
(1954) 04 MAD CK 0003

In the Madras High Court

Case No : C.R.P. No. 2199 of 1932 and C.M.P. No. 3002 of 1953

Messrs. Tata Iron and Steel Co. Ltd.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 14-04-1954

Acts Referred:

Contract Act, 1872 — Section 30

Citation : (1954) 04 MAD CK 0003

Hon'ble Judges : Satyanarayana Rao, J;Rajagopalan, J

Bench : Division Bench

Advocate : Alladi Kuppaswami, for the Appellant;

Final Decision : Allowed

Judgement

Rajagopalan, J.—The petitioner, assesses, is the Tata Iron and Steel Co., Ltd. with its head office at Jamshedpur and a branch at Madras.

The assesses is a registered dealer within the meaning of S. 8-A of the Madras General Sales-tax Act IX of 1939 (hereinafter referred to as the

Act). When the final assessment was made for the assessment year 1947-48 under R. 13 (5) of the Turnover and Assessment Rules framed under

the Act, the assesses claimed that it was exempt from the payment of sales-tax on a turnover of Rs. 52,59,112-15 0 on the ground that though

goods of that value were sold by the company to the consumers in the taxable territory of Madras, the sales themselves had been effected at

Jamshedpur outside the taxable territory. It was common ground that as the law stood in the assessment year, the turnover of these sales did not

fall within the purview of the charging S. 3 of the Act. But it is equally common ground that, though it was eventually established that the sales

themselves were not liable to sales-tax under the Act, the company had collected

from the purchasers in Madras State amounts equivalent to the taxes that would have been payable, had the sales been liable to tax, that is, at 1 per cent of the sale price up to 31st December 1947, and at 1, 9/16 per cent from 1st January 1948 to 31st March 1948. Such collections were treated by the company itself as collections under S. 8-B (1) of the Act and were shown as such in the monthly returns submitted by the company under R. 13 (2) of the Turnover and Assessment Rules for the purpose of provisional assessment under the Rules. In the final assessment, the assessing authorities declined to order a refund of the amount computed on the turnover in question, Rs. 52,59,112-15-0. The Appellate Tribunal upheld the contention of the State, that such collections were payable to the Government under S. 8-B (2) of the Act and were not refundable to the assesses. It was the revision of that decision that the assesses sought in this petition before us.

The finding of the Appellate Tribunal was:

If the sales were outside the State of Madras, no tax is livable. But when tax has been collected in such cases, it is clear that such tax has to be regarded as an amount collected in excess of the tax, attracting thereby S. 8-B (2) of the Act. The object of S. 8-B (2) is obviously to see that no dealer is permitted to retain to himself any amount collected by way of sales-tax. Ample opportunities were giving to the appellants to show from whom they had collected the sales-tax, so that the question of granting refund might be considered. The learned Counsel for the appellants stated that the appellants are unable to furnish that information. Admittedly, sales-tax was collected on sales which were not liable to tax, and the appellants are unable to state to whom the refund was to be made. In these circumstances, the amount collected by way of sales-tax on the disputed turnover has to be retained by the Government under S. 8-B (2).

2. That the assesses acted in good faith in purporting to make the collections under S. 8-B (1) was never in dispute. Till the assessment was completed, the assesses company was net sure that it would not be called upon to pay sales-tax on the turnover in dispute. Lists were filed before us showing the details of the amounts collected by way of tax from the purchasers in Madras. The sales by the company were mostly to the railways and to certain Government departments. The amount refundable by the

company to each purchaser can thus be easily ascertained and the learned Counsel for the assessee represented that the company was ready to refund the amounts. It is rather unfortunate from the company's point of view, that this information was not placed before the Appellate Tribunal. But neither of these factors affects the determination of the real question at issue before us, is the company liable under S. 8-B (2) of the Act to pay over to the Government what it has collected under a mistake from its purchasers ? As we have already pointed out, that the turnover itself made up of these sales was not liable to sales-tax under the Act was never in dispute.

