**BOMBAY HIGH COURT**

Commissioner of Sales Tax

Vs

Barium Chemicals Ltd

(D Madon and S V Manohar, JJ.)

22.01.1981

**JUDGMENT**

**D Madon, J.**

1. Four questions have been referred to this Court by the Maharashtra Sales Tax Tribunal under section 9(2) of the Central Sales Tax Act, 1956, (hereinafter referred to as "the Act"), read with section 61(1) of the Bombay Sales Tax Act, 1959. We will advert to these questions later, but at the present it is sufficient to say that the real controversy between the parties is whether the same transactions of inter-State sales which have been assessed to tax and the tax thereon collected by the Central Government through the agency of one State can subsequently be assessed through the agency of another State.

2. The facts which have given rise to this controversy are that the respondents are a public limited company. Their main place of business is situate in district Khammam in the State of Andhra Pradesh. It has not been found that they had at any material time a place of business in Bombay or at any other place in the State of Maharashtra. The respondents were registered as a dealer under the Act. They also had got themselves registered under the Bombay Sales Tax Act, 1959, as a non-resident dealer with effect from 4th February, 1963. In respect of the period 3rd May, 1963, to 9th November, 1964, the respondents were assessed to Central sales tax by the taxing authorities under the local sales tax law in force in the State of Andhra Pradesh and had paid the tax to the Central Government in the said State.

3. By his order dated 22nd December, 1968, the Sales Tax Officer, Non-Resident Circle, Bombay, again assessed the respondents to Central sales tax on the very same transactions of inter-State sales which had been assessed and in respect of which the respondents had paid tax in the State of Andhra Pradesh. The Sales Tax Officer held that the movement of goods, which were the subject-matter of these transactions, had commenced in the State of Maharashtra and

therefore the State of Maharashtra was the appropriate State to assess and collect the amount of tax on these transactions of inter-State sales. He further held that the first of the transactions of inter-State sales effected by the respondents was on 3rd May, 1963, to Bharat Electronics Limited of Bangalore and therefore the respondents had become liable to get themselves registered under the Act. In addition, therefore, to levying Central sales tax the said Sales Tax Officer also imposed a penalty of Rs. 500 upon the respondents. The respondents went in appeal to the Assistant Commissioner of Sales Tax against the said order of assessment and levy of penalty. Their appeal in so far as it was against the order of assessment was dismissed, but in so far as it was against the levy of penalty it succeeded. The respondents then went in second appeal to the Tribunal. The Tribunal held that the Central Government had recovered tax on the transactions in question through its agent, namely, the State of Andhra Pradesh, and therefore the State of Maharashtra acting as an agent of the Central Government could not again recover tax in respect of the same transaction.

4. At the instance of the Commissioner of Sales Tax the Tribunal has referred to this Court the following four questions :

> "(1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in setting aside the assessment under the Central Sales Tax Act, 1956, on the ground that the Central Government had already collected Central sales tax on the respondents' inter-State sales through its agent, namely, the State of Andhra Pradesh, and that the Maharashtra State acting as an agent of the Central Government could not again recover the tax in respect of the same transactions of sale ?
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> (2) Whether the Tribunal erred in ignoring the clear mandatory provision of section 9(1) of the Central Sales Tax Act, 1956, as amended by the Central Sales Tax (Amendment) Act, 1969, which empowers the Government of India to levy and collect the Central sales tax only in the State from which the movement of the goods commenced, which was the State of Maharashtra in the respondents' case ?
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> (3) Whether the Tribunal was correct in law in setting aside the order of assessment made under the Central Sales Tax Act, 1956, by the Sales Tax Officer, Non-Resident Circle, Bombay, merely on the ground that the Andhra Pradesh sales tax authorities had already assessed and collected the Central sales tax on the very transactions of inter-State sales, though it was not disputed by the respondents that the Maharashtra State was the appropriate State in respect of their inter-State sales in question, from which State the movement of the goods had commenced as a result of the respondents' sales in question ?

(4) Whether the Tribunal was correct in law in holding that the State of Andhra Pradesh was an agent of the Central Government in respect of the inter-State sales of the respondents, when admittedly that State was not the appropriate State for the purpose of assessment and collection of Central sales tax in respect of the respondents' inter-State sales in question, as the movement of the goods had not commenced from that State but from the State of Maharashtra ?"

