THE STATE OF MADRAS

v.

M/S. RADIO AND ELECTRICALS LTD. ETC.

April 19, 1966

[K. N. WANCHOO, J. C. SHAH AND S. M. SIKRI, *JJ.*]

Central Sales Tax Act, 1957, ss. 7, 8—Central Sales Tax (Registration & Turnover) Rules, 1957—Rules 3—8, 12—Scope of.

The assessees carried on business in the State of Madras and were registered dealers under the Central Sales Tax Act, 1956. In proceedings for assessment for central sales tax for the year 1957-58 the assessees claimed that they were liable to pay tax at the concessional rate of tax on the turnover under sec. 8(1) of the Act where sales were made by them to registered purchasing dealers who furnished declaration in Form 'C'.

The common question considered in these appeals was:

When a purchasing dealer in one State furnishes in Form 'C' prescribed under the Central Sales Tax (Registration & Turnover) Rules, 1957, to the selling dealer in another State a declaration certifying that the goods ordered, purchased or supplied are covered by the certificate of registration obtained by the purchasing dealer in Form 'B' prescribed under r. 5(1) of the Central Sales Tax (Registration & Turnover) Rules, 1957, and that the goods are intended for resale, or for use in manufacture of goods for sale, or for use in the execution of contracts, or for packing of goods for resale, and that declaration is produced by the selling dealer, is it open to the Sales Tax authority under the Central Sales Tax Act to deny to the selling dealer the benefit of concessional rates under s. 8(1) of the Central Sales Tax Act, 1956, on the view that the certificate in Form 'C' mentions more purposes than one for which the goods are intended to be used, or that the goods are incapable of being used for the purpose for which they are declared to be purchased, or that the goods are applied for some other purpose not mentioned in the certificate in Form 'C'?

HELD: The Act and the Rules do not impose an obligation upon the purchasing dealer to declare that goods purchased by him are intended to be used for one purpose only, even though under his certificate of registration in Form 'B' he is entitled to purchase goods of the classes mentioned in s. 8(3) (b) for more purposes than one. When the purchasing dealer furnishes a certificate in Form 'C' without striking out any of the four alternatives, it is a representation that the goods purchased are intended to be used for all or any of the purposes, and the certificate complies with the requirements of the Act and the Rules. The Sales Tax Officer may scrutinise the certificate to find out whether it is genuine and may also examine the registration certificate of the purchasing dealer, to see if the goods are covered by it. But it is not for him to hold an enquiry whether the goods specified in the certificate of registration of the purchaser can be used by the purchasing dealer for any of the purposes mentioned in Form 'C', or whether they should have been specified in the registration certificate or even that the goods purchased have in fact not been used for the purpose declared in the certificate. [206 B-D]

A It is contemplated in sec. 7 and the Rules that the certificate of registration may only be issued after an objective satisfaction by the notified authority that the specified goods are likely to be needed for the purpose of business of the registered dealer, and that satisfaction is open to challenge in an appropriate proceeding before the High Court and even before this Court. Correctness or propriety of satisfaction of the notified authority in issuing the certificate in B Form 'B' that the goods are likely to be required for the purpose of the business would not however be again open to challenge before another taxing authority in proceedings for assessment of tax. [206 G—207 B].

Indian Copper Corporation Ltd. v. *Commissioner of Commercial Taxes, Bihar & Others* 16 *S.T.C.* 259 *and J.K. Cotton Spinning & Weaving Co. Ltd.* v. *The Sales Tax Officer, Kanpur & Another* 16 *S.T.C.* 563, *referred to.*

C CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 334, 335 and 338 of 1965.

Appeals by Special Leave from the judgment and orders dated January 1, 1963, November 7, 1962 and November 4, 1963 of the Madras High Court in Tax Case No. 170 of 1961 Civil Revision Petition No. 105 of 1961 and Tax Case No. 153 of 1963 respectively.

D *Bishan Narain* and *A. V. Rangam*, for the appellants (in C.As. Nos. 334 and 335 of 1965).

