1960

August 29.

TATA IRON AND STEEL CO., LIMITED, BOMBAY

v.

S. R. SARKAR AND OTHERS.

(B. P. SINHA, C. J., JAFER IMAM, A. K. SARKAR, K. C. DAS GUPTA AND J. C. SHAH, JJ.)

Sales Tax—Inter-State sales—Sale effected by transfer of documents of title to goods during their movement from one State to another—Appropriate State to tax such sale—Place where sale effected—Central Sales Tax Act, 1956 (74 of 1956), ss. 2(a), 3, 4—Constitution of India, Art. 286.

The petitioner, a limited company carrying on the business of manufacturing and selling iron and steel goods, with its factory at Jamshedpur in Bihar and its head Sales Office in Calcutta in west Bengal, was served with a notice on August 12, 1959, by the Commercial Tax Officer of West Bengal directing it to submit a statement of sales from Jamshedpur for the period of assessment July 1, 1957, to March 31, 1958, "the documents relating to which were transferred in West Bengal or of any other sales that may have taken place in West Bengal under s. 3(b) of the Central Sales Tax Act, 1956." For the same period, i.e., July 1, 1957 to March 31, 1958, of assessment the petitioner had on December 15, 1958, filed with the Sales Tax Officer, Jamshedpur, a return of inter-State sales made from Jamshedpur, in which were included all sales in which movement of the goods had taken place from the State of Bihar to destinations outside the State, and had paid advance tax under the Central Sales Tax Act, 1956. The petitioner contended before the Taxing Officer of West Bengal, inter alia, that in so far as its inter-State sales from Jamshedpur were concerned the situs of such sales, as determined under s. 4(2) of the Act, would always be in the State of Bihar as the goods were in Bihar and that the State of West Bengal could not tax a sale where goods were under the contract of sale moved from Bihar to Bengal even though the documents of title to the goods sold were transferred in Bengal, such sales being taxable only by the State of Bihar. The Taxing Officer, however, taxed all the sales effected by the company under s. 3(b) on the view that the sales in which the documents of title were handed over in Calcutta were taxable in the State of West Bengal because (1) all the sales effected in favour of West Bengal parties satisfied the conditions prescribed by s. 3(b), and (2) the place where the documents were delivered by the company to the purchaser was the place where the sale was effected.

Held, (*per* Sinha, C. J., Imam and Shah, JJ., Sarkar and Das Gupta, JJ., *dissenting*): (1) that within cl. (b) of s. 3 of the

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Central Sales Tax Act, 1956, are included sales in which property in the goods passes during the movement of the goods from one State to another by transfer of documents of title thereto clause (a) of s. 3 covers sales, other than those included in cl. (b), in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State.

(2) that sub-s. (2) of s. 4 of the Act defines what sales or purchases shall be deemed to take place inside a State and, thereby, locates the place where a sale is effected. The terms of the sub-section being quite general provide also for cases where sales are effected in the course of inter-State trade or commerce under s. 3 of the Act.

(3) that the Taxing authorities in West Bengal had to ascertain, before they could order payment of tax under the Central Sales Tax Act, whether on the materials they were satisfied (a) that the goods at the time of transfer of documents of title were in movement from the State of Bihar to the State of West Bengal, and (b) that the place where the sale was effected was, under s. 4, cl. (2), within the State of West Bengal.

Per Sarkar and Das Gupta, JJ.—A sale contemplated by s. 3(b) of the Central Sales Tax Act, 1956, is one where the transfer of property in the goods sold takes place by the transfer of documents of title to them during their movement from one State to another and is effected within the State in which the documents of title are transferred; that State is the "appropriate State" in respect of such sale. (2) The purpose of s. 4(2) of the Act is to formulate principles for determining when a sale takes place "outside a State", and not to fix the place where a sale under s. 3(b) can be said to have taken effect. The place of that sale is fixed by cl. (ii) of the Explanation in s. 2(a).

ORIGINAL JURISDICTION : Petition No. 199 of 1959.

Petition under Article 32 of the Constitution of India for enforcement of Fundamental Rights.

A. V. Viswanatha Sastri, N. A. Palkhivala, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and *P. L. Vohra*, for the petitioner.

B. Sen, K. C. Mukherjee and *P. K. Bose*, for respondents Nos. 1 and 2.

Lal Narayan Sinha and *S. P. Varma*, for respondent No. 3.

C. K. Daphtary, Solicitor-General of India, R. Ganapathy Iyer, R. H. Dhebar and *T. M. Sen* for respondent No. 4.

1960. August 29. The judgment of the Court was delivered by

SHAH J.—By this petition for writs of *certiorari* and *mandamus*, the Tata Iron and Steel Co., Ltd., hereinafter referred to as the company, challenges the authority of the Commercial Tax Officer, Lyons Range, Calcutta, to demand payment of Rs. 41,14,718·12 nP. to the West Bengal Government as tax leviable under the Central Sales Tax Act No. 74 of 1956 in respect of certain sales of steel goods.

The company has its registered office in Bombay, its Head Sales office in Calcutta in the State of West Bengal and its factories in Jamshedpur in the State of Bihar. The company is registered as a "dealer" under the Bihar Sales Tax Act, and is also registered as a "dealer" in the State of West Bengal under the Central Sales Tax Act, 1956. For the period of assessment July 1, 1957, to March 31, 1958, the company submitted its return of taxable sales to the Commercial Tax Officer, Lyons Range, Calcutta, disclosing a gross taxable turnover of Rs. 9,561-71 nP. in respect of sales liable to Central sales tax in the State of West Bengal. By his memorandum dated August 12, 1959, the Commercial Tax Officer directed the company to submit a statement of sales from Jamshedpur for the period under assessment, "documents relating to which were transferred in West Bengal or of any other sales that may have taken place in West Bengal under s. 3(b) of the Central Sales Tax Act, 1956". The company, by its letter dated September 30, 1959, informed the Tax Officer that the requisition for production of statement of sales made from Jamshedpur in the course of inter-State trade or commerce was without jurisdiction. The company contended that "all the sales from Jamshedpur were of the type mentioned in s. 3(a) of the Central Sales Tax Act and at the same time, some of them also fell within the category mentioned in s. 3(b) of the Act", that even if the sales were "of the type mentioned in s. 3(b) of the Act, the appropriate State of the place where the sales take place or are effected alone had jurisdiction

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to assess such sales to Central sales tax", and that in respect of inter-State sales from Jamshedpur, the situs of the sale was always the State of Bihar as the goods were in Bihar either at the time of the contract of sale or at the time of appropriation to the contract. By his order dated October 21, 1959, the Commercial Tax Officer made a "best judgment assessment" on a gross turnover of Rs. 9,00,09,561·71 nP. of inter-State sales and called upon the company to pay Rs. 41,14,718·12 nP. as tax under the Central Sales Tax Act.

The company had, on December 15, 1958, filed with the Sales Tax Officer, Jamshedpur, a return of inter-State sales made from Jamshedpur for the period July 1, 1957, to March 31, 1958, and a return for the same period for the sales made from Dhanbad with the Sales Tax Officer, Dhanbad. In these returns, the company included all sales in which movement of the goods had taken place from the State of Bihar to destinations outside that State. The total turnover in respect of such inter-State sales as shown in the return exceeded Rs. 26 crores and the company paid as required by the Bihar Sales Tax Act Rs. 71 lakhs odd as advance tax under the Central Sales Tax Act, 1956.

By this petition the company impugns the validity of the order of the Commercial Tax Officer and claims a writ of *certiorari* quashing and setting aside the assessment order dated October 21, 1959, and a writ of *mandamus* directing the Commercial Tax Officer to refrain from taking steps in enforcement or implementation of the order.