5. In our opinion, it was unnecessary for the Tribunal to have framed and referred all the above four questions. Question No. (1) alone would have served the purpose as it clearly brings out and pinpoints the actual point which arises in this case for determination. The other three questions are argumentative and repetitious. Further, questions Nos. (3) and (4) in the way they assume facts are not correct. There was no question of the respondents not disputing that the Maharashtra State was the appropriate State to collect the tax. It had throughout been contended by the respondents that the tax had been collected by the State of Andhra Pradesh and the State of Maharashtra had no right or jurisdiction to collect the tax, irrespective of what might be the position in law. Such a contention does not involve or imply that the respondents had either admitted that the State of Maharashtra was the appropriate State for collecting the tax or that the respondents had not disputed its right to collect the tax. For the above reasons, we are deleting questions Nos. (2) to (4) as being unnecessary.

6. At the hearing of this reference Mr. Jetly, the learned counsel for the applicant, advanced the following three submissions :

(1) The State of Maharashtra was the State from where the movement of goods had commenced and therefore the State of Maharashtra was the only State which could levy and collect the tax under the Act.

(2) The fact that a wrong State had collected the tax on a transaction would not affect the right of the appropriate State to collect the tax on that transaction.

(3) Since on the admitted facts Maharashtra was the appropriate State, the collection of tax by the Central Government could only be through the agency of the State of Maharashtra.

7. Before we examine the validity of these submissions we may point out that it is not, and it never was, an admitted or undisputed position that the State of Maharashtra was the appropriate State for collection of taxes. The point which has arisen for determination in this reference falls to be determined in the light of the relevant provisions of the Constitution of India and of the Act. Under entry 92A in List I, namely, the Union List, in the Seventh Schedule to the Constitution, taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes

place in the course of inter-State trade or commerce, are matters which fall within the exclusive legislative field of Parliament. Taxes on the sale or purchase of newspapers and on advertisements published therein are provided for by entry 92 in List I. Entry 54 in List II, namely, the State List, in the Seventh Schedule to the Constitution, provides : "Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I." Entry 92A was inserted in List I and entry 54 in List II amended to read, as set out above, by the Constitution (Sixth Amendment) Act, 1956. Thus taxes on inter-State sales and purchases fall within the exclusive legislative domain of Parliament, while taxes on local sales and purchases fall within the exclusive legislative domain of the State Legislatures. Though Parliament alone has the power to legislate with respect to taxes on inter-State sales and purchases, the amount of taxes collected by such levy is not to be retained by the Government of India but is to be assigned by it to the various States in which these taxes have been collected. This is provided for in article 269 of the Constitution. The material provisions of that article are :

> "269. Taxes levied and collected by the Union but assigned to the States. - (1) The following duties and taxes shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clauses (2) and (3), namely :
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> * * * *
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> (f) taxes on the sale or purchase of newspapers and on advertisements published therein;
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> (g) taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.
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> (2) The net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that duty or tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.
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> (3) Parliament may by law formulate principles for determining when a sale or purchase

of goods takes place in the course of inter-State trade or commerce."

8. Sub-clause (g) of clause (1) and clause (3) were inserted in article 269 by the Constitution (Sixth Amendment) Act. In exercise of its legislative power under article 269(3) and the said entry 92A Parliament has passed the Act inter alia formulating the principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce, and providing for the levy, assessment, collection and distribution of taxes on sales or purchases of goods in the course of inter-State trade or commerce.

9. The Act came into force on 1st July, 1957. The principles formulated in the Act and the scheme of levy, assessment, collection and distribution of tax under it have led to considerable difficulties in the working of the Act. In fact, even before the Act came into force, certain difficulties were envisaged and the Act was amended on 4th June, 1957. To date the Act has been amended as many as thirteen times, and in view of certain contradictory and discrepant provisions which have been noticed in the course of the arguments advanced at the hearing of this reference, there appears to be a very urgent need for amending the Act still further. We are afraid that even such an amendment will not, however, solve the various difficulties that are likely to arise hereafter.

