KARAM CHAND THAPAR & BROS. (COAL SALES) LIMITED

v.

STATE OF UTTAR PRADESH AND ANOTHER

July 21, 1976

[A. C. GUPTA AND JASWANT SINGH, JJ.]

Central Sales Tax Act (74 *of* 1956), *s.* 9(1), *proviso—Scope of.*

U.P. Sales Tax Act, 1948, *S.* 22—*Order of rectification passed within* 3 *years of original order, but served beyond* 3 *years—If barred by limitation.*

Under s. 3(b), Central Sales Tax Act, 1956, 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 is effected by a transfer of documents of title to the goods during their movement from one State to another. Section 7(3) provides that on the application of the dealer the prescribed authority shall register the applicant and grant him a registration certificate which shall specify the class or classes of goods for the purpose of s. 8(1); and the Form prescribed by r. 3, Central Sales Tax (Registration and Turnover) Rules, 1957, for application for registration, requires the purposes for which the goods were purchased by the dealer to be specified, re-sale being one such purpose. Section 8(1)(b) provides that every dealer who, in the course of inter-State trade or commerce sells to a registered dealer other than the Government, goods of the description referred to in sub-s. (3) shall be liable to pay 3% of his turnover as tax under the Act; whereas, under s. 8(2), the tax payable with respect to goods which do not fall within sub-s. (1) shall be, in the case of declared goods, at the rate applicable to the sale or purchase of such goods inside the appropriate State and in the case of other goods 10%, or the rate applicable in the State, whichever is higher. Prior to April 1, 1963, s. 8(3) stated, that the goods referred to in s. 8(1)(b), "(a) in the case of declared goods, are goods of the class or classes specified in the certificate of the registered dealer purchasing the goods as being intended for re-sale by him; and (b) in the case of goods other than 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 re-sale by him." By the Amendment Act (8 of 1963), cl. (a) was omitted and the opening words in cl. (b), "in the case of goods other than declared goods" were also omitted; so that, after April 1, 1963, the goods referred to in s. 8(1)(b) are specified in sub-s. (3) as goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him. Section 8(4)(a) says that the provisions of s. 8(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 in the prescribed Form, duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars. Section 9(1) contains a general rule that the tax payable by any dealer on sales effected in the course of inter-State trade or commerce would be levied by the Government of India and collected in the State from which the movement of the goods commenced. The proviso to the sub-section qualifies this rule in the case of a subsequent sale which is not exempted from tax under s. 6(2), and states, that the tax on such subsequent sale would be levied and collected in the State from which the registered dealer effecting the subsequent sale *obtained, or could have obtained,* the Form prescribed for the purpose of s. 8(4)(a). Coal is one of the declared goods having been declared under s. 14 to be of special importance in inter-State trade or commerce.

The appellant was a Company carrying on business as coal agents and was registered in U.P. under the U.P. Sales Tax Act, 1948, and the Central Sales Tax Act. The appellant arranged for the supply of coal from collieries in W. Bengal and Bihar to consumers in U.P. The collieries sent the coal by

A rail, the railway receipts either in the name of the appellant or in the name of the consumer in U.P., and sent the bills and invoices to the appellant's head office in Calcutta. The appellant forwarded the railway receipts to the consumers in cases where the receipts were in the names of the consumers, and in cases where the receipts were in the appellant's name also endorsed them in favour of the consumers. There was thus, in the latter cases, a subsequent sale of goods in the course of inter-State trade or commerce by the transfer of documents of title by the appellant to the consumers in U.P. For the assessment year 1966-67 the appellant claimed that the turnover in cases where the railway B receipts had been subsequently endorsed in favour of the consumers in U.P. was not taxable in U.P. The Sales-tax Officer by order dated March 27, 1971, accepted the contention, relying on a decision of the High Court. But, in subsequent decisions, the High Court held that in cases where a regisetred dealer effected a second sale in the course of inter State trade and commerce, sales tax on the turnover was to be realised in the State where the dealer effecting the sale was registered; and in one of the decisions it was observed that the decision on which the Sales-tax Officer relied had overlooked the proviso C to s. 9(1) of the Central Act. The Sales-tax Officer accordingly proposed to rectify the error committed by him and after following the procedure prescribed for rectification of errors apparent on the face of the record in s. 22 of the U.P. Act, passed an order on March 26, 1974, rectifying the mistake and served it on the appellant on March 31, 1974. The appellant challenged the order unsuccessfully in the High Court.

