

(1961) 12 MAD CK 0030
In the Madras High Court

S. Mariappa Nadar and Others

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 13-12-1961

Acts Referred:

Central Sales Tax Act, 1956 — Section 8

Citation : (1962) 75 LW 783 : (1962) 2 MLJ 302

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—Certain common questions arise in these petitions. The Assessments in question are under the Central Sales Tax Act for the year 1957-58. In order to understand the points in controversy, the facts relating to one petition will be set out. Though there are minor differences in the details relating to the other petitions, the questions for determination are not different.

T.G. No. 108 of 1959.

2. The assessee manufactures matches and sells the product of his factory both inside the Madras State and to dealers outside the State. He is a registered dealer under the Central Sales Tax Act. According to the petitioner, when he sells the matches, he invoices only the sale value of the matches, that is to say, he does not include in the invoice the excise duty which is payable on the goods. He prepares a separate debit note on the buyer for this excise duty and collected that amount from the buyer. In respect of the turnover, the petitioner returned a net turnover of only Rs. 4,43,000 and odd, representing the sale price of the matches, exclusive of the excise duty paid by him, and deducting also the freight charges incurred. A sum of Rs. 10,85,300 had been paid by way of excise duty and collected by the petitioner from the buyers outside the State on foot of separate debit notes referred to.

3. The petitioner contended before the assessing authority that this amount of excise duty did not form part of the sale price. But this contention was overruled

and the Deputy Commercial Tax Officer assessed the net turnover liable to assessment under the Central Sales Tax Act at Rs. 15,17,631 and the tax payable thereon at Rs. 15,176. An appeal was taken to the Commercial Tax Officer before whom also it was claimed that the excise duty was paid on behalf of the buyer, and though it was recovered by a separate debit note it was entered in a separate ledger and did not form part of the sale consideration. It was alleged that it was agreed between the buyer and the seller that only the value of the matches was to be paid. It was further contended that since the Central Sales Tax Act has to be administered in the same manner as the Madras General Sales Tax Act, the excise duty paid to the Central Government being eligible for deduction from the turnover of the dealer under the Madras General Sales Tax Act, a similar relief should be granted in the assessment under the Central Sales Tax Act as well. These contentions were examined by the Commercial Tax Officer who came to the conclusion that the method employed by the petitioner in issuing invoices and debit notes did not alter the true nature of the transaction which was that the consideration for the sale of the goods included the amount of excise duty paid on the goods. The further contention that excise duty should be exempted from the turnover was also rejected on the ground that the rules framed under the Central Sales Tax Act did not provide for any such exclusion.

4. It would suffice to mention that the further appeals to the Tribunal also failed.

5. It is in these circumstances that the present petitions have come before this Court. A feature that obtains in some of these cases is that no separate debit note is issued in respect of the excise duty. But what is done by the petitioners in these cases is to record as a footnote to the invoice the amount of excise duty paid in respect of the goods. In a few of the cases again, though an inclusive price has been charged in respect of the goods, that is, inclusive of the freight in question, a footnote is added to the invoices furnishing the number of the railway receipt and the amount of the freight. It is claimed that in these cases, the freight should be deducted from the turnover as it does not form part of the sale consideration.

6. It has been stated before us that in T.C. Nos. 108 to 111 of 1959, 56 of 1960 and 35 of 1960, an invoice for what is claimed to be the sale consideration of the goods is issued followed up by a debit note covering the excise duty paid. As indicated already, both the amounts are recovered from the buyer. In the remaining cases, an inclusive bill is prepared, that is to say, the sale value of the goods as displayed in the invoice is inclusive of the excise duty. But the excise duty is also separately indicated in these invoices.

7. Mr. Swaminathan, for the assessee petitioners, contended initially that the levy of tax u/s 8 of the Act was inoperative for the following reason. The charging Section 8 of the Central Sales Tax Act makes the dealer liable to tax on his "turnover"; and "turnover" is defined in Section 2 (j) of the Act in these words:

"Turnover " used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received or receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in the prescribed manner.

Under Section 13(1) of the Act, the Central Government is empowered to make rules providing for:

(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 deduction which may be made in the process of such determination.

Since the liability to taxation of the turnover is on the turnover as "determined in the prescribed manner", and the manner in which the turnover is to be determined has to be prescribed by the rules framed under the Act, learned Counsel contends that the rules, as they stand do not prescribe the manner in which the turnover should be determined. According to him, therefore, the levy fails to take effect. This contention has now to be examined.

