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hearing cases would refer the matter for the decision of a Full Court. In the result these appeals are allowed and the decrees passed by the trial court restored with costs throughout. One set of hearing costs.

Appeals allowed.

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April 28.

M/S. GEORGE OAKES (P.) LTD.

v.

STATE OF MADRAS

(S. K. DAS, J. L. KAPUR, M. HIDAYATULLAH, J. C. SHAH and T. L. VENKATARAMA AIYAR, JJ.)

Sales Tax—Turnover—If includes tax collected by seller—Deeming statute—Constitutionality—Constitution of India, Entry 54, List II Seventh Schedule—Government of India Act, 1935 (26 Geo. 5 & 1 Ed. 8 Ch. 2), Entry 48, List II, Sch. VII—Madras General Sales Tax Act, (Mad. Act IX of 1939), ss. 2(i), 2(h), 8B—Madras General Sales (Definition of Turnover and Validation of Assessments) Act, 1954 (Mad. XVII of 1954), ss. 2, 3—Turnover and Assessment Rules, rr. 4, 5, 6, 11.

Certain amounts collected by the appellants as sales tax were included in their turnover by the sales tax authorities. They contested the constitutional validity of the Madras General Sales (Definition of Turnover and Validation of Assessments) Act, 1954, on the ground inter alia that the Sate Legislature went beyond its legislative competence under entry 54 of List II of the Constitution in enacting by the impugned Act that the amounts collected by the dealer by way of tax shall be deemed to have formed part of his turnover.

Held, that entry 54 of List II of the Seventh Schedule of the Constitution is similar to entry 48 of List II of Sch. VII of the Government of India Act, 1935 sales under which have been held to be transactions passing title to the Goods from the seller to the buyer and that a mere executory agreement was not a sale within the meaning of that entry. The same meaning must be given to entry 54.

State of Madras v. *Gannon Dunkerly & Co., Ltd.*, [1959] S.C.R. 379 and *Sales Tax Officer* v. *M/s. Budh Prakash Jai Prakash*, [1955] 1 S.C.R. 243, referred to.

Under ss. 2(i) and 2(h) of the Madras General Sales Tax Act, 1939, the expression "turnover" means the aggregate amount for which goods are sold either for cash or deferred payment or other valuable consideration, and when a sale attracts purchase tax which is passed on to the consumer what the buyer has to pay includes the tax and the aggregate amount to be paid would fall under the definition of turnover. When the seller passes on the tax and the buyer agrees to pay sales tax in addition to the price, the tax is really part of the entitle considerations.

Papreka Ltd. v. *Board of Trade*, [1944] 1 All E.R. 372, *Love* v. *Norman Wright (Builders) Ltd.*, [1944] 1 All E.R. 618, followed.

Asoka Marketing Co. Ltd. v. *The State of Bihar*, [1959] 10 S.T.C. 110 and *Tata Iron and Steel Co.* v. *The State of Bihar*, [1958] S.C.R. 1355, referred to.

Although s. 8B of the Madras General Sales Tax Act, 1939 and the Turnover and Assessment Rules separately mentioned the amounts collected as tax for the purpose of paying such amounts to the Government, no immutable distinction was drawn between the sale price and the tax nor was any such distinction maintained under s. 2 of the impugned Act. Assuming that such a distinction did exist the Legislature was competent to enact under entry 54 in List II of the Constitution that the tax shall be deemed to have formed part of the turnover and obliterate the distinction for the limited period during which the impugned Act operated. The impugned Act was therefore valid.

The Deputy Commissioner of Commercial Taxes v. *M. Krishnaswami Mudaliar*, [1954] 5 S.T.C. 88, held not applicable.

Sri Sundararajan & Co. v. *The State of Madras*, [1956] 7 S.T.C. 105, approved.

The Government of Andhra v. *East India Commercial Co., Ltd.*, [1957] 8 S.T.C. 114 and *Bengal Immunity Co., Ltd.* v. *State of Bihar*, [1955] 2 S.C.R. 603, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 280 and 281 of 1960.

Appeal from the judgment and order dated April 20, 1956, of the Madras High Court, in T. R. C. Nos. 101 and 102 of 1956.

