MANGANESE ORE (INDIA) LTD. A

*v.*

THE REGIONAL ASSISTANT COMMISSIONER OF SALES TAX, JABALPUR

*December* 19, 1975

B

[H. R. KHANNA AND S. MURTAZA FAZAL ALI, JJ.]

*Central Sales Tax Act*, 1956—*S.* 5(1) *read with Art.* 286(1)(*b*) *of the Constitution of India—Contract of sales occasioning export are eligible to tax under s.* 5(1) *of the Central Sales Tax*, 1956—*Sales through an intermediary buyer does not "occasion export".*

*"Stare Decisis" doctrine of, is a valuable principle of precedent requiring special or extraordinary reasons to depart from.* C

*Cental Sales Tax Act*, 1956—*Sec.* 3(*a*), 4(2)(*b*) *and* 9—*Sale in the course of inter-State trade or commerce—Conditions to be satisfied before a sale can be said to take place.*

*Central Sales Tax Act*, 1956—*Sec.* 3(*a*)—*"Movement of goods"—Whether it makes a distinction between unascertained goods and future goods—Scope of s.* 3(*a*).

*Penalties for belated return under the Central Sales Tax Act when not provided for, the State cannot take recourse to under the State Sales Tax Act—Sec.* 10 (*a*) *of the Central Sales Tax Act*, 1956. D

*"Oriental mixture"—Term used in the contract of sale, whether "manganese ore" and liable to tax.*

The appellant—Manganese Ore (India) Ltd. (a commercial venture where the Government of India, Government of Maharashtra and Government of Madhya Pradesh hold shares in the ratio of 17 per cent each) entered into four types of "contracts of sale" with buyers in India and outside India for selling the manganese ores extracted from the mineral mines leased out to it and situated in the States of Madhya Pradesh and Maharashtra. They were (a) category I are the contracts where the appellant directly sent the ores to two foreign companies on f.o.b. terms; (b) category II represents contracts which were entered into by the appellant with the Mineral and Metals Trading Corporation of India Ltd., under which the appellant despatched manganese ore of varying percentage to the M.M.T.C., f.o.b. Bombay and the M.M.T.C. in turn exported the goods to foreign buyers; (c) category III relates to the sales to M/s. Ram Bahadur Thakur & Co., Bombay and other buyers who in their turn sold the goods to M.M.T.C. for export; and (d) category IV relates to the sales in favour of the buyers within the territories of India, but outside the State. E F

According to s. 3(a) and 9 of the Central Sales Tax Act, the State of Madhya Pradesh was competent to levy tax on the sales in the course of inter-State trade or commerce. Under s. 5(1) of the Central Sales Tax Act, sales occasioning export or in the course of export are exempt from the purview of the Act. G

In respect of categories II to IV, the Sales Tax Authorities levied tax under the Central Act, holding that they were in the course of inter-State trade or commerce and imposed a penalty of Rs. 1,000/- under the Madhya Pradesh General Sales Tax Act for belated filing of returns. The writ petition filed by the assessee in the Madhya Pradesh High Court failed.

Dismissing the appeal by special leave and quashing the penalty imposed, H the Court.

HELD : As no export was involved so far as the buyers in India are concerned, s. 5(1) of the Central Sales Tax Act has no application at all. This

point is no longer *"res integra"* in view of the Constitution Bench Division of this Court in *Md. Serajuddin and others* v. *State of Orissa,* [1975] 2 SCR 47 Where the sale was not directly and substantively connected with export, and where between the seller and ultimate buyers intermediaries are involved, such a sale would not occasion any export and would not fall within the purview of s. 5(1) of the Central Sales Tax Act. [102 G, 103 C—D]

*Md. Serajuddin & others* v. *State of Orissa,* [1975] 2 SCR, 47, applied.