Counsel for the respondents contends that the petition under Art. 32 of the Constitution is not maintainable because no fundamental right of the company is infringed by the order passed by the Commercial Tax Officer and the remedy of the company, if it feels aggrieved by the order, is to seek relief by resorting to the machinery provided by the West Bengal Sales Tax Act. Counsel relies in support of his contention upon the judgments of this court in *Ramjilal* v. *Income Tax Officer, Mohindargarh* (1) and *Laxmanappa*

(1) [1951] S.C.R. 127.

Hanumantappa Jamkhandi v. *The Union of India and another* (1). In *Ramjilal's case* (2), this Court held that the protection against imposition and collection of tax save by authority of law directly arises from Art. 265 and is not secured by cl. 1 of Art. 31; and Art. 265 not being in Ch. III of the Constitution, its protection is not a fundamental right which can be enforced by an application under Art. 32 of the Constitution. It was observed in *Ramjilal's case* (2) that the right secured by Art. 265 may be enforced by adopting appropriate proceedings under the Act authorising levy of tax but a petition founded on Art. 32 read with Art. 31(1) was misconceived and must fail. That view was reiterated in *Laxmanappa's case* (1). But it has been held that a threat by the State to realize without authority of law tax from a citizen by using coercive machinery of an impugned Act is an infringement of the fundamental right guaranteed to him under Art. 19(1)(g) and gives to the aggrieved citizen a right to seek relief by a petition under the Constitution (see *Himmatlal Harilal Mehta* v. *The State of Madhya Pradesh and others* (3), *The Bengal Immunity Company Ltd.* v. *The State of Bihar and others* (4) and *The State of Bombay* v. *The United Motors (India) Ltd. and others* (5). In these cases, in appeals from orders passed by the High Courts in petitions under Art. 226, this Court held that an attempt to levy tax under a statute which was *ultra vires* infringed the fundamental right of the citizens and recourse to the High Court for protection of the fundamental right was not prohibited because of the provisions contained in Art. 265. In the case before us, the *vires* of the Central Sales Tax Act, 1956, are not challenged; but in *Kailash Nath and another* v. *The State of Uttar Pradesh and others* (6) a petition challenging the levy of a tax was entertained by this Court even though the Act under the authority of which the tax was sought to be recovered was not challenged as *ultra vires*. It is not necessary for purposes of this case to decide whether the principle of *Kailash Nath's case* (6) is inconsistent

(1) [1955] 1 S.C.R. 769
(2) [1951] S.C.R. 127.
(3) [1954] S.C.R. 1122.
(4) [1955] 2 S.C.R. 603.
(5) [1953] S.C.R. 1069.
(6) A.I.R. 1957 S. C. 790.

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with the view expressed by this Court in *Ramjilal's case* (1). Evidently, the company has paid to the Sales Tax Officer, Bihar, tax due under the Central Sales Tax Act on its turnover including sales on which the tax is sought to be levied by the Commercial Tax Officer, West Bengal. Under the Central Sales Tax Act, there is a single liability to pay tax on inter-State sales. The company having paid the tax to the Bihar State for and on behalf of the Central Government, the threat to recover again sales tax on behalf of the Central Government in respect of the same sales, i. e., sales which are included in the assessment proceedings before the Bihar Sales Tax authorities prima facie infringes the fundamental right of the company to hold its property and the company is entitled to approach this Court under Art. 32 of the Constitution. The preliminary objection raised by counsel for the respondents must therefore fail.

To appreciate the arguments advanced on the merits of the claim made by the company, it is necessary to set out the relevant legislative history and the course of judicial decisions.

Under the Government of India Act, 1935, power to make laws in respect of " taxes on sale of goods and advertisements " was conferred by s. 100(1) read with entry 48 of List II in Schedule VII upon the Provincial Legislatures. This power was exercised by all the Provinces and by picking out one or more ingredients constituting a sale, as determinative of the place where the sale took place, they brought within the taxing laws transactions substantially outside the territorial limits of their authority. Statutes so enacted led to multiple taxation of the same transaction by several Provinces, each Province seeking to rely upon some ingredient of the sale within its jurisdiction as establishing a territorial nexus.

This burden lay heavily upon the consumer. The Constituent Assembly was seriously exercised over this situation and tried to meet the problem by placing restrictions upon the taxing power of the States in respect of sales and purchases having inter-State elements. Article 286 of the Constitution was one of

(1) [1951] S.C.R. 127.

the Articles enacted for that purpose. That Article before it was amended by the Constitution (Sixth Amendment) Act, 1956, stood as follows:

(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation:—For the purposes of sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce—

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution, shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thity-first day of March, 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.

As framed, the Article attempted to enunciate restraints upon the legislative power of the States: but the somewhat inartistic form in which the Article and particularly the Explanation was couched, obscured instead of clarifying the meaning of the Constituent

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Assembly. The scope of Art. 286 fell to be determined in *The State of Bombay* v. *United Motors (India) Ltd.* (1) in an appeal to this court in which the validity of the provisions of the Bombay Sales Tax Act, 1952 was challenged. By the Bombay Act; liability to pay tax was imposed on sales of goods which had been actually delivered in the State of Bombay as a direct result of sales for the purpose of consumption in that State even if property in the goods had, by reason of such sales, passed in another State. The High Court of Bombay in a petition under Art. 226 held that the definition of sale in the Act included certain sales which were by Art. 286 of the Constitution exempt from liability to tax by the State and the tax imposed was therefore wholly void. A majority of Judges hearing an appeal from that judgment to this Court held that Art. 286(1)(a) prohibited taxation of sales or purchases involving inter-State elements by all States except the State in which the goods were actually delivered for the purpose of consumption therein, and the effect of the Explanation thereto was to convert inter-State transactions into intra-State transactions and to remove them from the operation of cl. 2. On this view, the majority of the Judges held that the Bombay Sales Tax Act did not contravene Art. 286. This interpretation of Art. 286 did not meet with the approval of a larger Bench of this Court which heard and decided the *Bengal Immunity Co.'s case* (2). In that case four out of the seven judges constituting the Bench held that the operative provisions of the several parts of Art. 286, namely cl. 1(a), cl. 1(b) and cls. 2 and 3 were intended to deal with different topics and one "could not be projected or read into another". According to the minority view, Art. 286(1)(a) located the situs of the sales with a view to avoid multiple taxation and for that purpose, it divided the sales into two categories—"inside sales" and "outside sales", and that Art. 286(2) applied to the sales in the course of inter-State trade and the sales which fell within the Explanation were intra-State sales. In *M/s. Ram Narain Sons Ltd.* v. *Assistant Commissioner of Sales*

(1) [1953] S.C.R. 1069. (2) [1955] 2 S.C.R. 603.

Tax and others (1) which was decided after the *Bengal Immunity Co.'s case* (2), this Court held:

"The bans imposed by Art. 286 of the Constitution on the taxing powers of the States are independent and separate and each one of them has to be got over before a State Legislature can impose tax on transactions of sale or purchase of goods. The Explanation to Art. 286(1)(a) determines by the legal fiction created therein the situs of the sale in the case of transactions coming within that category and once it is determined by the application of the Explanation that a transaction is outside the State, it follows as a matter of course that the State, with reference to which the transaction can thus be predicated to be outside it, can never tax the transaction."

The Constitution was thereafter amended, Explanation 1 of Art. 286 was deleted and cls. 2 and 3 thereto were altered by the amendment. As amended, Art. 286 stands as follows:

Art 286:—1. No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods, where such sale or purchase takes place—

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

2. Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in cl. 1.

3. Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

Simultaneously, the Parliament was authorised by the incorporation of item 92A in List I of the seventh schedule, to legislate for levying tax on the sale or purchase of goods other than newspapers, where such

(1) [1955] 2 S.C.R. 483. (2) [1955] 2 S.C.R. 603.

