

(1953) 05 PAT CK 0013

In the Patna High Court

Case No : Misc. Judl. Case No. 232 of 1951

The State of Bihar

APPELLANT

Vs

Bengal Chemical and Pharmaceutical Works Ltd.

RESPONDENT

Date of Decision : 08-05-1953

Acts Referred:

Bihar Sales Tax Act, 1944 — Section 10(5), 2, 21(5), 4
Bihar Sales Tax Act, 1947 — Section 25(1), 25(5)
Contract Act, 1872 — Section 5, 8
Income Tax Act, 1922 — Section 23(4), 66
Sales of Goods Act, 1930 — Section 23, 23(1), 39

Citation : AIR 1954 Patna 14

Hon'ble Judges : Ramaswami, J; Rai, J; Das, J

Bench : Full Bench

Advocate : Government Advocate, for the Appellant; S.N. Datta and B.C. Banerji, for the Respondent

Judgement

Ramaswami, J.—This case is stated by the Board of Revenue u/s 25(1), Bihar Sales Tax Act, 1947.

2. The assessee is an incorporated company called the Bengal Chemical and Pharmaceutical Works, Ltd., whose registered office is at 94 Chittaranjan Avenue, Calcutta. For the eight quarters commencing from 1-10-1944, the Sales-tax Officer, Bhagalpur Circle, made an assessment of sales tax amounting to Rs. 250 plus a penalty of Rs. 375 for each of the eight quarters. The assessee contended that the Sales-tax Officer had no jurisdiction to tax on the ground that the sale of the chemicals took place in Calcutta and not in Bihar and that the assessee was not a "dealer" as contemplated by the Act. In a letter dated 9-12-1946 the assessee stated:

"The goods in question were supplied under orders of the Bhagalpur Municipality sent by post to this company in Calcutta and payment was made by cheque in Calcutta. Sale of goods is effected on the transfer of property therein. In our sale of alum to the Municipality the transfer of property in the goods (viz.- alum) way

effected when the goods (viz., alum) were separated and appropriated against the order of the Bhagalpur Municipality at this company's factory at Panihati (District 24 Parganas, Bengal). Hence the sale did not take place in Bihar. Further, company cannot be said to be dealer as defined in the Act."

3. The Sales-tax Officer thereafter made enquiries at the Bhagalpur Municipal and District Board offices and found that

"the goods were always consigned by the assessee in the name of some officer of the Municipality or District Board and payments were made by cheques on the Imperial Bank of India, Bhagal pore branch."

The Sales-tax Officer held that the sales were completed in Bihar and the assessee was bound to register itself as dealer and to pay sales-tax on the sales made to the Bhagalpore District Board and Bhagalpore Municipality. For the period from 1-10-1944 up to 30-9-1946 the Sales-tax Officer computed the taxable turnover to be Rs. 16,000 per quarter. The assessment was made on 31-12-1946. Appeals were preferred to the Assistant Commissioner of Sales-tax who affirmed the decision of the Sales-tax Officer that the sales were completed in Bihar and the assessee had been properly taxed. The Assistant Commissioner of Sales-tax, however, remitted the penalty imposed in each case. The assessee applied in revision before the Commissioner but the application was dismissed. The assessee also moved the Board of Revenue but the application was dismissed.

4. At the instance of the assessee the Board of Revenue has referred the following questions of law for being determined by the High Court:

(1) "Whether" on the facts and circumstances of the case the assessee is a dealer within the meaning of Section 2 (c) of the Bihar Sales Tax Act?" and

(2) "Whether on the facts and circumstances of the case, there was any sale by the assessee in Bihar within the meaning of Section 2 (g) of the Bihar Sales Tax Act?"

5. Upon the first question Mr. Dutt who appeared on behalf of the assessee pointed out that apart from the sales of chemicals to the Bhagalpore Municipality and the Bhagalpore District Board the Assessee had sold chemicals to various dealers in Bihar but the method of sale was different. In this class of sales, the assessee had sent railway receipts to Messrs. Lalji Sao of Bhagalpore who realised the sale price from the parties before making over the railway receipts. The railway receipts were sent by Lalji Sao by value payable post to different dealers who were obliged to pay the price of the consignment before they obtained the railway receipts. In this state of facts, Mr. Dutt conceded that the assessee had reserved the right of disposal u/s 25(2), Sales Tax Act & that the title to the goods did not pass in Calcutta but the title passed in Bhagalpore when the railway receipts were handed to the various dealers after payments of cash. Mr. Dutt, therefore, did not seriously dispute that the assessee was a dealer

within the meaning of Section 2 (c) of the Sales-tax Act and that the first question should be answered in the affirmative.

6. The second question is more difficult to answer. On behalf of the assessee, Mr. Dutt presented the argument that the sales of chemicals to Bhagalpore Municipality and Bhagalpore District Board were effected not in Bhagalpore but in Calcutta, that the transaction did not fall within the ambit of Section 2 (g), Sales-tax Act, and that the Sales-tax Officer had no authority to impose a tax on these sales. The learned counsel based his argument upon the findings of the Sales-tax Officer reproduced by the Board of Revenue in the statement of the case--

"The Sales-tax Officer after personal enquiries found that the goods are always consigned by the company in the name of the Chairman or Vice Chairman or some such officer of the Municipality or District Board at Bhagalpore or any other station within Bhagalpore District and payments have always been made by cheque on the Bhagalpore branch of the Imperial Bank of India and hence it was held that sales were always completed in Bihar".

Mr. Dutt contended upon these facts that title passed as soon as the goods were appropriated in the assessee's factory at Panihati against the orders of the Bhagalpore District Board and the Bhagalpore Municipality. It was submitted that not merely did the title pass at Panihati but delivery was also effected in pursuance of the contract to the railway authorities at Panihati.

7. It was on the contrary argued by the Government Pleader that the contract of sale took place in Bhagalpore, that title to the goods passed at Bhagalpore and the transaction was rightly taxed under the Bihar Sales-tax Act. The argument was based on Section 4, Contract Act, which states that

"the communication of an acceptance is complete as against the proposer, when it is put in a course of transmission to him, and as against the acceptor, when it comes to the knowledge of the proposer".