10. So far as the relevant provisions of the Act are concerned, they have been the subject-matter of frequent amendments so that these provisions as they stand today can hardly be recognised in their original garb. Section 9 of the Act deals with the levy and collection of tax under the Act. That section as originally enacted provided as follows :

> "9. Levy and collection of tax. - (1) The tax payable by any dealer under this Act shall be levied and collected in the appropriate State by the Government of India in the manner provided in sub-section (2).
>
> (2) The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected; and for this purpose they may exercise all or any of the powers they have, under the general sales tax law of the State; and the provisions of such law including provisions relating to returns, appeals, reviews, revisions, references,

penalties and compounding of offences, shall apply accordingly.

(3) The proceeds (reduced by the cost of collection) in any financial year of any tax levied and collected under this Act in any State on behalf of the Government of India shall, except in so far as those proceeds represent proceeds attributable to Union territories, be assigned to that State and shall be retained by it; and the proceeds attributable to Union territories shall form part of the Consolidated Fund of India."

11. Sub-section (3) of section 9 incorporates the constitutional position contained in article 269. It was amended by the Central Sales Tax (Second Amendment) Act, 1958 (Act 31 of 1958), with effect from 1st October, 1958, and it was renumbered as sub-section (4). It was again amended with retrospective effect by the Central Sales Tax (Amendment) Act, 1969, and once again renumbered as sub-section (3). The first point to notice is that under the unamended section as also under the amendments made in sub-section (3) and the amendments made in sub-sections (1) and (2), to which we will presently refer, the tax is to be levied and collected by the Union of India and the authorities which are to collect, or rather to act, do so on behalf of the Union of India. Both under the Constitution as also under the Act no State has the power to levy Central sales tax in its own right or independently to assess transactions of inter-State sales to any tax or to collect any tax thereon. When the local sales tax authorities of a State assess the tax under the Act, they do so not in their own right but only on behalf of and as agent of the Government of India. Under sub-section (1) as originally enacted the tax was to be collected "in the appropriate State by the Government of India in the manner provided in sub-section (2)". Under sub-section (2) the authorities who were to assess, collect and enforce payment on behalf of the Government of India of any tax payable by a dealer under the Act were to be the authorities empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State. In other words, they were to be the local sales tax authorities of a State, which for the purposes of the Act was the "appropriate State".

12. This, therefore, immediately brings us to ascertaining the meaning of the term "appropriate State". Clause (a) of section 2 of the Act, which is the definition section, defines the term "appropriate State". As originally enacted, clause (a) was as follows :

"'appropriate State' means -

(i) in relation to a dealer who has one or more places of business situate in the same State, that State;

(ii) in relation to a dealer who has one or more places of business situate in different States, every such State with respect to the place or places of business situate within its

territory;

Explanation. - 'Place of business' means -

(i) in the case of a sale of goods in the course of inter-State trade or commerce falling within clause (a) of section 3, the place from which the goods have been moved by reason of such sale;

(ii) in the case of any such sale falling within clause (b) of section 3, the place where the sale is effected."

13. Thus under clause (a) as originally enacted the term "appropriate State" was to be understood as the place of business and was to be ascertained with reference to the movement of goods where an inter-State sale had occasioned the movement of goods from one State to another or with reference to the place where the inter-State sale was effected in cases where such sale had been effected by a transfer of documents of title to the goods during their movement from one State to another. The State in which a dealer's actual place of business was located was irrelevant for the purpose of determining which would be the appropriate State. Every State, therefore, from which the goods moved in the course of inter-State trade or commerce or in which a sale was effected, when the sale had taken place in the course of transit of goods would thus become the agent of the Government of India for the purpose of assessing, collecting and enforcing the payment of tax under the Act. This was bound to lead to great hardship and inconvenience for dealers and lead equally to administrative difficulties and inconvenience. By the said Amendment Act No. 31 of 1958, the explanation was deleted from clause (a) and sub-clause (ii) of the said clause was amended so that the amended clause (a) now reads as follows :

"'appropriate State' means -

(i) in relation to a dealer who has one or more places of business situate in the same State, that State;

(ii) in relation to a dealer who has places of business situate in different States, every such State with respect to the place or places of business situate within its territory."