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sale or purchase takes place in the course of inter-State trade or commerce, and by the amendment of item 54 of List II excluded that field of taxation from the competence of the State Legislatures. Art. 269, cl. 1(g), which was also amended by cl. 3 to that Article read after the amendment as follows:

"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".

The effect of these diverse amendments made by the Constitution (Sixth Amendment) Act, 1956, was to invest the Parliament with exclusive authority to enact laws imposing tax on sale or purchase of goods where such sale or purchase takes place in the course of inter-State trade or commerce, and the tax collected by the States was to be assigned in the manner provided by cl. 2 of Art. 269 to the State within which the tax was leviable.

In exercise of authority conferred upon the Parliament by Art. 286 and Art. 269, cl. 3, the Parliament enacted the Central Sales Tax Act (74 of 1956). The Act was enacted as the preamble recites:

"to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject".

By chapter 2 of the Act, ss. 3, 4 and 5, those principles were formulated and by chapter 3, detailed provisions were made for imposing liability to pay tax on inter-State sales, for registration of dealers, fixing rates of tax and for levy and collection of tax and for imposing penalties for breach of the provisions of the Act relating to levy and collection of inter-State sales tax. By s. 6, every dealer was made liable to pay tax on all sales effected by him in the course of inter-State

trade or commerce. By sub-s. 2 of s. 8, the rates of tax on sales in the course of inter-State trade or commerce were directed to be calculated at the same rates and in the same manner as would have been done if the sale had in fact taken place inside the appropriate State. By s. 9, the machinery for levy and collection of tax was prescribed. The tax payable by any dealer under the Act was to be levied and collected by the appropriate State in the manner provided by sub-s. 2 which enacts that the authority 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 assess, collect and enforce payment of any tax payable by any dealer under the 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. It is manifest that by s. 6 which is the charging section, liability to pay tax on inter-State sales is imposed upon all sales effected by any dealer in the course of inter-State trade or commerce. The liability to pay tax under the Central Sales Tax Act arises as an inter-State sale. The tax though collected by the State in which the sale takes place is due to the Central Government and is payable at the rates prescribed in respect of intra-State sales by the State in which it is collected.

Sale is defined in s. 2(g) as meaning any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration and includes a transfer of goods on the hire-purchase or other system of payment by instalments, but does not include a mortgage or hypothecation of or a charge or pledge on goods. By s. 3, a sale or purchase of goods is deemed to take place in the course of inter-State trade or commerce if the sale or purchase (a) occasions the movement of goods from one State to another, or (b) is effected by transfer of documents of title to the goods during their movement from one State to another. A transaction of sale is subject to tax under the Central Sales Tax Act on the completion of the sale, and a mere contract of sale is

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not a sale within the definition of sale in s. 2(g). A sale being by the definition, transfer of property, becomes taxable under s. 3(a) if the movement of goods from one State to another is under a covenant or incident of the contract of sale, and the property in the goods passes to the purchaser otherwise than by transfer of documents of title when the goods are in movement from one State to another. In respect of an inter-State sale, the tax is leviable only once and that indicates that the two clauses of s. 3 are mutually exclusive. A sale taxable as falling within cl. (a) of s. 3, will be excluded from the purview of cl. (b) of s. 3 ; otherwise certain sales may, be liable to tax under both the clauses and two States may, in respect of a single sale, claim to levy the tax contrary to the plain intendment of ss. 6 and 9 of the Act.

The sale contemplated by cl. (b) is one which is effected by transfer of documents of title to the goods during their movement from one State to another. Where the property in the goods has passed before the movement has commenced, the sale will evidently not fall within cl. (b); nor will the sale in which the property in the goods passes after the movement from one State to another has ceased be covered by the clause. Accordingly a sale effected by transfer of documents of title after the commencement of movement and before its conclusion as defined by the two terminii set out in Explanation (1) and no other sale will be regarded as an inter-State sale under s. 3(b). The definition of the expression "sale" undoubtedly includes transfer of goods on hire-purchase or other systems of payment by instalments, but thereby, a mere contract of sale which does not result in transfer of property occasioning movement of goods from one State to another does not fall within the terms of s. 3(a). That transaction alone in which there is "transfer of goods" on the hire-purchase or other systems of payment by instalments is included in the definition of "sale". The question whether a mere contract in which goods are delivered under a hire-purchase agreement is a sale within the meaning of s. 2, cl. (g) and therefore, covered by cl. (a) of s. 3 does

not fall to be determined in this case: nor are we called upon to express our opinion on the question whether the clause authorising imposition of sales tax on what may be merely a contract of sale is unconstitutional. We are in this case concerned to decide the competing claims of the States of West Bengal and Bihar to levy sales tax from the company in respect of transactions of completed sales and not in respect of any hire-purchase transactions.

Cases of this Court, viz., *State of Travancore-Cochin and others* v. *The Bombay Co., Ltd.* (1) and *State of Travancore-Cochin and others* v. *Shanmugha Vilas Cashew Nut Factory and others* (2) relied upon by counsel for the State of West Bengal have no bearing on the interpretation of s. 3, cls. (a) and (b). In those cases, the meaning of the expressions, "in the course of import and export" and "in the course of inter-State trade or commerce" used in Art. 286 fell to be determined. The Constitution does not define these expressions. The Parliament has in the Central Sales Tax Act, 1956, sought to define by s. 3 when a sale or purchase of goods is said to take place in the course of inter-State trade or commerce and by s. 4(1) to define when a sale or purchase of goods is said to take place outside a State and by s. 5, when a sale or purchase is said to take place in the course of import or export. In interpreting these definition clauses, it would be inappropriate to requisition in aid the observations made in ascertaining the true nature and incidents without the assistance of any definition clause of "sales outside the State" and "sales in the course of import or export" and "sales in the course of inter-State trade or commerce" used in Art. 286.

In our view, therefore, within cl. (b) of s. 3 are included sales in which property in the goods passes during the movement of the goods from one State to another by transfer of documents of title thereto: cl. (a) of s. 3 covers sales, other than those included in cl. (b), in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State.

(1) [1952] S.C.R. 1112. (2) [1954] S.C.R. 53.

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The question to which attention must then be directed is, which out of the two or more States concerned with the goods sold under an inter-State sale is entitled to collect the tax under Act 74 of 1956. By s. 9, the tax payable by any dealer under the Act is to be levied and collected in the "appropriate State". The expression "appropriate State" was at the material time defined by s. 2(a) 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 cl. (a) of s. 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 cl. (b) of s. 3, the place where the sale is effected.

This definition made the State in which the place of business is situate, the appropriate State; and by the Explanation, the expression "place of business" was defined in relation to the two classes of sales in s. 3 as sales in the course of inter-State trade or commerce. By the first part of the definition, in case of sale of goods falling within cl. (a), the place from which the goods have been moved is the place of business and by cl. 2, in the case of sales falling within cl. (b) of s. 3, the place where the sale is effected is the place of business. This evidently is a highly artificial definition. By a fiction, the place from which goods have been moved by reason of the sale falling within cl. (a) of s. 3, that is, that place from which the goods have been moved under the contract of sale for the purpose of delivery to the purchaser in another State was declared the place of business. By another fiction, the place where the sale is effected in inter-State transactions falling within s. 3(b) was declared the

place of business. In ascertaining the place of business as defined by the Explanation, for cases falling within cl. (a) of s. 3, little practical difficulty arises. But in cases of sales falling within cl. (b), the location of the place where "the sale is effected" for ascertainment of the place of business within the meaning of the Explanation raises difficult problems. As observed by Das, Acting Chief Justice, in *Bengal Immunity Company's case* (1) at p. 649:

"The situs of an intangible concept like a sale can only be fixed notionally by the application of artificial rules invented either by Judges as part of the judge-made law of the land or by some legislative authority. But so far as we know, no fixed rule of universal application has yet been evolved for determining this for all purposes. There are many conflicting theories: One, which is more popular and frequently put forward and is referred to and may indeed be urged to have been adopted by the Constitution.....favours the place where the property in the goods passes, another which is said to be the American view.....fixes upon the place where the contract is concluded, a third which prevails in the continental countries of Europe prefers the place where the goods sold are actually delivered, a fourth points to the place where the essential ingredients which go to make up a sale are most densely grouped".