8. The Central Sales Tax Act (Registration and Turnover) Rules were originally issued in February, 1957. At the time Rule 11 dealing with the determination of the turnover read thus:

The period of turnover in relation to any dealer liable to pay tax under this Act shall be the same as the period in respect of which he is liable to submit returns under the General Sales Tax Law of the appropriate State.

The proviso to this rule has no application to the present cases and does not require to be set out. The rule, as it was originally framed, thus prescribed only the period of the turnover, which is one of the incidents in relation to which the Central Government is empowered to make rules u/s 13(1) (b) of the Act. Sub-rule 11 (2) was framed and inserted by S.R.O. No. 3613 of 6th November, 1957. It was subsequently amended by G.S.R. , dated 23rd September, 1958. Before its amendment, Rule 11 (2) read thus:

In determining the turnover of a dealer for the purposes of Section 8, there shall be deducted the following amounts from the aggregate of sales prices....

(a)

(b)

The subsequent form of amendment of Rule 11 (2) is not material for the consideration of the present question. What has now to be examined is whether the rule provides for the manner in which the turnover of the dealer has to be determined. It is no doubt true that when turnover has been defined to mean the aggregate of the sale prices in respect of sales made during any prescribed period and determined in the prescribed manner, the turnover that would be liable to tax u/s 8 of the Act cannot come into existence unless the manner of its determination is provided for by the rules and it is so determined. In Palaniappa

Chettiar and Co. and Others Vs. The Deputy Commercial Tax Officer, Moore Market Division, , Rajagopala Ayyangar, J., observed:

I fully recognise that taxation might be imposed absolutely as well as conditionally, and that while one law may select the subject of taxation, it might leave it to other laws to prescribe conditions on the fulfilment of which alone the tax liability shall fasten. In such cases, no doubt, the fulfilment of the condition would be a constituent fact in the emergence of tax liability and therefore an essential element in the imposition of the tax. A law which prescribes the conditions on which the tax liability should arise can properly be described as part of the law imposing the tax...To illustrate my point, I would take the case of rules framed under section 3 (4) for the computation of the turnover. It cannot be disputed that without the rules prescribing the method for computing the turnover, the charging provision in Section 3(1) could not be brought into play.

The learned Judge was in that case dealing with the argument that certain of the rules framed under the Madras General Sales Tax (Turnover and Assessment) Rules did not have the effect of making the necessary prescription regarding the assessment and collection of taxes imposed by Sections 3 and 5 of the Madras General Sales Tax Act. We have no quarrel with the proposition advanced by the learned Counsel for the petitioners that if the rules did not prescribe the method of computing the turnover, the charging provision cannot come into play. The immediate question is whether the rules as they stand cover the alleged lacuna.

9. It is not disputed that Section 11(2) is operative for the assessment year in question. Even in the form in which it stood prior to its amendment in September, 1958, what it stated was that " in determining the turnover " of a dealer for the purposes of Section 8, there shall be deducted the following amounts from the aggregate of sale prices....Indeed, part of the definition of turnover itself is that it is " the aggregate of sale prices received and receivable by the dealer in respect of sales of any goods in the course of inter-State trade or commerce "; of course conditioned by determination in the prescribed manner. When, therefore, Rule 11 (2) states that " in determining the turnover of the dealer for the purposes of Section 8 there shall be deducted the following amounts from the aggregate of sale prices " , it seems to us that the determination of the turnover is completely provided for by the rule. The aggregate of the sale prices initially forms the turnover and when the rule stipulates that for the purpose of Section 8 certain amounts are to be deducted from such aggregate, the determination of the turnover for the purposes of Section 8 is complete. What the learned Counsel however argues is that what this rule provides for is only the deduction of certain amounts and does not say that the result arrived at after such deduction is the turnover prescribed within the meaning of Section 13(1) (b). We are unable to agree. The emphasis is upon the expression " in determining the turnover of dealer for the purposes of Section 8." The purpose of Section 8 being only the bringing into charge the turnover

which would be assessable, it should necessarily follow that the rule, when applied, results in "determining" the turnover as defined in Section 2 (j) of the Act. The contention that there is no proper prescription for the determination of the turnover is therefore without substance.

