

Sultan Singh Jain
 v.
 Jai Chand
 and another

 Mehar Singh, J.

Controller is not an order having the force of a decree, though executable as a decree of a civil Court. The appeal to the Rent Control Tribunal was against the order of the Rent Controller and that order has correctly been stamped as such. This argument on the side of the landlord does not prevail.

In the consequences, this second appeal fails and is dismissed, with costs.

R. S.

SALES-TAX REFERENCE

Before Inder Dev Dua and R. S. Narula, JJ.

M/s NAND LAL-HIRA LAL,—*Applicant*

versus

THE PUNJAB STATE,—*Respondent*

General Sales-tax Case No. 2 of 1962.

1965

 April, 28th.

Central Sales-tax Act (LXXIV of 1956)—S. 9—Transaction of sale or purchase in Amritsar which occasions the movement of goods to Jammu and Kashmir—Whether liable to Central Sales-tax—Interpretation of Statutes—Taxing Statute—Construction of—Rules as to, stated.

Held, that it is permissible to impose sales-tax on a transaction of sale or purchase which takes place in Amritsar, but occasions the movement of the goods from the Punjab State to the State of Jammu and Kashmir.

Held, that under section 9(1) of the Central Sales-tax Act, the tax is to be levied and collected in the State from which the movement of the goods sold in *inter-State* trade commences. It is thus clear that so far as the payment of tax on sales is concerned, the State in which the movement of the sold goods terminates does not come into the picture at all except for the purpose of determining whether or not the sale in question has been effected in the course of *inter-State* trade. This cannot, in any manner, affect the State in which the movement of the goods terminates so as to influence the construction to be placed on the liability of the dealer to be taxed in regard to the transaction taking place in the State from which the movement of the sold goods commences.

Held, that for the purpose of statutory construction, taxing statutes bear little analogy to penal statutes because the burden of paying

taxes in a welfare democratic Republic is distributed as equally as possible upon everyone, thus taking the form of a privilege or a contribution towards sustenance of the social order instead of punishment.

Held, that taxing statutes are designed to see that the burden of taxation falls equally and uniformly, avoiding, as far as possible, unjust or unreasonable results. It must never be forgotten that the long range objective of all tax measure is the accomplishment of good social order and for a welfare democratic State revenue is its very life blood.

Application under section 9(2) of the Central Sales-tax Act, read with section 22(1) of the Punjab General Sales-tax Act, XLVI of 1948, of M/s Nand Lal-Hira Lal, Bazar Ghanta Ghar, Amritsar to refer the question of law arising out of the order dated 16th November, 1961, in Revision No. 95 of 1960-61 pertaining to the assessment year 1957-58.

H. L. SIBAL AND S. C. SIBAL, ADVOCATES for the Petitioners.

D. S. NEHRA, FOR THE ADVOCATE-GENERAL, for the Respondents.

JUDGMENT.

DUA, J.—These four references (G.S.T.Rs Nos. 1, 2, 3 and 4 of 1962), made by the learned Financial Commissioner under section 9(3) of the Central Sales Tax Act (Act 74 of 1956) read with section 22(1) of the Punjab General Sales Tax Act, 1948, raise the same questions of law and have, therefore, been heard together. Main arguments have been addressed in G.S.T.Rs. Nos. 2 and 3; Shri Gandhi has, however, supplemented in G.S.T.R. No. 1 arguments addressed by Shri Sibal in the other two cases.

Dua, J.

The four questions referred by the learned Financial Commissioner may here be reproduced:—

- (1) While not extending the Central Sales Tax Act No. 74 of 1956 to the State of Jammu and Kashmir or in other words not enacting that Act for the State of Jammu and Kashmir, did the Parliament by that Act formulate even its first principle of determining, when a sale or purchase of goods takes place in the course of inter-State trade or commerce, *qua* transactions of sale between dealers of other States of rest

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- of India with those of the State of Jammu and Kashmir ?
- (2) Whether by laying down in section 1(2),—it extends to the whole of India except the State of Jammu and Kashmir, is it not meant that none of the principles formulated by this Act and the provisions of the sections apply to inter-State transactions by dealers of other States with those of the State of Jammu and Kashmir or, in other words, the territory of the State of Jammu and Kashmir is excluded from the map of India for the purposes of this Act, to the remaining States of which India for their inter-State transactions *inter se* the Act only applies ?
- (3) Whether sales by the dealers applicants during the period commencing from 1st July, 1957 and ending with 12th March, 1958 to dealers of the State of Jammu and Kashmir and consequent despatch there of goods to that State was not in the course of export of goods to a place outside that India to the inter-State transactions in between whose States the Central Sales Tax Act then did apply ?
- (4) Whether the tax amounting to Rs. 12,188.75 nP. levied under the Central Sales Tax Act, 74 of 1956, on the dealers applicants for sales effected by them to the dealers of State of Jammu and Kashmir during the period commencing from 1st July, 1957 and ending with 12th March, 1958 was right, legal and just when the Central Sales Tax Act did not extend to the State of Jammu and Kashmir and whether its imposition and collection for that period was neither right nor legal nor just ?

