

(2010) 09 MP CK 0012
In the Madhya Pradesh High Court
Case No : Writ Petition No. 9506 of 2003

Vikram Cement

APPELLANT

Vs

Commissioner of Commercial Tax and Others

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Income Tax Act, 1961 — Section 263

Madhya Pradesh General Sales Tax Act, 1958 — Section 17(3), 19(1), 38, 39(2), 43

Citation : (2010) ILR (MP) 2443 : (2011) 2 MPHT 283 : (2011) 1 MPLJ 610

Hon'ble Judges : S.S. Kemkar, J; S.C. Sharma, J; Prakash Shrivastava, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.

This petition under Articles 226/227 of the Constitution of India has been filed against the order of re-assessment dated 26-12-1998 (Annexure P-9) passed by the Assistant Commissioner, Commercial Tax, Ujjain, the appellate order dated 9-9-2002 (Annexure P-11) passed by the Appellate Deputy Commissioner, Commercial Tax, Ujjain and the order dated 2-7-2003 (Annexure P-13) passed in revision by the Additional Commissioner of Commercial Tax, Indore.

Briefly stated the Petitioner a registered dealer under the M.P. General Sales Tax Act, 1958 (for short the Sales Tax Act) and under the M.P. Vanijyik Kar Adhiniyam, 1994 (for short Vanijyik Kar Adhiniyam) engaged in the business of manufacture and sale of cement was assessed to the tax for the period of 1-4-1987 to 31-3-1988 vide order dated 19-3-1991 passed by the fourth Respondent in Assessment Case No. 24/1988. On assessment additional demand of Rs. 41.062/- was raised against the Petitioner. The Petitioner being a new industrial unit was granted the facility of deferment of payment of tax for the period from 22-6-1985 to 21-6-1988 under the Notification dated 1-9-1983 for a period of 10 years, was allowed the facility to purchase all classes of goods

specified in Schedule II of the Sales Tax Act from other registered dealer for use of raw material or incidental goods in the manufacturing of other goods for sale without payment of tax. In the circumstances, while making assessment the fourth Respondent did not levy purchase tax u/s 7(1) of the Sales Tax Act on the goods purchased by the Petitioner from other registered dealers without payment of tax in view of the Notification dated 8-5-1984. However, the fourth Respondent levied tax on some part of the sales of cement by denying the Petitioner opportunity to produce the declarations in Form B-2 and appendix declarations.

Feeling aggrieved by the part of the said order passed by the fourth Respondent Assistant Commissioner in not granting the Petitioner time to produce the declarations in Form B-2 and appendix declarations by procuring it from the buyers as desired by its letter dated 11-3-1991 and levying of tax for the same, the Petitioner filed an appeal (Annexure P-5) u/s 38 of the Sales Tax Act. The Appellate Authority third Respondent vide order dated 20-5-1992 (Annexure P-6) allowed the Petitioner's appeal, set aside the order of the assessing authority and remanded the matter to the assessing authority the fourth Respondent directing him to provide opportunity to the Petitioner to submit declarations in Form B-2 and appendix declarations and make appropriate assessment of the tax. In pursuance to the aforesaid appellate order (Annexure P-6) the assessing authority permitted the Petitioner to submit declarations in Form B-2 and appendix declarations and thereafter passed the order dated 26-10-1994 (Annexure P-7).

When the matter stood thus, the assessing authority issued a notice (Annexure P-8) u/s 19(1) of the Sales Tax Act to the Petitioner in Form No. 16 proposing to levy sales tax @ 12% on cement amounting to Rs. 20,00,000/-. In addition it was also proposed to levy purchase tax u/s 7(1) of the Sales tax Act on the purchase of coal amounting to Rs. 3,31,63,065/- and on High Speed Diesel (Diesel Oil) amounting to Rs. 3,05,23,132/- which was purchased by the Petitioner from the registered dealer of Madhya Pradesh without payment of tax taking the benefit of Notification dated 8-5-1984. On receipt of the said notice the Petitioner contended before the assessing authority that no purchase tax u/s 7(1) of the Sales Tax Act was leviable and that the proceedings of re-assessment initiated u/s 19(1) of the Sales Tax Act were barred by limitation of five calendar years from the date of original order of assessment which was passed on 19-3-1991. However, the Petitioner's contentions were not accepted by the assessing authority and the order of reassessment was passed on 26-12-1998 (Annexure P-9). In the re-assessment order purchase tax u/s 7(1) of the Sales Tax Act was levied on purchase of coal and High Speed Diesel. As regards levying of sale tax of cement, it was found that the said value of the cement was not sold but was transferred to Grasim Industries the owner of the Petitioner's unit and there being no sale, no tax was leviable on it.