In appeal to this Court it was contended :

D (1) That the declaration prescribed under s. 8(4)(a) is necessary when s. 8(1) was applicable, but that, after the omission in s. 8(3), reference to 'declared goods' is omitted in that section, so that when s. 8(1)(b) refers to the sale of goods mentioned in s. 8(3) the reference is only to goods other than declared goods and hence, when a dealer sells declared goods, he could not have obtained the prescribed declaration and so the proviso to s. 9(1) did not apply;

E (2) Section 22 of the U.P. Act was not applicable as there was no mistake apparent on the face of the record; and

(3) The order under s. 22 was barred by limitation, because it was effective only when it was served on the appellant.

Dismissing the appeal to this Court,

HELD: (1) The 1971-assessment order was wrong. [46 G]

F The Act and the rules and the prescribed Forms make no distinction between declared goods and other goods, except for the purpose of the rate of tax. Under s. 7(3) the registration certificate granted to a dealer has to specify the class or classes of goods for the purposes of s. 8(1) and it makes no distinction between declared goods and other goods. Sub-sections 8(1) and (3) also show that all sales to a registered dealer other than the Government, whether of declared goods or other goods, are covered by s. 8(1). Clause (a) was omitted from s. 8(3) presumably because it was considered unnecessary G to retain it when cl. (b) apparently covered all goods both declared and other than declared. The declaration referred to in s. 8(4)(a) is necessary for the dealer to avail himself of the benefit of the rate of tax mentioned in s. 8(1). There is no valid reason why the appellant could not have obtained the declaration in the prescribed Form as required by the proviso to s. 9(1). Since no claim for exemption under s. 6(2) is made by the appellant, the first order of assessment was contrary to the proviso of s. 9(1) and the sales in question were taxable within the respondent-State, where the appellant was registered as a dealer. [45 D-H]

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(2) The 1971-order of assessment was patently erroneous in that it failed to take into consideration the proviso to s. 9(1). Therefore, it could be rectified under s. 22, U.P. Act. [46 G]

(3) The order rectifying the mistake was recorded within 3 years of the date of the original order as required by s. 22 of the U.P. Act. The fact that the order was communicated, to the appellant on March 31, 1974 could not make any difference. The order of rectification is deemed to be made on the date of communication only for the purpose of counting the period of limitation for filing the appeal, under s. 9 of the U.P. Act. Therefore, in the instant case, the appellant was not affected by the order under s. 22 being *communicated to it* after the expiry of 3 years from the date of the original order. [47 B; 48 B]

Raja Harish Chandra Raj Singh v. *The Deputy Land Acquisition Officer* [1962] 3 S.C.R. 676 and *Madan Lal* v. *State of U.P.* [1975] 3 S.C.C. 779 explained & distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 928 and 929 of 1975.

(From the Judgment and Order dated 8-10-1974 of the Allahabad High Court in Civil Writ Nos. 2169 and 2276 of 1974).

F. S. Nariman, D. N. Misra and *O. C. Mathur,* for the appellant.

S. C. Manchanda and *O. P. Rana,* for the respondents.

ARGUMENTS

APPELLANTS

I. *Civil Appeal No.* 928 *of* 1975.—In this Appeal three questions arise for determination :

(i) Whether in the facts and circumstances of the case the proviso to s. 9(1) of the Central Sales Tax Act, 1956 was applicable so as to enable the State of Uttar Pradesh to levy and collect Central Sales Tax in respect of the subsequent sales of coal effected by the Appellants to consumers in the State of U.P. ?

(ii) Whether the Sales Tax Officer, Moradabad had no jurisdiction to rectify the assessment for the year 1966-67 as there was no error apparent on the face of the record of the original assessment (s. 22 of the U.P. Sales Tax Act, 1948)?

(iii) Whether the order of rectification passed under s. 22 of the U.P. Sales Tax Act on 26th March, 1974 (for the assessment year 1966-67) and communicated to the Appellants on 31st March, 1974 was barred by limitation as it could not be said to be "within three years from the date of" the original assessment order dated the 27th March, 1971 ?