The argument of the Government Pleader is that so long as the acceptance was not communicated by the assessee to the Bhagalpore Municipality or Bhagalpore District Board the contract was not complete. It was contended that the communication in this case was made when the railway receipt with respect to the goods was received by the Bhagalpore Municipality or Bhagalpore District Board and the contract of sale was, therefore, completed at Bhagalpore. The argument cannot be however accepted as valid. Section 5 of the Indian Contract Act must be read subject to Section 8 which states that

"performance of the condition of a proposal or the acceptance of any consideration for a reciprocal promise is an acceptance of the proposal"

There is in principle a material distinction between the acceptance of an offer which asks for a promise and an offer which asks for an act on the condition of the offer becoming a promise. In the former case, where the acceptance is to consist of a promise, there must be communication to the proposer. But in the

latter class of cases, where the acceptance is to consist of an act, as for example, despatching goods ordered by post, the rule is that no further communication of the acceptance is necessary than the performance of the proposed act. The distinction is recognised in Sections 5 and 8, Contract Act. The legal position is correctly stated by Bowen L. J. in -- "Carlill v. Carbolic Smoke Bail Co." (1893) 1 Q. B. 256 (A):

"One cannot doubt that, as an ordinary rule of law an acceptance of an offer made ought to be notified to the person who makes the offer, in order that the two minds may come together. But there is this clear gloss to be made upon that doctrine, that, as notification of acceptance is required for the benefit of the person who makes the offer, the person who makes the offer may dispense with notice to himself if he thinks it desirable to do so, and I suppose that there can be no doubt that where a person, in an offer made by him to another person, expressly or impliedly intimates a particular mode of acceptance as sufficient to make the bargain binding it is only necessary for the other person to whom such offer is made to follow the indicated method of acceptance; & if the person making the offer expressly or impliedly intimates in his offer that it will be sufficient to act on the proposal with-out communicating acceptance of it to himself, performance of the condition is a sufficient acceptance without notification".

In -- "Brodgen v. Metropolitan Railway Co." (1877) 2 AC 666 (B), Lord Blackburn stated the principle in similar terms:

"But I have always believed the law to be this that when an offer is made to another party, and in that offer there is a request express or implied that he must signify his acceptance by doing some particular thing, then as soon as he does that thing, he is bound. If a man sent an offer abroad saying: I wish to know whether you will supply me with goods at such and such a price, and, if you agree to that, you must ship the first cargo as soon as you get this letter, there can be no doubt as soon as the cargo was shipped the contract would be complete, and if the cargo went to the bottom of the sea, it would go to the bottom of the sea at the risk of the orderer,"

In my opinion, the argument of the Government Pleader on this branch of the case must therefore fail. It is manifest upon the facts found by the Sales-tax Officer that the contract of sale was effected in West Bengal.

8. If this view is correct, the question arises where the title to the goods passed to the buyer and where delivery took place. According to the statement of the case, the goods were consigned to the assessee in the name of the Chairman or Vice-Chairman of the Municipality or District Board. The railway receipts were sent in the name of the Chairman or Vice-chairman and it is not the case of the Sales-tax Department that the railway receipts were sent by V. P. P. On the contrary, the Sales-tax Officer has found that the payments were made later on by cheque on the Bhagalpore branch of the Imperial Bank. In this state of facts,

the question arises where title to the goods passed. Section 23(1), Sale of Goods Act, states that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Section 23(2) is also important. Section 23(2) provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. Upon the facts found in the present case, the assessee did not reserve the right of disposal and since there is an unconditional appropriation of the goods to the contract, the title to the goods passed as soon as the appropriation took place in West Bengal. It is manifest that the delivery also in the present case took place at Panihati as soon as the assessee made over the goods to the carrier. Section 39(1), Sale of Goods Act, states that where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer. In the present case, the railway receipts were made out in the name of the District Board or Municipality as consignee and the seller had not reserved any right of disposal since the railway receipts were not sent by V. P. P. 3 or against cash payments. It is clear that as regards the transactions with the Bhagalpore District Board or Bhagalpore Municipality delivery of the goods took place at Panihati in West Bengal.

In this context the learned Government Pleader referred to Section 32 and Section 50, Sale of Goods Act. But these sections have no relevance on the question which is being examined. Section 32 states:

"Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods".

But this section is subject to a contract to the contrary and in the present case the facts stated clearly indicate that there was an agreement that goods should be delivered first and payment was to be made afterwards. Section 50 relates to the right of "stoppage in transitu". It was argued by the Government Pleader that Section 50 would indicate that title of the goods did not pass till 1954 Fat./3 & 4 delivery was effected at Bhagalpore to the Municipality or District Board. The argument proceeds on a misconception. Section 50 has no bearing on the question of passing of title. On the contrary, the section applies only in a case where title to the goods has already passed to the buyer. For Section 46(1) states--

"Notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law..... (b) in case of the insolvency of the buyer right of stopping the goods in transit after he has parted with the possession of them".

It is clear therefore that neither Section 50 nor Section 32 has any relevance in determining the question where title to the goods has passed.

9. The next branch of the argument presented on behalf of the State of Bihar is that even if title to the goods passed in West Bengal, the transaction would fall within the ambit of the Bihar Sales-tax Act. It was pointed out that the goods, were despatched to Bhagalpore and payments were made by cheque on the Bhagalpore branch of the Imperial Bank. It was contended that these facts constitute a sufficient nexus or territorial connection which conferred jurisdiction on the Bihar legislature to impose tax. Reference was made to a decision of this Court in -- Bengal Immunity Co. Ltd. Vs. State of Bihar and Others, in support of the argument. But the ratio decidendi of that case was different. The question in that case was whether the second proviso to section 2(g) as amended by Bihar Act 7 of 1951 was constitutionally valid, The amendment was to the following effect:

"The sale of any goods actually delivered in Bihar as a direct result of such sale for the purpose of consumption in Bihar shall be deemed for the purpose of this Act to have taken place in Bihar, notwithstanding the fact that under the general law relating to sale of goods, the property in the goods has, by reason of such sale passed in another State".