(2) The doctrine of *"Stare Decisis"* is a very valuable principle of precedent which cannot be departed from unless there are extraordinary or special reasons to do so, and more so to reconsider a recent constitutional decision. [103 G]

(3) Before a sale can be said to take place in the course of inter-state trade or commerce, the following conditions must be satisfied : (i) that there is an agreement to sell which contains a stipulation express or implied regarding the movement of the goods from one State to another; (ii) that in pursuance of the said contract the goods in fact moved from one State to another; and (iii) that ultimately a concluded sale takes place in the State where the goods are sent which must be different from the State from which the goods move. If these conditions are satisfied, then by virtue of s. 9 of the Act, it is the State from which the goods move which will be competent to levy the tax under the provisions of the Act. [104 D—F]

*Balabhgas Hulaschand and others* v. *State of Orissa,* [1976] 2 SCR, 939 relied on.

(4) So far as s. 3(a) of the Central Sales Tax Act is concerned, there is no distinction between unascertained and future goods and goods which are already in existence, if at the time when the sale takes place these goods have come into actual physical existence. [108 B]

*Balabhgas Hulsachand and others* v. *State of Orissa,* [1976] 2 S.C.R., 939 applied.

(5) In the absence of any provision for penalty under the Central Sales Tax Act itself it is not open to the Sales Tax Authorities to press into the service the provisions of the State Sales Tax. [108 G]

(6) In the instant case, a careful perusal of the agreements would clearly show that what the buyers wanted and what was actually sold to them was manganese ore and after all the goods were stocked together, the required percentage under the contracts of sale automatically come into existence. The word "oriental mixture" is merely a technical terminology or just another name for what is known in the commercial world as manganese ore. Therefore, it is clear that it was manganese ore and manganese ore alone which was sought to be sold by the appellant to various buyers in India. The mere fact that certain specific contracts have been mentioned does not alter the character and quality of the goods that are actually supplied by the appellant to its various purchasers. In these circumstances, therefore, the theory of the ore supplied by the appellant being only one constituent and not the entire goods sold is illusory. [105 D—F, 107 B—D]

*Central Provinces Manganese Ore Co., Ltd.* v. *The State of Maharashtra,* S.T. Ref. 17-20/1964 decided on 7-4-1969 by Bombay High Court, *Commissioner of Sales Tax. Eastern Division Nagpur* v. *Hussenali Adamji and company and another,* 10 S.T.C. 297, (Distinguished).

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 599 of 1975.

(Appeal by special leave from the judgment and order dated the 23-4-1974 of the Madhya Pradesh High Court at Jabalpur in Misc. Petition No. 542 of 1971).

*S. V. Natu, D. K. Kambarkar* and *V. N. Ganpule,* for the appellant.

*Ram Panjwani* and *H. S. Parihar,* for the respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J.—This is an appeal by special leave against the judgment and order of the Madhya Pradesh High Court dated April 23, 1974 dismissing the writ petition filed by the appellant before the High Court for quashing the order of the Assessing Authorities imposing tax under the Central Sales Tax Act, 1956 on the basis of a number of sales made by the appellant Company in pursuance of multifarious contracts of sale. The appellant Company was formed in pursuance of an agreement dated June 8, 1962 between the President of India and the Central Provinces Manganese Ore Company Limited. Before this agreement the said Company which will be hereafter referred to as the 'C.P.M.O.C.' was a private company incorporated in the United Kingdom and carried on the business of extracting manganese ore from several mines in the erstwhile States of C.P. & Berar and Bombay. By virtue of the agreement referred to above a new Company was formed under which the Government of India, the Government of Maharashtra and the Government of Madhya Pradesh held shares in the ratio of 17% each whereas the original Company C.P.M.O.C. retained shares to the extent of 49%. Thus the position was that in the present commercial venture the Central Government had preponderance of share. The appellant, after the formation of the new Company, was known as Manganese Ore (India) Ltd. which will hereafter be referred to as the M.O.I.L. Fresh leases to extract the minerals from the various mines were issued by the Government in favour of the M.O.I.L. and the Company entered into contracts with buyers in India and outside for selling the manganese ore extracted from the various mines situated in the States of Madhya Pradesh and Maharashtra.