The Petitioner being dissatisfied with the order of re-assessment (Annexure P-9)

preferred an appeal before the third Respondent Appellate Deputy Commissioner of Commercial Tax, Ujjain. The main contention of the Petitioner before the Appellate Authority was that the proceedings of re-assessment initiated by the assessing authority invoking powers u/s 19(1) of the Sales Tax Act were barred by limitation of five calender years from the date of order of assessment dated 19-3-1991. However, the Appellate Authority did not agree with the Petitioner's contention. He held that in view of the fresh order of assessment passed on 26-10-1994 the period of limitation would run from the date of fresh assessment order dated 26-10-1994. Accordingly, the Petitioner's appeal was dismissed vide order dated 9-9-2002 (Annexure P-11). The revision filed by the Petitioner before the first Respondent Commissioner of Commercial Tax was also dismissed vide order dated 2-7-2003 (Annexure P-13). Aggrieved the Petitioner has filed this petition.

The question raised and involved in this writ petition is as to whether on the facts and circumstances of the case, the period of limitation for invoking powers u/s 19(1) of the Sales Tax Act would run from the date of fresh assessment after the order of remand passed by the Appellate Authority or from the date of original order of assessment. On 28-10-2009 when this writ petition was listed for hearing a Division Bench after considering the submissions made by the learned Counsel for the parties, the nature of controversy and the judgment delivered by Division Bench of this Court in the case of Commissioner of Sales Tax M.P. v. Sanawad Co-operative Society (1984) 55 STC 54 in which it was held that there is a conflict in two Division Bench judgments of this Court in the matters of Commissioner of Sales Tax v. Jammatlal Prahladlalrai (1983) 54 STC 392 and Commissioner of Sales Tax v. Himmatlal and Company (1981) 47 STC 415 took a view that the matter deserves to be considered by a Larger Bench. Accordingly, the matter was placed before the Hon'ble Chief Justice for constituting an appropriate Bench. On the basis of the orders passed by Hon'ble the Chief Justice this Full Bench has been constituted.

Heard Shri G. M. Chaphekar, learned Senior counsel for the Petitioner and Shri L. N. Soni. learned Additional Advocate General for the Respondents and perused the record.

Shri G. M. Chaphekar, learned Senior counsel for the Petitioner argued that the assessing authority, the Appellate Authority and the revisional authority have committed error in holding that the proceedings of re-assessment initiated by the fourth Respondent u/s 19(1) of the Sales Tax Act were not barred by limitation since they were initiated within the period of five calender years from the date of order of fresh assessment passed on 26-10-1994 in terms of the order of remand. His contention was that the appeal which was filed against the original order of assessment passed on 19-3-1991 was on a limited point and the case was remanded by the Appellate Authority vide order dated 20-5-1992 (Annexure P-6) only to the extent of the ground on which the appeal was filed. According to him as per the "doctrine of merger" the only point which merged in the order of

appeal dated 20-5-1992 was in respect of opportunity to be given to the Petitioner to file declarations in Form B and appendix declarations and, therefore, all other points emanating from the original order of assessment passed on 19-3-1991 had become final and did not merge in the appellate order. He also urged that from the date of original order of assessment dated 19-3-1991 the period of limitation had already expired on 31-12-1996 in the circumstances, the proceedings of re-assessment initiated on 23-9-1997 were clearly barred by limitation. In support of his contentions learned Senior counsel for the Petitioner placed reliance on the Division Bench judgment of this Court in the case of Commissioner of Sales Tax v. Jammatlal (supra). The Full Bench judgment of this Court in the case of Commissioner of Income Tax, Bhopal v. R.R. Banwarilal 1982 MPLJ 296 , yet another Full Bench judgment of this Court in the case of Commissioner of Income Tax Vs. Mandsaur Electric Supply Co. Ltd., Division Bench judgment of Andhra Pradesh High Court in the case of State of A.P. v. Sri Rama Laxmi Satyanarayana Rice Mill (1975) 35 SCC 601 (AP), Division Bench judgment of this Court in the case of Commissioner of Commercial Tax M.P. v. Sanawad Co-operative Society (supra). Division Bench judgment of this Court in the case of Commissioner of Sales Tax, M.P. v. Himmatlal and Company (supra), and on a judgment of the Supreme Court in the case of State of Madras v. Madurai Mills Company Limited 1967(19) SCC 144.