3. S. 8-A of the Act provides for the registration of the dealers. S. 8-B (1) runs :
No person who is not a registered dealer shall collect any amount by way of tax under this Act, nor shall a registered dealer make any such collection except in accordance with such conditions and restrictions, if any, as may be prescribed;
(The proviso is omitted as it is not material for our present purposes). S. 8-B (2) runs :

Every person who has collected or collects any amount by way of tax under this Act on or after the 1st day of April 1947 shall pay over to the State Government within such time and in such manner as may be prescribed, all amounts so collected by him, if they are in excess of the tax if any, paid by him for the period during which the collections were made, and in default of such payment, the amounts may be recovered as if they were arrears of land revenue.

Rule 5 (A) (7) of the Turnover and Assessment rules runs :
A registered dealer may collect amounts by way of tax or taxes under the Act subject to the following conditions :
(i) He shall not collect any amount or amounts by way of tax or taxes under the Act at a rate or rates exceeding the rate or rates specified in S. 3 or 5 or notified in S. 6 (1).
(ii) He shall pay in full the amount or amounts collected by him by way of tax or taxes to the State Government on or before the 30th April of the year succeeding that in which such collection is made.

4. Form A.8, which is the certificate of registration to be granted after a dealer is granted registration under S. 8-A of the Act provided as the first

of the conditions to which a registered dealer was subjected, "he shall pay the entire amount of tax collected by him to the Government.

5. We shall also set out S. 8-C of the Act for the purpose of comparison, S. 8-C runs :

Notwithstanding anything contained in this Act, the State Government shall, in respect of any sale of goods effected by them, be entitled to collect

by way of tax any amount which a registered dealer effecting such sale would have been entitled to collect by way of tax under this Act.

6. Were the collections made by the assesses on the sales, which made up the disputed turnover of Rs. 52,59,112-15-0 collections of amounts

by way of tax under this Act"" within the meaning of S. 8-B (1) is the first question. That these amounts were not part of the sale price as such

should be clear. Had they been part of the sale price, no question of refund to the purchaser could arise. It is also clear that the amounts were

collected from the purchasers under a mistaken conception of the liability of the turnover of these sales to sales tax. It was not a tax lawfully livable

under the Act, as the sales were effected outside the taxable territory. That the liability of the company to refund to the purchaser amounts so

collected, amounts which in law the purchasers were not liable to pay, could have been enforced at law by the purchasers cannot be doubted.

Though the assesses was a registered dealer, and though the amounts were actually collected against a possible contingency of the assesses being

called upon to pay sales tax under the Act on the turnover of these sales-the contention of the assesses, that the collection was only on a

provisional basis, was never challenged even before the Appellate Tribunal-they were not amounts collected by way of tax within the meaning of S.

8-B (1). What the registered dealer is empowered to collect under S. 8-B (1) is only what is lawfully livable as tax under the Act. That such is the

limited scope of S. 8-B (I) seems to us to be clear from the scheme of taxation that underlies the provisions of the Act.

7. The basic features of S. 3 of the Act, which is the main charging section are: (1) the tax at the rates specified in the section is levied on the

turnover of the dealer and (2) the tax is levied on, and is payable by the dealer. The statute authorizes the levy of the tax and it also empowers the

State Government to collect the tax lawfully levied. It has, however, always been accented both by economists and Courts that the ultimate

economic incidence of the tax is on the consumer. That was also pointed out by the Supreme Court in *State of Bombay v. United Motors India*