R. Ganapathy Iyer and *G. Gopalakrishnan*, for the appellant.

M. M. Ismail and *T. M. Sen*, for the respondent.

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D. V. Sastri and *T. M. Sen*, for Intervener No. 1.

Naunit Lal, for Intervener No. 2.

S. M. Sikri, Advocate-General, Punjab and *D. Gupta*, for Intervener No. 3.

S. M. Sikri, Advocate-General, Punjab, N. S. Bindra and *D. Gupta*, for Intervener No. 4.

G. C. Kasliwal, Advocate-General, Rajasthan, S. K. Kapur and *D. Gupta*, for Intervener No. 5.

1961. April 28. The Judgment of the Court was delivered by

S. K. Das J.

S. K. DAS, J.—These are two appeals on certificates granted by the High Court of Madras and consolidated by its orders dated March 22, 1957. They are from the judgment and orders of the said High Court dated April 20, 1956 and July 30, 1956 in two Tax Revision Cases, by which the High Court dismissed two petitions filed by the appellants under s. 12-B of the Madras General Sales Tax Act (Madras Act IX of 1939), hereinafter called the principal Act, in the following circumstances.

Messrs. George Oakes (Private) Limited, appellants herein, are dealers in Ford motor cars, spare parts and accessories. For the two years 1951-52 and 1952-53 the appellants submitted their returns under the relevant provisions of the principal Act and claimed exemption from tax with regard to certain amount realised on transactions of sales which the appellants contended were inter-State sales and hence exempt from tax under Art. 286 of the Constitution as it stood at the relevant time. The Deputy Commercial Tax Officer, Madras, not only rejected the claim of exemption, but added to the turnover certain amounts which the appellants had collected by way of tax. The amounts so added for 1951-52 were—(a) Rs. 8,000 to the net turnover assessable at 3 pies per rupee, and (b) Rs. 4,30,000 to the turnover assessable at 9 pies per rupee. For 1952-53 the amounts so added were —(a) Rs. 30,132 odd and (b) Rs. 2,92,257 odd respectively.

Aggrieved by the orders of the Deputy Commercial

Tax Officer, the appellants preferred two appeals to the Special Commercial Tax Officer, Appeals, Madras City. These appeals were dismissed. The matter was then taken to the Sales Tax Appellate Tribunal by means of two appeals. By this time the Madras Legislature had passed the Madras General Sales (Definition of Turnover and Validation of Assessments) Act, 1954, being Madras Act No. XVII of 1954. This Act we shall refer to as the impugned Act in this judgment, because its constitutional validity is now the only question for decision in these appeals. The Tribunal negatived the claim of the appellants arising out of the contention that some of the sale transactions in the relevant years were in effect inter-State sales and therefore exempt from tax; the tribunal declined to go into the second question of the constitutional validity of the impugned Act. We may state here, though nothing now turns upon this, that the Tribunal held that when sales tax was included in the turnover, it was proper to tax the amounts so included at the minimum rate only, viz., 3 pies in the rupee under s. 3(1) of the principal Act.

Thereafter the appellants filed two revision petitions to the High Court under s. 12-B of the principal Act. These were dismissed *in limine*. By the orders dated April 20, 1956 the High Court held that the contention as to some of the transactions being inter-State sales was concluded by one of its earlier decisions, which came before us in *Ashok Leyland Ltd.* v. *The State of Madras*, Civil Appeal No. 446 of 1958. In that appeal we delivered judgment on March 28, 1961 and held that the Sales Tax Laws (Validation) Act, 1956 applied and it was unnecessary to consider the true nature of the transactions which the appellants contended were inter-State sales. Learned Counsel for the appellants has conceded before us that that decision governs the present appeals, and the first question no longer survives.

As to the second question, the High Court by oversight did not deal with it in its orders dated April 20, 1956. When the matter was brought to the notice of

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the High Court, it said in its orders dated July 30, 1956 that the second question was also concluded by its decision in *Sri Sundararajan and Co., Ltd.* v. *The State of Madras* (1) where the validity of the impugned Act was upheld.