Shri G. M. Chaphekar, learned Senior counsel also submitted that though there is a conflict in the two Division Bench judgment of this Court in the case of Commissioner of Sales Tax v. Jammatlal Prahlad Rai and Commissioner of Sales Tax v. Himmatlal and company but the facts and the questions involved in both the cases are different from the present case. On addressing the Court about the conflict in the views he supported the view taken by the Division Bench in the case of Commissioner of Sales Tax v. Jammatlal (supra). He argued that in the case of Commissioner of Sales Tax v. Himmatlal Company the Division Bench overlooked the provisions contained in Section 43(1) of the Sales Tax Act which empowers to the Commissioner or the Appellate Authority by providing that in the course of any proceedings under the Act, on being satisfied that dealer has concealed his turnover or the aggregate of purchase price in respect of any goods or has furnished inaccurate particulars for such sales or purchases as the case may be, or has furnished a false return, the Commissioner or the Appellate Authority, as the case may be after giving a dealer a reasonable opportunity of being heard, direct the dealer to pay penalty in addition to the tax payable by him. In the circumstances, according to him the judgment passed by the Division Bench of this Court in the case of Himmatlal and Company has not taken a correct view. He supported the view taken by the Division Bench in the case of Commissioner of Sales Tax v. Jammatlal Prahlad Rai which is in conformity with the provisions of Section 43(1) of the Sales Tax Act in which it has been held that the Appellate Authority, while hearing an appeal and finding that the circumstances of the case showed that the dealer was guilty of concealment of turnover, could take proceedings for imposition of penalty. In failing to take

action u/s 43 of the Act and in not imposing penalty while disposing of the appeal, the Appellate Authority passed an order which was clearly prejudicial to the revenue. The Commissioner was therefore, entitled u/s 39(2) of the Act to revise that order. As the order imposing penalty could have been passed by the Appellate Authority, the limitation for taking proceedings u/s 39(2) of the Act for revising the order of the Appellate Authority was three years from the date of the appellate order, and in the instant case, counting the limitation from the date of the order of the Appellate Authority, the revisional proceedings were within limitation.

On the other hand, Shri L. N. Soni, learned Additional Advocate General placing reliance on the judgment of the Supreme Court in the case of Deputy Commissioner of Commercial Tax v. H.R. Sriramulu 1977 39 STC 177 argued that while allowing the Petitioner's appeal the appellate Deputy Commissioner vide order dated 20-5-1992 (Annexure P-6) had set aside the assessment order dated 19-3-1991 and remanded the matter to the assessing authority the fourth Respondent, therefore, the order passed, by the assessing authority after remand on 26-10-1994 (Annexure P-7) is the order of fresh assessment, and as such the period of limitation provided u/s 19(1) of the Sales Tax Act would run from the fresh assessment order dated 26-10-1994.

We have considered the contentions raised by learned Counsel for the parties and have gone through the record and the judgments relied upon by them. Before dealing with the facts of the present case we would deem it proper to consider and decide as to which of the two conflicting views expressed by two Division Bench of this Court in the case of Commissioner of Sales Tax v. Jammatlal Prahlad Rai and in the case of Commissioner of Sales Tax v. Himmatlal Company is correct.