A close analysis of the contracts entered into by the appellant Company and the business carried on by it would manifestly reveal that the contracts may be divided into four separate and clear categories.

Category-I are the contracts by which the manganese ore extracted by the appellant company is sent directly to a foreign company known as M/s. Philips Brothers on f.o.b. terms. Another such contract was entered into by the appellant with B.I.S.C. (Ore) Ltd., London for sale of oriental manganese ore f.o.b. Visakhapatnam. Copies of these contracts were filed before the High Court as Annexures Q & R. The Regional Assistant Sales Tax Commissioner accepted the contention of the appellant that so far as the sales under these contracts were concerned, they occasioned export and were clearly exempt from the Central Sales Tax Act as they fell within the purview of s. 5(1) of the said Act. We might also mention here that the main dispute between the parties is regarding the applicability of ss. 3(a), 4(2)(b) and 9 of the Central Sales Tax Act, according to which the State of Madhya Pradesh was competent to levy tax on the sales made by the appellant in the course of which the manganese ore moved from the State of Madhya Pradesh to other States in India. The main contention of the appellant before the High Court as also before the Sales Tax Authorities was that all these sales were outside sales and not in the course of

A inter-State trade or commerce and therefore the provisions of the Central Sales Tax Aat did not apply. The Assistant Sales Tax Commissioner negatived the contention of the appellant and hence a writ petition was filed before the High Court. We might also mention that the writ petition was filed by the appellant company before the High Court even before taking recourse to the normal procedure laid down under the Madhya Pradesh General Sales Tax Act, 1958. This was B obviously done because the appellant chose to assail the levy of tax on the ground that the Sales Tax Authorities did not possess any jurisdiction to impose the tax inasmuch as the sales were not at all covered by the Central Sales Tax Act. We have stressed this fact particularly because before the High Court the appellant raised some questions relating to the merits of the matter which could be properly agitated before an Appellate or Revisional authorities under the Madhya Pradesh C General Sales Tax Act. Thus so far as the sales in Category-I are concerned, the Assistant Sales Tax Commissioner accepted the plea of the appellant and did not levy any tax on those sales. These sales, therefore, did not form the subject matter of the present appeal before us. This position was conceded by both sides.

Category-II represents contracts which were entered into by the ap- D pellant company with the Minerals and Metals Trading Corporation of India Ltd.—hereinafter referred to as MMTC under which the appellant despatched manganese ore of varying percentage to the MMTC f.o.b. Bombay. After having received the goods from the appellant the MMTC exported the goods to foreign buyers. The copies of the contracts comprising these sales are Annexures N, O and P, before the High Court. E

Category-III relates to sales as per agreements copies of which are Annexures S, T and U by which the appellant sold to M/s Ram Bahadur Thakur & Company, Bombay and other buyers which in turn sold the goods to the MMTC.

As regards these two categories, Category II and Category III, the F appellant advanced two-fold contentions before us. In the first place it was argued that as the goods were eventually exported by the buyers from India to foreign countries, therefore, the sales made by the appellant were not inter-State sales but sales which occasioned exports and, therefore, fell within s. 5(1) of the Central Sales Tax Act. The High Court after consideration of various aspects of the matter overruled the contention of the appellant and held that as no export was involved so G far as the sales made by the appellant to the buyers in India were concerned, therefore, s. 5(1) had no application at all. This matter need not detain us further, because it is no longer *res integra* and is now completely concluded by a Constitution Bench decision of this Court in *Md. Serajuddin and Others* v. *State of Orissa*(1) where Ray, C.J., speaking for the majority observed as follows :

H "To establish export a person exporting and a person importing are necessary elements and the course of export is

(1) [1975] 2 S.C.R. 47

between them. Introduction of a third party dealing independently with the seller on the one hand and with the importer on the other breaks the link between the two for then there are two sales one to the intermediary and the other to the importer. The first sale is not in the course of export because the export commences with the intermediary. The tests are that there must be a single sale which itself causes the export or is in the progress or process of export. There is no room for two or more sales in the course of export.

x x x x x

The expression "occasions" in Section 5 of the Act means the immediate and direct cause. But for the contract between the Corporation and the foreign buyer, there was no occasion for export. Therefore, the export was occasioned by the contract of sale between the Corporation and the foreign buyer and not by the contract of sale between the Corporation and the appellant."