When we heard these appeals along with *Ashok Leyland Ltd.* v. *The State of Madras*, Civil Appeal No. 446 of 1958, we expressed the view that there was some divergence of opinion in the High Courts on the second question and the substantial point for consideration before us was whether the impugned Act was validly made under entry 54 of the State List in the Seventh Schedule to the Constitution: thus the question raised was one of legislative competence and affected all the States. The State of Madras was already a party respondent to these appeals. Accordingly, we directed the issue of notices to the Advocates-General of all other States also. In pursuance of the said notices the Advocates-General of Andhra Pradesh, Assam, West Bengal, Gujarat, Maharashtra, Punjab and Rajasthan have appeared before us. They have unanimously supported the State of Madras in its submission that the impugned Act is valid; some of them have added supplementary arguments in support of that submission.

For convenience and brevity we shall refer in this judgment to the main arguments as representing two differing points of view; firstly, there is the argument on behalf of the appellants that the several provisions of the principal Act as also s. 2 of the impugned Act make a distinction between the sale price of goods sold and the amount collected by way of tax and in view of that distinction made, what the impugned Act seeks to impose is a 'tax on sales-tax', a subject which does not come within the ambit of entry 54 of List II which at the relevant time read as "Taxes on the sale or purchase of goods other than newspapers." On the other side, the argument is that what the impugned Act seeks to do is to enlarge the scope of the definition of 'turnover' so as to include the amount collected by way of tax in the turnover by a deeming

(1) (1956) 7 S.T.C. 105.

provision, and this the State Legislature was competent to enact under entry 54 of the State List. These are the main arguments on two sides; but there are several subsidiary points in support of the main argument on each side, and it would be an over simplification to ignore these altogether. We shall, therefore, consider them also when dealing with the main argument on each side.

We shall first refer to the relevant provisions of the principal Act and of the impugned Act, in so far as they bear on the points debated before us. Under s. 3 of the principal Act which is the charging section, every dealer is liable to pay, subject to the provisions of the Act, for each year a tax on his total turnover for that year calculated at a particular percentage of such turnover. What is 'turnover' is defined in s. 2(i). The definition substantially states—"'turnover' means the aggregate amount for which goods are either bought or sold by a dealer whether for cash or for deferred payment or other valuable consideration....." 'Sale' is defined in s. 2(h) and means (we are reading so much of the definition only as is material for our purpose) "every transfer of property in goods by one person to another in the course of trade or business for cash or deferred payment or other valuable consideration." It is worthy of note here that the tax imposed by the principal Act is a tax on total turnover, and turnover means the aggregate amount for which goods are either bought or sold by a dealer. Therefore, one of the questions which fall for consideration is whether the State Legislature went beyond its legislative competence in enacting by the impugned Act that the amounts collected by the dealer by way of tax shall be deemed to have formed part of his turnover. This brings us to s. 8B of the principal Act, which provides in sub-s. (1) that no person who is not a registered dealer shall collect any amount by way of tax; nor shall a registered dealer make any such collection except in accordance with such conditions and restrictions, if any, as may be prescribed; sub-s. (2) provides inter alia that every person who has collected or collects by way of tax any amounts shall pay

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over the same to the State Government. Section 15 provides for penalties for a contravention of some of the provisions of the principal Act including the provisions of s. 8B.

In *The Deputy Commissioner of Commercial Taxes, Coimbatore Division* v. *M. Krishnaswami Mudaliar & Sons* (1) the Madras High Court held that the amount collected by a registered dealer from the consumer by way of sales tax and paid over to Government should not be included in the turnover of the registered dealer as part of the sale price of the goods sold and it was not liable to be taxed again. This decision was given on January 7, 1954. In July 1954 was enacted the impugned Act sections 2 and 3 whereof need only be set out here.

"S. 2. *Sales Tax Collections by dealers to be deemed part of turnover.*—In the case of sales made by a dealer before the 1st April 1954, amounts collected by him by way of tax under the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939) (hereinafter referred to as the principal Act), shall be deemed to have formed part of his turnover.