A. V. Rangam, for the appellant (in C.A. No. 338/1965).

K. R. Chaudhuri, for the respondent (in C. A. No 334/1965).

N. D. Karkhanis, O.C. Mathur, J.B. Dadachanji and Ravinder E *Narain, for the respondents* (in C.As. Nos. 335 and 338/1965).

The Judgment of the Court was delivered by

Shah, J. This is a group of appeals filed by the State of Madras against orders passed by the High Court of Judicature at Madras which raises the following common question as to applicability of concessional rate of sales tax to transactions of inter- F State sale and taxable under the Central Sales Tax Act, 1956:

> "When a purchasing dealer in one State furnishes in Form 'C' prescribed under the Central Sales Tax (Registration & Turnover) Rules, 1957, to the selling dealer in another State a declaration, certifying that the goods ordered, purchased or supplied are covered by the certificate of registration obtained by the purchasing dealer in Form 'B' prescrib- G ed under r. 5(1) of the Central Sales Tax (Registration & Turnover) Rules, 1957, and that the goods are intended for resale, or for use in manufacture of goods for sale, or for use in the execution of contracts, or for packing of goods for resale, and that declaration is produced by the selling dealer, is it open to the Sales Tax authority under the Central Sales H Tax Act to deny to the selling dealer the benefit of concessional rates under s. 8(1) of the Central Sales Tax Act, 1956.

on the view that the certificate in Form 'C' mentions more purposes than one for which the goods are intended to be used, or that the goods are incapable of being used for the purpose for which they are declared to be purchased, or that the goods are applied for some other purpose not mentioned in the certificate in Form 'C'?" A

We may briefly set out the facts which give rise to two out of the appeals: Civil Appeals Nos. 334 & 335 of 1965. B

Civil Appeal No. 334 *of* 1965. M/s Radio & Electricals Ltd., respondents in this appeal—carry on business in the State of Madras in electrical equipment and are registered as dealers under the Central Sales Tax Act. The Bombay State Electricity Board, Saurashtra Division, which is engaged in the production of electric energy purchased transformers and other goods of the total value of Rs. 1,42,020/- from M/s. Radio & Electricals Ltd. and the latter claimed in proceeding for assessment for Central sales-tax for the year 1957-58 that they were liable to pay tax at the rate of 1 per cent on the turnover under s. 8(1) of the Central Sales Tax Act. The Deputy Commercial Tax Officer rejected the claim on the ground that the Bombay State Electricity Board was not a dealer engaged in selling goods and merely because they held a registration certificate, the goods sold to the Board could not be admitted to the concessional rate of tax under s. 8(1) of the Act. The Appellate Assistant Commissioner of Commercial Taxes confirmed the order on the ground that transformers and other goods purchased by the Electricity Board for use in the production of electrical energy were not intended to be used in the manufacture of goods for sale within the meaning of s. 8(3) (b) of the Central Sales Tax Act, because electricity was not at the material time "goods" within the meaning of the Act. The order passed by the Appellate Assistant Commissioner was confirmed by the Sales Tax Appellate Tribunal, Madras. The High Court, following an earlier judgment in *Deputy Commissioner of Commercial Taxes, Madras Division*, v. *Manohar Brothers*(1) modified the order holding that if the selling dealer within the State produces a certificate in Form 'C' setting out one or more of the purposes in s. 8(3)(b) of the Act, and if the Sales Tax authorities on behalf of the State do not deny that the purchasing dealer is a registered dealer, the selling dealer will not be denied the concessional rate of tax under the Act, even if it transpires that the purchasing dealer has utilised the goods for purposes other than those mentioned in the certificate of registration. The High Court then held that out of the certificates in Form 'C' produced by the selling dealer, certificates in respect of a turnover of Rs. 42,080/- set out the purpose as "manufacture of electrical energy" and since this was not one of the purposes mentioned in s. 8(3)(b) of the Act as it stood at the relevant time, the Sales Tax authority was right in denying the benefit of the rate under s. 8(1) to the assessee, but with regard to a turnover of C D E F G H

(1) 13 S.T.C. 686.