10. It is obvious that in advancing this argument, learned Counsel seems to have taken note of the elaborate set of rules that have been provided for under the Madras General Sales Tax Act, 1939. Under the Act also, the State Government was empowered to make rules for determining the turnover of the dealer for the purposes of the Act. Rules dealing with the turnover and assessment were made. Considering that the purposes of the Madras General Sales Tax Act covered a variety of goods with varying incidence of tax, providing for single point and multi-point levy, the rules had necessarily to cover every aspect of the subject-matter of the tax. One of such rules made provision for deduction of various amounts from the gross turnover of a dealer. In contrast to this set of rules, the Central Sales Tax Act contains only a single rule for the determination of the turnover providing within the ambit of that very rule for the deduction of certain amounts from the sale price of the goods. A mere comparison of the two sets of rules cannot lead us to the conclusion that Rule 11(2) as it stands does not have the result of determining the turnover for the purpose of laying the charge u/s 8 of the Central Sales Tax Act.

11. The next contention advanced is that by the terms of Section 8, the dealer is entitled to have the excise duty paid in respect of the goods excluded from the turnover. We shall later deal with the question whether the sale price of the goods is inclusive of this excise duty or not. But what the learned Counsel claims in this regard is that under the very terms of Section 8, that result is reached. The argument runs in this manner. u/s 8(1) of the Act every dealer who sells any goods to the Government, or sells to a registered dealer other than the Government, goods of a specified description in the course of inter-State trade or commerce, is liable to pay tax at 1 per cent on his turnover. Section 8(2) deals with cases which do not come within the range of Section 8(1). It is not necessary to decide in this contest what kinds of cases would come u/s 8(2) for the purposes of the present argument. In such cases, though the turnover is that resulting from the sale of goods in the course of inter-State trade or commerce, the tax has to be calculated at the rate applicable to the sale or purchase of the goods inside the appropriate State, if the goods are declared goods and in the case of goods other than declared goods at 7 per cent. or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher, and "for the purpose of making any such calculation, any such dealer shall be deemed to be a dealer liable to pay tax under the Sales Tax Law of the appropriate State, notwithstanding that he in fact may not be so liable under that law." In cases falling u/s 8(2) of the Act, in the case of declared goods, the tax payable "shall be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State." In some of the cases before us, the sales were not to registered dealers and the transactions were accordingly taken

out of the scope of Section 8(1) and came u/s 8(2). Sub-section (2-A) of Section 8 further provides that notwithstanding anything contained in Sub-section (1) or (2) if under the Sales Tax Law of the appropriate State, the sale or purchase of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than 1 per cent. the tax payable under this Act on his turnover, in so far as the turnover or any part thereof relates to the sale of such goods, shall be nil, or as the case may be, shall be calculated at the lower rate. Reading all of these provisions together, learned Counsel for the assessee petitioners seeks to reach the conclusion that the law relating to the sale of goods inside the appropriate State should apply, to the sales and if that is so, since the Madras General Sales Tax Act provides for the exclusion from the turnover under that Act of the amount paid by way of excise duty to the Central Government, the same result should follow. Giving consideration to this argument, it seems to us that it cannot be accepted. Firstly, the tax that is leviable either u/s 8(1) or 8 (2) of the Act is on the turnover and in so far as the expression " turnover" occurring in these provisions is concerned, it is the turnover under the Central Sales Tax Act and not that under the Madras General Sales Tax Act. Examining the provisions of Section 8(2) further, what is provided for is that if a case is taken out of Section 8(1) and made taxable u/s 8(2) it is only the rate which should apply to those transactions that is specified in this sub-section and not that the entire State Law is made applicable to the transaction. There is nothing in any of these provisions of Section 8(2) or (2-A) to say that the inter-State nature of the transaction is taken away and the transaction becomes in intra-State one. It is only if the transaction is specifically declared to be deemed to be one inside the State that the local sales tax law can apply to it wholly. That is not the case here. The clause " for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he in fact may not be so liable under that law " does not bring about the result that the transaction is declared to lose its inter-State character and to become one that takes place inside the State. What is intended by this part of the section is that even though such a dealer may be exempt from the payment of tax under the local Sales Tax Act, by reason of his turnover falling short of the prescribed minimum or for any other special provisions that may exist in the local sales tax law he is nevertheless liable to pay under the Central Act; and this provision in effect denies him the exemption which he would enjoy under the local law. The levy is clearly one under the Central Sales Tax Act and the turnover of the dealer is determined under the Central Sales Tax Act remains unaffected by this provision.

