and wheel sets;
- (xv) wire rods and wires—rolled, drawn, galvanised, aluminised, tinned or coated such as by copper;
- (xvi) defectives, rejects, cuttings or end pieces of any of the above categories;]

¹[(v) jute that is to say, the fibre extracted from plants belonging to the species *Corchoaus capsularies* and *Corchorus olitorious* and the fibre known as mesta or bimli extracted from plants of the species *Hibiscus cannabinus* and *Hibiscus sabdariffa*—*Varaltissima* and the fibre known as Sunn or Sunn-hemp extracted from plants of the species *Crotalaria juncea* whether baled or otherwise;]

²[(vi) oilseeds, that is to say,—

- (i) groundnut or peanut (*Arachis hypogaea*);
- (ii) sesamum or til (*Sesamum orientale*);
- (iii) cotton seed (*Gossypium Spp.*);
- (iv) soyabean (*Glycine seja*);
- (v) rapeseed and mustard—
 - (1) torta (*Brassica campestris var toria*);
 - (2) rai (*Brassica juncea*);
 - (3) jamba—Taramira (*Eruca Sativa*);

1. Subs. by Act 61 of 1972, Sec. 11, for Cl. (v) (w.e.f. 1st April, 1973).

2. Subs. by Sec. 11, *ibid.*, for Cl. (vi).

(4) sarson, yellow and brown (*Brassica campestris varsarson*);

(5) banarsi rai or true mustard (*Brassica nigra*);

(vi) linseed (*Linum usitatissimum*);

(vii) castor (*Ricinus communis*);

(viii) coconut (i.e. copra excluding tender coconuts) (*Cocos mucifera*);

(ix) sunflower (*Helianthus annuus*);

(x) nigar seed (*Guizotia abyssinica*);

(xi) Neem, vepa (*Azadirachta indica*);

(xii) mahua illupai, Ippe (*Madhuca indica* M. *Latifolia*, *Bassia*, *latifolia* and *Madhuca longifolia* syn. *M. Longifolia*);

(xiii) karanja, pongam, hongra (*Pongamia pinnata* syn. *P. Glabra*);

(xiv) kusum (*Schleichera oleosa*, syn. *S. Triujuga*);

(xv) punna, undi (*Calophyllum inophyllum*);

(xvi) kokum (*Carcinia indica*);

(xvii) sal (*Shorea roxburghii*);

(xviii) tung (*Aleurites fordii* and *A. Montana*);

(xix) red palm (*Elaeis guineensis*);

(xx) safflower (*Carthamus tinctorius*);

¹[(vi-a) pulses, that is to say,—

(i) gram or gulab gram (*Cicerarietinum* L);

(ii) tur or arhar (*Cajanus cajan*);

(iii) moong or green gram (*Phaseolus aureus*);

(iv) masur or lentil (*Lens esculenta* Moench, *Lens culinaris* Medic);

(v) urad or black gram (*Phaseolus Mungo*);

(vi) moth (*Phaseolus aconitifolius* Jacq);

(vii) lakh or khesari (*Lathyrus sativus* L.)]

²[(viii) man-made fabrics covered under heading Nos. 54.08, 54.09, 54.10, 54.11, 54.12, 55.07, 55.08, 55.09, 55.10, 55.11, 55.12, 58.01, 58.02, 58.03, 58.04, 58.05, ³[58.06], 59.01, 59.02, 59.03, 59.05, 59.06, and 60.01 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(ix) sugar covered under sub-heading Nos. 1701.20, 1701.31, 1701.39 and 1702.11 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(x) unmanufactured tobacco and tobacco refuse covered under sub-heading No. 2401.00, cigars and cheroots of tobacco covered under heading No. 24.02, cigarettes

1. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 7.

2. Subs. by Finance Act, 1988 (26 of 1988), Sec. 85 (b), for item (vii), (viii), (ix) and (x).

3. Ins. by Finance Act, 1989 (13 of 1989), Sec. 50 (a).

and cigarillos of tobacco covered under sub-heading Nos. 2403.11 and 2403.21 and other manufactured tobacco covered under sub-heading Nos. 2404.11, 2404.12, 2404.13, 2404.19, 2404.21, 2404.29, 2404.31, 2404.39, 2404.41 ¹[2404.50 and 2404.60] of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(x) woven fabrics of wool covered under heading Nos. 51.06, 51.07, 58.01, 58.02, 58.03 and 58.05 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)].