14. The deletion of the explanation was, however, not the end of the expression "place of business" so far as the Act is concerned, because a new clause, namely, clause (dd), defining a place of business was incorporated in section 2. That clause is as follows :

"'place of business' includes -

(i) in any case where a dealer carries on business through an agent (by whatever name called), the place of business of such agent;

(ii) a warehouse, godown or other place where a dealer stores his goods; and

(iii) a place where a dealer keeps his books of account."

15. It will be noticed that while the definition of the term "appropriate State" is exhaustive because clause (a) uses the word "means", the definition of the term "place of business" is an extensive definition because it uses the word "includes". Thus the expression "place of business" now must be understood not only in its ordinary sense but also as including the different places mentioned in clause (dd). It is, however, clear that whatever else may be included in the expression "place of business" in clause (dd), it cannot now include a place from which any goods moved or a place where any sale was effected. Reading the definition in relation to section 9, had sub-sections (1) and (2) remained unamended, the position would have been that the authorities which were to act as agents of the Government of India for the purpose of assessing, collecting and enforcing the payment of tax under the Act would now be the authorities of the State in which a dealer's place of business was situate, that place of business having no reference to the movement of goods or the place of the effecting of sale but having relation to his place of business in the ordinary sense as also in the extended sense given to that expression by clause (dd), but in each of these senses having reference to a particular place or location. If such were the position, the present reference would have presented no difficulty at all, because an argument that the appropriate State which could assess and collect tax was the State of Maharashtra could never have arisen, since admittedly the respondents' main place of business was in Andhra Pradesh and there is no finding that the respondents had at any material time any place of business in the State of Maharashtra. The difficulty is created, however, by the fact that by the very same Amendment Act, namely, Act No. 31 of 1958, sub-sections (1) and (2) of section 9 also came to be amended.

16. Sub-section (1) was amended to read as follows :

"The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce [whether such sales fall within clause (a) or clause (b) of section 3] shall be levied and collected by the Government of India in the manner provided in sub-section (3) in the State from which the movement of the goods commenced :

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods, the tax

shall, where such sale does not fall within sub-section (2) of section 6, be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods."

17. This sub-section was substituted with retrospective effect from 1st October, 1958, by Ordinance No. 4 of 1969, which Ordinance was replaced by Act No. 28 of 1969. The substituted sub-section reads as follows :

"The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced :

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods, the tax shall, where such sale does not fall within sub-section (2) of section 6, be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or, as the case may be, could have obtained, the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods."

18. For a clearer understanding of these amendments it may be mentioned that Amendment Act No. 31 of 1958 introduced a new sub-section in section 9, which was numbered as sub-section (2), and the original sub-section (2) was amended and renumbered as sub-section (3). Sub-section (3) again became sub-section (2) by the amendments made in 1969. For our present purpose what is important to note in the amended as also the substituted sub-section (1) is that the tax under the Act is to be levied by the Government of India and the tax which is so levied is to be collected by that Government "in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced". Thus the expression "appropriate State" disappears from sub-section (1). Had a corresponding amendment been made in sub-section (2), it would have presented no difficulty in understanding which State is to act as agent of the Government of India in assessing and collecting the tax under the Act, for such State would be the State from which the movement of goods commenced, and in the case of a subsequent sale it would have been the State from which the registered dealer effecting it had obtained or could have obtained the declaration form under section 8(4). A corresponding amendment has, however, not been made in sub-section (2).

19. As mentioned earlier, the old sub-section (2) which had become sub-section (3) was renumbered as sub-section (2) and substituted with retrospective effect by the said Amendment Ordinance No. 4 of 1969, which was re-enacted and replaced by Amendment Act No.28 of 1969. It is unnecessary to set out the whole of this sub-section either as amended or substituted. Since the sub-section which was operative at the date of the order of assessment out of which the present reference arises was the sub-section prior to its substitution with retrospective effect, it will be sufficient for us to reproduce the relevant part of that sub-section. The relevant provisions of that sub-section were :

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

20. The substituted sub-section came on the statute-book once again as sub-section (2), and its relevant provisions are as follows :

> "Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State;".