Ex facie, cl. 2 of the Explanation to s. 2(a) does not seek to locate the place where the sale is effected in cases falling within cl. (b) of s. 3 at the place where the transfer of documents of title to the goods was effected. Parliament has classified the sales "in the course of inter-State trade or commerce" in cls. (a) and (b) of s. 3 and by the first clause of the Explanation to s. 2(a), in cases of sales falling within s. 3(a) the place of business is the place from which movement has commenced and in the case of sales falling within s. 3(b), it is the place where the sale is effected. But there is in the Explanation no material for ascertaining the place where the sale is effected.

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

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There was a sharp conflict of opinion as to the true meaning of Art. 286, cls. 1(a) and (b) and the Explanation as they stood before the amendment by the Constitution (Sixth Amendment) Act, 1956. In the *United Motors' case* (1) it was opined by a majority of the judges of this Court that Art. 286(1)(a) prohibited taxation of sales or purchases involving inter-State elements by all States except the State in which the goods were delivered for the purpose of consumption therein, and the latter State was left free to tax such sales or purchases and that power was not derived from the Explanation to Art. 286(1) but under Art. 246(3) read with entry 54 in List II. Mr. Justice Bose who disagreed with the majority held that the basic idea underlying Art. 286 was to prohibit taxation in the course of inter-State trade and commerce until the ban under cl. 2 of the said Article was lifted by Parliament and always in the case of imports and exports, and when the ban was lifted, the Explanation to cl. 1 of Art. 286 came into play to determine the situs of the sale, the explanation not governing cl. 2 as it applied to transactions which in truth and in fact took place in the course of inter-State trade and commerce. Mr. Justice Bhagwati who agreed with the conclusion of the majority as to the vires of the impugned Act, opined that the Explanation to Art. 286(1) did not take away the right which the State in which the property in the goods passed had to tax the sale or purchase, but only deemed such purchase or sale by a legal fiction to have taken place in the State in which the delivery of the goods had been made for consumption so as to enable the latter State also to tax the sale or purchase in question. In *The Bengal Immunity Co.'s case* (2), Das, Acting Chief Justice, in delivering the judgment of the majority observed that the several parts of Art. 286, viz., cls. 1(a), 1(b), (2) and (3) were intended to deal with different topics; that the Explanation to cl. 1(a) to Art. 286 should not legitimately be extended to cl. (b) either as an exception or as a proviso thereto or read as curtailing or limiting the ambit of cl. 2; that Art. 286(1)(a) fixed

(1) [1953] S.C.R. 1069. (2) [1955] 2 S.C.R. 603.

the situs of the sales with a view to avoid multiple taxation and for that purpose classified the sales into two categories, inside sales and outside sales and enacted that the State cannot tax outside sales and the purpose of the Explanation which declared a sale in the course of inter-State trade must be deemed to have taken place inside the State in which the goods are delivered for consumption was clearly to take it out of the inter-State trade and impress it with the character of an intra-State sale. This view was followed in *M/s. Ram Narain Sons Ltd.* v. *Assistant Commissioner of Sales Tax & others* (1).

Evidently, by the interpretation placed by this Court on the scope and meaning of Art. 286 as originally enacted, Parliament was faced with a difficult problem. The Parliament had to examine the problem of taxing inter-State trade and commerce in the light of three principal factors, namely, (1) the constitutional freedom of trade, commerce and intercourse guaranteed by Art. 301, (2) the inadvisability of allowing the States unrestricted freedom to levy or impose taxes on sales or purchases of goods with inter-State content, and (3) the necessity to impose restrictions on multiple taxation of the same sale by different States. The Parliament deleted the Explanation to cl. 1 of Art. 286 which had given rise to this serious conflict of views and recast cls. 2 and 3. By cl. 2 as amended, the Parliament was authorised to formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in cl. 1; and by the addition of item 92A in List I of the seventh schedule, the Central Government alone could tax sales or purchases of goods which take place in the course of inter-State trade or commerce. By incorporating cl. 3 to Art. 269, the Parliament assumed to itself the power to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce. It is after this amendment was made that the Central Sales Tax Act, 1956, was enacted with a view to provide for collection of a tax on sales or purchases in

(1) [1955] 2 S.C.R. 483.

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the course of inter-State trade or commerce. The Parliament had to define sales in the course of inter-State trade or commerce, sales in the course of import or export, and intra-State sales. The Parliament set out by s. 3 to define sales of goods which can be said to take place in the course of inter-State trade or commerce, by s. 4(1) to define when a sale is said to take place outside a State, and by s. 5 when a sale is said to take place in the course of import and in the course of export. By s. 9, authority to tax was conferred upon the appropriate State, and that expression was defined by s. 2 as the State where the dealer had his place of business, and in respect of sales which fall within cl. (b) of s. 3, the place of business of the dealer was declared to be the place where the sale is effected. By s. 3, it was intended to define the class of sales which shall be deemed to be sales in the course of inter-State trade or commerce, but the conditions which go to make such transactions, sales in the course of inter-State trade or commerce as set out by cls. (a) and (b) were not intended to locate the place where the sale takes place.

The legal position as to taxability of sales in the course of inter-State trade or commerce was unsatisfactory and the Parliament radically amended Art. 286 and the allied Articles. It also enacted a special Act authorising levy and collection of Central Sales Tax with a view to prevent rivalry and competition between different States. Is it then to be assumed that the Parliament still left the law in so far as it related to a class of sales covered by the description of sales in the course of inter-State trade or commerce in the same unsatisfactory condition without enacting where the sales in cases falling within cl. (b) of s. 3 were effected?

Before proceeding to answer that query, attention may be directed to s. 4 of Act 74 of 1956. It is as follows:

"(1) Subject to the provisions contained in s. 3 when a sale or purchase of goods is determined in accordance with sub-s. (2) to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States.

(2) A sale or purchase of goods shall be deemed to take place inside a State if the goods are within the State—

(a) in the case of specific or ascertained goods, at the time the contract of sale is made ; and

(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

Explanation :—Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of this sub-section shall apply as if there were separate contracts in respect of the goods at each of such places."

Sub-section 2 defines what sales or purchases shall be deemed to take place inside a State. The terms of sub-s. 2 are quite general, and the Parliament has thereby attempted to locate the place where a sale takes place. The clause does not deal with the conditions which "effect" a sale : nor is there any warrant for the view that sub-s. 2 of s. 4 only seeks to locate the place of sale which are not in the course of inter-State trade or commerce. By enacting ch. II, the Parliament sought as evidenced by the title of the chapter to exercise its power under Art. 269(3) and 286(2). By s. 3, the Parliament formulated principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce and in so doing, it exercised authority conferred upon it by Art. 269(3). In enacting s. 4, cl. (1), the Parliament sought to formulate principles for determining when a sale takes place outside a State and in enacting that section, it legislated in exercise of authority under Art. 286(2) read with cl. 1(a) of that Article ; and in enacting s. 5, sub-ss. 1 and 2, it exercised authority under Art. 286(2) read with cl. 1(b) of the Article to formulate principles for determining the sale which takes place in the course of import or export. The Parliament by sub-s. 2 of s. 4 attempted to define when a sale shall be deemed to take place inside a State, and by sub-s. 1 of s. 4 provided that when a sale or

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purchase of goods was determined in accordance with sub-s. 2 to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States. But sub-s. 1 having been made subject to the provisions contained in s. 3, it is evident that only those sales which were not in the course of inter-State trade or commerce should be determined under sub-s. 1 of s. 4 as having taken place outside a State. We are unable to hold that any weight can be attached to the argument that if it was the object of the Legislature by enacting sub-s. (2) of s. 4 to explain the expression, " where the sale is effected " as used in cl. (ii) of the Explanation to s. 2(a), the Legislature would have expressly stated so. Nor are we able to agree with the contention that s. 4 only seeks to define " outside sales " and is not intended to locate the place where a sale is effected. The argument that by the application of s. 4, sub-s. 2, in cases where the goods sold are unascertained or future goods, there will be difficulty in ascertaining the place where the sale is effected, has also no force. In any event, s. 4(2) may not be denied its full operation, merely because difficulty may be encountered in some cases in ascertaining the place where it is effected by the application of the rules set out therein.