Ltd. (1953) 4 S.T.C. 133, 149 = 66 L.W. 577. The basis of S. 8-B (1) and S. 8-C of the Act is the statutory recognition of the real and

economic incidence of the tax in the cases provided for by those sections. While under S. 3 the levy of the tax is on the dealer, and while the

authority empowered by the Act to collect that tax is the State Government, S. 8-B (1) empowers the registered dealer to collect the tax from the

consumer or the purchaser. That, however, in no way alters the liability of the registered dealer under S. 3 to pay the tax assessed on his total

turnover. Whether the registered dealer exercises or not his statutory right under S. 8-B(1) to collect the lawfully livable tax from his purchasers, he

cannot escape his liability under S. 3 of the Act. But what is livable on him under S. 3 and what the State Government can collect from him is only

the tax that is lawfully livable. S. 8-B (1) is not by itself a charging section; it is only an enabling section empowering the registered dealer at his

option to collect the tax. But for S. 8-B(1); the dealer would have no right at all to collect any tax. S. 8-B (1) does not empower even the

registered dealer to collect anything other than the tax lawfully livable under the Act, despite the use of the expression ""by way of tax"". That should

be the limited scope of S. 8-B (1) even without reference to the Rules, R. 5 (a) (i) of the Turnover and Assessment rules and condition No. 1 of

Form No. A-8, the certificate of registration make the position quite clear. What the certificate of registration requires the registered dealer to pay

is the entire amount of tax collected by him. Obviously ""tax"" in that context could only mean the tax lawfully livable under the Act. The use of the

expression ""by way of tax"" does not enlarge the right conferred on the registered dealer by S. 8 B (1) Surely, the legislature did not intend to

confer on a registered dealer a right higher than that it conferred on the State Government, the right to collect tax lawfully livable under the Act.

8. That conclusion is strengthened when we examine the scope of S. 8 C of the Act. Under S. 8-C, the State Government is empowered to collect

taxes on goods sold by itself as vendor. But for S. 8-C, the turnover of such sales by the Government may not be taxable at all, as the Government

may not be a dealer as defined by the Act. Nevertheless, S. 8-C is no more a charging section than S. 8-B. The right S. 8-C confers on the

Government is analogous to the right S. 8-B confers on the registered dealer to collect tax direct from the purchasers. Despite the opening words

of S. 8-C "notwithstanding anything contained in this Act" it is a restricted right that S. 8-C confers on the Government. No more than a registered

dealer can a Government collect "by way of tax" any amount other than a tax lawfully livable under the Act.

9. Thus, nothing other than a tax lawfully livable under the Act can be collected by way of tax either under S. 8-B (1), or under S. 8-C. What is

collectable under S. 8-B (1) is not itself the amount, the tax, for the levy of which S. 3 provides. Running through all the three sections, Ss. 3, 8-B

(1) and 8-C is the statutory requirement that what can be collected is only what is lawfully livable as tax under the Act. That can never be altered,

whichever is the collecting agency. Whatever is lawfully livable and is lawfully levied under S. 3 of the Act, the State Government can collect.

Whatever is lawfully leviable as tax, the registered dealer can collect under S. 8-B (1) subject to the other limitations imposed by Sub-Ss. (1) and

(2) of S. 8-B. Whatever is lawfully livable as tax, the State Government can collect under S. 8-C but only in its right as a statutory registered

dealer. What is collected as tax under S. 3 goes to the State. There is no difficulty about that. What is collected by the registered dealer under S.

8-B (1) also goes to the State; S. 8-B (2) provides for that. Obviously there is no need to provide for anything analogous to S. 8-B (2) in S. 8-C,

because it is the State Government itself that makes the collection authorized under S. 8-C. While the amounts collectable as levied under S. 3 are

themselves taxes, the amounts collected by the State Government under S. 8-C and by the registered dealer under S. 8-B (1) are "by way of

taxes". That, we think, is the true concept of the expression "by way of tax" both in Ss. 8-B (1) and 8-C.

10. Had S. 8-B (1) and S. 8-C stood by themselves along with S. 3 of the Act, we should have no difficulty in construing the expression "collect

any amount by way of tax under this Act" as "collect by way of tax any amount that is lawfully livable and collectable under this Act as a tax.

11. Do the provisions of S. 8-B (2) in any way compel a different construction of the expression "by way of tax" in S. 8-B (1) is the next question.