It was held by this Court that this amendment was valid in view of the provision of Article 286(1)(a) of the Constitution, and also upon a general consideration of the scope of the jurisdiction of a legislature in the matter of taxation. In the present case, however, the question at issue is different. The question is not whether the Bihar legislature has constitutional authority to tax a sale in Bengal when the goods are despatched to Bihar. The question at issue is a matter of construction and not a matter of constitutional validity. The question is what is the intention of the framers of the 1944 Act whether upon a proper construction of the 1944 Act the authorities could validly impose a tax on the transactions in question? in order to answer the question, it is necessary to examine the various provisions of the Act. Section 2 (g) defines "sale" to mean

"any transfer of property in goods for cash or deferred payment or other valuable consideration....."

Section 2 (c) defines "dealer" to mean

"any person who carries on the business of selling or supply goods in Bihar, whether for commission, remuneration otherwise.

Section 2 (h) defines "saleprice" to mean

"the amount payable to a dealer as valuable consideration for the sale or supply of any goods".

It was submitted on behalf of the State that a person who merely supplied goods in Bihar would be a "dealer" within the meaning of the Act though the transfer of title took place outside the State, But I am unable to accept this argument as correct. In my opinion, the word "supply" cannot be interpreted in its literal absolute sense, but must be given a limited and qualified sense. In a case of this description, the rule of interpretation is *noscitur a sociis*". The words, as they were, take colour and meaning from their context, that is to (say, the more general word is restricted to a sense analogous to the less general word. In the present case, therefore, I hold that the word "supply" in Section 2 (c) of the Act must be interpreted as to include the conception of sale.

10. This opinion is supported by consideration of other important provisions of the Act, Section 4 which is the charging section states that every dealer whose gross turnover during the year immediately preceding the commencement of the Act exceeded Rs. 5,000 shall be liable to pay tax under the Act on sales effected after the date so notified. Section 4, therefore, imposes tax only on sale and not on supply of goods. The title of the Act and the preamble are also important. The Act is entitled

"To impose a tax on the sale of goods in Bihar: The preamble states:

"Whereas it is necessary to make an addition to the revenue of Bihar and for that purpose to impose a tax on the sale of goods in Bihar".

If Section 2 (c) is construed in the setting and context of the other important provisions of the Act it is clear that the conception of supply of goods must be interpreted so as to include the conception of sale. - So construed, supply is merely a form of sale and despatch and there can be no supply of goods in this sense unless there is a sale. As regards the meaning of "sale", Section 4(3) of the Sale of Goods Act may be compared with Section 2 (5) of Bihar Sales-tax Act. Section 4(3), Sale of Goods Act, states that where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale. The section is similar in terms to Section 2 (g), Bihar Sales Tax Act, which defines "sale" to mean "any transfer of property in goods for cash or deferred payment or other valuable consideration". Upon a review of the various provisions of the Bihar Sales-tax Act it is clear that the intention of the framers of the Act was to impose a tax on transactions where the transfer of title took place in Bihar and there was no intention that tax should be imposed on sales which took place outside Bihar though the goods were despatched for the purpose of consumption in Bihar. The argument of the learned Government Pleader on this part of the case must therefore fail.

11. In the course of his argument, the Government Pleader laid great stress on the fact that the assessee had failed to submit his return and the assessment was therefore made by the Sales-tax Officer to the best of his judgment under

the provisions of Section 10 (5), Bihar Sales-tax Act. It was submitted that no question of law would arise on an assessment made in this manner. In my opinion, the argument is misconceived. In an assessment made u/s 10 (5) the quantum may not be challenged but the legal basis or the legal principle on which the assessment is based is always open to challenge. It is true that the Sales-tax Officer makes an assessment u/s 10 (5) when the assessee has made default. But this does not mean that the assessment may be made capriciously or in an arbitrary manner. The very phrase "best judgment" implies and imports a legal consideration of the facts relating to the assessment of the particular assessee. It is true that the Sales-tax Officer is not a Court but in making an assessment of sales-tax the Sales-tax Officer acts judicially and if he applies a wrong legal principle in making the assessment his decision can be questioned. Even in a case where the assessee fails to submit a proper return the Sales-tax Officer must proceed in a judicial manner. In -- AIR 1937 133 (Privy Council) the Judicial Committee stated with reference to Section 23 (4). Income Tax Act:

"He (the Income Tax Officer) must not act dishonestly, or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and though there must necessarily be guess-work in the matter, it must be honest guess-work".

In this context, the following passage from the speech of Viscount Haldane in -- "Local Government Board v. Arlidge" (1915) AC 120 (E), is also important--

"They (the Income Tax authorities) must deal with the question referred to them without bias and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice".

In the present case it was contended on behalf of the assessee that the Sales-tax Officer applied a wrong legal principle in making assessment of sales-tax as regards transactions between the assessee, and the Bhagalpore District Board and the Bhagalpore Municipality. The question raised is a question of law within the meaning of Section 25 (1), Bihar Sales-tax Act, and the Board of Revenue may properly refer such question for the determination of the High Court.

12. It was also submitted by the Government Pleader on behalf of the State of Bihar that there was no material in this case to properly determine the question of law raised by the Board of Revenue. It was contended that the assessee did not produce the actual correspondence with the Bhagalpore Municipality and the Bhagalpore District Board and the exact terms of the contract of sale were therefore not available. There is not much point in this argument for, it is the admitted case that the Sales-tax Officer inspected the records in the Municipal and District Board Offices and as a result of such inspection he reached the following findings:

"It has been found that the goods viz., alum, bleaching powder and medicines etc, are always consigned by the Company in the name of Chairman and Vice-chairman and some such officer of the Municipality or District Board at Bhagalpore or any other station within Bhagalpore District and the payments have always been made by cheques on the Imperial Bank of India, Bhagalpore branch. All this will prove that the sales are always completed in Bihar. The crucial test of this also is that the company does not claim to have paid sales-tax in Bengal which would have been the case if the sales had really been in Bengal. I am sure that Company did not pay sales-tax in Bengal claiming the sales to have been despatched outside Bengal".

These findings were reached by the Sales-tax Officer as a result of his inspection of the correspondence between the assessee and the Bhagalpore District Board and the Bhagalpore Municipality which correspondence was available in the offices of the Municipality and District Board at Bhagalpore. It is clear, therefore, that the material facts have been investigated by the taxing authorities and the terms of the contract which the assessee did not produce were actually available in the offices of the District Board and Municipality at Bhagalpore.