The Commercial Tax Officer has observed in his order that :

" In this case, it should be remembered that section 3(b) refers to transfer of documents and not only to transfer of documents *by endorsement.* Thus, even if the documents are in the name of the buyer as consignee but these are physically transferred to the buyer in West Bengal then that sale is taxable in West Bengal. In case of goods consigned to " Self " there is no question that delivery to the railways cannot be constituted as delivery to the buyer ".

But under the Sale of Goods Act, if a document of title to goods is used in the ordinary course of business as proof of the possession or control of goods, endorsement or delivery thereof according to mercantile practice will amount to delivery of the goods thereby represented. The transfer of documents contemplated

by s. 3(b) is therefore such transfer as in law amounts to delivery of the goods. Transfer of documents either by endorsement or delivery does complete transfer of title, but in the absence of an indication to that effect in the statute, the place where the documents are transferred is not the place of sale. If the view which appealed to the Commercial Tax Officer is accepted, there is a possibility of large scale evasion of tax. For instance, the documents may be handed over outside India. If documents of title to goods are handed over by the vendor either directly or through his agent to the purchaser or his agent outside India, on the view taken by the Commercial Tax Officer, even though the sale has taken place in India and the goods are in India, the sale would not be taxable. This result could not have been contemplated by the Legislature. We are therefore unable to agree with the view taken by the Commercial Tax Officer.

It was urged by counsel for the State of Bihar that iron and steel are commodities of which the storage, sale and purchase are controlled by the Iron and Steel (Control) Order, 1956, and all the sales which are made subject to tax under the impugned order are those covered by s. 3(a) of the Central Sales Tax Act. In para. 3 of the petition, the company has set out the practice which is followed in supplying steel pursuant to the orders passed by the Controller. It is stated that an intending purchaser has to obtain a permit from the Iron and Steel Controller of the region where he carries on business and the permit is sent by the Provincial Controller to the Controller at Calcutta. The latter Officer plans the indent on the company and sends it to the Head Sales Office at Calcutta for compliance, and the planning of the indent in effect is a directive by the Controller to supply steel to the intending purchaser subject to the company's terms and conditions. In paras. 4, 5 and 6 of the petition, the specimen forms of quotation letters and the practice followed in supplying goods to the Government and Railways, to the "engineering firms and the bazaar parties" are set out. In the light of cls. 4, 5, 10 and 15 of the Iron and Steel (Control) Order, it was

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urged that all the sales effected by the company under the direction of the Controller fall within s. 3, cl. (a). But we do not think it necessary to express any opinion on this argument at this stage, without a more complete picture of the modus operandi followed.

The Commercial Tax Officer has taxed all the sales effected by the company under s. 3, cl. (b), on the view that sales in which the documents of title were handed over in Calcutta were taxable in the State of West Bengal. The assessment is made on two assumptions, (1) that all the sales effected in favour of West Bengal parties satisfied the conditions prescribed by s. 3(b), and (2) that the place where the documents are delivered by the company through its Head Sales Office to the purchaser is the place where the sale is effected. Neither of these assumptions is correct. The Commercial Tax Officer had, in our judgment, to ascertain before he could order payment of tax under the Central Sales Tax Act, whether on the materials he was satisfied, (a) that the goods at the time of transfer of documents of title were in movement from the State of Bihar to the State of West Bengal, (b) that the place where the sale was effected was under s. 4, cl. (2), within the State of West Bengal. The Commercial Tax Officer has, in our view, failed to apply the correct tests and has made assumptions which are not warranted and on a true interpretation of the provisions of the Central Sales Tax Act, the order of assessment discloses an error apparent on its face and a writ of *certiorari* must issue quashing the assessment. It will be for the Commercial Tax Officer of West Bengal to re-assess the company in respect of transactions of sale which are properly taxable within the State of West Bengal by the application of the test which we have already set out.

On this view, the rule is made absolute and it is directed that a writ of *certiorari* will issue quashing the order of assessment made by the Commercial Tax Officer, Lyons Range, Calcutta, West Bengal. The company will be entitled to its costs of this petition.

SARKAR J.—The petitioner was assessed to sales tax on some of its sales by the Government of West Bengal under the provisions of the Central Sales Tax Act, 1956. It contends that the Government of West Bengal had no power to assess tax on those sales, for, under the Act, they could be brought to tax only by the Government of Bihar. It has filed this petition under Art. 32 of the Constitution for a writ to quash the order of assessment made by the Government of West Bengal on the ground that it violates the petitioner's rights under sub-cls. (f) & (g) of cl. (1) of Art. 19 to hold property and carry on business.

The petitioner is a limited company carrying on a business of manufacturing and selling iron and steel goods. It has its factory at Jamshedpur in Bihar and its head sales office in Calcutta in West Bengal.

On August 12, 1959, the Taxing Officer of the Government of West Bengal served a notice on the petitioner to produce "a statement of sales from Jamshedpur.....the documents relating to which were transferred in West Bengal or of any other sales that have taken place under s. 3 (b) of the Central Sales Tax Act, 1956". The petitioner refused to submit the return for reasons which we shall state later and took the stand that the tax on the sales was assessable by the Government of Bihar and not by the Government of West Bengal. The Taxing Officer of the Government of West Bengal did not accept the contention of the petitioner and in the absence of a return by it, made a best judgment assessment on October 21, 1959, assessing the petitioner to a tax of Rs. 41,14,718-12 nP. The petitioner seeks to have this order quashed.

The respondents to this petition are the Government of West Bengal, its officer who made the assessment, the Government of Bihar and the Union of India. No relief is however claimed against the last two respondents.

The questions raised by this petition depend on the construction of certain provisions of the Central Sales Tax Act, 1956. The Act was amended with effect from October 1, 1958. This case however has to be decided

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on the Act as it stood prior to the amendment, for the period covered by the impugned order of assessment was from July 1, 1957 to March 31, 1958. It may be stated here that the validity of the Act has not been challenged by the petitioner.

A preliminary objection to this petition is taken on behalf of the Government of West Bengal. It is said that as the legality of the Act is not challenged, the imposition of the tax does not result in any violation of the fundamental right guaranteed by Art. 31(1) of the Constitution and this petition based on such alleged violation is, therefore, not competent. Such a view was indeed taken by this Court in *Ramji Lal* v. *Income-tax Officer, Mohindargarh* (1). This case was followed in *Laxmanappa Hanumantappa Jamkhandi* v. *Union of India* (2). The present case however does not complain of a violation of any fundamental right under Art. 31. The fundamental right the infringement of which is alleged by the assessment order, is the right to hold property and carry on business under Art. 19 (1)(f) and (g). In *Kailash Nath* v. *The State of U. P.* (3), this Court held that an illegal levy of sales tax on a trader under an Act the legality of which was not challenged violates his fundamental rights under Art. 19(1)(g) and a petition under Art. 32 with respect to such violation lies. The earlier case of *Ramji Lal* v. *Income-tax Officer, Mohindargarh* (1) does not appear to have been considered. It is contended that the decision in *Kailash Nath's case* (3) requires reconsideration. We do not think however that the present is a fit case to go into the question whether the two cases are not reconcilable and to decide the preliminary question raised. The point was taken at a late stage of the proceedings after much costs had been incurred. The question arising on this petition is further of general importance, a decision of which is desirable in the interest of all concerned. As there is at least one case supporting the competence of the petition, we think it fit to decide this petition on its merits, on the footing that it is competent.