12. It is needless to point out that Sub-section (2-A) which we have extracted earlier has no application. That only covers cases where the sale or purchase of any goods is either wholly exempt or is subjected to a rate of tax lower than 1 per cent in which event notwithstanding the provision of the rate of 1 per cent. in Section 8(1) or other rates in Section 8(2), the taxation in respect of any goods

the sale of which inside the State is subject to no tax or is subject to a lower rate than 1 per cent. shall be at these rates even under the Central Sales Tax Act. This provision has no application to any part of the turnover of the dealer and applies only to categories of goods the sales or purchases of which are dealt with at preferential rates in the local sales tax law.

13. The next contention that has been advanced is that u/s 9 of the Act, which deals with the levy and collection of tax and penalties, the assessee becomes entitled to all the deductions and exemptions which the local sales tax law provides for. Section 9(1) states that the tax payable by any dealer under this Act shall be levied and collected by the Government of India in the manner provided in Sub-section (3) "in the State from which the movement of the goods commenced." Sub-section (3) reads thus:

The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax, including any penalty, payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods the general sales tax law of the State is assessed paid, or collected; and for this purpose they may exercise all or any of the powers they may have under the general sales tax law of the State.

Learned Counsel for the petitioners lays emphasis upon the phrase "in the same manner as the tax... under the general sales tax law of the State is assessed, paid or collected" and calls upon us to infer therefrom that all the incidents of the local law become applicable to the assessment under the Central Sales Tax Act. We are totally unable to appreciate this interpretation. This section provides only for the procedural part of making the assessment. In quantifying the charge that is laid by Section 8 of the Act, the powers which the authorities are to exercise in making the assessment such as calling for returns, accounts, etc., in issuing notices of demand and enforcing the default provisions are what are contemplated in the above, sub-section. If the local sales tax law in its entirety is made applicable, there seems to be no purpose served by the Central Government making special rules under the Central Sales Tax Act. It is indisputable that Section 9 (3) has to be read with Section 9 (1); the manner provided in Sub-section (3) is for the levy and collection of the "tax payable under this Act", such tax having become quantified in accordance with Section 8. Sub-section (3) of Section 9 empowers the local authorities to assess, collect and enforce payment of any tax "subject to any rules made under this Act." The phrase "in the same manner" occurring therein cannot therefore take in all exemptions and deductions contemplated under the local sales tax law; what is contemplated by Section 9 (3) is that the procedure of making any assessment, collection of tax, etc., is the very same procedure laid down in the local Sales Tax Act. The application of that procedural provision of the local law does not assimilate other provisions in that law which deal with the determination of the

turnover, which in so far as the Central Sales Tax Act is concerned is required to be determined only under the Central Act and the rules framed thereunder.

14. Learned Counsel had made reference to Section 40 of the Indian Income Tax Act, where when the guardian or trustee of a minor, lunatic or idiot is in receipt of any income, profits or gains on behalf of such beneficiary, the tax shall be levied upon and recovered from such " guardian or trustee, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age or sound mind...." We are asked to construe the expression " in the same manner " in Section 9 (3) of the Central Sales Tax Act on the analogy of the interpretation which the expression " in like manner " in Section 40 of the Income Tax Act would bear. We are unable to see any basis upon which the expression occurring in Section 40 of the Income Tax Act could be said to be comparable to the expression " in the same manner " in Section 9 (3) of the Central Sales Tax Act. Section 40 specifically enacts that the liability to tax on the guardian of a minor shall be limited to the extent to which the minor, if he were assessable,, would be liable to tax. The quantum of the liability upon the guardian is equated to the liability of the beneficiary if he was to be taxed independently. In Section 99(3) however, " in the same manner " has reference to the procedure for making the assessment, the procedure outlined by the local law being followed, but the liability and the quantum of tax being governed only by the Central Sales Tax Act and subject to the rules made thereunder. The two expressions referred to cannot possibly be equated, and no assistance in interpreting the one can be derived from the other.