S. 8-B (2) directs every person who has collected any amount by way of tax under the Act to pay over the collections to the State Government.

The expression "every person" in S. 8-B (2) obviously includes also dealers who are not registered under S. 3. S. 8-B (1) forbids unregistered

dealers from collecting any amounts by way of tax; but if one of such unregistered dealers does collect any amount by way of tax, in addition to

other liabilities in law which we need not examine now, there is the liability under S. 8-B (2) to pay over to the Government amounts collected by

way of tax. To that extent the liability of the unregistered dealer is the same as that of the registered dealer. In the case of a registered dealer the

extent of the liability imposed upon him by S. 8-B (2) has to be correlated to the right conferred on him by S. 8-B (1). It is what he has lawfully

collected under S. 8-B(1), that he has to pay over to the State Government under S. 8-B (2). While prohibiting an unregistered dealer from

collecting any amount by way of tax, S. 8-B (1) permits the registered dealer to make such collections. Neither the prohibition nor the permission,

which relates only to collection, alters the liability of the transactions of sale to sales-tax. under the Act. The expression "by way of tax" even in S.

8-B (2) can in our opinion only refer to what is otherwise lawfully collectable by way of tax, but far the specific provisions of S. 8-B(1).

12. Confining ourselves now to the case of a registered dealer what S. 8-B (2) requires of him is that he should pay over to the State Government

all amounts collected by him if they are in excess of the tax, if any, paid by him for the period during which the collections were made." The

expression "tax, if any, paid by him" should obviously refer only to the tax lawfully levied or lawfully leviable under the Act. Had it been the

intention of the legislature to impose an absolute obligation on the registered dealer to pay over to the State Government all amounts collected by

him, whether they were lawfully collectable or not, one should expect the statutory provision to be differently worded, requiring him to pay over all

the amounts collected by him, without the limiting clause, which requires him to pay over his collections, if they are in excess of the tax, if any, paid

by him during the assessment period in question. The expression is not even "in excess of the tax if any payable by him." But it is "in excess of the

tax, if any, paid by him." The further provision in S. 8-B (2), that in default of such payment the amounts may be recovered as if they were arrears

of land revenue, is also significant. We have already pointed out that the amount collected by way of tax under S. 8-B (1) is not strictly itself the

tax, and that explains the need to provide for the recovery of such collections made by way of tax in S. 8-B (2), independent of the provisions in

the Act for the recovery of the tax itself. As we have already pointed out, the extent of the obligation is made even clearer by condition No. 1 in

the certificate of registration, that he should pay the entire amount of "tax" collected by him to the Government.

13. There is nothing in S. 15 (f) or 15(g) of the Act, which penalize the contravention of S. 8-B (1) and 8-B (2) respectively, to conflict with the

interpretation we have placed on the expression "any amount by way of tax" in S. 8-B (1).

14. Though analogy may not always be safe in interpreting the words of a given statute in its context, authority is not wanting to support the view

we have taken that "by way of tax under this Act" really means "taxes under this Act" subject to what we have said earlier about the need for the

expression by way of taxes in S. 8-B (1) and 8-C of the Act. In *Kong Yee Lone and Co. v. Lowjee Nanjee* 29 Cal. 461 at 467 their Lordships of

the Privy Council had to construe the expression "agreements by way of wager" in S. 30 of the Indian Contract Act. In dealing with the contention

of the Counsel that there was difference between the expression of "gaming and wagering" used in the English statute -and the expression "by way

of wager", their Lordships observed that they were unable to perceive the distinction. "By way of wager" was construed to mean "wager." In

Potts' Executors v. Inland Revenue Commissioners (1949) 2 U. S. 706, the expression "by way of loan" in the Finance Act of 1938 was

construed to mean "as a loan." In *Birmingham Corporation v. Allop and Sons Ltd.*, 88 L. J. K. B. 549, "by way of satisfaction" was held to mean

in full satisfaction," though as Erashed M.R. pointed out at page 715 the expression by way of may in some contexts involve a somewhat wider

meaning that the single word "as." In our opinion, what the registered dealer is empowered to collect under S. 8-B (1) is only what is lawfully

livable as a tax under the Act.