In the case of Commissioner of Sales Tax v. Himmatlal and Co. (supra) the Division Bench was considering the question that when u/s 43(1) of the Sales Tax Act penalty has not been imposed either by the assessing authority or by the first Appellate Authority, the time limit for initiating the proceedings u/s 39(2) of the Sales Tax Act will be taken from the date of the order of the first Appellate Authority or from the date of the order of the assessing authority. From the facts narrated it is clear that in the said case the order of assessment passed by the assessing authority was confirmed in appeal by the Appellate Authority, however with a slight modification in the penalty u/s 17(3) of the Sales Tax Act. It was held by the Division Bench that in the assessment order no penalty u/s 43(1) of the Sales Tax Act was imposed on the Assessee on the ground of alleged concealment of its turnover. In the assessee's appeal before the Appellate Assistant Commissioner only two questions had arisen for consideration; one was about the estimate of the turnover and another about the penalty for late filing of the return u/s 17(3) of the Sales Tax Act. The Division Bench held that the Appellate Assistant Commissioner was not called upon to consider the question of penalty u/s 43(1) of the Sales Tax Act and, therefore, the default if any was in

the assessment order itself. Having held so the Division Bench held that the order of assessing authority did not merge with that of the Appellate Authority so far as the question of penalty u/s 43(1) of the Act was concerned because at no stage this question had arisen before the Appellate Authority.

In the case of Commissioner of Sales Tax M.P. v. Jammatlal Prahladrail (supra) the assessment order was passed on 7-6-1965. The Assessing authority did not take any proceedings for imposing penalty u/s 43 of the Sales Tax Act. In the appeal preferred by the Assessee which was decided by the Additional Appellate Assistant Commissioner on 9-3-1966 the Appellate Authority also did not take any action u/s 43. In the circumstances, the Commissioner took the matter in suo motu revision in exercise of its powers u/s 39(2) of the Sales Tax Act. He was of the view that the order of the Appellate Authority was erroneous and prejudicial to the interest of the revenue as no action was taken for imposition of penalty u/s 43. After issuing the notice to the dealer on 7-3-1969 the Additional Commissioner imposed upon him the penalty of Rs. 1,000/- u/s 43(1) in the revision. The appeal preferred by the dealer was allowed by the Sales Tax Appellate Tribunal holding that the revision was barred by limitation. The Division Bench after considering the proviso to Section 39(2) providing limitation of 3 years to initiate proceedings from the date of order sought to be revised held the Tribunal was not correct in holding the proceedings u/s 39(2) to be barred by limitation. The Division Bench held that the Tribunal has failed to take notice of Section 43 by which the Appellate Authority is also empowered to take proceedings for imposition of penalty as Section 43 opens with the words "if the Commissioner or the Appellate Authority in the course of any proceedings under this Act is satisfied." It further held that the appeal is certainly any proceedings within the meaning of Section 43 and the Appellate Authority while hearing an appeal and finding that the circumstances of the case show that the dealer was guilty of concealment of turnover can take proceedings, for imposition of penalty. In failing to take action u/s 43 and in not imposing penalty while disposing the appeal the Appellate Authority passed an order which was clearly prejudicial to the interest of the revenue and, therefore, revisional proceedings were within limitation.

Having regard to the aforesaid we find that the view taken by the Division Bench in the case of Commissioner of Sales Tax M.P. v. Jammatlal Prahladrail to be in consonance with the provisions contained in Section 43 of the Sales Tax Act whereas, we find that the Division Bench in the case Commissioner of Sales Tax M.P. v. Himmatlal has overlooked the opening words of Section 43 which empowers the Appellate Authority also to take proceedings for imposition of penalty and in the circumstances if the Appellate Authority while hearing an appeal is satisfied that the circumstances of the case show that the dealer was guilty of concealment of turnover it can take proceedings for imposition of penalty and in not doing so while disposing of the appeal if the Appellate Authority had passed an order the same can be clearly said to be prejudicial to the interest of the revenue. Therefore, the view taken in the case of

Commissioner of Sales Tax, M.P. v. Himmatlal cannot be approved, as a result we hold that in the case of Commissioner of Sales Tax, M.P. v. Himmatlal the Division Bench has not laid down the law correctly whereas, the judgment rendered in the case of Commissioner of Sales Tax, M.P. v. Jammatal Pahaladrai lays down correct law and accordingly we approve the view taken by the Division Bench in the case of Commissioner of Sales Tax v. Jammatal Pahaladrai.