It may be pointed out that before the learned Financial Commissioner it was admitted by the learned Advocate, for the petitioners that there was a sale of the goods in question made by dealers of Amritsar and that the sale did occasion the movement of goods from the State of Punjab to the State of Jammu and Kashmir. The short

question which is canvassed before us, therefore, is whether under the Central Sales Tax Act it is permissible to impose sales-tax on a transaction of sale or purchase which takes place in Amritsar but occasions the movement of the goods from the Punjab State to the State of Jammu and Kashmir. For the purpose of understanding the argument, and giving our answer to the questions referred, it is not necessary to give any further details about the gross turnover or the date of assessment or any other details. Suffice it to say that sales were made by dealers at Amritsar prior to the amendment in the Central Sales Tax Act (hereinafter called the Central Act) effected by Act 5 of 1958, whereby the words 'except the State of Jammu and Kashmir' were omitted from section 1(2) of the said Act, thus extending the application of that Act to the State of Jammu and Kashmir as well.

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Shri Sibal's argument in support of his challenge is somewhat like this. The Central Act has not been applied by the Parliament to the State of Jammu and Kashmir. This is intentional and the object of this exclusion is that, in so far as Jammu and Kashmir State is concerned, the operation of the Act is completely ruled out and, according to the legislative scheme and design, it must not affect anyone doing business in that State. The learned counsel has, indeed, tried to put his challenge in several forms suggesting different facets of his submission. The State of Jammu and Kashmir, says he, must be held to have been intended by the Parliament not to constitute one of the States covered by the operation of the rule of sale in the course of inter-State trade within the contemplation of section 8 of the said Act. From this premise it is sought to infer that the sale or purchase taking place at Amritsar, which occasions the movement of the goods sold to Jammu and Kashmir State, must be considered not to be liable to tax under section 8. I must confess it has not been possible for me to appreciate this submission. The argument that the Government of India has to assign the proceeds under section 9(4) of the Central Act to the State in which they are levied and collected means that in the present case they are to be assigned to the State of Punjab. Up to this point, the position is intelligible, but beyond it there seems to me to be a *non-sequitur* and it does not follow that the State of Jammu and Kashmir must, therefore, be held not

M/s Nand Lal- to be intended to be included in the State covered by the
 Hira Lal rule of inter-State sale. I for my part do not find it possible
 v. to peer through the mirk to find my way to the conclusion
 The Punjab State the petitioner desires me to reach.

Dua, J.

The other submission put forth by the petitioner's learned counsel is that the movement of the goods sold or purchased must be occasioned to terminate in a State to which also the Central Act applies. I again fail to understand how this conclusion is justified. The word 'State' is not defined in the Central Act. In the Constitution, Jammu and Kashmir is expressly mentioned as one of the States in the Union of India,—*vide* Article 1 and First Schedule item No. 15. Under section 9(1) of the Central Act, the tax is to be levied and collected in the State from which the movement of the goods sold in inter-State trade commences. The dealer is liable under section 6(1) to pay tax under the Act on all sales effected by him in the course of inter-State trade. Under section 7, the dealer liable to pay tax has to apply for registration to the specified authority in the appropriate State and the 'appropriate State' under section 2(a) is defined in relation to the dealer's place of business. It is thus clear that so far as the payment of tax on sales is concerned, the State in which the movement of the sold goods terminates does not come into the picture at all except for the purpose of determining whether or not the sale in question has been effected in the course of inter-State trade. This obviously cannot, in any manner, affect the State in which the movement of the goods terminates so as to influence the construction to be placed on the liability of the dealer to be taxed in regard to the transaction taking place in the State from which the movement of the sold goods commences. I have, therefore, little hesitation in rejecting the petitioner's challenge on this ground as completely misconceived.

Reference has next been made to Articles 301 to 304 of the Constitution and it is very forcefully argued that to permit tax on sales taking place in the State of Punjab which occasion the movement of the goods sold to Jammu and Kashmir State is discriminatory. I am equally unable to appreciate this argument. Indeed, to sustain this submission would, in my view, give rise to discrimination rather than avoid it, for to uphold this submission would mean that dealers in Jammu and Kashmir State, who

may as dealers in Amritsar purchase goods in the course of inter-State trade so as to terminate the movement of the goods in Jammu and Kashmir State would not be liable to be taxed, whereas goods so purchased for being moved into all other States of India would be liable to tax. It is unnecessary to point out that the grievance of the petitioner's learned counsel is not that sales taking place in the State of Jammu and Kashmir in the course of inter-State trade should also be taxed, but he wants, on the other hand, exemption from tax in regard to sales taking place in Amritsar, which occasion the movement of the goods sold to the State of Jammu and Kashmir. The challenge on the basis of discrimination, as contemplated by Article 303, on which the counsel has placed reliance is patently unfounded and is, therefore, unacceptable.