3. *Validation of certain assessment and collections.*—(1) All assessments, and collections made, all orders passed, all actions taken by any officer in the exercise or purported exercise of jurisdiction or power conferred by the principal Act, and all judgments, decrees or orders pronounced by any Tribunal or Court in the exercise of its jurisdiction or powers with respect to matters in the principal Act, on the basis that amounts collected by a dealer by way of tax under the principal Act before the 1st April 1954, formed part of the turnover of the dealer are hereby declared to have been validly made, passed, taken or pronounced, as the case may be; and any finding recorded by any officer, Tribunal or Court to a contrary effect and any order, judgment or decree in so far as such order, judgment or decree embodied or is based on any such finding and does not relate merely to the costs of the proceeding which result in the judgment, decree or order shall be void and of no effect:

(2) [1954] 5 S.T.C. 88.

Provided that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Act had not been passed.

(2) Nothing in sub-section (1) shall be construed as authorising any officer, in assessing any dealer in the exercise or purported exercise of jurisdiction or powers conferred by the principal Act, to include in the turnover of the dealer amounts collected by him after the 1st April 1954 by way of tax under the principal Act."

The validity of the impugned Act was then questioned in the Madras High Court and in *Sri Sundararajan and Co., Ltd.* v. *The State of Madras* (1) it was held that the impugned Act was valid. The High Court pointed out that the earlier decision in *Krishnaswami Mudaliar's case* (2) was not that the State Legislature could not make the amounts collected by a registered dealer by way of tax under s. 8B part of the assessable turnover, but that the principal Act as it stood at the relevant time did not make such amounts part of the assessable turnover. It held that in pith and substance the impugned Act validated the assessments already made before April 1, 1954 and that even where the registered dealer collected any amount by way of tax under the authority of s. 8B, the payment by the purchaser was on the occasion of the sale by the dealer and vis-a-vis the latter it was in reality part of the price the purchaser paid the seller for purchasing the goods. The same view was also expressed by the Patna High Court in *Asoka Marketing Company Ltd.* v. *The State of Bihar* (3) with regard to the Bihar Sales Tax (Definition of Turnover and Validation of Assessments) Act, 1958. The question before us is whether the aforesaid view is correct.

The relevant legislative entry, as we have said earlier, is entry 54 of List II—"Taxes on the sale or purchase of goods other than newspapers." A similar entry (no. 48) in List II of Schedule VII to the Government of India Act, 1935 read as "Taxes on the

(1) [1956] 7 S.T.C. 105. (2) [1954] 5 S.T.C. 88.
(3) [1959] 10 S.T.C. 110.

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sale of goods." The true scope and effect of that entry was considered by this Court in the *State of Madras* v. *Gannon Dunkerley and Co. (Madras) Ltd.* (1) and on a review of several decisions bearing on the subject it held that the expression "sale of goods" was a term of well-recognised legal import in the general law relating to sale of goods and in the legislative practice relating to that topic and must be interpreted as having the same meaning as in the Sale of Goods Act, 1930; in other words, it was held that sales contemplated by entry 48 of the Government of India Act, 1935 were transactions in which title to the goods passed from the seller to the buyer, and in *The Sales Tax Officer, Pilibhit* v. *Messrs. Budh Prakash Jai Prakash* (2) it was held that a mere executory agreement was not a sale within the meaning of that entry. We think that the same meaning must be given to entry 54 of List II of the Seventh Schedule to the Constitution. The question before us is that giving that meaning to the entry, is the impugned Act a valid piece of legislation by a competent Legislature?

Now, learned Counsel for the appellants has not raised before us the extreme contention that in no case could the State Legislature validly make a law which would include the amount collected by way of tax as part of the turnover of the dealer. He has submitted that it is unnecessary for him in this case to press into service any such wide proposition. His argument is that the principal Act by ss. 8B and 15 and the impugned Act by s. 2 thereof having made a distinction between what he calls the sale price and what is collected by way of tax by the dealer, the question of the validity of the impugned Act must be determined on the basis of that distinction and so determined, what the impugned Act does is to impose what learned Counsel calls "a tax on tax" and therefore not covered by the relevant legislative entry. His submission further is that what is collected by way of tax being distinct from sale price and therefore from turnover, it must be necessarily held that the amount collected by way of tax is not essentially

(1) [1951] S.C.R. 379. (2) [1955] 1 S.C.R. 243.

connected with the transaction of sale and therefore the imposition of "a tax on tax" has no necessary connexion with the transaction of sale as understood in the general law relating to sale of goods.