13. For the reasons expressed I think that on the facts and circumstances of the case the assessee was a dealer within the meaning of Section 2 (c), Bihar Sales-tax Act. As regards the second question, I am of opinion that the sales of chemicals to the Bhagalpore Municipality and to Bhagalpore District Board for which tax has been assessed were effected in West Bengal and as such were not liable to be taxed in Bihar under the provisions of the Bihar Sales-tax Act of 1944. As regards the other transactions of sale for which the railway receipts were sent to Messrs. Lalji Sao of Bhagalpore, I am of opinion that they have been properly taxed as they constitute "sales" within the meaning of the Bihar Sales-tax Act, 1944.

14. I would answer the questions formulated by the Board of Revenue in the manner indicated above.

15. My learned Brother, Rai, J. is of opinion that the second question does not cover the sale of chemicals to the District Board and the Municipality of Bhagalpore and that it is not necessary for the High Court to decide whether the sale of chemicals to the District Board and the Municipality are taxable under the Bihar Sales-tax Act. With deference to my learned Brother, I am unable to accept this view. This question of sales to the Bhagalpore Municipality and the Bhagalpore District Board was specifically raised by the assessee before the Sales-tax Officer. It is stated by Mr. Dutt on behalf of the assessee that the sale of chemicals to the Bhagalpore Municipality and the Bhagalpore District Board constitute the major part of the taxable turnover determined by the Sales-tax Officer in this case. The Sales-tax Officer made enquiries from the Bhagalpore District Board and the Bhagalpore Municipality on the question whether the sales took place in Bengal as claimed on assessee's behalf. The question is also expressly dealt with by the Board of Revenue in formulating the statement of the

case. In their application u/s 5 the assessee asked that a reference should be made of nine questions including Question No. 4--

"Can the transaction of the assessee with the Bhagalpur Municipality and the Bhagalpur District Board be termed to be a sale which has taken place in Bihar?"

The Board did not refuse to refer this question but after hearing the parties consolidated all the points raised by the assessee into two questions-

(1) "Whether on the facts and in the circumstances, the assessee is a dealer within the meaning of Section 2 (c), Bihar sales-tax Act?" and (2) "Whether on the facts and in the circumstances of the case there was any sale by the assessee in Bihar within the meaning of Section 2 (g), Bihar Sales-tax Act?"

The statement of the case made by the Board of Revenue contains all the material facts relating to the transaction of sale with the Bhagalpore Municipality and the Bhagalpore District Board. In my opinion, the second question formulated by the Board of Revenue directly covers the sales made by the assessee to the Bhagalpore Municipality and the Bhagalpore District Board on which tax has been levied.

16. Even if the question has not been happily framed, I think that the High Court is competent to reframe and resettle the question formulated by the Board of Revenue for answering it so as to bring out the real issue in controversy between the parties. In the present case, the real question at issue between the assessee & the Department is with respect to the transaction of sales with the Bhagalpore Municipality and the Bhagalpore District Board which constitute the major part of the taxable turnover determined by the Sales-tax Officer. There is nothing in Section 21 (5), Bihar Sales-tax Act of 1944, to suggest that the duties of the High Court are confined to answer the question of law strictly in the grammatical form formulated by the Tribunal irrespective of whether it is the real question at issue between the taxing authorities and the assessee. It is well settled by a long line of authorities that the High Court may at the hearing of the reference resettle and re-frame the issue so as to bring out real point in issue between the assessee & the taxing authorities -"(see Shiva Prasad Gupta Vs. Commissioner of Income Tax, ; -- "Gangaram Balmkund v. Commr. of Income Tax Punj." AIR 1937 Lah 721 (G) -- COMMISSIONER OF AGRICULTURAL Income Tax Vs. SULTAN ALI GHARAMI., . -- Assam Bengal Cement Co. Ltd., Calcutta Vs. Commissioner of Income Tax, West Bengal, Calcutta, -- Caltex (India) Ltd. Vs. The Commissioner of Income Tax, Bombay City, .

17. In this connection my learned Brother has referred to -- AIR 1940 158 (Privy Council) and -- "Chhaturam Horilram Ltd. In the matter of" In Re: Chhaturam Horilram Ltd., . In my opinion, the principle of these cases has no bearing on the present case. In -- AIR 1940 158 (Privy Council) the Judicial Committee refused to answer the question on the ground that it was purely academic. In the second case -- " A. I. R. 1951 Pat 74 (L)" the assessee had asked the Appellate Tribunal to refer the question whether there was evidence to support the finding of the

Tribunal that cash credits were secreted profits of the assessee. The Tribunal had refused to refer the question on the ground that there was no point of law involved. The assessee attempted to raise the same question in the High Court, But the High Court refused to entertain the question on the ground that the necessary facts have not been stated by the Tribunal. In the present case, the position is manifestly different. The material facts have been stated by the Board of Revenue in the order of reference with respect to the sales made by the assessee to the Bhagalpore Municipality and the Bhagalpore District Board. The question is, in my opinion, directly raised by the Board of Revenue in the statement of the case and it is not only competent to the High Court but it is the duty of the High Court to answer the question.

Rai, J.

18. This is a reference u/s 25 (1), Bihar Sales Tax Act, 1947 (Bihar Act 19 of 1947).

The reference has invited answers by this Court to the following questions. (After quoting the questions stated in para 15 above, the judgment proceeds thus). From the statement of the case, it appears that the assessee, the Bensraj Chemical and Pharmaceutical Works, Ltd., Calcutta, was assessed to sales tax for 8 quarters beginning from the quarter ending on 31-12-1944 up to the quarter ending on 30-9-1946. The assessee was assessed by the Sales Tax Officer, Bhagalpur Circle, to sales tax amounting to Rs. 250 plus a penalty of Rs. 375, total Rs. 625, for each of the 8 quarters in question, under the provisions of Section 10 (5), Bihar Sales Tax Act 1944. The assessment order of the Sales Tax Officer was upheld by the Appellate and the Revisional authorities.