15. It has been argued that the sale consideration for the supply of the goods, matches in the present case, does not include the excise duty paid by the seller to the Government. The goods are excisable commodities and before the manufacturer could deal with them by way of sale, the duty has to be paid to the Government. What is contended is that the contract between the buyer and the seller--no contract was produced either here or in the Tribunals below--was that the sale was to be for a stated price which did not include the excise duty and that when the seller paid the excise duty, he paid it on behalf of the buyer and that part of the payment, though subsequently recovered from the buyer, was never intended to be part of the sale consideration. It is difficult to see how this contention can be accepted. It is not denied by the learned Counsel that the buyer would not be able to take possession of the goods, unless the duty was paid. In the hands of the buyer it is undeniable that the amount of the excise duty is part of the consideration which he has to pay for obtaining the property in the goods. Even assuming that the seller sold the goods in bond and authorised the buyer to take possession of the goods which he could obtain possession of only after the payment of excise duty, it does not to our minds cease to be part of the sale consideration. It is also not denied that the liability to pay excise duty is upon the person who manufactures the goods and keeps them under bond in the bonded warehouse. The Central Excise and Salt Duties Act casts this liability undoubtedly upon the manufacturer. The rules thereunder also provide that a

manufacturer could keep excisable goods in bond for a maximum period of three years. Though during this period he is permitted to pay The excise duty on the occasion of the removal of the goods from the warehouse, on the expiry of the period of three years, he is bound to clear the entirety of the goods and pay he excise duty thereon. This may, no doubt, not be directly relevant to the question before us. But it is still of interest to note that the liability to pay the excise duty is upon the manufacturer.

16. Section 2 (h) of the Central Sales Tax Act defines " sale price " to mean " the amount payable to a dealer as consideration for the sale of any goods. " Does he fact that a separate debit note was prepared by the seller for the excise duty paid by him and which was subsequently recovered from the buyer or even that a separate indication of the amount of excise duty paid in respect of the goods, was noted on the invoice make any difference? Does it mean that these features operate to the extent of saying that the excise duty paid was not part of the sale price? We have no doubt that the price was inclusive of the excise duty and that consolidated amount was "payable " to the dealer as consideration for the sale of the goods. In *George Oakes (Private) Ltd v. State of Madras* (1962) 1 S.C.J. 300 : (1962) 1 M.L.J. 142 : 12 S.T.C. 476, the question arose whether the tax collected by a registered dealer under the Madras General Sales Tax Act was liable to be included in the turnover resulting in the levy of tax on the tax so collected and whether the subsequent Act validating such assessment Was valid. Their Lordships observed in this connection : Lordships

First of all, we do not think that either the principal Act or the impugned Act proceeds immutable distinction between sale price and tax such as learned Counsel for the appellants has suggested. The principal Act does not contain any separate definition of sale price. We have already referred to the definition of "sale" and "turnover"; those definitions do not show any such distinction. On the contrary, the expression " turnover " means the aggregate amount for which goods are bought and sold, whether for cash or for deferred payment or other valuable consideration, and when a sale attracts purchase tax and the tax is passed on to the consumer, what the buyer has to pay for the goods includes the tax as well and the aggregate amount so paid would fall within the definition of turnover In *Papriea Ltd. and Anr. v. Board of Trade* (1944) 1 All E.R. 372 Lawrence J., said "Whenever a sale attracts purchase tax, that tax presumably affect the price which the seller who is liable to pay the tax demands but does not cease to be the price which the buyer has to pay even if the price is expressed as plus purchase, tax". The same view was again expressed in *Lote v. Norman Wright (Buildingers) Ltd.* (1944) 1 All E.R. 618, when Goddard, L.J., said:

Where an articles taxed, whether by purchase tax, customs duty, or excise duty, the tax becomes part of the price which ordinarily the buyer will have to pay. The price of an ounce of tobacco is what it is because of the rate of tax, but on a sale there is only one consideration though made up of cost plus profit plus tax. So, if a seller offers for sale, it is for him to quote a price which includes the tax if he

desires to pass it on to the buyer. If the buyer agrees to the price it is not for him to consider how it is made up or whether the seller has included tax or not.

We think that these observations are apposite even in the context of the provisions of the Act we are considering now, and there is nothing in those provisions which would indicate that when the dealer collects any amount by way of tax, that cannot be part of the sale price. So far as the purchaser is concerned, he pays for the goods what the seller demands, viz., price even though it may include tax as the purchaser. That is the whole consideration for the sale and there is no reason why the whole amount paid to the seller by the purchaser should not be treated as the consideration for the sale and included in the Turnover.