We are unable to accept this argument as correct. First of all, we do not think that either the principal Act or the impugned Act proceeds on any immutable distinction between sale price and tax such as learned Counsel for the appellants has suggested. The principal Act does not contain any separate definition of sale price. We have already referred to the definitions of 'sale' and 'turnover'; those definitions do not show any such distinction. On the contrary, the expression 'turnover' means the aggregate amount for which goods are bought or sold, whether for cash or for deferred payment or other valuable consideration, and when a sale attracts purchase tax and the tax is passed on to the consumer, what the buyer has to pay for the goods includes the tax as well and the aggregate amount so paid would fall within the definition of turnover. In *Paprika Ltd. and Another* v. *Board of Trade* (1) Lawrence, J. said "Whenever a sale attracts purchase tax, that tax presumably affects the price which the seller who is liable to pay the tax demands but it does not cease to be the price which the buyer has to pay even if the price is expressed as x plus purchase tax." The same view was again expressed in *Love* v. *Norman Wright (Builders), Ltd.* (2) when Goddard, L. J. said:

> "Where an article is taxed, whether by purchase tax, customs duty, or excise duty, the tax becomes part of the price which ordinarily the buyer will have to pay. The price of an ounce of tobacco is what it is because of the rate of tax, but on a sale there is only one consideration though made up of cost plus profit plus tax. So, if a seller offers goods for sale, it is for him to quote a price which includes the tax if he desires to pass it on to the buyer. If the buyer agrees to the price, it is not for him to consider how it is made up or whether the seller has included tax or not."

(1) [1944] 1 All E.R. 372. (2) [1944] 1 All E.R. 618.

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

But, argues learned Counsel for the appellants, s. 8-B of the principal Act and Turnover and Assessment Rules made under s. 19 show that under the scheme of the principal Act a distinction is drawn between the amount collected by way of tax and the amount of purchase price. It is indeed true that in s. 8-B the amount collected by way of tax is separately mentioned, and while sub-s. (1) thereof is merely enabling in the sense that a registered dealer may pass on the tax, sub-s. (2) imposes an obligation on the registered dealer to pay over the amount of tax collected by him to Government. The position under the Turnover and Assessment Rules is correctly summarised in the following extract from the judgment in *Krishnaswamy Mudaliar's case* (1):

> "Rule 4 provides that the gross turnover of a dealer for the purposes of the rules is the amount for which goods are sold by the dealer. Provision is made in rule 5 for certain deductions, and the mode or manner in which the tax to be levied has to be arrived at. The object of these rules is to assess the net turnover on which the tax is to be levied under the charging section. It is therefore clear that under the charging section, tax is to be paid on the turnover which is assessed according to the rules. Rule 11 requires that every dealer should submit a return under rule 6 every year to the assessing authority in Form A in which he has to show the actual gross and net turnover for the preceding

(1) [1954] 5 S.T.C. 88.

year and the amounts by way of tax or taxes actually collected during that year. In Form A columns 1 to 10 relate to the gross turnover and the deductions to be made from the gross turnover; column 10 requires the net turnover liable to tax to be shown. In column 11 the amount actually collected by way of tax or taxes under s. 8-B has to be shown."

The question however still remains—do the aforesaid provisions show such a distinction under the scheme of the two Acts that the amount collected by way of tax cannot be part of the turnover of the dealer and if the impugned Act makes it a part of the turnover by a deeming provision, it must be struck down as being outside the legislative competence of the State Legislature? It is necessary to emphasise here that no question of legislative competence arose in *Krishnaswamy Mudaliar's case* (1) the decision being based on a construction of s. 8-B and the Turnover and Assessment Rules only.

We do not think that the distinction drawn in *Krishnaswamy Mudaliar's case* (1) whether right or wrong on a question of construction only, is material to the question of legislative competence. In *The Tata Iron & Steel Co., Ltd.* v. *The State of Bihar* (2) this Court dealt with a provision in the Bihar Sales Tax Act, 1947 similar to s. 8-B of the principal Act. Das, C. J., delivering the majority opinion said:

"The circumstance that the 1947 Act, after the amendment, permitted the seller who was a registered dealer to collect the sales tax as a tax from the purchaser does not do away with the primary liability of the seller to pay the sales tax. This is further made clear by the fact that the registered dealer need not, if he so pleases or chooses, collect the tax from the purchaser and sometimes by reason of competition with other registered dealers he may find it profitable to sell his goods and to retain his old customers even at the sacrifice of the sales tax. This also makes it clear that the sales tax need not

(1) [1954] 5 S.T.C. 88. (2) [1958] S.C.R. 1355.