The Court clearly held that where the sale was not directly and substantially connected with export, and where between the seller and ultimate buyers intermediaries were involved, such a sale would not occasion any export and would not fall within the purview of s. 5(1) of the Central Sales Tax Act. It is not disputed that all the sales covered by Category II and Category III were actually made by the appellant not to any foreign exporter but to buyers inside India whether it was MMTC or whether they were other private firms. In these circumstances, therefore, the sales mentioned above could not be said to be sales which occasioned any export. The High Court, therefore, rightly found that these sales were completed within the territory of India when the goods passed to the buyers. The High Court further found as follows :

"For these reasons, it cannot be held that these sales occasioned the export within Section 5(1) of the Central Sales Tax Act and were sales in the course of export."

The High Court relied on a number of authorities, but in view of the decision of this Court in *Md. Serajuddin's* (supra) case it is not necessary for us to consider those authorities at all, because the matter has now been concluded by a decision of this Court. In fact this position was conceded by Mr. Natu appearing for the appellant but he tried to persuade us to refer the case to a larger Bench for reconsidering *Md. Serajuddin's* (supra) case. We are, however, unable to agree with the prayer made by the learned counsel for the appellant because this Court has given its decision recently and the doctrine of *stare decisis* is a very valuable principle of precedent which cannot be departed from unless there are extra ordinary or special reasons to do so. We are unable to find any special reasons for reconsidering *Md. Serajuddin's case* (supra), particularly when this Court has laid down the rule, namely, that where the sale is in fact and in law a pure inter-State sale, it cannot be treated to be a sale occasioning export. This, therefore, disposes of the first plank of attack made by the appellant

A on the judgment of the Madhya Pradesh High Court so far the sales contained in Categories II and III are concerned.

Category-IV is in respect of contracts of sale, copies of which are Annexures 1 to 7 before the High Court. These sales were admittedly made by the appellant in favour of the buyers within the territory of India but outside the State. It was, however, contended B that as the goods purported to have been sold to the buyers did not in fact move from the State of Madhya Pradesh, therefore, there was no inter-State sale, but only an inside sale in the State where the goods were delivered, and therefore the State of Madhya Pradesh had no jurisdiction to levy tax under the Central Sales Tax Act. The same arguments were applied to Categories II and III on the ground that if the sales comprised in Categories II and III were not sales C in the course of export they also were not inter-State sales, because the goods which moved from the State of Madhya Pradesh were not actually the goods which were sought to be sold to the buyers in other States in India. The High Court has considered this matter at great length and has relied on a number of authorities. In a recent judgment of this Court in *Balabhgas Hulaschand and Ors.* v. *State of Orissa*(1), after review of all the authorities on the point, this Court D held as follows :

> "That the following conditions must be satisfied before a sale can be said to take place in the course of inter-State trade or commerce :
>
> (i) that there is an agreement to sell which contains a E stipulation express or implied regarding the movement of the goods from one State to another;
>
> (ii) that in pursuance of the said contract the goods in fact moved from one State to another; and
>
> (iii) that ultimately a concluded sale takes place in the State where the goods are sent which must be F different from the State from which the goods move.
>
> If these conditions are satisfied then by virtue of s. 9 of the Central Sales Tax Act it is the State from which the goods move which will be competent to levy the tax under the provisions of the Central Sales Tax Act."