19. The assessee had supplied goods to a number of customers of the province of Bihar including the District Board and the Municipality of Bhagalpur. The railway receipts in respect of the consignments sent to the Municipality and the District Board stood in the names of either the Chairman or the Vice-Chairman or some other officer of the Board as consignee. The consignments to other consumers were invariably despatched by the Company to "self and the price thereof was realised through Messrs. Lalji Sao and sons of Bhagalpur, who, for all intents and purposes acted as the agents of the assessee. In some cases the railway receipts were sent per V. P. P. The District Board and the Municipal Board paid the price of the articles supplied to them by cheques drawn on the Imperial Bank of India, Bhagalpur Branch. According to the statement of the case, the Company has been admittedly selling goods worth several lacs in the Province of Bihar, yet it has not got itself registered as a "dealer" in accordance with the provisions of the Bihar Sales Tax Act 1944. The assessee did not submit any return with the result that the Sales Tax Officer had to make the assessment in accordance with the provisions of Section 10 (5) of the Act.

20. It is agreed on all hands that the questions referred to this Court are to be answered with reference to the provisions of the Bihar Sales Tax Act, 1944.

21. In order to appreciate the points raised at the Bar it is necessary to quote the relevant portion of some of the definitions provided in the Act.

Section 2. In this Act, unless there is anything repugnant in the subject or context,

(c) "dealer" means any person who carries on the business of "selling or supplying goods in Bihar", whether for commission, remuneration or otherwise and includes any firm or a Hindu or a Hindu joint family, and any society, club or association which sells or supplies goods to its members;

(g) "sale" means, with all its grammatical variations and cognate expressions any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods involved in the execution of contract but does not include a mortgage, hypothecation, charge or pledge

Provided that a transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale.

Provided further that notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale of any goods which are actually in Bihar at the time when, in respect thereof, the contract of sale as defined in Section 4 of that Act is made, shall, whenever the said contract of sale is made, be deemed for the purpose of this Act to have taken place in Bihar,

(h) "sale price" means the amount payable to a dealer as valuable consideration for

(i) the "sale or supply of any goods", less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof, other than the cost of freight or delivery or the cost of installation when such cost is separately charged,

(1) "turnover" means the aggregate of the amounts of sale prices received and receivable by a dealer in respect of "sale or" supply of goods" or carrying out of any contract, effected or made during a given period".

22. In view of the above quoted provisions of the Act the learned counsel for the assessee did not press that the Company was not a "dealer" within the meaning of Section 2 (c) of the Act. From the statement of the case also, it is clear that the Company has been selling and supplying goods worth lacs in Bihar and as such the first question must be answered in the affirmative.

23. In order to formulate an answer to the second question it is necessary to refer to the relevant portion of Section 4 (1) of the Act which runs thus:

"4(1) Subject to the provisions of sections 5 and 6 and with effect from such date as the Provincial Government may, by notification in the official Gazette, appoint, being not earlier than thirty days after the date of the said notification,

every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeding Rs. 5,000 shall be liable to pay tax under this Act on sales effected after the date so notified:"

Learned counsel for the Company urged that in order to attract the provisions of Section 4 (1) of the Act it must be established that the sale had taken place in the province of Bihar. According to him, as soon as the Company had set apart the articles for which orders had been placed by the District Board and the Municipality, the sale will be deemed to have been completed. He submitted that the sale will be deemed to have taken place at Panihati in Bengal where the factory of the assessee is situated and where the consignment was delivered to the railway Company. In this connection he referred to Section 23, Sale of Goods Act, 1930 which runs thus:

"(1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally "appropriated to the contract, either by the seller with the assent of the buyer" or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract."

In support of his contention, Mr. Dutt also relied on the decisions in the cases of -- "Grainger & Son v. William Lane Gough" (1896) AC 325 (M), --"The Badische Anilin and Soda Fabrik v. The Basle Chemical Works Bindschedler" (1898) AC 200 (N); -- Deo Raj and Another Vs. Munshi Ram and Another, -- Firm Amar Singh Dhumi Mal v. Sharaf-ud-din A. I. R. 1925 Lah 555 (P).

In my opinion, these cases have no application to the point under consideration. It is, however, not necessary for me to discuss them in detail here, because, on the admitted case of the assessee company itself, the second question also should be answered in the affirmative. It has been conceded by Mr. Dutt that according to Section 25, Sale of Goods Act, these articles will be deemed to have been sold in Bihar which had been despatched to various destinations in the Province of Bihar in the name of the Company itself as consignee and the price of which had been realised through V. P. P. or through the agency of Messrs. Lalji Sao and sons of Bhagalpur.

24. I agree with the learned counsel for the Department that it is not necessary for this Court to express any opinion regarding the sale of chemicals and medicines to the District Board and the Municipal Board of Bhagalpur alone, as the second question referred to this Court for answer is about any sale and not about a particular sale. No such distinction appears to have been made before the Sales Tax Officer, the Assistant Commissioner of Sales Tax or before the

Board of Revenue at the time of the hearing of the revision petition filed on behalf of the assessee. The order of the Assistant Commissioner of Sales Tax definitely mentioned the following grounds urged on behalf of the assessee for exemption from taxation under the Bihar Sales Tax Act, 1944:

"(1) It is not a dealer within the meaning of Section 2 (c) of the Bihar Sales Tax Act 1944.

(2) That the sales invariably took place at Calcutta and the Company ceased to be the owner of the goods after the despatch at Calcutta.

(3) That the payments were always received at Calcutta.

(4) That the "sales were never" completed in Bihar.

(5) That the "sales by the company were not a "sale" within the meaning of Section 2(g) of the Act."

From ground Nos. 4 and 5 quoted above, it is quite clear that according to the contention of the assessee all sales had taken place in Bengal and none of them had taken place in Bihar to attract the operation of the Bihar Sales Tax Act. Before the Commissioner of Commercial Taxes also, the same position was taken by the assessee. The relevant portion of the order of the Commissioner of Commercial Taxes runs thus:

"The main points taken before me were, (1) that Messrs. Bengal Chemical and Pharmaceutical Works Ltd. are not "dealers" as defined in the Sales Tax Act; (2) that "the sales for which tax has been imposed in this case were effected in Calcutta" and therefore not liable to assessment in Bhagalpur (3) that in similar cases of import of medicines, drugs, etc. by other firms functioning outside Bihar no tax is assessed."