A Rs. 47,340/- the Sales Tax authority was bound to accept the certificates in Form 'C' produced by the assessee even though the certificates contained all the purposes mentioned in the prescribed form, and no purpose was struck out.

The facts which give rise to Civil Appeal No. 335 are these; B M/s Stanes Motors (South India) Ltd.—respondents in this appeal —are dealers in automobiles, tractors and spare parts. For the year 1957-58 they claimed benefit of concessional rates under s. 8(1) on a turnover of Rs. 1,38,572/12/- resulting from sale of tractors supplied to certain "tea factories" in the State of Kerala. The purchasing dealers who were four "tea factories" registered as dealers under the Act delivered to the respondents certificates in C Form 'C' declaring that the tractors purchased by them were intended for use in the manufacture of tea for sale. In the view of the Tax Officer benefit of the concessional rate could not be claimed in respect of those sales, since the tractors were not for resale and the tractors "were not directly relatable to the manufacturing process". In appeal, the order passed by the Tax Officer was confirmed by the Appellate Assistant Commissioner. He held that the D tractors which were used for transporting tea leaves from the plantations to the factories cannot be said to be used in the manufacture of goods for sale. In appeal to the Sales Tax Appellate Tribunal, it was held that the respondents were entitled to the concessional rate in respect of sales to two out of the four factories, which held certificates of registration in Form 'B' specifying "machinery" as one of the items under s. 8(3)(b). The High Court of Madras E confirmed the order passed by the Tribunal in exercise of its revisional jurisdiction.

Counsel for the State of Madras contends that the Commercial Tax Officer is invested with authority under the Act to scrutinise the transactions in respect of which the claim to concessional rate of tax is made, and he is competent to ascertain not only F whether the certificate in Form 'C' is genuine, but whether the certificate is valid in law, whether the purchasing dealer holds a valid certificate of registration in Form 'B', whether the goods specified in the purchasing dealer's certificate can be used for the purpose mentioned in the certificate in Form 'C', and whether the goods were applied for the purpose for which they were purchased. Counsel also submitted that a certificate in Form 'C' which G specifies more purposes than one for which the goods are intended to be used by the purchasing dealer is invalid.

We may in the first instance set out the relevant provisions of the Act and the Rules. The Central Sales Tax Act 74 of 1956 was enacted by the Parliament to formulate principles for determining when a sale or purchase of goods takes place in the course of inter- H State trade or commerce or outside a State or in the course of import into or export from India. By Ch. II 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 or export are enacted. Chapter III deals with inter-State sales tax. By s. 6 liability is imposed upon every dealer to pay tax under the Act on all sales effected by him in the course of inter-State trade or commerce during any year. Section 7 provides for registration of dealers. Section 8, as originally enacted, provided:

"(1) Every dealer who, in the course of inter-State trade or commerce sells to a registered dealer goods of the description referred to in sub-section (3) shall be liable to pay tax under this Act, which shall be one per cent of his turnover:

Provided that, if under, the sales tax law of the appropriate State, the sale or purchase of any goods by a dealer is exempt from tax generally and not in specified cases or in specified circumstances or is subject to tax (by whatever name called) at a rate or rates which is or are lower than the rate specified in sub-section (1), the tax payable under this Act on the turnover in relation to the sale of such goods in the course of inter-State trade or commerce shall be nil or shall be calculated at the lower rate, as the case may be.

(2) . . . . . .

(3) The goods referred to in sub-section (1)—

(a) in the case of declared goods, are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him; and

(b) in any other case, are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or for use by him in the manufacture of goods for sale or for use by him in the execution of any contract; and in either case include the containers or other materials used for the packing of goods of the class or classes of goods so specified.

Explanation— . . . . . .

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold, containing the prescribed particulars on a prescribed form obtained from the prescribed authority.

(5) . . . . . ".

(With effect from October 1, 1958, by Act 31 of 1958, s. 8 was extensively amended, but we are, in these appeals, not concerned with the statute as amended).