G On a careful consideration of the facts and circumstances of the present case we are satisfied that the present case is directly covered by the decision of this Court in *Balabhgas Hulaschand's case*(1).

The learned counsel for the appellant sought to distinguish *Balabhgas Hulaschand's case*(1) on the ground that what was despatched from Madhya Pradesh was merely managanese ore of a particular H percentage but that was not the property which was sought to be purchased by the buyers in other States. It was contended that under the

(1) [1976] 2 S.C.R. 939.

contracts of sale the property which was to be sold was continental mixture which consisted of various kinds of rocks or manganese ore which were mixed together. What therefore was actually despatched, according to counsel for the appellant, was merely one of the constituents of the goods purported to be sold and not *the* goods which were ores purchased by the buyers. The High Court in its well reasoned judgment has fully considered this aspect of the matter and has rightly pointed out that there is no mechanical or scientific process by which the continental mixture is made. According to the appellant itself the mixture comes into existence automatically by piling up manganese ore despatchted from various States one after the other. In other words, the position is that suppose 1000 tons of manganese ore is sent from Madhya Pradesh and another thousand tons from various mines from Maharashtra, when these ores are stocked at one place by being piled up one upon another they automatically produce continental mixture with various constituents properties and percentages required.

Mr. B. Sen appearing for the respondent submitted that what was actually sold was manganese ore of an average percentage and it was not right to say that actually one of the constituents of the manganese ore was despatched by the appellant from various mines situated in the State of Madhya Pradesh. In fact, manganese ore like iron or coal is a special type of commodity which is not capable of undergoing any scientific process of mixing up resulting in an end product. We find ourselves in complete agreement with the argument of the learned counsel for the respondent. It seems to us that the word 'oriental mixture' which has no doubt been used in some of the agreements produced by the appellant is a misnomer, because this is merely a technical terminology or just another name for what is known in the commercial world as manganese ore of an average or standard percentage of about 49%. A careful perusal of the agreements would clearly show that what the buyers wanted and what was actually sold to them was manganese ore and after all the goods were stocked together the required percentage under the contracts of sale automatically came into existence. For instance, the relevant provisions of one of the contracts, which has been quoted by the High Court, runs thus :

> "*QUALITY* : The average quality of the ore to be supplied by sellers should be, without guarantee, 49.25% Manganese, 0.15% Phosphorus, 9% Silica and 7.5% Iron *PROVIDED ALWAYS* that as such supplies are furnished by mixtures of ores from the sellers' several mines the average quality of the samples taken from deliveries from each mine shall form the basis of settlement."

It would be seen that what was to be supplied was only manganese ore of the percentage of 49.25%. Properties like Phosphorus, Silica and Iron are inherent constituents of manganese ore and are bound to be found in every manganese ore. Similarly in another contract

which appears at p. 117 of the Paper Book and which was entered into by the appellant with the MMTC the relevant passage runs thus :

> "The execution of this Sale Agreement is dependent on the sellers being able to rail the ores from the mines to the port for shipment and also of the grant of any necessary export permit.
>
> 1. *QUALITY* : 30,000 (Thirty thousand tonnes) of 1000 kgs. each, 5% more or less at Buyers' option.
>
> 2. *SPECIFICATIONS* :

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|---|---|---|
| Mn. | basis | 48% |
| rejection | below | 46% |
| Fe. | | 10% maximum |
| Silica+Alumina | | 14% maximum |
| Phos. | | 0.18% maximum" |

Here also it would appear that the agreement is only for sale of manganese ore. Although a certain percentage is mentioned but that percentage is derived automatically when the manganese ores are stocked together. In most of the other contracts which have been filed by the appellants, for instance, in another contract which has been entered into between the appellant and the MMTC on February 22, 1968 what is sold is 'Oriental grade manganese ore'. Similarly in another contract between the appellant and M/s Ram Bahadur Thakur & Company dated February 28, 1968 the property sold is about 25,000 Metric Tonnes of Oriental Mixture of Manganese Ore. In another contract which appears at p. 147 of the Paper Book and which is between the appellant and the Universal Ferro & Allied Chemicals Ltd., Tumsar Road, what is sold is 12,000 metric tonnes of Manganese Ore. There was another stipulation as to delivery in respect of this contract as follows :