(xi) ²[* * *]

COMMENTS

Whether copra powder is declared commodity.—The dispute in the present case was regarding rate of tax. According to respondent copra powder was taxable at 5 per cent. and according to the department it was taxable at 8 per cent. since it was an undeclared commodity. In first appeal filed by the respondent assessee Assistant Commissioner (Judicial), accepted the copra powder as declared commodity. The revenue feeling aggrieved filed second appeal. The Tribunal rightly in second appeal held that copra powder is a declared commodity under Sec. 14 (iv) of the Central Sales-tax Act.³

"That is to say".—The expression "that is to say" employed in the definition in the statute with reference to oil seeds is exhaustive and is not illustrative.⁴

Whether mattar is declared goods under Sec. 14 of the Central Sales-tax Act.—All the authorities in the present case have held that *mattar* was not a declared commodity and, therefore, imposed tax on the turnover of *mattar*. The short question involved in the instant revision is as to whether *mattar* is declared goods under Sec. 14 of the Central Sales-tax Act and therefore, it was not liable to additional tax of 1 per cent. It is impossible to point out any illegality or error which may warrant interference by High Court in the present revision and the view taken by the Tribunal that *mattar* was not a declared commodity under Sec. 14 of the Sales-tax is wholly correct.⁵

Declared goods taxed at a single point.—The goods being declared goods, they can only be taxed at a single point, that is, only one sale in the State can be subjected to tax.⁶

Cast iron.—If molten metal is poured into a mould, what comes out may be regarded as a casting. Even then such iron casting in its solid form must be treated as "cast iron" in Sec. 14 (iv) of the Central Sales-tax Act. To repeat, the test is whether the goods in question are being bought and sold, i.e. dealt with an understood, in commercial parlance as cast iron or as different goods, e.g. manhole covers, pipes, motor parts etc.⁷

1. Subs. by Finance Act, 1989 (13 of 1989) Sec. 50 (b), for the word and figures "and 2404.50".

2. Item (xi) omitted by Act 19 of 1968, Sec. 43.

3. Commissioner of Sale tax, Uttar Pradesh v. Suraj Narain Suresh Chandra, 1986 A.T.J. 478 at p. 479.

4. Sait Rikhaji Furtarnal v. State of A.P., A.I.R. 1991 S.C. 354; 1991 Supp. (1) S.C.C. 202; State of Bihar v. Universal Hydrocarbons Co. Ltd., A.I.R. 1995 S.C. 991 at p. 995; Gopuram Gram Min Co. v. State of A.P., 1998 (8) S.C.C. 668 at p. 670.

5. Nav Bharat Dal Mill v. Commissioner of Sales-tax, Uttar Pradesh, 1986 A.T.J. 360 at p. 380; State of Bihar v. Universal Hydrocarbons Co. Ltd., A.I.R. 1995 S.C. 991 at p. 994.

6. Shanmuga Traders v. State of Tamil Nadu, 1998 (5) S.C.C. 349 at p. 354.

7. Vasantham Foundry v. Union of India, A.I.R. 1995 S.C. 2400 at p. 2405.

Calcined petroleum coke.—Once the entry is "coke in all its forms" irrespective of the fact raw petroleum coke loses its original identity or in the process of manufacture "Calcined Petroleum Coke" out of the purview of this entry. In more or less identical situation it was held that petroleum coke is one form of coal governed by the expression "coal" within Sec. 14 (i-a) of the Act.¹

Watery coconuts are declared goods.—Schedule III consists of declared goods under the provisions of Sec. 14 of the Central Sales-tax Act, 1956, and are common throughout India and more than 4 per cent. tax could not be levied.

It is, thus, clear, that the water coconuts are within the original entry No. 5 of the Third Schedule. Once the goods were covered by entry No. 5 of the Third Schedule they automatically excluded by the definition of entry No. 10 of the Second Schedule. Therefore the goods are not liable to tax additionally, as they are covered by entry No. 5 of the Third Schedule they automatically excluded by the definition of entry No. 5 of the Third Schedule.²

Hides and skins separate commercial commodity.—Merely because different goods or commodities are listed together in the same sub-heading or sub-item in Sec. 14 cannot mean that they are regarded as one and the same item. Whenever the Legislature wanted different goods placed in the same entry to be regarded as a single commodity it expressly provided for the same. Dressed hides and skins is a separate commercial commodity which emerges after raw hides and skins has been subjected to manufacturing process and, therefore, Sec. 14 (iii) deals with two different types of goods which unlike the case of pulses referred to in Sec. 15 (d), is not regarded by the Act as one and the same commodity.³