15. What is the extent of the obligation imposed on a registered dealer by S. 8-B (2) has to be considered next. What S. 8-B (2) requires of the

registered dealer is to pay over to the State Government "all amounts so collected by him." Where the amounts collected by the registered dealer

are all taxes lawfully livable on the sales of goods, the entire collections will come within the scope of "all amounts so collected by him" and the

entire collections will be payable by the registered dealer to the Government under S. 8-B (2).

16. The next question is whether S. 8-B (2) also requires a registered dealer to pay over to the Government collections made by him which were

not lawful. What we have already stated about the extent of the power conferred on a registered dealer by S. 8-B (1) and the extent of the

obligation imposed upon him by S. 8-B (2) should suffice to answer this question in the negative. We are not here concerned with the question,

whether by making a collection which was not lawful, the assessee laid himself open to the penalty that S. 15 (1) might impose upon him. All we

are called upon to say now is that, in our opinion, S. 8-B (2) does not impose an obligation on a registered dealer to pay over to the Government

any amount not lawfully collected by him.

17. Apart from the language of the section itself, the need for such a restriction on the obligation of the registered dealer should be obvious. If a

registered dealer collects from the purchaser an amount which is not lawfully livable and is therefore not lawfully collectable under S. 8-B (1), the

liability of the dealer to refund that unlawful collection to the purchaser from whom it was made, can be enforced in law by the purchaser. To such

a claim, the payment of such collections to the Government would be no defense. Whether, if such collections have been paid over to the

Government, the purchaser could claim a refund of the money from the Government does not arise for determination in these proceedings. The

learned Advocate General was, however, prepared to concede that a claim preferred by the person who had paid the amount to the registered

dealer would lie against the Government. There is no specific provision for a refund as such either in the Act or in the rules framed there under. We

shall therefore concern ourselves only with the liability of the registered dealer to refund to the purchasers the amounts not lawfully collected. To

use a familiar saying, if a person robs Peter to pay Paul, payment to Paul would be no defense to the charge, that the person committed an

actionable wrong in robbing Peter. That precisely would be the position here, and in our opinion, S. 8-B (2) does not alter that position. We are unable to accept the contention of the learned Government Pleader, that payment under S. 8-B (2) would operate as a statutory discharge of any claim preferred against a registered dealer by a purchaser from whom an unlawful collection was made. Besides, as we have already pointed out, S. 8-B (2) does not, on a proper construction of the section, impose an obligation on a registered dealer to pay over to the Government what he has unlawfully collected.

18. The learned Advocate General referred us to the decision of the House of Lords in *Reading v. Attorney General* 1951 A.G. 507 .. in that case the plaintiff Reading was a sergeant in the British army on active service in Egypt. He consented on several occasions to accompany civilian lorries transporting illicit spirits to specified destinations. He always wore military uniform in order to avoid inspection of them by the police, and for his services he received in all i.e. 20,000. The military authorities took possession of several thousand pounds found in his hands, and he was tried by Court Martial and convicted of conduct prejudicial to good order and military discipline. After his release from prison he claimed, by petition of right, the return of the amount seized. The House of Lords, confirming the decision of the Court of Appeal, held that he was not entitled to recover the money. Lord Porter rested the right of the Crown to retain the money on two grounds. One was that the official position held by the soldier, which enabled him to earn money by its use gave his master, the Crown, the right to the money so earned as money had and received, even though it was earned by a criminal act, and even though the Crown suffered no loss. The other ground was that the Crown was also entitled to the money on the separate and independent ground, that a fiduciary relationship existed between the soldier and the Crown. That the soldier owed a fiduciary duty was also the view of Lord Normand.