(1) [1951] S.C.R. 127. (2) [1955] 1 S.C.R. 769.
(3) A.I.R. 1957 S.C. 790.

Now, the Central Sales Tax Act, 1956, is an Act of the Union Legislature. It authorises the levy of a tax on sales made in the course of inter-State trade. It is only with such sales that the present case is concerned. Sales in the course of inter-State trade are defined in s. 3 of the Act and this section will be set out later. Section 6 of the Act provides that every dealer shall be liable to pay tax under the Act on all sales made by him in the course of inter-State trade. That the petitioner is a dealer is not in dispute. Section 9(1) provides that the tax payable by any dealer under the Act shall be levied and collected in the "appropriate State" by the Government of India. Section 9(2) provides that the authorities empowered to assess and collect tax under the general sales tax law of the "appropriate State" shall on behalf of the Government of India, assess and collect the tax payable under the Act and for such purpose, exercise all powers under its general sales tax law. Under the provisions of sub-s. (3) of s. 9, the State collecting the tax becomes entitled to retain it substantially. It is therefore clear that the tax is payable to the Union and is collected by a State for the Union.

The contention of the petitioner before the taxing officer of the Government of West Bengal may be reproduced in its own words:

"We contend that all our sales from Jamshedpur are of the type mentioned in Section 3(a) of the Central Sales Tax Act and at the same time some of them also fall within the category mentioned in Section 3(b) of the Act. Even if the sales are of the type mentioned in Section 3(b) of the Act, the Appropriate State of the place where the sales take place or are effected, has jurisdiction to assess such sales to Central Sales Tax. Section 4(2) lays down the principles for ascertaining where the sale takes place, or in other words, the situs of the sale. This section creates a legal fiction for ascertaining the *situs of* the sale.

So far as our inter-State sales from Jamshedpur are concerned the situs of such sales will always be in the State of Bihar as the goods will be in Bihar either

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at the time of contract of sale (ascertained goods) or at the time of their appropriation to the contract (unascertained goods). We have accordingly filed our returns of sales made in the course of inter-State trade or commerce from Jamshedpur with the Bihar Sales tax Authorities under the Central Sales Tax Act, 1956, and have paid to them the Tax on the basis of these returns".

The Taxing Officer of the Government of West Bengal did not accept the petitioner's contention. He held:

"In the case of sale u/s 3(b) no property in the goods passes unless the documents of title to goods are in the hands of the buyer. In such a case the "Appropriate State" to levy the tax should be that State in which the sale has been effected; or, in other words, that State in which the documents of title to goods have been transferred to the buyer.

.....

.....

In the above circumstances, it is clear that West Bengal is the "Appropriate State" to levy tax on inter-State sales of the dealer effected by transfer of documents of title to goods in West Bengal. In this case, it should be remembered that section 3(b) refers to transfer of documents and not only to transfer of documents by endorsement. Thus, even if the documents are in the name of the buyer as consignee but these are physically transferred to the buyer in West Bengal then that sale is taxable in West Bengal. In case of goods consigned to "Self" there is no question that delivery to the railways cannot be constituted as delivery to the buyer".

He also held that:

"The dealer has said that section 4(2) lays down the principles for ascertaining where the sale in the course of inter-State trade takes place. In other words, the "Appropriate State" (to levy the tax on the sales) u/s 9 of the Central Act (prior to its amendment with effect from 1-10-58) should be determined by section 4(2). In my opinion, this is an incorrect reading of the law. Each of section 3 and section 4

deals with quite independent sphere of commercial transactions".

Finally, he made the best judgment assessment, earlier mentioned, remarking that:

"The dealer has himself admitted that he has some sales u/s 3(b). From my experience of examining the books of accounts of the dealer for some earlier years I am of the opinion that a very substantial portion of the total sales are effected by transfer of documents in West Bengal. The dealer has refused to comply with my direction to submit a statement of such sales. I have, therefore, to make an estimate.

On examining the records of the dealer under the State law and keeping in view the fact that there had been considerable expansion of sales of iron and steel in recent years I estimate the turnover during the period of assessment to be Rs. 9 crores; i.e., an average of Rs. 1 crore per month".

Now in this case the petitioner's complaint is not that there should not have been a best judgment assessment. It does not say that that assessment is arbitrary or, for any other reason, unfair. Its point is that the Government of West Bengal could not tax a sale where goods were under the contract of sale moved from Bihar to Bengal even though the documents of title to the goods sold were transferred in Bengal, such sales being taxable only by the Government of Bihar.

It is clear from what we have said that the Government of West Bengal purported to tax sales under s. 3(b); it taxed sales where during their movement from Bihar to Bengal, the property in the goods sold passed, by a transfer in West Bengal of the documents of title to them. Two questions arise, namely, what is a sale under s. 3(b) and which is the "appropriate State" to tax such sales?

We take up the first question now. In order to decide it, we have to consider s. 3 as a whole. The section, so far as material, is in these terms:

Section 3:—A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase—

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(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

The first thing that strikes us is that the section has to be so construed that the two clauses in it are made mutually exclusive. It seems clear that it was not contemplated that a sale can fall within both the clauses. If that were not so, there might be two "appropriate States" in respect of it, one being the State from which the goods were moved by reason of the sale and the other being another State within which the sale was effected by the transfer of documents of title during the movement of the goods sold from one State to another. In such a case, each of the two "appropriate States" would be entitled to collect the tax with the result that the same sale would be taxed twice over. The learned counsel for the State of Bihar was inclined to contend, no doubt as an alternative argument, that that could be done. We do not think that the Act intended such a result. We proceed now to state our reasons for this view.

The Act imposes tax on sales in the course of inter-State trade. It is an Act of the Union legislature. Under the Constitution the State legislatures have no power to tax such sales and only the Union Legislature can do so. It is well-recognised that the power to tax sales made in the course of inter-State trade has been denied to the State Legislatures with the object of preventing multiple taxation of the same sale by different States resulting in hardship to the ultimate consumer: see *State of Bombay* v. *United Motors (India) Ltd.*(1) and *Bengal Immunity Co. Ltd.* v. *The State of Bihar* (2). Since these cases were decided, the Constitution has no doubt been amended, but the observations made in them still apply. This being so, the Act could not have intended to tax the same sale twice.

But apart from this consideration of a somewhat general nature, the provisions of the Act plainly make

(1) [1953] S.C.R. 1069. (2) [1955] 2 S.C.R. 603.

it impossible to levy two taxes on the same sale. Under s. 8(1), the tax is a certain percentage of the dealer's "turnover". Section 2(j) defines "turnover" as meaning the aggregate of the sale prices in respect of the dealer's sales. So the tax is a percentage of the sale price and as each sale produces one price, it follows that it can be taxed only once. Again, s. 9 by providing that the tax shall be collected in the "appropriate State" by the Government of India, plainly indicates that there is one tax payable to the Government of India which is collected by one State only. Section 3 by the use of the word "or" between cls. (a) and (b) in it also suggests that the clauses are exclusive of each other.

One sale then cannot be taxed twice. A sale cannot fall under both cl. (a) and cl. (b) of s. 3, for then it would be liable to tax twice. Clauses (a) and (b) are hence mutually exclusive. Keeping this basic consideration in mind, we proceed to construe s. 3.