[15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.—Every sales-tax law of a State shall, in so far as it imposes or authorizes the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:

- (a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed ⁵[four per cent.] of the sale or purchase price thereof, ⁶[* * *];
- (b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, ⁷[and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law ⁸[shall be reimbursed to person making such sale in the course of inter-State trade or commerce] in such manner and subject to such conditions as may be provided in any law in force in that State;]
- ⁹[(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in sub-clause (i) of Cl. (i) of Sec. 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy;

1. State of Bihar v. Universal Hydrocarbons Co. Ltd., A.I.R. 1995 S.C. 991 at pp. 993, 994.

2. State of A.P. v. Kavali Venkata Ramanaiah & Sons., 1993 (89) S.T.C. 175 at pp. 175, 176 (A.P.).

3. TVL K.A.K. Anwar & Co. v. State of Tamil Nadu, 1998 (1) S.C.C. 437 at p. 448.

4. Subs. by Act 31 of 1958, Sec. 11, for the former Sec. 15 (w.e.f. 1st October, 1958).

5. Subs. by Act 25 of 1975, Sec. 38, for "three per cent." (w.e.f. 1st July, 1975).

6. The words "and such tax shall not be levied at more than one stage" omitted by Finance Act, 2002 (20 of 2002), Sec. 155.

7. Subs. by Act 61 for 1972, Sec. 12, for "the tax so levied" (w.e.f. 1st April, 1973).

8. *Ibid.*, for "shall be refunded to such persons."

9. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 8.

¹[(ca) where a tax on sale or purchase of paddy referred to in sub-clause (i) of Cl. (i) of Sec. 14 is leviable under the law and the rice procured out of such paddy is exported out of India, then, for the purposes of sub-section (3) of Sec. 5, the paddy and rice shall be treated as a single commodity;]

(d) each of the pulses referred to in Cl. (vi-a) of Sec. 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law.]

COMMENTS

Assessment order—When could be quashed.—Bright-bars are declared goods within the meaning of the provisions of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi. They were assessed to sales-tax under the said Act for the assessment years 1973-74 and 1974-75. The petitions were filed to quash the assessment orders for the two years on the ground that the assessment made under Sec. 5(2) (a) (ii) of the State Act is bad since it is inconsistent with the provisions of Sec. 15 (a) of the Central Sales-tax Act, 1956 and violative of Art. 286 (3) of the Constitution of India. An identical challenge fell for consideration before the Supreme Court in *Govind Saran Ganga Saran v. Commissioner, Sales-tax*.² The challenge was upheld and assessment order in that case was set aside. Section 15 (a) of the Central Act provides that every sales-tax law of State shall be subject to the restriction and condition that the tax payable under that law, on any declared goods, shall not exceed 3 per cent. of the sale or purchase price thereof and that such tax shall not be levied at more than one stage. Section 5 (a) (ii) of the Bengal Finance (Sales Tax) Act, 1941, does not contain any guideline as to the stage at which sales tax has to be levied upon a declared goods inside the State. It is the omission in this section of this important pre-requisite of Sec. 15 of the Central Act that persuaded the Supreme Court to set aside the assessment in the case referred above. The State Sales tax Act, as applied to the Union Territory of Delhi, was amended by Parliament in 1959 and Sec. 5 (A) was inserted empowering the Chief Commissioner to specify, by notification in the official Gazette, the point in the series of sales by successive dealers at which any goods or class of goods can be taxed. The Supreme Court observed that no notification was brought to its notice. In the absence of any notification, the assessment orders challenged in the petitions have to be quashed.³

Benefit of adjustment of tax.—Clause (i) of Art. 286 protects sale or purchase which take place (a) outside the State or (b) in the course of import of goods into or export of the goods out of the territory of India, from a State Law imposing or authorising imposition of a tax. Clause (c) of Sec. 15 of Central Sales tax Act directs that where in respect of sale or purchase of paddy, tax has been levied in a State, then the tax leviable on the rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy.⁴

⁵[CHAPTER V

LIABILITY IN SPECIAL CASES

16. Definitions.—In this chapter,—

(a) "appropriate authority", in relation to a company, means the authority competent to assess tax on the company;

1. Ins. by Act 33 of 1996, Sec. 87 (w.e.f. 28th September, 1996).

2. A.I.R. 1985 S.C. 1041; 1985 (Supp.) S.C. (205: 1985 S.C.C. (Tax) 447; *Larsen & Toubro Ltd. v. State of Tamil Nadu*, 1993 (88) S.T.O. 289 (Mad.).