Though these observations were made in dealing with the validity of the Madras General Sales (Definition of Turnover and Validation of Assessments) Act, 1954 enacted by the Madras State Legislature the general proposals are fully applicable in the context of the present sale transactions. It follows that any amount which the buyer is called upon to pay, except such amount as may be specified in the definition the sale price. "sale price" as being "excludable" must form part of

17. As their Lordships point out, where the seller passes on the tax and the buyer agrees to pay the tax in addition to the price, the tax is really part of the entire consideration, and the distinction between the two amounts loses all significance, more particularly from the point of view of legislative competence. Turning now to the definition of "sale price" in the Central Sales Tax Act, it seems to us that any amount, whether it be tax or excise duty which is payable to the dealer as a consideration for the sale of the goods, makes up the sale price in respect of the transaction. Sale price is defined to mean "the amount payable to a dealer as consideration for the sale of any goods", less certain normal trade discounts, or such other sums as are specifically excluded. It should necessarily follow that having regard to the transaction that took place, since it was an integral part of the agreement that the buyer should bear the burden of the excise duty paid by the seller, this excise duty certainly does form part of the sale price of the goods. We are therefore unable to accept the contention advanced in this regard.

18. Our attention has been drawn to a decision of this Court in C.R.P.No. 1874 of 1952. That was a case which arose under the Madras General Sales Tax Act and the question arose whether the excise duty paid on cured coffee which was the subject-matter of the sale, was deductible. What happened was that the India Coffee Board which sold the coffee had collected the excise duty from the buyer and paid it to the Central Government. The Department contended that the assessee, the India Coffee Board, had not itself paid the excise duty and that therefore that amount was not deductible under Rule 5 (1) of the General Sales Tax (Turnover and Assessment) : Rules. The decision of this Court was that whoever might have paid the excise duty, since the rule excluded the excise

duty, if any, paid by the dealer to the Central Government in respect of the goods sold by him, the fact that the seller had collected it from the purchasers of coffee did not make any difference to the claim. There was the observation by the learned Judges:

Even so, there will be no case at all for including that amount in the turnover. That could not be a part of the sale price at all.

Reliance has been placed upon this observation by the learned Counsel for seeking to establish that the quantum of excise duty did not form part of the sale price. The question whether excise duty formed part of the sale price or not was not in issue before the learned judges. Even apart from that, the decision of the Supreme Court which we have referred to takes the matter beyond the realm of controversy.

19. In some of these cases, objection is taken to the inclusion of the sales tax in the taxable turnover. What the Supreme Court has laid down in the above decision has direct application to the sales tax. We may observe further that in so far as the legislative competence is concerned, Parliament is fully competent by reason of the residuary entry in List I of Schedule VII of the Constitution of India, to bring to tax as part of the turnover, any amount, be it tax or designated by any other name. Besides the fact that the definition of sale price does not exclude the sales tax which, being payable by the buyer is undoubtedly part of the consideration for the sale of the goods, the Parliament has undoubted competence to bring to tax as part of the turnover the tax that forms part of the consideration.

20. Another point that was urged before us was that the freight charges which were incurred by the seller should have been excluded. It does not appear to be denied by the petitioner that when the contract of sale was entered into, it called for the delivery of the goods to the buyer at his place of residence or business and that the price that was quoted was an inclusive one comprising also the freight charges that would be payable. The only occasion when such freight charges can be excluded from the sale price is set out in the definition of the sale price itself, which states that the cost of freight of delivery or the cost of installation in cases where such cost is separately charged shall be deducted from the sale price. It is not in dispute that wherever such freight was separately charged, deduction has been allowed. It seems clear that unless freight had been separately charged to the knowledge of the buyer, the cost of the freight cannot be deducted from the sale price. What we are told is that in some of these cases, after charging an inclusive price in respect of the goods sold, an entry was made at the bottom of the bill giving the number of the railway receipt and other particulars of freight incurred. We are unable to accept the claim that this indication on the bill amounts to a separate charge in respect of the freight. What we understand this expression to mean is that the sale price indicated on the bill should be in respect of the cost of the goods alone and an additional charge should have been indicated in the bill the total making up the consideration

which the buyer was called upon to pay. That would be in keeping with the wording of the definition of sale price and would comply with the requirement that the freight had been charged separately, that is to say, the buyer was informed that that quantum of freight charges was additional to the sale price of the goods and that he had to pay those freight charges. The indication found in the bill, to our minds, is not sufficient to meet the requirement of the provision of law. In the absence, therefore, of a separate charge in respect of the costs of freight, the claim that this amount should be excluded must fail.