Now in order to decide the controversy involved in this petition as to whether the period of limitation for initiating the proceedings for re-assessment u/s 19(1) of the Sales Tax Act would start from the original order of assessment or from the order of fresh assessment passed after the order of remand we would first deal with the judgments on which learned Counsel for the parties have relied. In the case of State of Madras v. Madurai Mills Co. Ltd. (supra) the Supreme Court after considering the various judgments including the judgment in the case of Commissioner of Income Tax, Bombay Vs. Amritlal Bhogilal and Co., and in the case of The State of Uttar Pradesh Vs. Mohammad Nooh, held that the "doctrine of merger" is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior tribunal and the other by a superior tribunal, passed in an appeal or revision, there is a fusion or merger of two orders irrespective of the subject-matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute. It was held that the application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of statutory provisions conferring the appellate or revisional jurisdiction. Noticing the facts of the case the Supreme Court further held that it cannot be said that there was merger of the order of assessment made by the Deputy Commercial Tax Officer dated 28-11-1952 with the order of Deputy Commissioner of Commercial Tax dated 21-8-1954 because the question of exemption on the value of yarn purchased from outside the State of Madras was not the subject-matter of revision before the Deputy Commissioner of Commercial Taxes. The only point that was urged before the Deputy Commissioner was that sum of Rs. 6,57,971-4-9 collected by the Respondent by way of tax should not be included in the taxable turnover. This was the only point raised before the Deputy Commissioner and was rejected by him in revision proceedings. On the Contrary the question before the Board of Revenue was whether the Deputy Commercial Tax Officer, Madurai was right in excluding from the net taxable turnover of the Respondent the sum of Rs. 77,4,62,706-1-6. Having noticed the facts as stated the Supreme Court has held that there was no merger and the doctrine of merger cannot be invoked in the circumstances of the case.

In the case of Commissioner of Income Tax, M.P.-II Bhopal v. R.R. Banwarilal (supra) the Full Bench of this Court which was constituted on being suggested at the time of hearing the matter before the Division Bench that the two Division Bench of this Court in Commissioner of Income Tax Vs. Narpat Singh Malkhan Singh, and Alok Paper Industries, Indore v. C.I.T. M.C.C. No. 142/1978 decided on 14-1-1981 appear to have taken contrary views, after considering the law laid

down by the Supreme Court in the case of State of Madras v. Madurai Mills Co. Ltd. (supra) on the doctrine of merger noticed that there is no difference in the two Division Bench decision on the meaning and scope of the doctrine of merger. While answering the question the Full Bench applying the law laid down by the Supreme Court in the case of State of Madras v. Madurai Mills held that the Appellate Tribunal was not correct in law in holding that the entire assessment orders of Income Tax Officer had merged in the order of Appellate Assistant Commissioner, irrespective of the points urged by the parties or decided by the Appellate Assistant Commissioner and, therefore, the Commissioner of Income Tax was not competent to revise those orders u/s 263 of the Income Tax Act, even in respect of the points not considered and decided by the Appellate Assistant Commissioner. In the case of Commissioner of Sales Tax, M.P. v. Sanawad Co-operative Society (supra) the Division Bench of this Court has held that the Appellate Authority under the Income Tax Act as well as the Sales Tax Act has jurisdiction to consider and decide even that part of the order of the assessing authority against which no appeal has been preferred. But when the Appellate Authority does not touch any part of the order of the assessing authority, the order of the assessing authority to that extent cannot be held to be merged in the order of the Appellate Authority. (Emphasis supplied).

In the case of Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu on which reliance has been placed by the learned Additional Advocate General, the Supreme Court was considering the period of limitation for exercising the powers of revision u/s 21(2) of the Mysore Sales Tax Act. It held that the order passed u/s 12A would be the starting point and not the initial assessment order. It was observed by the Supreme Court that once an assessment is re-opened the initial order of assessment ceases to be operative. It has been further held that the effect of re-opening the assessment is to set aside the initial order of assessment and to substitute in its place the order made on re-assessment.