3. *Rajasthan Commercial Corporation v. Sales-tax Commissioner*, 1986 (4) S.C.C. 350 at p. 351.

4. *Satnam Overseas (Export) v. State of Haryana*, A.I.R. 2003 S.C. 66 at p. 82.

5. Ins. by Act 61 of 1972, Sec. 13 (w.e.f. 1st April, 1973).

- (b) "company", and "private company" have the meanings respectively assigned to them by Cls. (i) and (iii) of sub-section (1) of Sec. 3 of the Companies Act, 1956 (1 of 1956).

17. Company in liquidation.—(1) Every person—

- (a) who is the liquidator of any company which is being wound up, whether under the orders of a Court or otherwise; or
- (b) who has been appointed the receiver of any assets of a company, (hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the appropriate authority.

(2) The appropriate authority shall, after making such inquiry or calling for such information as it may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the appropriate authority would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by company.

(3) The liquidator shall not part with any of the assets of the company or the properties in his hands until he has been notified by the appropriate authority under sub-section (2) and on being so notified, shall set aside an amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands:

PROVIDED THAT nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties in compliance with any order of a Court or for the purpose of the payment of the tax payable by the company under this Act or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding-up of the company as are in the opinion of the appropriate authority reasonable.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by, or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of sub-section (3), he shall be personally liable for the payment of the tax which the company would be liable to pay:

PROVIDED THAT if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

18. Liability of directors of private company in liquidation.—Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), when any private company is wound-up after the commencement of this Act, and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then, every person who was a director of the private company at any time during

the period for which the tax is due shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

1[CHAPTER VI
AUTHORITY TO SETTLE DISPUTES IN COURSE OF INTER- STATE
TRADE OR COMMERCE

19. Central Sales Tax Appellate Authority.—(1) The Central Government shall constitute, by notification in the Official Gazette, an Authority to settle inter-State disputes falling under ²[Sec. 6-A read with Sec. 9] of this Act, to be known as "the Central Sales Tax Appellate Authority (hereinafter referred to as the Authority)".

(2) The Authority shall consist of the following Members appointed by the Central Government, namely:

- (a) a Chairman, who is a retired Judge of the Supreme Court, or a retired Chief Justice of a High Court;
- (b) an officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India; and
- (c) an officer of a State Government not below the rank of Secretary or, an officer of the Central Government not below the rank of Additional Secretary, who is an expert in sales-tax matters.

(3) The salaries and allowances payable to, and the terms and conditions of service of, the Chairman and Members shall be such as may be prescribed.

(4) The Central Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act.

20. Appeals.—(1) The provisions of this Chapter shall apply to appeals filed by the aggrieved dealer against any order of the assessing authority made under [Sec. 6-A read with Sec. 9] ⁴[of this Act, which relates to any dispute concerning the sale of goods effected in the course of inter-State trade or commerce.]

(2) Notwithstanding anything contained in the general sales tax laws, the Authority shall adjudicate an appeal filed by a dealer ⁵[under sub-section (1) within forty-five days from the date on which order referred to in that sub-section is served on him:

PROVIDED THAT the Authority may entertain any appeal after the expiry of the said period of forty-five days, but not later than sixty days from the date of such service, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.]

(4) The application shall be made in quadruplicate and be accompanied by a fee of five thousand rupees.

1. Ins. by Central Sales-tax (Amendment) Act, (41 of 2001), Sec. 3.

2. Subs for the words, figures and letter "Sec. 6-A or Sec. 9" by Finance (No. 2) Act, 2004 (23 of 2004), Sec. 119 (a), dated 10th September, 2004.

3. Subs. for the words, figures and letter " Sec. 6-A or Sec. 9" by Finance (No. 2) Act, 2004 (23 of 2004) Sec. 119 (b), dated 10th September, 2004 (w.e.f. 17th March, 2005).

4. Subs. for the words "Sec. 9 of this Act" by Finance Act, 2003 (32 of 2003), Sec. 163 (a), dated 14th May, 2003 (w.e.f. 17th March, 2005).

5. Subs. by the Finance Act, 2003 (32 of 2003), Sec. 163 (b), dated 14th May, 2003 (w.e.f. 17th March 2005).

6. Sub-section. (3) of Sec. 20 omitted by Finance Act, 2003 (32 of 2003), Sec. 163 (c), dated 14th May, 2003 (w.e.f. 17th March, 2005).