21. T.C. Nos. 57 and 58 of 1960 : In these cases, the sales were to buying dealers in the State of Jammu and Kashmir. The Deputy Commercial Tax Officer brought the transactions to tax u/s 8(2) of the Act. In appeal, however, the Assistant Commissioner took the view that as the Central Sales Tax Act did not extend to Jammu and Kashmir, the transactions could not be brought within the purview of that Act and directed the assessing authority to exclude those sales from assessment. The Board of Revenue in the exercise of its suo motu powers of revision set aside the orders of the Assistant Commissioner. Against the orders of the Board of Revenue, appeals have been filed before this Court and they are T.C. Nos 57 and 58 of 1960.

22. It is argued by the learned Counsel that the sales in question do not acquire an inter-State character bringing them within the purview of the Central Sales Tax Act, so long as that Act has not been extended to Jammu and Kashmir. We are unable to agree with this view. What is an inter-State sale is defined in Section 3 of the Central Sales Tax Act. We do not understand the learned Counsel as denying that the sale transaction in these cases occasioned the movement of the goods from one State to another. A suggestion was made that Jammu and Kashmir cannot be considered, to be a "State", in so far as the inter-State movement of the goods is concerned, solely for the reason that the Act did not extend to Jammu and Kashmir. There can be no doubt whatsoever that Jammu and Kashmir is a State within the meaning of Article 1 of the Constitution. That the Central Sales Tax Act was not extended to that State till 13th March, 1958, cannot lead to the inference that it was not a State for the purposes of the Act. The sales which occasioned the movement of the goods from this State to the State of Jammu and Kashmir were accordingly inter-State sales. The scheme of the Central Sales Tax Act is to bring to tax the inter-State sales, in the State from which the movement of the goods commenced. The non-extension of the Central Sales Tax Act to Jammu and Kashmir might have this result, viz., that if the movement commenced in the State of Jammu and Kashmir, those inter-State sales cannot be brought to tax under the Central Sales Tax Act. But the taxability of sales, when the movement commenced from a State in which the Central Sales Tax Act is in force, cannot probably be affected, so long as the other territory involved in the movement is a " State " , whether or not the Central Sales Tax Act has been extended to it.

23. Nextly it was argued that the non-extension of the Central Sales Tax Apt

resulted in the position that the assessee became taxable u/s 8(2) of the Act at a higher rate of tax. The favourable rate of 1 per cent. of tax u/s 8(1) of the Act is available, broadly speaking, only when the buyer at the other end is a registered dealer, i.e., registered under the Central Sales Tax Act. If the Central Sales Tax Act is not in force in Jammu and Kashmir, it follows that no dealer there can get himself registered under that Act; the selling dealer of this State would not be in a position to furnish the certificates required u/s 8(4) of the Act; non-compliance with Section 8(4) of the Act takes the sale out of Section 8(1) of the Act and brings it within the "penal" provisions of Section 8(2) of the Act for no fault of either the seller or the buyer. So runs the argument. We are not impressed" with the argument that any anomaly is involved. Parliament is competent to make laws for the whole or any part of the territory of India; and in excluding the operation of the Act from the territory of the State of Jammu and Kashmir, Parliament could not have been unaware of the result of a transaction of sale in which the buyer would be a dealer of the State of Jammu and Kashmir and that such a sale would be taxable u/s 8(2) and not u/s 8(1) of the Act.

24. If in the working of an Act, an anomaly in its incidence not consciously intended by the Legislature is noticed, it may be permissible to so interpret the Act as to avoid that anomaly. But where it is obvious that by not extending the Act to an area, the Legislature did deliberately create a distinction between transactions in which such area was or was not involved, it is not an anomaly which judicial interpretation is called upon to investigate. The dealers of this State were fully aware that when they sold goods to dealers in Jammu and Kashmir, the sales would attract tax u/s 8(2) of the Act. In these circumstances, it is not correct to say that the levy of tax u/s 8(2) is "penal" in its nature.

25. The contention that these sales are outside the scope of the Central Sales Tax Act has therefore to be rejected.

26. In the result, all petitions are dismissed with costs, counsel's fee Rs. 50 in each petition and appeal.