21. We are not concerned with the other amendments which have been made in section 9. The position that emerges with respect to sub-section (2), therefore, is that under it the tax is to be collected by the sales tax authorities under the general sales tax law of the appropriate State. As mentioned earlier, the expression "appropriate State" as defined in clause (a) read with the definition of the expression "place of business" given in clause (dd) excludes any place from which the goods moved or where the sale was effected. Thus one is immediately faced with a contradiction between the language of sub-section (1) and sub-section (2). Sub-section (1) speaks of collection of tax in the State from which the movement of the goods commenced and at the same time states that it has to be collected in the manner provided in sub-section (2), the manner provided in sub-section (2) being by the "local sales tax authorities of the appropriate State". Neither counsel appearing before us, though both of them have very great experience of sales tax matters and are highly reputed in that subject, could suggest any real acceptable solution to the

problem. Mr. Jetly, the learned counsel for the applicant, attempted to get over the difficulty by pointing out that the respondents must have a place of business in Bombay if they have effected so many sales. He also drew our attention to the definition of "dealer" and particularly the very wide meaning given to it by explanation I thereto. These attempts could not, however, be sustained on the record because admittedly there is no finding that the respondents had at the relevant time any place of business in the State of Maharashtra. Mr. Jetly next suggested that the expression "appropriate State" in sub-section (2) should be read as meaning "the State from which the movement of the goods commenced". No convincing answer why one should read the expression "the appropriate State" in sub-section (2) as meaning "the State from which the movement of the goods commenced" instead of reading the expression "the State from which the movement of the goods commenced" in sub-section (1) as meaning "the appropriate State" was forthcoming. We, therefore, take it that the reason for advancing this construction was that it may clothe the State of Maharashtra with authority to tax the sales in question. For reasons which will presently appear, that, of course, would not have solved Mr. Jetly's difficulty nor would have meant that the reference should be answered in favour of the department. One important factor which militates against the construction sought to be put by Mr. Jetly is the insertion of sub-section (2A) in section 8 of the Act by the said Amendment Act No. 31 of 1958. This sub-section has also been time and again amended. It is unnecessary to detail all these amendments. Suffice it to say that under this sub-section if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally, or is subject to tax generally at a rate lower than one per cent for the period 1st October, 1958, to 31st March, 1963, or lower than two per cent for the period 1st April, 1963, to 30th June, 1966, or lower than three per cent. for the period 1st July, 1966, to 30th June, 1975, the tax payable under the Act in so far as the dealer's turnover or any part thereof related to the sales of such goods is to be nil or, as the case may be, is to be calculated at the lower rate. If one were to read the expression "appropriate State" in subsection (2) by substituting for it the words which Mr. Jetly wants us to do, then sub-section (2A) of section 8 would be meaningless, unless we equally substitute the same words for the expression "appropriate State" in sub-section (2A) of section 8. But that would not be the end of the matter, because this exercise would then leave us wondering why the expression "appropriate State" was at all amended or a new definition given to the expression "place of business". There would equally be other difficulties, but it is unnecessary to burden this judgment by pointing out each one of them. If the agency to assess, collect and enforce payment of the tax under the Act in respect of the transactions in question would be the State from which the movement of the goods, which were the subject-matter of these sales, commenced, such agency would be the State of Maharashtra. If, however, the agency which could so assess, collect and enforce payment of the tax were to be the appropriate State, then it would be the State of Andhra Pradesh. The State of Andhra Pradesh was also the State in which the respondents were

registered as a dealer under the Act. Registration of dealers is dealt with in section 7 of the Act, and under sub-section (1) thereof every dealer liable to pay tax is to apply for registration to the prescribed authority "in the appropriate State".