II. Re: *Whether in the facts and circumstances of the case the proviso to Section* 9(1) *of the Central Sales Tax Act,* 1956 *was applicable so as to enable the State of Uttar Pradesh to levy and collect Central*

A *Sales Tax in respect of the subsequent sales of coal effected by the Appellants to consumers in the State of U.P.?*

(a) The proviso to s. 9(1) of the Central Sales Tax Act, 1956 does not apply either :—

(i) to subsequent sales (in the course of inter-State trade or commerce) of declared goods—i.e. goods declared in s. 14 to be of special importance in inter-State trade or commerce; or

(ii) to sale of goods to persons other than registered dealers;

(b) The argument in support of the submission that the proviso to s. 9(1) does not apply to declared goods is as follows :—

Section 8(1) and 8(2) of the Central Sales Tax Act, 1956 deals separately with two types of goods, namely, (i) goods of the description referred to in sub-section (3) [*see* s. 8(1)(b) and (ii)] declared goods [*see* s. 8(2)(a)]. The rates of tax for the two types of goods have been and are differently prescribed in sub-s. (1) and sub-s. (2) of s. 8—especially since the Amending Act VIII of 1963. The expression "goods of the description referred to in sub-section (3)" in s. 8(1) originally included declared goods intended for re-sale [*see* s. 8(3)(a)] as originally enacted in the Central Sales Tax Act, 1956 (reproduced in *Chaturvedi's Central Sales Tax Act, 4th Edition, p.* 548). Sub-section (3) of s. 8 then read as follows :

"(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 re-sale 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."

By the Amending Act VIII of 1963 (which raised the rate of tax under s. 8(1) to 2 per cent), clause (a) of s. 8(3) stood deleted. The effect of this deletion was

that since 1963 declared goods fell outside the purview of s. 8(3). Section 8(4) only applies to sales of goods of the description referred to in sub-s. (3), since the provisions of that sub-section have express reference to the provisions of s. 8(1). For the proviso to s. 9(1) being applicable it is necessary that the registered dealer effecting the subsequent sale *obtained* or *could have obtained* the form prescribed in s. 8(4)(a)—i.e. Form 'C' prescribed under rr. 12 and 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957 (see *pages* 25 *and* 27 *of Chaturvedi's Central Sales Tax Act, Fourth Edition*).

In the present case, the appellants neither obtained nor could have obtained Form 'C' from their purchaser since s. 8(4) [read with s. 8(1) and (3)] did not (after 1963) apply to declared goods.

It is submitted that to accept the arguments urged on behalf of the Respondents that s. 8(4)(a) [read with s. 8(1) and (3)] dealt with declared goods as well, would be to give no meaning to the provisions contained in s. 8(2). Besides, as held by Their Lordships in *State of Tamil Nadu* v. *Sitalakshmi Mills & Others* C [1974] 4 S.C.C. 408 at 412 para 6), s. 8 deals with three different classes of cases—declared goods do not fall within the class mentioned in s. 8(1).

The argument that the charging s. 6 does not make any differentiation between declared and undeclared goods is of no avail. Section 6(1) itself commences with the words "Subject to the other provisions contained in this Act..... ....". If the effect of any other provision is to take away liability to pay sales tax, effect would have to be given to that other provision notwithstanding the charging section [see *State of Mysore* v. *L. Setty* 16 S.T.C. 231, 239 (S.C.)]. Declared goods are clearly intended by the framers of Central Tax Act, 1956 to receive preferential treatment not only in respect of local sales tax on local sales (*see* s. 15), but also Central Sales Tax in sales effected during the course of inter-State trade or commerce [see s. 8(2)].