A Section 10 provides for penalties. The section at the material time provided:—

"If any person—

(a) fails to get himself registered as required by section 7; or

B

(b) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration; or

(c) not being a registered dealer, falsely represents when purchasing goods in the course of inter-State trade or commerce that he is a registered dealer; or

C

(d) after purchasing any goods for any of the purposes specified in clause (b) of sub-section (3) of section 8 fails, without reasonable excuse, to make use of the goods for any such purpose;

(e) has in his possession any form prescribed for the purpose of sub-section (4) of section 8 which has not been obtained by him or by his principal or by his agent in accordance with the provisions of this Act or any rules made thereunder;

D

he shall be punishable with simple imprisonment.

. . . . . .

Section 14 deals with declared goods in respect of which by s. 8(1) read with s. 8(3)(a) the concessional rate of tax applies when the

E

goods are purchased as being intended for resale. Reading s. 8(1) with s. 8(3)(b), it is clear that the Legislature intended to grant the benefit of concessional rates of tax under the Act to registered dealers, provided that the goods sold were of the class or classes specified in the certificate of registration of the purchasing dealer and the goods were intended to be used for re-sale by him or for use in the manufacture of goods for sale, or for use in the execu-

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tion of contracts, or for packing of goods for resale.

In exercise of the power under s. 13 the Central Government made rules called "The Central Sales Tax (Registration & Turnover) Rules, 1957". Rules 3 to 8 provide for registration and issue of certificate of registration. Rule 5(1) provides that when the notified authority is satisfied, after making such enquiry as it thinks necessary, that the particulars contained in the application are cor-

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rect and complete, it shall register the dealer and grant him a certificate of registration in Form 'B' and also a copy of such certificate for every place of business within the State other than the principal place of business mentioned therein. The material part of Form 'B' is as follows:

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This is to certify that ..... whose principal place of business within the State of .... is situated at .....

has been registered as a dealer under section 7(1)/7(2) of the Central Sales Tax Act, 1956.

The business is:
wholly
mainly
partly
partly
partly

The class(es) of goods specified for the purpose of sub-section (1) of section 8 of the said Act is/are as follows and the sales of these goods in the course of inter-State trade to the dealer shall be taxable at the rate specified in that sub-section subject to the provisions of sub-section (4) of the said section:—

(a) For resale, (b) For use in manufacture,

(c) For use in the execution of contracts.

The dealer's year for the purpose of accounts runs from ..... day of ..... to the ..... day of .....".

Rules 9 & 10 deal with cancellation of registration, and Rules 11 & 12 deal with determination of turnover. By r. 12 the declaration referred to in sub-s. (3) of s. 8 of the Act has to be in Form 'C' consisting of three sections—a counterfoil, a duplicate and the original. The duplicate section of the Form (which in terms is identical with the original section) is as follows:

"Form 'C'—Form of Declaration

(See rule 12).

(to be used at the time of making purchases from out of State sellers).

Name of issuing State .....

Issued to holder of Registration Certificate No. .....

Serial No. .....

To

..... (Seller)

.....

Certified that the goods

**Ordered for in our purchase order No. .....dt.....

*Purchased from you as per bill/cash memo stated below.

Supplied under your chalan No. ..... dated ..... are for

**resale

**use in manufacture of goods for sale/use in the execution of contracts/packing of goods for resale.

A and are covered by my/our registration certificate No. ..... dated ..... issued under the Central Sales Tax Act, 1956.

(Name of the purchasing dealer in full).

.....

(Signature and status of the person signing the declaration).

B *Particulars of Bill/Cash Memo ..... Dated .....No. ..... Amount .....

**Strike out whichever is not applicable.

(Note—To be retained by the selling dealer)".

The Scheme of the Rules read with the Act is that the purchasing dealer as well as the selling dealer must register themselves C under the Central Sales Tax Act. If declared goods are specified in the certificate of registration of the purchasing dealer and if it be certified that the goods are intended for resale by him, the sale is subject to concessional rate of tax under s. 8(1). In respect of sales of other classes of goods specified in the certificate of registration of the purchasing dealer, if the goods are purchased either for resale by him, or for use in manufacture of goods for sale, or for use D in the execution of contracts, the concessional rate of tax is available, provided the selling dealer obtains from the purchasing dealer the declaration in the prescribed form duly filled in and signed by the latter containing the particulars that the goods are ordered, purchased or supplied under a certain specific order, bill or cash memo or chalan, for all or any of the purposes mentioned and that the goods are covered by the registration certificate of the purcha- E ser described therein and issued under the Act. If the certificate is defective in that it does not set out all the details, or that it contains false particulars about the order, bill, cash memo or chalan, or about the number and date of the registration certificate and specifications of goods covered by the certificate of the purchasing dealer, the transaction will not be admitted to concessional rates.