> "The sellers will load the component ores from their mines into the wagons which will be arranged for by the buyers who shall be the consignees, in the name of the sellers, who shall be the consignors, at such mines' sidings and for such quantities as may be declared from time to time by the sellers' Managing Director, the destination of all the wagons being Tumsar in the State of Maharashtra and the railway freight being payable by the buyers at the destination. As aforesaid, after the loading of the component ores into wagons the buyers shall be responsible in all respects in respect of the goods so loaded into the wagons."

The stipulation in this contract that after loading the component ores into the wagons the buyers shall be responsible in respect of the goods

is a clear pointer to the fact that the manganese ores that were loaded into the wagons were undoubtedly the goods which were purported to be sold under the contract of sale, otherwise the buyers would not have taken the responsibility for the ores loaded into the wagons if it was really not the ores which the appellant were to supply but merely a constituent thereof.

A close perusal of the various contracts of sale entered into by the appellant would, therefore, clearly disclose that it was manganese ore and manganese ore alone which was sought to be sold by the appellant to various buyers in India. The mere fact that certain specifications have been given or certain percentages have been mentioned does not change the character or the quality of the goods that are actually supplied by the appellant to its various purchasers.

Another important feature of the contract of sale is that a certain amount of tonnage of manganese ore is to be supplied by the appellant which is stretched over a period of few months which shows that the appellant was to supply the ore in instalments. In these circumstances, therefore, the theory of the ore supplied by the appellant being only one constituent and not the entire goods sold appears to be purely illusory and is not at all supported even by the contracts of sale filed by the appellant. For instance, if a firm placed an order for 1000 bales of cloth to be supplied to it by the seller in the course of five months and in pursuance of this contract if the seller supplies 200 bales every month it cannot be said that the first instalment of 200 bales is not the goods sold but only a constituent of the same. On a parity of reasoning, therefore, the manganese ores loaded by the appellant in the railway wagons in the State of Madhya Pradesh, are clearly included in the contract of sale which itself provides that the supply has to be made within a specified period of few months.

Learned counsel for the appellant placed great reliance on a judgment of the Bombay High Court, a certified copy of which has been filed in this Court in the *Central Provinces Manganese Ore Company Ltd.* v. *The State of Maharashtra*(1). In the first place this judgment is not at all applicable to the facts of the present case, because the Bombay High Court was not dealing with a sale under the Central Sales Tax Act. The High Court was pre-eminently concerned with the provisions of the C.P. and Berar Sales Tax Act, 1947 and there is nothing to show that the provisions of that Act were in *pari materia* to the provisions of the Central Sales Tax Act. More than this, we do not want to say about the judgment of the Bombay High Court.

Reliance was also placed by the appellant on a decision of this Court in *Commissioner of Sales Tax, Eastern Division, Nagpur* v. *Husenali Adamji and Company & Another*(2) which also does not appear to be applicable to the facts of the present case, because the Supreme Court in that case was dealing with the question as to when the title in the goods passes.

(1) Sales Tax Reference Nos. 17, 18, 19 and 20 of 1964 decided on April 7, 1969.
(2) 10 S.T.C. 297.