Similar position appears to have been taken by the assessee before the Member of the Board of Revenue, Bihar, also as appears from the following portion of the resolution of the Board: "In this revision application in a sales tax case the main contentions of the petitioners are:

(1) That Messrs. Bengal Chemical & Pharmaceutical Works Ltd. are not "dealers" as defined in the Sales Tax Act, and

(2) That "the sales for which tax has been assessed in this case were effected in Calcutta", and as such were not liable to assessment in Bhagalpur."

25. It appears that, for the first time, in their application u/s 25 (1), Bihar Sales Tax Act, 1947, the assessee introduced the following point as point no. 4:

"Can the transaction of the assessee with the Bhagalpur Municipality and the Bhagalpur District Board be termed to be a sale which has taken place in Bihar?"

The Member of the Board of Revenue in dealing with this application observed as follows: "The petitions originally raised 9 questions to be answered which have

subsequently been summarised into 2 after hearing, namely, (1) whether on the facts & in the circumstances, the assessee is a dealer within the meaning of Section 2(c), Bihar Sales Tax Act; and (2) whether on the facts and in the circumstances of the case "there was any sale by the assessee in Bihar" within the meaning of Section 2 (g), Bihar Sales Tax Act."

Thus I am of opinion that the assessee is not entitled to ask us to give any answer in respect of sales or supplies to the District Board and the Municipal Board of Bhagalpur alone as distinct from sales and supplies to other customers within the Province of Bihar. In my opinion, this question does not arise out of the relevant order as required by Section 21 CD, Bihar Sales Tax Act, 1944 and Section 25 (1), Bihar Sales Tax Act, 1947. As was held in -- Tobacco Manufacturers (India) Ltd Vs. The State, , the function of this Court is merely consultative or advisory with reference to the question submitted to it for answer. We are not required to express any opinion on matters not covered by the questions and not arising out of the order. The jurisdiction exercised by this Court under the Bihar Sales Tax Act is similar to that exercised u/s 66, Income Tax Act. In -- AIR 1940 158 (Privy Council) their Lordships of the Judicial Committee while defining the function of a High Court u/s 66 of the Income Tax Act observed: "In these circumstances their Lordships do not think it would be right to depart from the well established practice of the Board to refuse to decide a question which is purely academic. The function of the High Court in cases referred to it u/s 66 of the Act is advisory only, and is confined to considering and answering the actual question referred to it".

26. In --- In Re: Chhaturam Horilram Ltd., Ramaswami, J. with whom Sarjoo Prosad, J. had agreed observed as follows:

"On behalf of the assessee, Mr. Baldeva Sahay addressed the argument that there was no evidence on which the Tribunal could have held that the cash credits were secret profits of the assessee. But this question has not been formulated by the Appellate Tribunal and no statement of the case has been made thereon. It is therefore not open for the High Court to examine this question in this case. It is of importance to state that the jurisdiction with which the High Court is invested under the Income Tax Act is of an exceptional nature and in hearing the reference the High Court has seisin only of such question of law as has been duly raised before the Appellate Tribunal and upon which there is statement of the case."

The assessee cannot at this stage ask us to raise fresh questions and ask for a statement of the case on that question, because that right of the assessee is barred by limitation.

27. With all respect to my learned brother, I am afraid I am not in a position to give my assent to the answer proposed by him to the second question. I would therefore answer both the questions in the affirmative.

Das, J.

.28. This case has come to me on a difference of opinion between two of my learned brothers, Ramaswami and Rai, JJ. The facts of the case are succinctly stated in the judgment of Ramaswami, J. and I do not think that it is necessary that I should restate the facts in detail. I shall content myself with stating such of the facts as are necessary for the determination of the points which have been canvassed before me by learned Counsel for the parties.

29. The assessee company was assessed to sales tax for eight quarters commencing from 1-10-1944 and up to 30-9-1946. The assessment was made on 31-12-1946. An appeal was preferred to the Assistant Commissioner, who affirmed the decision of the Sales Tax Officer but remitted the penalty imposed. The assessee applied in revision before the Commissioner, but the application was dismissed. The assessee then moved the Board of Revenue but without success. Then, at the instance of the assessee, the Board of Revenue referred two questions of law for determination by the High Court under the provisions of Section 25, Bihar Sales Tax Act, 1947. The order of reference is dated 29-3-1951, and the questions which the Board of Revenue have referred are: (1) whether on the facts and in the circumstances, the assessee is a dealer within the meaning of Section 2(c), Bihar Sales Tax Act; and (2) whether on the facts and in the circumstances of the case, there was any sale by the assessee in Bihar within the meaning of Section 2(g), Bihar Sales Tax Act. It may be stated here that it is admitted by the parties that the questions have to be answered with reference to the provisions of the Bihar sales Tax Act, 1944, which was the law in force during the relevant period. With regard to question No. 1, there was no difference of opinion. Both my learned brothers answered that question in the affirmative. With regard to the second question, however, there was a difference of opinion. Ramaswami, J. proposed the following answer to the second question: "As regards the second question, I am of opinion that the sales of chemicals to the Bhagalpore Municipality and to Bhagalpore District Board for which tax has been assessed were effected in West Bengal and as such were not liable to be taxed in Bihar under the provisions of the Bihar Sales-tax Act of 1944. As regards the other transactions of sale, for which the railway receipts were sent to Messrs. Lalji Sao of Bhagalpore I am of opinion that they have been properly taxed as they constitute "sales" within the meaning of the Bihar Sales-tax Act of 1944". Rai, J., however, was of the view that no answer should be given with regard to particular sales, because the second question as framed did not relate to individual sales; nor was it necessary for the Court to give an answer with regard to individual sales, because in his opinion, such a question did not arise out of the order of assessment or the order passed on appeal and revision. He said:

"Thus, I am of opinion that the assessee is not entitled to ask us to give any answer in respect of sales and supplies to the District Board and the Municipal Board of Bhagalpur alone as distinct from sales and supplies to other customers within the Province of Bihar. In my opinion, this question does not arise out of the relevant order as required by Section 21(1), Bihar Sales Tax Act, 1944 and

Section 25(1) of the Bihar Sales Tax Act, 1947".

As some of the sales made by the assessee admittedly took place in Bihar, Rai J. was of the opinion that the second question should also be answered in the affirmative, without making any distinction in respect of the sales of Chemicals made by the assessee to the Municipal Board and the District Board of Bhagalpur. This, in effect is the difference of opinion between two of my learned brethren on which the case has come to me.