19. Lord Porter observed at page 516: ""I agree with Asquith, L. J., in thinking that the words "fiduciary relationship" in this setting are used in a wide and loose sense and include, inter alia, a case where the servant gains from his employment a position of authority which enables him to obtain the sum which he receives.

20. It is an extension of this principle that the learned Advocate General sought in support of his contention, that, if a registered dealer clothed with the authority under S. 8-B (1) to collect amounts by way of taxes from his purchasers exceeded that authority and made collections which were not lawful, he was bound by the specific provision of S. 8-B (2) to make over all those collections to the Government. In the case of a registered dealer, at any rate, it is true that but for the authority conferred upon him by S. 8-B (1) he could not have collected any amount by way of taxes lawfully livable. If he exceeded that authority and made collections, the collections would be unlawful, but still the position would be that but for the authority conferred upon him by S. 8-B (1), he would not have been in a position to make any collections at all. Lord Porter observed

In my opinion, any official position, whether marked by a uniform or not, which enables the holder to earn money by its use gives his master a right to receive the money so earned even though it was earned by a criminal act.

The learned and noble Lord also observed at page 515:

Any third party's claim to the money would not be affected.

In commenting on this decision Prof. Goodhart observed in "English law and Moral law" at page 129 :

It is an interesting question what the position would have been if a man, not a soldier, had stolen the uniform, and had then used it as Reading did in

this case. It would be difficult to argue that the thief in stealing the uniform had entered into an implied contract with the Crown, but, on the other

hand, it is impossible to believe that he would be entitled to keep the money which he had acquired by the use of the Crown's property.

21. Weighty though these observations are and entitled to the profoundness respect they cannot apply to the determination of the limited issue

before us. We are not concerned now with the question, what are the rights and liabilities of the State and a registered dealer in an action at

common law for the recovery of the collections made under color of S. 8-B (1), but in excess of the authority, and subsequently paid over to the

Government. The limited issue before us is, what is the extent of the statutory obligation created by S. 8-B (2) of the Act. As we have already

pointed out, S. 8-B (2) applies, both to the collections made by a registered dealer who is authorized to collect, and by an unregistered dealer who

is forbidden to collect by S. 8-B (1). It applies to "every person who collects any amounts by way of tax under this Act." That aspect should not be lost sight of in construing the scope of the obligation cast alike by S. 8-B (2) on the registered dealer and on the unregistered dealer. Neither of them is in the position of a servant vis a vis the State. Nor can the unregistered dealer be said to have ever occupied a fiduciary position in relation to the State. The collections he made could never be under color of any authority conferred upon him by the State, when S. 8-B (1) in specific terms prohibited him from making any collections. Therefore in the case of an unregistered dealer, neither of the grounds mentioned by Lord Porter in *Beading v. Attorney General* 1951 A. C. 507, could apply. In the case of an unregistered dealer, at any rate, S. 8-B (2) cannot be held to accord any statutory recognition of the principle of fiduciary obligations. Since, in respect of the obligation to pay over to the Government all amounts "so collected" within the meaning of S. 8-B (2) there is no difference between a registered dealer and an unregistered dealer, it is difficult to hold that in the case of the registered dealer alone anything independent of the statutory obligation under S. 8-B (2) can apply. There appears to be no room to engraft on S. 8-B (2) in the case of the registered dealer alone any principle of fiduciary obligation.

22. We are therefore unable to extend to the above case before us the principles laid down in *Beading v. Attorney General* 1951 A. C. 507.

What S. 8-B (2) requires of every person is that he should pay over to the State Government "all amounts so collected by him", that is, all amounts collected by way of tax. That in the case of a registered dealer should apply only to what he could collect by way of tax within the meaning of S. 8-B (1). In the case of the unregistered dealer, though he lacks the authority conferred on the registered dealer by S. 8-B (1) to make any collections, the expression "so collected by him" would only apply to the collection referred to in the earlier part of S. 8-B (2), the collection of any amount "by way of tax under this Act." In both cases the interpretation "by way of tax lawfully livable under this Act" would fit in with the obligations imposed by S. 8-B (2) though we realize the anomalous position of an unregistered dealer on whom no rights were conferred but on whom only obligations were imposed.