22. In this reference we are not called upon to decide which was the State which would be the appropriate agency to assess and collect tax on behalf of the Government of India in respect of the inter-State sales in question. In our opinion, the answer to the question which has been submitted to us falls to be determined on very different principles altogether. We have been at pains to point out the above contradictions in view of the arguments advanced by Mr. Jetly, to which we will refer in the later part of the judgment. So far as the question which falls for determination is concerned, the tax under the Act in respect of the transactions in question has already been assessed by the Central Government and has been paid to the Central Government. It has been assessed by the sales tax authorities of the State of Andhra Pradesh acting on behalf of the Government of India, and the tax was paid to the Central Government. In seeking once again to assess these transactions to tax under the Act the State of Maharashtra could not possibly act in its own right, because then its action would be wholly unconstitutional. It was acting on behalf of the Government of India. The tax having been once paid to the Government of India, in our opinion, it is not open to the Government of India to demand it again, whether through the same agency or another agency. The assessment which was made through the agency of the State of Andhra Pradesh has become final. It has become final not only for the dealer but also for the assessing authority, and it cannot be sought to be by-passed in the manner in which the Government of India has sought to do through the agency of the State of Maharashtra. To permit such an action would be to subject the same transactions to double taxation, a doctrine which cannot be incorporated into fiscal legislations without an express statutory provision to that effect. If it is the contention of the State of Maharashtra that the amount of tax in respect of these transactions has been wrongly assigned by the Government of India to the State of Andhra Pradesh, it is not a matter with which the respondents are concerned. That is a matter between the State of Maharashtra, the State of Andhra Pradesh and the Union of India. It was submitted by Mr. Jetly that it was open to the respondents to file a writ petition against the State of Andhra Pradesh to recover the amount of tax paid as having been paid under a mistake of law. This was a startling argument. It was never the contention of the respondents that they had paid this amount under a mistake of law. They had not paid this amount to the State of Andhra Pradesh. They had paid this amount to the Government of India. The proper remedy, therefore, if the governmental authorities cannot resolve the dispute by themselves, would be for them to file a suit in the Supreme Court under article 131 of the Constitution to resolve this dispute. It was, however, the submission of Mr. Jetly that the first order of assessment was wholly without jurisdiction and therefore the State of Maharashtra was entitled to ignore it. This argument overlooks two cardinal

facts. The first is that it cannot be said that the order was wholly without jurisdiction. We have set out earlier the difficulties that arise in the construction of sub-sections (1) and (2) of section 9. In view of the doubtful and highly debatable construction, it can hardly be said that the action of the State of Andhra Pradesh acting as agent of the Union of India was wholly without jurisdiction. The second fact which has been ignored is that assuming for the sake of argument the first assessment order was without jurisdiction, it is the Government of India which has acted without jurisdiction and is seeking to retain the money which it had collected by reason of an act which is without any jurisdictional authority. The Government of India in seeking to recover an equal amount by an act which would have jurisdictional authority, while at the same time retaining the amount which had already been collected by it, would be taking advantage of its own wrong. If the Government of India wanted to collect this amount through a proper agency, it should have first refunded to the respondents the amount collected from them.

23. We are here not concerned with a case where it may happen that by reason of certain inter-State transactions being taxed in a particular State where a lower rate of local tax prevails, the inter-State transactions come to be assessed and the tax thereon paid at a lower rate than what would have been had they been assessed in a State which was the proper agency to assess them. It may well be that in such a case the Government of India by assessing these transactions through a proper agency will be able to recover the balance amount of the tax. Since this question does not arise for our determination, we are expressing no final opinion upon it.

24. We will now examine the authorities which were cited by Mr. Jetly. The first authority relied upon by Mr. Jetly was a decision of the Madras High Court in *S. Mohamed Ibrahim Hadhee v. State of Madras*[1] In that case a dealer who carried on inter-State trade and commerce was registered under the Act both in the State of Kerala as also in the State of Madras. He effected various inter-State sales, part of which occasioned the movement of the goods from the State of Madras. The rest were first sales effected by transfer of documents in the course of movement of the goods which commenced from the State of Madras. He was assessed to tax under the Act by the sales tax authorities of the State of Kerala. The Madras High Court held that the appopriate State which could assess the tax was the State of Madras. With respect, it is somewhat difficult to appreciate the ratio of this judgment. The learned Judges of the Madras High Court have in one place clearly stated (at page 381) that "there can only be one charge under the Central Act on an identical inter-State turnover". While referring to the appopriate State the learned Judges have observed :

> "Before and after the amendment by Act 31 of 1958, that State, from which the goods moved pursuant to a sale, is an appropriate State."

25. It does not appear that the attention of the court was at any time drawn to the definition of the expression "appropriate State" or to the amendments made therein or to the new clause (dd) which was inserted in section 2 by Act No. 31 of 1958. The judgment further proceeds to state :

> "..... except where the multi-point tax is attracted under section 6, there can only be a single levy in the prescribed manner on identical turnover of inter-State sales. But the levy and collection will have to be made by the appropriate State which is the State from which the goods have moved pursuant to the sale ....."