A Lastly it was contended by counsel for the appellant that as the manganese ores despatched by the appellant were unascertained or future goods which would come into existence only after the manganese ores extracted in various mines in Madhya Pradesh and Maharashtra were stocked and piled up one after the other the provisions of s. 3(a) of the Central Sales Tax Act would not apply. This contention is completely without substance in view of the decision of this Court in *Balabhgas Hulaschand's case,* (supra) where it was pointed out that so far as s. 3(a) of the Central Sales Tax Act is concerned there is no distinction between unascertained and future goods and goods which are already in existence, if at the time when the sale takes place these goods have come into actual physical existence. In the instant case also it was never disputed before the High Court or before us that the manganese ore was loaded into the wagons after being extracted from the mines and that the sales of these manganese ores despatched from Madhya Pradesh to various States actually took place and the goods were ultimately accepted by the buyers in other States. In these circumstances, therefore, it is quite clear in this case that the movement of the goods took place in pursuance of the contracts of sale which ultimately merged into actual sales and it was only thereafter that the tax was sought to be levied by the State of Madhya Pradesh. It was also not disputed that the tax has been levied only on such sales of the manganese ore despatched from the State of Madhya Pradesh which came from the mines situated in the State of Madhya Pradesh. Thus all the incidents of an inter-State sale are present in the instant case and the view taken by the High Court that the sales were covered by s. 3(a) of the Central Sales Tax Act is absolutely correct and we fully endorse the same.

These were the main arguments advanced before us by counsel for the appellant. Apart from these, some small points were also argued by the learned for the appellant. In the first place it was submitted that the Sales Tax Authorities had no jurisdiction to impose a penalty of Rs. 1,000/- for the delay in filing the return under the Central Sales Tax Act, because there was no provision in the Central Act making a dealer liable to pay penalty for filing belated returns and recourse could not be taken to the provisions of the State Act on the subject. The High Court negatived this plea following two Division Bench judgments of the Madhya Pradesh High Court. The view taken by the High Court on this point is legally erroneous because this Court in *M/s. Khemka & Co. (Agencies) Pvt. Ltd.* v. *State of Maharashtra*(1) has pointed out that in the absence of any provision for penalty under the Central Sales Tax Act itself it is not open to the Sales Tax Authorities to press into service the provisions of the State Sales Tax Act. In this connection, this Court observed as follows :

> "It is only tax as well as penalty payable by a dealer under the Central Act which can be assessed, re-assessed, collected and enforced in regard to payment. The words

(1) [1975] 3 S.C.R. 753.

as if the tax or penalty payable by such a dealer under the Central Act is a tax or penalty payable under the general sales tax law of the State" have "origin and root in the words" payment of tax including any penalty payable by dealer under the Central Act". A

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For the foregoing reasons we are of opinion that the provisions in the State Act imposing penalty for non-payment of income-tax within the prescribed time is not attracted to impose penalty on dealers under the Central Act in respect of tax and penalty payable under the Central Act. B

x x x x x The Central Act contains specific provisions for penalty. Those are the only provisions for penalty available against the dealers under the Central Act. Each State Sales Tax Act contains provisions for penalties. These provisions in some cases are also for failure to submit return or failure to register. It is rightly said that those provisions cannot apply to dealers under the Central Act because the Central Act makes similar provisions." C D

In this view of the matter, therefore, this part of the order of the High Court must be set aside and the penalty imposed by the Assistant Sales Tax Commissioner must be quashed.

It was then submitted that a purchase tax on a turnover of Rs. 748/- has been levied under s. 7(1) of the Madhya Pradesh General Sales Tax Act. It was, however, pointed out by the respondent that the tax was actually levied on the purchases made by the appellant from unregistered dealers and is a very petty amount. In view of this concession, learned counsel for the appellant did not press this matter. The finding of the High Court on this point is, therefore, affirmed. E F

Lastly it was submitted that the Assistant Sales Tax Commissioner was wrong in holding that the turnover in respect of inter-State sales was not supported by 'C' Forms. This is also a matter which relates to the merits of the case which could be properly agitated before the Appellate or Revisional authorities under the State Sales Tax Act.

The result is that the penalty of Rs. 1000/- imposed by the Assistant Sales Tax Commissioner is quashed. All other contentions raised by the appellant fail and the judgment of the High Court on those points is hereby affirmed. The appeal is accordingly dismissed with the modification indicated above, but in the circumstances without any order as to costs. G

S.R. *Appeal dismissed.* H