F Now in certain certificates in Form 'C' furnished by the purchasing dealer in this group of appeals all the alternatives in the printed form were retained, and in others one or more but not all the alternatives were retained. Counsel for the State of Madras urged that a certificate in Form 'C' is defective unless it specifies only one purpose for which the goods purchased are intended to be used. But that contention is not borne out by the Act and the G Rules. Goods may be sold to a purchasing dealer under a single order, bill, cash memo or chalan, one part to be used for resale, another to be used in the execution of contracts, and the rest in manufacture of goods for sale, but it is not enacted that separate certificates should be issued each relating to the quantity intended to be used for a specified purpose. A purchasing dealer may again H be carrying on business as a manufacturer, as a building, installation or repair contractor, and as a dealer in goods, and if he purchases goods specified in his certificate, but without making up his

mind about the precise purpose for which the goods will be used, provided it is one of the purposes, he will still be complying with the statutory requirements if he declared in Form 'C' that the goods are purchased for more than one purpose. The Act and the Rules do not impose an obligation upon the purchasing dealer to declare that goods purchased by him are intended to be used for one purpose only, even though under his certificate of registration he is entitled to purchase goods of the classes mentioned in s. 8(3)(b) for more purposes than one. When the purchasing dealer furnishes a certificate in Form 'C' without striking out any of the four alternatives, it is a representation that the goods purchased are intended to be used for all or any of the purposes, and the certificate complies with the requirements of the Act and the Rules. The Sales Tax authority is, of course, competent to scrutinise the certificate to find out whether the certificate is genuine. He may also, in appropriate cases, when he has reasonable grounds to believe that the goods purchased are not covered by the registration certificate of the purchasing dealer, make an enquiry about the contents of the certificate of registration of the purchasing dealer. But it is not for the Tax Officer to hold an enquiry whether the goods specified in the certificate of registration of the purchaser can be used by him for any of the purposes mentioned by him in Form 'C', or that the goods purchased have in fact not been used for the purpose declared in the certificate.

The authority issuing the certificate under r. 5(1), as expressly stated in the rule, has, before issuing a registration certificate, to be satisfied after making such enquiry as it thinks necessary that the particulars contained in the application are correct and complete. The enquiry would obviously be made in the light of the nature of the business and goods which are likely to be needed either for re-sale, or for use in the manufacture of goods for sale, or for use in the execution of contracts. Satisfaction which is contemplated by r. 5 is objective, and may be arrived at upon a quasi-judicial enquiry. This Court has in several cases had occasion to consider the legality of orders of the notified authority refusing to grant certificates of registration in Form 'B' in respect of certain classes of goods which it was claimed by the tax-payer were necessary for the purpose of his business and were therefore requested to be specified in the certificate of registration: e.g. *Indian Copper Corporation Ltd.* v. *Commissioner of Commercial Taxes, Bihar & Others*(1) and *J. K. Cotton Spinning & Weaving Co. Ltd.*, v. *The Sales Tax Officer, Kanpur & Another*(2). On the plain words used in s. 7 and the Rules, it is contemplated that the certificate of registration may only be issued after an objective satisfaction by the notified authority that the specified goods are likely to be needed for the purpose of the business of the registered dealer, and that satisfaction is open to challenge in an appropriate proceeding before the High Court and even before this Court. Correctness or

(1) S.T.C. 259. (2) [1965] II. S.C.R. 900; 16 S.T.C. 503.

propriety of satisfaction of the notified authority in issuing the certificate in Form 'B' that the goods are likely to be required for the purpose of the business would not however be again open to challenge before another taxing authority in proceedings for assessment of tax. If therefore goods are specified in the certificate of registration in Form 'B', it is not open, when a claim is made in respect of the purchases of those goods for the application of concessional rate of tax, to the Sales Tax Officer to deny to the selling dealer of those goods the benefit on the ground that the goods specified cannot be used by the purchasing dealer for the purpose of his business. It is open to the Tax Officer to ascertain whether the goods in respect of which a claim for concessional rate is made are specified in the certificate of registration, but if the class of goods is included in the certificate of registration in Form 'B' he cannot say that the class of goods should not have been specified.