26. With great respect, the learned Judges of the Madras High Court were in error in observing that the levy of tax under the Act would have to be made by the appropriate State. As pointed out above, the levy is by the Government of India and the Government of India alone both under the provisions of the Constitution and the relevant provisions of the Act in that behalf which merely reproduce the constitutional provisions. Though the learned Judges have noticed sub-section (4) of section 9, now sub-section (3), under which the amount of tax collected is to be assigned to the State in which it was collected, they have proceeded upon the basis as if the levying and taxing authorities were the States acting in their own rights, and in not appreciating that under both the constitutional scheme as also the scheme under the Act this authority was the Government of India. The learned Judges concluded (at pages 381-382) :

> "It follows, therefore, that a plea that a wrong State has already assessed will be no answer to an appopriate State bringing to tax transactions liable to be brought to charge by that State."

27. With respect, we are unable to agree with this observation. It is not any State which is bringing to tax transactions of inter-State sales. It is only the Government of India, and if the Government of India chooses to act through a wrong agency and collects the amount of tax due to it through such agency, it cannot turn round and say that though it had received the amount due to it, since the amount was not received through the proper agency, it will receive double the amount by collecting an identical amount of tax in respect of the same transactions through a proper agency.

28. The next authority relied upon by Mr. Jetly was a judgment of the Delhi High Court in Sales Tax Officer, Ward No. 13, New Delhi v. Indian Wood Products Company Limited ([1972] 30 S.T.C. 132 at 138.). In that case the dealer, who was registered under the Act in Delhi, had, pursuant to the advice given by the Government of India that the appropriate State would be Uttar Pradesh, filed returns and had been assessed to tax under the Act by the Sales Tax Officer, Bareilly. Despite this fact the Sales Tax Officer, Delhi, made an order of assessment levying tax

under the Act on the very same transactions. Thereupon the respondents filed petitions under article 226 of the Constitution to challenge the orders of assessment made by the Sales Tax Officer, Delhi. A learned single Judge of the said High Court allowed the petitions and set aside the orders of assessment. Against this order of the trial court the Sales Tax Officer, Delhi, went in appeal. The appeals were dismissed. In the course of the judgment the court observed (at page 138) :

> "It is, therefore, obvious that the sales tax under the Sales Tax Act has to be paid once only and that is in the State from which the movement of the goods commenced. It is not disputed before us that the respondents had already been assessed and that they had deposited the tax with the Sales Tax Officer, Bareilly. That being so, the respondents cannot be taxed twice on the sale of commodities made in the course of inter-State trade or commerce."

29. The court further observed :

> "There can be no doubt about the principles laid down in the above-cited authorties but, in the instant case, as noted in an earlier part of this judgment, the tax payable under section 9 of the Central Sales Tax Act by any dealer under the said Act on sales of goods effected by him in the course of inter-State trade or commerce, irrespective of the fact whether such sales fell within clause (a) or clause (b) of section 3, has to be levied by the Government of India and the tax so levied shall be collected by the Central Government in accordance with the provisions of sub-section (2) in the State from which the movement of goods commenced, and the respondents have already been assessed by the Sales Tax Officer, Bareilly, and they have already deposited the tax so assessed and as such they cannot be made to pay the said tax over again; more so when the Sales Tax Officer, Delhi, had no jurisdiction to assess the respondents to tax without giving a positive finding as to the place where the sale was effected. In the circumstances, it cannot be urged that the petitions are not maintainable. In the special circumstances of the case, the learned single Judge was justified in holding that he was not inclined to dismiss the petitions on the ground of existence of an alternate remedy."