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be passed on to the purchasers and this fact does not alter the real nature of the tax which, by the express provisions of the law, is cast upon the seller. The buyer is under no liability to pay sales tax in addition to the agreed sale price unless the contract specifically provides otherwise. See *Love* v. *Norman Wright (Builders), Ltd.* L. R. [1944] 1 K. B. 484."

These observations show that when the seller passes on the tax and the buyer agrees to pay sales tax in addition to the price, the tax is really part of the entire consideration and the distinction between the two amounts—tax and price—loses all significance from the point of view of legislative competence. The matter is not in any way different under the Turnover and Assessment Rules. It is true that in column 11 of Form A the amount collected by way of tax under s. 8-B has to be shown; that does not, however, mean that an immutable distinction such as will go to the root of legislative competence has been drawn and must be always maintained. It appears to us that the true effect of s. 8-B and the Turnover and Assessment Rules is that (a) a registered dealer is enabled to pass on the tax, (b) an unregistered dealer cannot do so, and (c) the amount collected by way of tax is to be shown separately, for it has to be paid over to Government. This does not mean that it is incompetent to the legislature enacting legislation pursuant to entry 54 in List II by suitable provision to make the tax paid by the purchaser to the dealer together with the sale price in consideration of the goods sold, a part of the turnover of the dealer; nor does it mean that in law the tax as imposed by Government is a tax on the buyer making the dealer a mere collecting agency so that the tax must always remain outside the sale price.

There is another aspect from which the question may be considered. We shall assume that under the scheme of the principal Act a distinction is drawn between the amount collected by way tax and the sale price other than the tax. Is such a distinction continued and maintained by the impugned Act? Learned Counsel for the appellants has referred us to

s. 2 of the impugned Act where the expression "collected by him by way of tax under the Madras General Sales Tax Act, 1939" occurs. It is argued that the aforesaid expression in the impugned Act has to be read with the provisions of the principal Act and so read, s. 2 maintains and continues the distinction made under the principal Act. Again, we are unable to agree. The expression "collected by him by way of tax etc." is merely descriptive of the "amounts" so collected; the essential and operative part of s. 2 says that the amounts so collected shall be deemed to have formed part of the turnover of the dealer. Therefore, in express terms s. 2 states that the tax shall be deemed to have formed part of the turnover and obliterates the distinction, if any, between 'tax' and 'turnover' for the limited period during which the impugned Act operates. To hold that the distinction is maintained and continued under the impugned Act is to go against the express terms of s. 2. This aspect of the question was adverted to in *The Government of Andhra* v. *East India Commercial Co. Ltd.* (1) where the Andhra High Court had occasion to consider the question from a somewhat different point of view, namely, an amendment made by the Andhra Pradesh Legislature in the definition of the expression 'turnover' in the principal Act. Section 2 of the amending Act substituted the following definition of 'turnover':—

> "Turnover means the total amount set out in the bill of sale (or if there is no bill of sale, the total amount charged) as the consideration for the sale or purchase of goods...including any sums charged by the dealer for anything done in respect of the goods sold at the time of or before the delivery of the goods and any other sums charged by the dealer, whatever be the description, name or object thereof."

Section 4 of the amending Act repeated ss. 8-B and 8-C of the principal Act. Dealing with the effect of these amendments, the High Court of Andhra Pradesh said,

(1) [1957] 8 S.T.C. 114.

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"The ultimate economic incidence of the sales tax is on the consumer or the last purchaser and whatever he pays for the goods is paid only as price, that is to say, as consideration for the purchase. The statutory liability, however, for payment of sales tax is laid on the dealer on his total 'turnover' whether or not he realises the tax from the purchasers. Generally speaking, the price charged by the dealer would be inclusive of sales tax, for, it is to his interest to pass the burden of the tax to the purchaser. So far as the dealer is concerned, the payment of a sum covering the tax made by a purchaser on the occasion of sale, is really part of the price which the purchasers pay for the goods."