The Act seeks to impose tax on transactions, amongst others, of sale and purchase in inter-State trade and commerce. Though the tax under the Act is levied primarily from the seller, the burden is ultimately passed on the consumers of goods because it enters into the price paid by them. Parliament with a view to reduce the burden on the consumer arising out of multiple taxation has, in respect of sales of declared goods which have special importance in inter-State trade or commerce, and other classes of goods which are purchased at an intermediate stage in the stream of trade or commerce, prescribed low rates of taxation, when transactions take place in the course of inter-State trade or commerce. Indisputably the seller can have in these transactions no control over the purchaser. He has to rely upon the representations made to him. He must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificates: but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in Form 'C' the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplies the goods he incurs a penalty under s. 10. That penalty is incurred by the purchasing dealer and cannot be visited upon the selling dealer. The selling dealer is under the Act authorised to collect from the purchasing dealer the amount payable by him as tax on the transaction, and he can collect that amount only in the light of the declaration mentioned in the certificate in Form 'C'. He cannot hold an enquiry whether the notified authority who issued the certificate of registration acted properly, or ascertain whether the purchaser, notwithstanding the declaration, was likely to use the goods for a purpose other than the purpose mentioned in the certificate in Form 'C'. There is nothing in the Act or the Rules

that for infraction of the law committed by the purchasing dealer by misapplication of the goods after he purchased them, or for any fraudulent misrepresentation by him, penalty may be visited upon the selling dealer. A

Counsel for the appellant contended that the view expressed by the High Court in the judgments under appeal was in any case erroneous, because they held that a 'C' Form certificate produced by the selling dealer is conclusive of the right to the concessional rate of tax, and that no enquiry whatever may be made by the assessing authority. He invited our attention to the following passage from the judgment which is under appeal in Civil Appeal No. 335 of 1965: B

> "We are of the opinion that whether or not the goods were in fact used for the stated purposes or even usable for such a purpose, so long as the purchasing dealer has furnished the required declaration to the selling dealer, the selling dealer becomes under law entitled to the benefit of section 8(1) of the Act. It is no function of the selling dealer to enter into a judicial examination of whether the goods are in fact used or usable for the manufacture or processing of goods for sale by the purchasing dealer. The purchasing dealer declares that they are required for such a purpose and are further so specified in his form of registration granted by the sales tax authorities. It is not the function of the selling dealer to enquire whether the requirement of the purchasing dealer is *bona fide* or even is or is not within the certificate of registration of that dealer." C D E

It is implicit in the context in which these observations occur that if the purchasing dealer holds a valid certificate specifying the goods which are to be purchased, and furnishes the required declaration to the selling dealer, the selling dealer becomes on production of the certificate entitled to the benefit of s. 8(1). It is of course open to the sales tax authority to satisfy himself that the goods which are purchased by the purchasing dealer under certificate in Form 'C' are specified in the purchasing dealer's certificate in Form 'B'. Observation of the High Court that the selling dealer may not enquire whether the requirement is not within the certificate of registration of the purchasing dealer is not accurate. But whether the goods specified in the registration certificate in Fom 'B' can be used for the purpose is not for the selling dealer to determine. That is a matter which has already been determined by the notified authority issuing the certificate of registration. F G

Appeal No. 334 therefore fails and is dismissed with costs. In Appeals Nos. 335 & 338 the respondent is the same assessee, and common questions for different periods are raised. These appeals also fail and are dismissed with costs. One hearing fee. H

Appeals dismissed.