30. The first point to be determined is whether in answering the second question, it is necessary to consider the sales of chemicals made by the assessee to the District Board and the Municipal Board of Bhagalpur. Mr. Lal Narayan Sinha, appearing for the State of Bihar, has supported the view of Rai, J. and has contended that the second question should be answered not with reference to particular or individual sales but with reference to sales in general. He has emphasised, the words "any sale" occurring in the second question. He has argued that the assessee took up the attitude that he was not a dealer at all and was not liable to tax in Bihar; he did not raise the question of his liability on individual sales till a much later stage when he asked for a reference to be made to the High Court; therefore, the question of liability on individual sales does not arise out of the order of assessment or the order in appeal or revision therefrom. He has submitted that as the assessee did not submit any returns, the assessment was a "best of judgment" assessment u/s 10 (3), Bihar Sales Tax Act, 1944. According to Mr. Lal Narayan Sinha, the only contention which the assessee raised up to the stage of revision was whether he was assessable at all and not the question whether a particular assessment was arbitrary. He has further argued that as the assessee did not file any return or the necessary correspondence with the District Board and the Municipal Board of Bhagalpur, this Court has not the necessary facts to answer a question of law with regard to individual or particular sales.

31. These arguments appear to have been pressed before this Court when the case was heard by Ramaswami and Rai, JJ. My learned brother Ramaswami, J. has dealt with these arguments and, as I am in agreement with him. I propose to give the reasons for my view very briefly.

32. The order of assessment u/s 10, Bihar Sales Tax Act, 1944 itself shows that the assessee was assessed on the sale of chemicals such as alum, bleaching powder and other medicines to the Bhagalpur Municipality and the Bhagalpur District Board. Paragraph 3 of the assessment order states, in clear terms, that the assessee denied his liability to pay tax on the sales of the aforesaid chemicals to the Municipality and the District Board on the ground that the sales did not take place in Bihar. The Sales Tax Officer said that he had made enquiries in the Municipal office as also the District Board, and it appears from his order that he had seen the necessary correspondence on the subject. He proceeded on the footing, as he said in his order, that the sales were completed in Bihar. It is obvious, therefore, that the individual sales of chemicals to the Municipality and

the District Board of Bhagalpur were the very basis on which the assessment was made, and at the very earliest opportunity the assessee took the point that the sales did not take place in Bihar and he was not, therefore, liable to tax on those sales under the provisions of the Bihar Sales Tax Act, 1944. In this circumstance, it is impossible to accept the contention that the sales of chemicals to the District Board and the Municipality of Bhagalpur and the alleged liability of the assessee thereon, did not arise out of the assessment order. The order of the Assistant Commissioner of Sales Tax, Bhagalpur, as also the order of the Commissioner of Commercial Taxes, Bhagalpur, show that the assessee all along pressed the point that the sales to the Bhagalpur Municipality and the Bhagalpur District Board were sales which did not take place in Bihar. Before the Board of Revenue also, the same point was pressed, namely, that the sales for which tax was assessed were effected in Calcutta and as such the assessee was not liable to assessment in Bhagalpur. I must, therefore, overrule the contention that the question of individual or particular sales to the District Board and the Municipality of Bhagalpur did not arise out of the order of assessment or the order passed in appeal or revision therefrom.

33. As to the point that the necessary facts are not available for answering the question of law as to the sales of chemicals to the Bhagalpur Municipality and the District Board, this point has been dealt with effectively by Ramaswami, J., who rightly pointed out that the Sales Tax Officer himself inspected the records in the Municipal and the District Board Offices, as a result of which he came to certain findings embodied in the order of assessment. Those findings give the necessary facts for answering the question of law. It is not now open to the State of Bihar to say that the necessary correspondence has not been produced; the necessary correspondence and the material facts arising therefrom were investigated by the taxing authorities who have stated those facts very clearly, on which we have to determine the question of law.

34. I also agree with my learned brother Ramaswami, J. that even if the second question, as formulated by the Board of Revenue, is somewhat wide and requires modification, it is open to this Court to resettle and reframe the question to bring out the real point in issue between the assessee and the taxing authorities. In this case, the real point in issue between the assessee and the taxing authorities, was and has all along been, the question whether the sales of chemicals to the Municipality and the District Board of Bhagalpur were sales in Bihar on which the assessee was liable to pay sales tax. I do not see how the court can refuse to answer that question merely because the Board of Revenue has chosen to frame the second question in wider terms. I fully agree with Ramaswami, J. that the question of the liability of the assessee to tax on the sales to the Municipality and the District Board of Bhagalpur is covered by the second question, and this court should give an answer to it.

35. Mr. Lal Narayan Sinha has then contended that on such facts as have been found by the taxing authorities, the sales of chemicals to the District Board and

the Municipality of Bhagalpur were sales which took place in Bihar; therefore, the answer to the second question should be in the affirmative. Mr. Lal Narayan Sinha had developed his argument on this point in the following way. He has pointed out that Sales of Goods Act, 1930 does not deal with the "place of sale"; it deals with such subjects the formation of a contract of sale of goods, effects of such a contract, performance for the contract, rights of the unpaid seller against the goods &c. He has pointed out that Section 19 of the said Act states that where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred and unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Mr. Lal Narayan Sinha's argument is that if intention is the determining factor, then there are no sufficient materials on the record from which that intention can be inferred. He has further argued that the expression "sale" may be understood in the technical or legal sense as the transfer of the right of property in goods as defined in Sale of Goods Act; or, it may be understood in a popular sense meaning merely the transaction of sale, irrespective of when the property in the goods passes. His contention is that as a matter of construction, the word "sale" in Bihar sales Tax Act, 1944 should be taken to have been used in the popular sense; furthermore, he has argued that the business of supplying goods in Bihar will make the assessee a dealer within the meaning of Section 2(c), Bihar Sales Tax Act, 1944 and will make him liable to tax under the charging section, namely, S. 4 of the Act.