(c) Even assuming that s. 8(4)(a) [read with s. 8(1) and (3)] include within its purview "declared goods", the proviso to s. 9(1) is still inapplicable for the following reason :—

> For the proviso to s. 9(1) to be applicable and for the State of U.P. to have jurisdiction to levy and collect the Central Sales Tax on subsequent sales, it is necessary that the registered dealer effecting the subsequent sales (by endorsement of documents of title like Railway Receipt during the course of the movement of the goods from one State to another) either "obtained or as the case may be

could have obtained" the Form prescribed in s. 8(4)(a) in connection with the purchase of such goods involved in the subsequent sale. Such a form could only be obtained under s. 8(4)(a) from the appellants' purchasers if the appellants' sales were to be "a registered dealer" [*see* s. 8(1)(b)]. Admittedly in the present case the appellants though registered dealer for the relevant year in question did not sell coal to any registered dealer [see *the averments in para* 11 *of the Writ Petition, page* 62 *Vol.* 2 *which have not been denied in the Affidavit in Reply* (*para* 8 *page* 109 *Vol.* 2]. Therefore, even assuming that the provisions of s. 8(4)(a) [read with s. 8(1) and (3)] were applicable to declared goods (even after the Amending Act VIII of 1963), the sales resulting in the turnover of Rs. 5,59,172.38 not being to registered dealers, the provisions of s. 8(1)(b) were not attracted. Consequently the form prescribed under s. 8(4)(a)—Form 'C'—could not have been obtained by the appellants' purchaser from the prescribed authority. Consequently the appellants could not obtain from their purchaser such form under s. 2(4)(a). Accordingly the last part of the proviso to s. 9(1) not being satisfied, the State of U.P. had not jurisdiction to levy and collect Central Sales Tax from the Appellants.

III. Re : *Whether the Sales Tax Officer, Moradabad had no jurisdiction to rectify the assessment for the year* 1966-67 *as there was no error apparent on the face of the record of the original assessment* (*Section* 22 *of the U.P. Sales Tax Act,* 1948) ?

It has been stated in the order of rectification dated the 26th March, 1974 passed under s. 22 of the U.P. Sales Tax Act, 1948 that (page 96, Vol. 2) :

> "In the present case of the assessee this error is apparent because if this fact that it was registered under the Central Sales Tax Act had been placed before the Hon'ble Allahabad High Court in the case of Karam Chand Thapar & Bros. (Coal Sales) Ltd., Moradabad for the year 1965-66 the decision would have been against them as have been happened in the abovementioned two cases.)

The error apparent on the face of the record, which is a condition precedent to invoking the rectification provision (s. 22) is that the appellants were treated as unregistered dealers by the High Court in the decision for the earlier assessment year 1965-66 (the judgment of the High Court has been extracted at *pages* 71—78 *of Vol.* 2 . But in s. 22 the error has to be an "error apparent on the face of the record" of the assessment—i.e. for the assessment year 1966-67. This assessment order is dated 27th March, 1971 and a copy of it is *at pages*

79—83 *of Vol.* 2. In that order it is specifically mentioned (page 79 viz).: A

"10. Whether registered or not : Yes".

Thus it was known to the Sales Tax Officer passing the original assessment order that the appellants were in fact registered dealers.

An error apparent on the face of the record must be an error which B is "glaring and obvious" [*see* 34 I.T.R. 143, 150 (S.C.)]. Besides, there is a distinction between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A rectification is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected. It lies only for patent error (see *Thungabhudra Industries Ltd.* v. *Government of Andhra Pradesh* [1964] 5 S.C.R. 174, 186) where the expression "error apparent on the C face of the record" in O.47, r-1, C.P.C. was interpreted by the Supreme Court). In that case was also said that an error apparent on the face of the record was one where "without any elaborate argument one could point to the error" (page 186). This is also the view expressed in a Sales Tax Case—*Master Construction Co.* 17 *S.T.C.* 360, 365-366 (*Subba Rao, J.*).

In the present case, it is submitted that the view of the Sales Tax D Officer, Moradabad who passed the original assessment order dated 27th March, 1971 following the decision of the Allahabad High Court dated the 24th July, 1970 in *Civil Miscellaneous Writ No.* 4356 *of* 1969 (*pages* 71 *to* 78) was not patently erroneous. As a matter of fact the correctness of the subsequent decisions of the Allahabad High Court is being doubted in the present Appeal and there is no pronouncement of your Lordships on the question viz., interpretation of the proviso to E s. 9(1). Besides, it cannot be said that at the time when the original assessment order was passed there was a manifest error. Moreover, even as a result of the subsequent decisions of the Allahabad High Court it cannot be said that what was not an error on 27th March, 1971 became an error on 26th March 1974 (the date of the rectification order under s. 22). In any event, even assuming that there was an error, F that error is not apparent on the face of the record of the original assessment—it is a matter in which the arguments, to say the least, are evenly balanced and a decision of the Highest Court is now awaited.