30. The ratio of this judgment is, therefore, that the tax having been assessed on certain transactions once and the amount of tax collected, the same transactions could not be made the subject-matter of another assessment. In our opinion, the other observations of the learned Judges were not necessary for the decision of the case. Though they have observed that the State in which the tax should be collected would be the State which occasioned the movement of the goods, in almost the very next sentence there is a contradiction, when the court has observed

"more so when the Sales Tax Officer, Delhi, had no jurisdiction to assess the respondents to tax without giving a positive finding as to the place where the sale was effected". Thus, according to the court, the State in which the tax could be collected was that State from which the movement of goods commenced. At the very same time the court has said that it would be the State where the sale was effected. The State where a sale is effected and the State from which the movement of goods is occasioned by such contract of sale would often not be the same. Further, it should be noted that the court has rested its decision on two grounds : (1) that the tax having been assessed and collected in respect of certain transactions, the very same transactions could not be assessed to tax again, and (2) that the Sales Tax Officer, Delhi, had proceeded to assess the tax and had purported to assume jurisdiction without even giving any finding on jurisdictional facts. The other observations as to which would be the appropriate State were strictly not necessary for the determination of the case. The attention of the learned Judges was not drawn to the definition of the phrase "appropriate State" or the phrase "place of business". This decision cannot, therefore, be said to be an authority for the proposition that where tax has been assessed on certain transactions in one State, another State, which would be the appropriate State, can again assess and bring to tax the same transactions.

31. The third authority relied upon by Mr. Jetly, was a decision of the Allahabad High Court in *Kasturi Lal Har Lal v. State of U.P*[2]. The petitioner in that case was not registered under the Act. He purchased coal in the State of Bihar, booked it in his own name an endorsed the documents of title to the goods while the same were in transit from Bihar to Uttar Pradesh. The delivery of the goods was thereafter taken by the endorsees. The question which arose for the court to consider was whether the Sales Tax Officer, Lucknow, could impose sales tax on the sales under the Act. Now, the pertinent thing to remember is that there was no assessment at all made upon the dealer. The dealer had also not paid any tax. The Sales Tax Officer, Lucknow, therefore, issued a notice treating the sales to be inter-State sales having been effected in the State of Uttar Pradesh, and assessed the transaction to tax under the Act. A writ petition was thereupon filed challenging the jurisdiction of the Sales Tax Officer, Lucknow, to make the assessment. It was in this context that the court determined whether the Sales Tax Officer, Lucknow, had jurisdiction to make the assessment. The court held that sub-section (1) of section 9 of the Act conferred jurisdiction to make the levy and collection of the tax on the State in which the movement of the goods commenced and therefore the determining test for discovering the jurisdiction of a particular State is the place where the movement of the goods commenced and that the words "appropriate Government" (sic) in sub-section (3), now sub-section (2), should, therefore, necessarily refer to the State upon which by section 9(1) jurisdiction had been conferred to levy and collect the tax. The court further held that the definition of the words "appropriate Government" as contained in section 2(a) cannot be applied to section 9 without creating an inconsistency. With respect, we

are unable to agree with this proposition. The court has not observed that an equal inconsistency would be created in sub-section (3) of section 9 [now sub-section (2)]. The court has also not considered in detail the scheme of the Act and the other relevant provisions. It has not considered the effect of sub-section (2A) of section 8 nor has it considered whether the construction it was giving would affect, and if so in what manner, the provisions of the said sub-section (2A). Even assuming that what was held in that case to be correct, the decision is not an authority that if tax had been levied and collected by the Government of India in one State, the Government of India could assess the very same transactions to tax all over again in another State, which it considered the appropriate State while retaining at the same time the amount collected under the earlier assessment.

32. Mr. Jetly also relied upon two decisions of the Supreme Court. The first of these decisions was Union of india v. K. G. Khosla and Co. Ltd. . The question which the court had to decide in that case was whether the sales in question were sales made in the course of inter-State trade as contended by the department or whether they were intra-State sales effected within the Union Territory of Delhi as contended by the assessees. The question with which we are concerned was not before the court and did not arise for its consideration and was not considered by the court, and this authority, therefore, furnishes us no guidance in deciding this case.

33. The next decision of the Supreme Court which was relied upon by Mr. Jetly was *Indian Oil Corporation Ltd. v. Union of India.* . Here again the question was whether the sales effected by the assessees were intra-State sales or inter-State sales. This is not a question with which we are concerned. The points which fall for determination in the present reference were not before the Supreme Court and were not decided by it.

34. In the result, we answer the question in the affirmative, that is, in favour of the assessees and against the department.

35. The applicant will pay to the respondents the costs of this reference fixed at Rs. 300.

36. Reference answered in the affirmative.

Cases Referred.

1([1968] 21 S.T.C. 378)
2([1972] 29 S.T.C. 495)