36. I proceed now to consider these arguments. As to Section 19, Sale of Goods Act, it is sufficient to state that the section itself says that unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 23 is relevant for our purpose. The following facts have been found in this case by the taxing authorities, namely, that the District Board and the Municipality of Bhagalpur ordered alum, bleaching powder and certain medicines from the assessee company; the orders were received in Calcutta; with the implied consent of the buyer, the assessee company unconditionally appropriated the goods, in a deliverable state, to the contract at their godown at Panihati and made them over to a common carrier for despatch to the Municipality and the District Board; the Municipality and the District Board received the goods and took delivery; the payments were made subsequently by means of cheques to the branch of the Imperial Bank at Bhagalpur. On these facts; it seems clear to me that u/s 23, Sale of Goods Act, the property in the goods passed at Panihati in Bengal. The assessee company delivered the goods to the common carrier for the purpose of transmission to the buyer and did not reserve the right of disposal; therefore, he would be deemed to have unconditionally appropriated the goods to the contract. The facts as found by the taxing authorities do not show that there was anything else in the

conduct of the parties which showed a contrary intention. The argument based on Section 19, Sale of Goods Act, 1930 is not, therefore, available to the State of Bihar.

37. On the question of construction, I should refer to the definition of the word "sale" in Section 2(g), Bihar Sales Tax Act, 1944. That definition itself shows that the Bihar Legislature, in their wisdom, defined "sale" to mean

"any transfer of property in goods for cash or deferred payment or other valuable consideration".

There is a proviso which merely gives an exception, and proves that sale primarily means a transfer of property in goods. Certain amendments were made subsequently in 1947, 1948 and thereafter. We are not, however, concerned with those amendments. Sale, according to the definition in the Act of 1944, means in effect a transfer of property in goods. The argument that the expression "sale" should be taken in the popular sense found favour with the Madras High Court in -- Poppatlal Shah, Partner of Indo-Malayan Trading Company Vs. State of Madras, . That case went up to the Supreme Court, and their Lordships reversed the decision of the Madras High Court. The decision of the Supreme Court has not yet been reported, but a copy of the judgment has been made available to me by learned counsel for the State of Bihar. The decision was given in -- Poppatlal Shah Vs. The State of Madras, . Their Lordships said:

"Unmistakably the stress is laid in this definition on the element of transfer of property in a sale and no other. The language gives no indication of the popular meaning of sale, in which, according to the High Court, the word was used."

For an identical reason, the argument that the word "sale" has been used in the popular sense in the Bihar Sales Tax Act, 1944 cannot be accepted.

38. Mr. Lal Narayan Sinha has then argued that on a proper construction of the provisions of the Bihar Sales Tax Act, 1944, the liability to pay a tax is not confined, under those provisions, to sales in Bihar. He has, particularly, referred to the definition of a "dealer" in Section 2(c), "sale-price" in Section 2(h), and the charging section, namely, Section 4 of the Act. His contention is that the scheme of the Bihar Sales Tax Act, 1944 is that even if a person carries on a business of supplying goods in Bihar, he is liable to be taxed.

39. It should be made clear at the very outset that there is no dispute that a Provincial Legislature can pass taxing legislation imposing taxes on transactions concluded outside the Province, provided that there is a sufficient and real territorial nexus between such transactions and the taxing Province. The question that I am considering here is not a question of the constitutional validity of such a legislation; the question I am considering is the much narrower question of construction, namely, what is the true scope and meaning of the provisions of the Bihar Sales Tax Act, 1944. The Act is entitled, "An Act to impose a Tax on the sale of goods in Bihar." The preamble states:

"Whereas it is necessary to make an addition to the revenues of Bihar, and for that purpose to impose a tax on the sale of goods in Bihar, etc."

The charging section Section 4, states, inter alia, that after the appointed date, every dealer whose gross turnover during the year exceeds a particular amount shall be liable to pay tax under the Act on sales effected after the date so notified. It is no doubt true that the definition of a "dealer" includes a person who carries on the business of supplying goods in Bihar, and the definition of the expression "sale-price" means the amount payable to a dealer as valuable consideration for, amongst, other things, supply of any goods in Bihar.

40. The question is whether the word "supplying" or "supply" should be interpreted "*noscitur a sociis*", that is, that meaning should be given to the word which it shares with the word "sale" occurring before it, on the principle laid down by Lord Bacon that "*copulatio verborum indicat acceptionem in eodem sensu*" the coupling of words together shows that they are to be understood in the same sense. I am in agreement with my learned brother Ramaswami, J. that the word "supply" or "supplying" should be interpreted in association with the word "sale". Assuming, but without deciding, that the Bihar Sales-Tax Act, 1944 also contemplated to bring within its purview such persons who carried on the business of supplying goods in Bihar on a commission basis, it seems to me that the present assessee cannot be brought under a category. On the facts found, he sold the goods to the Municipality and the District Board of Bhagalpur. So far as he is concerned, there was no question of supplying goods on a commission basis without selling them. If his sales did not take place in Bihar, he was not liable to tax under the provisions of the Bihar Sales Tax Act, 1944. That seems to me to be clear enough from the charging section, namely Section 4 of the Act. I may observe that their Lordships of the Supreme Court said in "*Poppatlal Shah*"'s case, (S)":

"It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself. The title and preamble, whatever their value might be as aids to the construction of a statute, undoubtedly throw light on the intent and design of the legislature and indicate the scope and purpose of the legislation itself. The expression "sale of goods" is a composite expression consisting of various ingredients or elements. Thus, there are the elements of a bargain or contract of sale, the payment or promise of payment of price, the delivery of goods and the actual passing of title, and each one of them is essential to a transaction of sale though the sale is not completed or concluded unless the purchaser becomes the owner of the property. The question is what element or elements have been accepted by the Madras Legislature as constituting a sale in the province upon which it is the object of the statute to levy tax."

I have already held, that the provisions of the Bihar Sales Tax Act, 1944 show that the emphasis is on the element of the transfer of property in goods for cash

or deferred payment or other valuable consideration; in other words, the provisions of the Bihar Sales Tax Act, 1944 imposed a tax on sales in Bihar, that is, the transfer of property in goods for cash or deferred payment or other valuable consideration in Bihar. That being the position, the assessee was not liable to tax on sales which were effected outside Bihar. The question whether he paid tax in Bengal or not is in my opinion, irrelevant. We must construe the provisions of the Bihar Sales Tax Act, 1944 as they stood during the relevant period, and on that construction the liability of the assessee must be determined.

41. For the reasons given above, I would answer the second question in exactly the same way as it has been answered by my learned brother Ramaswami, J.