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It is then faintly urged that the sale in question is, for all practical purposes, a sale in the course of export of goods out of the territory of India and in this connection the counsel has read out Article 286 of the Constitution. This argument, I am afraid, is still more difficult for me to follow and, indeed, it gives me an impression of an argument of desperation in the petitioner's attempt to take his case out of the purview of the Central Act. Article 1 and First Schedule of our Constitution is a complete answer and even Article 286 does not touch any law made by the Parliament. Sub-article (2) of this Article on which reliance has been placed only relates to sale or purchase of goods on which tax is imposed by the law of a State : the Central Act would seem to me to be out of its purview. The challenge on this ground is perhaps the weakest, completely misconceived and wholly unfounded.

A word here about the approach to taxing statutes. For the purpose of statutory construction, taxing statutes bear little analogy to penal statutes because the burden of paying taxes in a welfare democratic Republic is distributed as equally as possible upon everyone, thus taking the form of a privilege or a contribution towards sustenance of the social order instead of punishment. Of course, the principles embodying criminal penalties, etc., in taxing statutes may involve a construction normally applicable to penal laws, but we are not here concerned with such a provision. A tax-statute, it is now well understood, calls

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for a construction in accordance with the legislative intent as manifested by the statutory language so as to effectuate the legislative purpose bearing in mind that the tax laws are enacted for practical ends. The true meaning must be discovered from the context and purpose of the provisions and their vitality must never be allowed to be frittered away by technical requirements. In our Republic taxing statutes are designed to see that the burden of taxation falls equally and uniformly avoiding, as far as possible, unjust or unreasonable results. It must never be forgotten that the long range objective of all tax measures is the accomplishment of good social order and for a welfare democratic State revenue is its very life blood. No cogent reason founded on any intelligible hypothesis as to why sale of the type in question should be held to be excluded has been advanced, when the law of the Central Act fairly construed does not support its exclusion : in other words, no convincing and logical reason has been advanced for treating Jammu and Kashmir State not to be a State in the Union of India, for the purpose of sales in the course of inter-State trade in the instant case. The argument that without sales taking place in Jammu and Kashmir State in the course of inter-State trade being liable to tax, sales which occasion the movement of goods sold from some other State terminating in Jammu and Kashmir should also not be taxed, which in substance seems to be the main plank of the petitioner's challenge, is supported neither by the language of the Central Act nor by its policy or scheme and, indeed no other convincing and reasonable hypothesis has been suggested for sustaining such a construction. I am, therefore, wholly unable to find any cogent or persuasive reason to agree with this submission, which I unhesitatingly repel.

I have come to this conclusion independently, but, luckily, the matter is not *res integra*, for, a Division Bench of Madras High Court in *S. Mariappa Nadar v. State of Madras* (1), has upheld a tax imposed on a sale held in the State of Madras in the course of inter-State trade when the goods sold were moved into the State of Jammu and Kashmir, where that movement terminated.

(1) A.I.R. 1962 Mad. 290.

For the foregoing reasons, all the four questions are answered in favour of the Revenue and against the petitioners in all the four references. In the peculiar circumstances of the case, however, I make no order as to costs.

R. S. NARULA, J.— I agree.

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Narula, J.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

RAJINDER KUMAR,—*Petitioner*

versus

BASHESHAR NATH,—*Respondent*

Civil Revision No. 325 of 1962.

East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 2(i) and 13—Tenancy of the tenants terminated by notice before the Act became applicable to the shops but tenants continued to be in possession thereof when the Act became applicable to them—Decrees for their eviction obtained from the civil Court—Whether can be executed after the Act became applicable—Such tenants—Whether entitled to apply for fixation of fair rent—S. 15(3)—Appellate Authority—Whether entitled to remand case for further enquiry.

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The Punjab Government by notification exempted for five years the buildings constructed in the years 1953, 1954 and 1955, from the provisions of the East Punjab Urban Rent Restriction Act, 1949, and this period of five years was to commence from the date of the completion of the building. The tenants in the present cases were of the shops which had been completed in January, 1955. Their tenancy had been terminated by notice under section 106 of the Transfer of Property Act with effect from 30th November, 1959, when the Rent Restriction Act was not applicable to these shops. The decrees for their eviction were passed by the civil Court on 30th November, 1960. They applied for fixation of fair rent on 2nd January, 1960 and the question arose whether they could be evicted in execution of the decrees passed against them and whether their applications for fixation of fair rent were maintainable.

Held, that according to the definition of tenant in section 2(i) of the East Punjab Urban Rent Restriction Act, 1949, a tenant continuing in possession after the termination of the tenancy in his