We take cl. (a) of s. 3 first. That clause contemplates a sale which occasions the movement of goods from one State to another. The words 'sale occasions the movement' should create no difficulty. It is apparent from the explanation in s. 2(a) which will be set out later, that they mean 'moved by reason of the sale'. The question then arises, when does a sale occasion the movement of goods sold? It seems clear to us that a sale can occasion the movement of the goods sold only when the terms of the sale provide that the goods would be moved; in other words, a sale occasions a movement of goods when the contract of sale so provides.

We turn now to the sale contemplated by cl. (b) of s. 3. That is a sale effected by a transfer of documents of title to the goods during their movement from one State to another. What then is a sale effected by a transfer of documents of title? In our view, it can only be a sale where the property in the goods sold is passed by a transfer of documents of title. It is well known that in many cases of sale, property in the goods sold is transferred by a transfer of documents of title to them. It has been said that a sale has several

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elements, namely, agreement to sell, transfer of property in the goods sold, payment of price, delivery of the goods and so forth: see *State of Bombay* v. *United Motors (India) Ltd.*(1). It seems to us to be inappropriate to talk of any of these elements of sale being effected by a transfer of documents of title, other than the element of transfer of property. Thus, for example, the contract of sale cannot be effected by the transfer of documents of title, neither the payment of price. A transfer of documents of title may perhaps effect a delivery of the goods if the parties so agree. But it seems to us that in defining a sale in the course of inter-State trade in a statute purporting to tax a sale, that is a transaction in which property in the goods passed, the legislature was not thinking only of delivery of goods. It does not appear to us to be a reasonable construction of the words 'sale is effected' to hold that they mean delivery of the thing sold. Therefore, we think that cl. (b) refers only to sales where transfer of property in the goods sold takes place by the transfer of documents of title to them during their movement from one State to another.

We have then come to this that cl. (a) of s. 3 contemplates a sale where the contract of sale occasions the movement of the goods sold and cl. (b), a sale where transfer of property in the goods sold is effected by a transfer of documents of title to them. Of course, in the first case, the movement of the goods must be from one State to another and in the second, the documents of title must be transferred during such movement.

Now it will be apparent that if this was the full construction of the two clauses, then they would often overlap. This, as earlier stated, was not intended. We have to narrow down the construction so as to make the clauses mutually exclusive. There may be sales under the terms of which the goods have to be moved from one State to another. All such sales would come within cl. (a). But it may so happen that in some of these sales, the property in the goods passes by a transfer of document of title to them during their

(1) [1953] S.C.R. 1069.

movement. Such sales would fall within cl. (b) also. To avoid this result we have to exclude from cl. (a) such of the sales coming under it in which the property in the goods passes by a transfer of documents of title to them during their movement. In other words, where a sale comes under both the clauses, it has to be held to fall under cl. (b).

We, therefore, think that the two clauses should be construed in the following way: Clause (a) contemplates a sale where under the contract of sale the goods sold are moved from one State to another, provided however that such a sale will not come under cl. (a) but fall under cl. (b) if the property in the goods sold is passed by a transfer of the documents of title to them during their movement from one State to another. Clause (b), on the other hand, contemplates a sale where the property in the goods sold is passed by a transfer of documents of title to them during their movement from one State to another.

The next question is which State can collect the tax on a sale falling under cl. (b) of s. 3, construing that clause in the sense that we have done earlier. In other words, the question in this case is: Would West Bengal be the "appropriate State" to tax a sale where the property in the goods sold passed from the seller to the buyer by a transfer in West Bengal of the documents of title to them during their movement from Bihar to West Bengal? Again, to put it shortly, in the case of sale under cl. (b) of s. 3, is the State where the transfer of documents of title takes place, the "appropriate State" to tax the sale? The West Bengal Government thought it was. We think that this is the correct view to take.

Now the "appropriate State" which alone can under s. 9 levy and collect the tax under the Act has been defined in s. 2(a) which is in these terms:

Section 2.—In this Act, unless the context otherwise requires,—

(a) "appropriate State" means—

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

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(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 s. 3, the place where the sale is effected;.

So the " appropriate State " is that within whose territories the dealer has his place of business. The place of business has however to be decided in each case by reference to the kind of sale. The effect of s. 2(a) appears to be this: If the sale is of the kind mentioned in cl. (a) of s. 3, the " appropriate State " is that from which the goods have been moved by reason of the contract of sale, while if the sale is of the kind mentioned in cl. (b) of s. 3, the " appropriate State " is that " where the sale is effected ".

We are in this case concerned only with sales under cl. (b) of s. 3, and the " appropriate State " in respect of such a sale has to be decided from cl. (ii) of the Explanation in s. 2(a). Under that clause the " appropriate State " in respect of such a sale is the State " where the sale is effected ". The question is, does this definition by itself give sufficient guidance to ascertain the " appropriate State " ?

The learned counsel for the State of Bihar contends that the words " where the sale is effected " do not indicate any place of sale and are not intended to indicate the " appropriate State ". The " appropriate State ", according to him, has to be decided by resort to s. 4(2) which was intended to be explanatory of Explanation (ii) in s. 2(a). We will consider s. 4(2) a little later. But before we do that, let us examine the argument that the words " where the sale is effected " in cl. (ii) of the explanation in s. 2(a) do not indicate any place or the " appropriate State ".

The learned counsel gave several reasons why the words " where the sale is effected " in cl. (ii) of the

Explanation in s. 2(a) cannot indicate any place. First, he referred to certain observations in *State of Bombay* v. *United Motors (India) Ltd.* (1) indicating that it was difficut to localise, that is, to fix the place where, a sale in the course of inter-State trade takes place. He also said that transfer of property is the creation of a jural relation and it is not possible to say where a jural relation is created. Lastly, he referred to the observations of Lord Loreburn, L. C., in *Badische Anilin Und Soda Fabrik* v. *Hickson* (2) that, "if you must decide in what country an appropriation of goods by consent takes place, it takes place not where the consent is given, but where the goods are at the time situate". Therefore he contended that the words "where the sale is effected" do not point to any particular place of sale.

In our opinion, these reasons have no application to a case, where a statute fixes the place of sale. The difficulty in the cases mentioned above was not that there was no place of sale at all, sale being a jural concept, but which of the several places in which a sale could be said to have taken place, was the correct one to select. No such difficulty arises where the statute fixes the place of sale. That is what the Act before us admittedly purports to do, in one view by cl. (ii) of the Explanation in s. 2(a) and in the other view by s. 4(2).

Clause (ii) of that Explanation says in effect that in the case of any sale falling within cl. (b) of s. 3 the appropriate State shall be the State where the sale is effected. Now, a sale under s. 3(b) is a sale "effected" by a transfer of documents of title. The "effect" is the sale; the mode in which the "effect" is produced is by the "transfer of documents of title". As soon as this mode has completed itself the "effect" has been produced. It is simple syllogism that the place where the mode is completed, that is, the transfer of documents of title takes place, is the place where the effect is produced, that is, the sale is effected. The act constituting the mode of effecting the sale being prescribed, the sale must be taken to have been effected where

(1) [1953] S.C.R. 1069 (2) [1906] A.C. 419, 421.

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that act is performed. Clause (ii) of the Explanation in s. 2(a), therefore, itself fixes the place of sale and no question of any difficulty in fixing it arises. In our view, a sale contemplated by s. 3(b) is effected within the State in which the documents of title to the goods sold are transferred resulting in a transfer of the property in them; that State is the "appropriate State" in respect of such sale.

In this view of the matter no question of resorting to s. 4(2) for fixing the place where a sale under s. 3(b) is effected, arises. The place of that sale is fixed by cl. (ii) of the explanation in s. 2(a) itself.