Later, it referred with approval to the decision in *Sri Sundararajan and Co., Ltd.* v. *The State of Madras* (1). In this latter decision the validity of the impugned Act was questioned and dealing with s. 2 of the impugned Act, the High Court said:

"Section 2 only enacted that such amount shall be 'deemed' to be part of the turnover and for a limited period. It may not be necessary to set out authorities for the well-settled principle of what the effect is of the use of the expression 'deemed' in a statute. Was the legislature competent to enact section 2 including the deeming provision, is the real question. If the validity of section 2 of the impugned Act is established there should be little difficulty in upholding the validity of section 3, which gave effect to the legal fiction enacted by section 2.

Obviously, it is not the name the legislature accords to a payment by a purchaser to a seller, who is a dealer as defined by the Act, that determines the question of the legislative competence. No doubt section 8B called the payment as amount (collected) by way of tax. It is equally true that the statutory liability to pay the sales tax is laid on the dealer. What is taxable is not each transaction of sale but the total turnover of the dealer, computed in accordance with the provisions of the

(1) (1956) 7 S.T.C. 105.

Act and the Rules. But it is well-recognised that whatever be the form of the statutory provisions, the ultimate economic incidence of the tax is on the consumer, the purchaser. It was that well-settled principle that was re-stated in *Bengal Immunity Co. Ltd.* v. *State of Bihar* (1). Even if the registered dealer collects the amount by way of tax under the authority of section 8B of the Act, the payment is by the purchaser on the occasion of the sale by the dealer. Vis-a-vis the dealer it is in reality part of the price the purchaser has to pay the seller for purchasing the goods. A tax on such a payment, in our opinion, is well within the ambit of Entry 54 of List II, Schedule VII, read with Article 246(3) of the Constitution."

We are of the view that the aforesaid observations correctly give the true effect of s. 2 of the impugned Act, and s. 3 of the impugned Act is merely consequential.

Mr. Sikri appearing on behalf of the States of Maharashtra and Punjab has drawn our attention to certain American decisions which show that treating tax as part of the sale price in cases where the tax is passed on to the buyer, is well-recognised and is not unknown to law (see *Lash's Products Company* v. *United States*, 73 L. Edn. 251; *Pure Oil Company* v. *State of Alabama*, 148 American Law Reports 260). We consider it unnecessary to examine these decisions, because the validity of the impugned Act must be determined on its own terms in the context of the provisions of the principal Act. Reading the impugned Act in the light of the provisions of the principal Act, it seems clear to us that the impugned Act cannot be held to be bad on the ground of legislative incompetence. Under the definition of turnover the aggregate amount for which goods are bought or sold is taxable. This aggregate amount includes the tax as part of the price paid by the buyer. The amount goes into the common till of the dealer till he pays the tax. It is money which he keeps using for his business till he pays it over to Government. Indeed,

(1) [1955] 2 S.C.R. 603.

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he may turn it over again and again till he finally hands it to Government. There is thus nothing anomalous in the law treating it as part of the amount on which tax must be paid by him. This conception of a turnover is not new. It is found in England and America and there is no reason to think that when the legislatures in India defined 'turnover' to include tax also, they were striking out into something quite unknown and unheard of before.

The only question which has been raised in these appeals is regarding the validity of the impugned Act. That question having been decided against the appellants, the appeals fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

1961

April 28.

THE GENERAL MANAGER, SOUTHERN RAILWAY

v.

RANGACHARI

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

State Service—Power of State to reserve appointments and posts for backward classes—Scope of such reservation—"Appointments or posts", Meaning of—Posts, if include selection posts in the services—Constitution of India, Arts. 16(4), 335.

This appeal was directed against an order of the Madras High Court issuing a writ of *mandamus* at the instance of the respondent restraining the appellants from giving effect to two circulars issued by the Railway Board reserving selection posts in Class III of the Railway service in favour of the members of the Scheduled Castes and Scheduled Tribes with retrospective operation. It was urged on behalf of the respondent that the Constitution made a clear distinction between backward classes on the one hand and Scheduled Castes and Scheduled Tribes on the other, and that Art. 16(4) applied only to reservation of posts at the stage of appointment and not to posts for promotions after appointment and, therefore, the circulars which fell