For correct application of law laid down by the Supreme Court on the "doctrine of merger" we have gone through the original order of assessment, the memo of appeal, the order of remand and the order of assessment passed after the remand. We find that against the original order of assessment passed on 19-3-1991 (Annexure P-2) deciding various aspects of tax liability against the Petitioner the appeal was preferred by the Petitioner on a limited ground:

The learned Assistant Commissioner has erred in not granting time period as desired by us vide our letter dated 11-3-1991 to procure the Forms B-2 and appendix declaration from our buyers.

Before the Appellate Authority the Petitioner raised the aforesaid sole ground in regard to its grievance that the Assessing authority has not granted it time to procure and submit Forms B-2 and appendix declarations from buyers. The Appellate Deputy Commissioner considering the very sole ground raised and urged by the Petitioner remanded the matter to the Assessing authority by setting aside the assessment order with a direction to the Assessing authority to

grant the Petitioner opportunity to submit Form B and appendix declarations and pass appropriate assessment order. Thereafter, in compliance of the order of remand passed on 20-5-1992 (Annexure P-6) the Assessing authority passed a fresh order dated 26-10-1994 (Annexure P-7) by maintaining its earlier order in regard to the other points except in regard to the directions contained in the remand order pertaining to Form B and appendix declarations.

Having regard to the original assessment order the aforesaid limited challenge to the original assessment order in the appeal, the order of the Appellate Authority and the order of assessment passed after the remand in our view the Respondents have committed error in holding that the original order of assessment passed on 19-3-1991 was completely set aside. In fact from the perusal of the memo of appeal and the order of remand passed on 20-5-1992 it is clear that the order of remand was passed only in respect of the prayer of the Petitioner to afford opportunity to submit Form B and appendix declarations by directing the Assessing Authority to afford an appropriate opportunity to the Petitioner to submit Form B and appendix declarations. The Appellate Authority did not touch other parts of the order of the assessing authority. Thus in our considered view, the only point merged in the remand order of assessment was in respect of the said Form B and appendix declarations filed by the Petitioner in consequence of the directions given by the Appellate Authority and not the whole original order of assessment.

The judgment of the Supreme Court in the case of Deputy Commissioner of Commercial Taxes, Mysore v. H.R. Sri Ramulu relied upon by the Respondents is based on different footings. In the said case the dealer was first assessed to tax under Mysore Sales Tax Act, 1957. On initiation of proceedings u/s 12-A of the said Act on a view being taken by the Commercial Tax Officer that some items of turnover had escape assessment re-assessment being made u/s 12-A. The Deputy Commissioner of Commercial Tax took up the case in revision on own motion in exercise of its powers u/s 21(2) of the Mysore Sales Tax Act and passed orders on revision within four years from the date of order of re-assessment. The question for consideration before the Supreme Court was whether the period of four years for initiating the proceedings of revision would be counted from the date of first assessment order or from the date of re-assessment order. While considering the said question the Supreme Court held that when an order of re-assessment is made, the original order of assessment merges in the order of re-assessment. Whereas, as would be clear from the facts of the present case the remand order of assessment was not u/s 19(1) but was passed in terms of the order of Appellate Authority in order to give opportunity to the Petitioner to file Form B and appendix declaration. In the circumstances, the reliance of the Respondents on the judgment of the Supreme Court in the case of Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu is misplaced.

Applying the doctrine of merger, we find that the Petitioner's appeal against the original order of assessment was on limited point about not giving of opportunity

to furnish Form-B, appendix declarations by the assessing authority, While deciding the appeal the Appellate Authority without touching any other ground though set aside the order of assessment but the remand was confined to give opportunity to the Petitioner to file Form B and appendix declarations and to pass a fresh appropriate assessment order. In compliance of the order of remand the assessing authority maintained its earlier order except to the extent ordered by the Appellate Authority in the order of remand. Therefore, in our considered view the entire assessment order was not merged in the assessment order which was passed after remand. In the circumstances the initiation of the proceedings u/s 19(1) for re-opening of the alleged escaped assessment of the items regarding which no appeal was filed by the Petitioner could not have been ordered being barred by limitation.

In view of the aforesaid finding, the petition deserves to be and is hereby allowed. The entire proceedings of re-assessment initiated on 23-9-1997 u/s 19(1) of the Sales Tax Act being barred by limitation are quashed. As a consequence, the orders Annexures P-9, P-11 and P-13 are also quashed. No orders as to costs.