It also appears to us to be absolutely clear that the purpose of s. 4(2) was not to fix the place where a sale under s. 3(b) can be said to have taken effect. That section is in these terms:

Section 4. When is a sale or purchase of goods said to take place outside a State.—

(1) Subject to the provisions contained in section 3, when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States.

(2) A sale or purchase of goods shall be deemed to take place inside a State if the goods are within the State—

(a) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

First, what the learned counsel for the petitioner and the State of Bihar say is that s. 4(2) is really an explanation to cl. (ii) of the Explanation in s. 2(a); cl. (ii) of the Explanation in s. 2(a) does not say where a sale is effected and the "place" is explained by sub-sec. (2) of s. 4. Now, sub-sec. (2) of s. 4 does not purport to be an explanation to clause (ii) of the explanation in s. 2(a); it does not refer to s. 2(a) at all. It would be a strange mode of enacting a statute to have

an explanation to another explanation and that too in another part of the statute dealing, as we shall presently show, with a different matter. Further sub-cl. (ii) of the Explanation in s. 2(a) specifies the place of business and s. 4(2) specifies a State; so the latter cannot be an explanation of the former.

Secondly s. 4(2) states when a sale shall be deemed to take place "inside a State". In order however to say where a sale takes place in the course of inter-State trade it is inappropriate to talk of it as taking place "inside a State". A sale in the course of inter-State trade from its very nature, has nothing to do with sales inside or outside a State. It contemplates commercial activities which take place in more than one State.

Thirdly, s. 4 is not really defining when a sale shall be deemed to take place inside a State. It is only defining when a sale shall be deemed to take place outside a State. It does so by saying that when a sale is to be deemed to be inside any State under sub-sec. (2), it shall be deemed to have taken place outside all other States. Sub-section (2) provides when a sale shall be deemed to take place inside a State only for the purpose of showing that it shall then be deemed to have then taken place outside all other States, and for no other purpose. This is clear from the section itself and is made further clear by the heading to the section. It seems to us that the heading is really a preamble to the section giving a key to its interpretation as was found to be the case in *Martins* v. *Fowler* (1).

Fourthly, s. 4 is expressly made subject to s. 3. This can only mean that in case any conflict between the two sections appears, s. 3 would prevail. Now these two sections define two kinds of sale, namely, a sale in the course of inter-State trade and a sale taking place outside a State. If a sale happens to come under both definitions, it would have to be taken as a sale in the course of inter-State trade for s. 4 has been made subject to s. 3. That being so, it would be impossible to hold that s. 4(2) indicates where a sale falling under s. 3(b) is to be held to have been effected.

Lastly it seems clear to us that s. 4 was enacted

(1) [1926] A. C. 746, 750.

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under the power conferred on the Parliament by Art. 286(2) to formulate principles for determining when a sale takes place "outside a State", the State legislatures having been prevented by cl. (1) of that Article from passing any law imposing tax on such a sale. This is clear from a consideration of ss. 3, 4 and 5 which together constitute Chapter II of the Act. Section 5 states when a sale is said to take place in the course of export or import. The power to enact this section is also derived from Art. 286(2). Section 3 formulates the principles for determining when a sale is said to take place in the course of inter-State trade and it is enacted under the power for that purpose contained in Art. 269(3). The enactments in that Chapter, as its heading shows, were for "formulation of principles for determining when a sale or purchase of goods takes place in the course of inter-State trade, or outside a State or in the course of export or import" and were made under Arts. 269(3) and 286(2), as already stated. We think that it is legitimate to refer to the heading of Chapter II for ascertaining the intention of the legislature on the principles stated by the Judicial Committee in *Toronto Corporation* v. *Toronto Railway* (1) in these words:

"This clause is the last of a fasciculus, of which the heading is "Track, &c., and Railways", and, as was held in Hammersmith Ry. Co. v. Brand, such a heading is to be regarded as giving the key to the interpretation of the clauses ranged under it, unless the wording is inconsistent with such interpretation". The interpretation that we put on s. 4 in the light of the heading, is clearly not inconsistent with the wording of that section. It is admitted that s. 5 has no connection with the other provisions in the Act and is clearly only laying down principles for determining when a sale can be said to have taken place in the course of import of goods into or export of goods out of, India. It would be legitimate to hold that similarly s. 4 was enacted only for the purpose of formulating principles for determining when a sale is said to take place outside a State and not for any other purpose. For all these reasons, we hold that sub-s. (2) of

(1) [1907] A. C. 315, 324

s. 4 was not enacted for determining which is an "appropriate State" to collect the tax in the case of a sale falling under cl. (b) of s. 3.

It was argued on behalf of the Government of Bihar that in any case the sales of the petitioner from Jamshedpur do not come under cl. (b) of s. 3 because all such sales were made pursuant to the permit granted under the provisions of Iron & Steel (Control) Order, 1956, issued under the Essential Supplies Act, 1955, the directions in which permit the petitioner was bound to carry out. It appears that iron and steel being controlled commodities, they could not under the provisions of the Act and Order aforesaid, be sold without the permission of the Iron & Steel Controller. It was contended that when on a contract made pursuant to such permission, the petitioner loaded the goods into the railway wagons at Jamshedpur, the property in them passed under s. 23(1) of the Sale of Goods Act to the purchaser, because, in view of the Iron & Steel (Control) Order, 1956, the goods became unconditionally appropriated to the contract by the seller with the assent of the buyer. The case of *Commissioner of Sales Tax, Bihar* v. *New India Sugar Mills* (1) was cited as authority for this view. This case was decided under a different Order. We do not propose to go into the question whether in any particular sale property was transferred from the seller to the buyer or how and when. That point can be taken before the appropriate taxing authorities.

It appears to us that the Taxing Officer of the West Bengal Government took the same view of s. 3(b) as we have done. He said that in the case of a sale under s. 3(b) "no property in the goods passes unless the documents of title to the goods are in the hands of the buyer". This, of course, means that in the case of a sale under cl. (b) of s. 3 the property in the goods sold passes by the transfer of documents of title to them. The Taxing Officer was further clearly contemplating the transfer of documents of title taking place during the movement of the goods from Jamshedpur to places in West Bengal. So far, it seems to us, his view is correct and unexceptionable. He

(1) 10 Sales Tax Cases 74.

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however proceeded to state that "even if the documents are in the name of the buyer as consignee but these are physically transferred to the buyer in West Bengal, then that sale is taxable in West Bengal". We think that this was not a correct view to take. The transfer of documents of title to the goods sold can pass the property in them only if the parties agree that that would be the result. Therefore, the Taxing Officer of the West Bengal Government had further to bear in mind the question whether the parties had agreed that physical delivery of the documents of title to the goods would pass the property in them. He does not seem to have done this. In the other case also where the documents of title are transferred to the buyer after endorsement, the same test has to be kept in mind, namely, that such transfer would pass the property in the goods only if the parties agreed that that would happen. It, therefore, seems to us that the West Bengal Government's Taxing Officers order may not have been completely in consonance with s. 3(b). In so far as it purported to levy a tax on sales where the documents of title are already in the name of the buyer simply because such documents had been transferred in West Bengal, it may have gone outside the limits of s. 3(b). The order of assessment made by the Taxing Officer of the Government of West Bengal in this case is hence liable to be set aside.

We accordingly set aside the order made by the Taxing Officer of the Government of West Bengal on October 21, 1959, assessing the petitioner to a tax of Rs. 41,14,718-12nP. The Government of West Bengal will be at liberty to proceed to assess the tax afresh in terms of the interpretation put on s. 3 by us in this judgment.

We do not think it fit to make any order as to the costs of this petition.

BY COURT: In view of the majority judgment of the Court, the petition is allowed with costs, and it is directed that a writ of *certiorari* will issue quashing the order of assessment made by the Commercial Tax Officer, Lyons Range, Calcutta.

Petition allowed.