23. The case of a registered dealer with a turnover of less than Rs. 10,000 in a year has also to be taken into account in defining the scope of S. 8-

B (2). His turnover is not liable to tax. S. 3 makes that clear. His liability to tax has to be determined on the turnover for the year either at the end

of the year or thereafter. Meanwhile throughout the year as a registered dealer, he could exercise the right conferred upon him under S. 8-B (1) to

collect amounts by way of tax. That the turnover of the dealer is eventually proved not taxable would not make the collections throughout the year

any the less collections by way of tax, if the collections were at the rates lawfully livable. We have already pointed out the difference between the

tax in S. 3, and the expression ""by way of tax"" in S. 8-B (1) and we have pointed out that under S. 8-B (1) each transaction of sale, which will

ultimately enter the turn over of the dealer, is treated as a taxable event. There is thus all the difference between the turnover of a dealer that is

taxable and the transaction of sale that is treated as taxable for the purpose of S. 8 B (1). In the case of the petitioner assesses we have held that

the transactions of sales themselves were not taxable under S. 8-B (1). In our opinion, the liability of a registered dealer with a turnover of less than

Rs. 10,000 to pay over to the State Government under S. 8-B (2) all collections so made within the meaning of S. 8-B (2), that is, all collection

made by way of tax, does not affect the interpretation we have placed upon the expression ""by way of tax"" as it occurs both in S. 8-B (1) and in S.

8-B (2).

24. We have attempted an interpretation of S. 8-B (2) that would cover all the three classes of dealers referred to above: (1) an unregistered

dealer, (2) a registered dealer whose turnover itself is not taxable and (3) a registered dealer whose turnover is taxable. It has always been

accepted as a sound canon of construction that should there be any ambiguity in the provisions of a fiscal statute, the ambiguity must be resolved in

favor of the tax-payer and not the State. It could not have been the intention of the legislature, when it enacted S. 8-B (2), to retain for the State

any amount not lawfully payable under S. 8-B (1), exposing the registered dealer also to the liability of having to pay such amounts to the person

lawfully entitled to it. If the State Government seeks to enlarge the scope of S. 8-B (2) to include in it every collection made by a dealer, whether

the dealer is authorized or not, and whether the collection is lawful or not, it must be by legislative sanction and not by placing an interpretation

which the language of S. 8-B (2) does not warrant.

25. Our attention was drawn to the decision of Subramania Aiyar, J. of the Travancore-Cochin High Court in Mathew v. Sales-tax Officer,

Always (1954) 5 S. T. C. 58.. The learned judge observed with reference to the provisions analogous to S. 8-B (2) and R. 5 (a) (7) of the

Madras Act and the rules :

the liability to pay the State the tax collected by the petitioner is thus obvious and it is gratifying to note that the learned Counsel for the petitioner

did not find his way to disputing that liability.

26. With all respect, we are unable to follow that decision, which appears to have been based on what was conceded. There was no occasion for

the learned Judge to construe the scope of S. 11 (2) of the Travancore-Cochin General Sales-tax Act, which is analogous to S. 8-B (2) of the

Madras Act. In our opinion, the claim of the assesses has to be allowed. The assessment already made on the assesses under R. 15 (5) of the

Turnover and Assessment Rules has to be revised. We notice from the order of the assessing authority the Deputy Commercial Tax Officer, that

even after the inclusion of the disputed turnover what the assesses had paid was in excess of what was lawfully payable by it, and the assesses

company was held entitled to a refund of Rs. 5299-2-0 under R. 15 (6). To that amount should be added what was mistakenly collected as tax on

the disputed turnover. The petitioner assesses is entitled to a refund order in Form C for the revised amount. As the petitioner has succeeded, the

petitioner will be entitled to costs Rs. 250 from the respondent-State.