In the circumstances there was no jurisdiction in the Sales Tax Officer, Moradabad to rectify and set aside the original order of assessment.

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IV. Re: *Whether the order of rectification passed under Section* 22 *of the U.P. Sales Tax Act on* 26*th March,* 1974 (*for the assessment year* 1966-67) *and communicated to the Appellants on* 31*st March,* 1974 *was barred by limitation as it could not be said to be "within three years from the date of" the original assessment order dated the* 27*th March,* 1971 ?

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It is submitted that the period of limitation under s. 22 of the U.P. Sales Tax Act, 1948, runs from the date on which the order of rectification is communicated to the assessee—which would enable the

A assessee to file an appeal under s. 9 of the U.P. Sales Tax Act, 1948. The period of limitation for filing an appeal is 30 days from the date of service of the copy of the order appealed against. It is submittd that an order of rectification is not complete as against the assessee unless it is duly communicated to him. The order of rectification affects the rights and liability of an assessee and it is essentially fair and just that it should be communicated to the party as stated by Your Lordships in
B a case under the Land Acquisition Act where the phrase "date of the Collector's award" was being considered. Your Lordships observed :

> "....If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and
> C in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award
> D or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to
> E the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being
> F an essential requirement of fair-play and natural justice the expression 'the date of award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words from the date of the Collector's award used in the proviso to s. 18 in a literal or mechanical
> G way."
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> (*A.I.R.* 1961 *S.C.* 1500, 1503—[1962] 1 *S.C.R.* 676, 683-684).

It is submitted that on an analogy of reasoning the words "the date of any order passed by him" in s. 22(1) of the U.P. Sales Tax Act, 1948 must be construed to mean the effective date of an order of rectification
H viz. the date when it is communicated. In the instant case the order was communicated after three years from the date of the assessment order and, therefore, the order of rectification is vitiated as being barred by time.

V. *In Civil Appeal No.* 929 *of* 1975 the only question that arises is :

Whether in the facts and circumstances of the case the proviso to s. 9(1) *of the Central Sales Tax Act,* 1956, *was applicable so as to enable the State of Uttar Pradesh to levy and collect central sales tax in respect of the subsequent sales of coal effected by the appellants to consumers in the State of U.P.* ?

The assessment year in question is 1969-70 and the Appellant adopts the arguments urged in Civil Appeal No. 928 of 1975. With regard to whether the sales by the appellants (in 1969-1970) during the course of the movement of the goods from State to State were to registered dealers or to consumers, there is no indication in the record as to whether the sales effected to registered dealers or to consumers or unregistered dealers. In the event of Your Lordships holding that declared goods are not covered by the proviso to s. 9(1) this would make no difference because it is admitted that the subsequent sales effected by the appellants were of declared goods namely coal. But in the event of Your Lordships coming to the conclusion that the proviso to s. 9(1) may include also subsequent sales of declared goods, then the submission urged is (as in Civil Appeal No. 928 of 1975) that in any view of the matter it is only subsequent sales to registered dealers which would attract jurisdiction of the State authorities under the proviso to s. 9(1) and not subsequent sales by the appellants to unregistered dealers or consumers. The fact would be easy of ascertainment by the Sales Tax Officer and it is submitted that in that event a direction ought to be given that the State of U.P. could levy and collect central sales tax under proviso to s. 9(1) in respect of subsequent sales of coal effected by the appellants only to registered dealers—and not to unregistered dealers or consumers.

RESPONDENTS :

A. *Contention No.* 1. This is the main contention and is a short one. It is as to which State has jurisdiction to tax subsequent sales made by a registered dealer. In the instant case, admittedly the appellant is a dealer registered in U.P. both under the Central and the U.P. Act. Therefore, the short question which arises for consideration is as to whether in the instant case the State of U.P. would have the jurisdiction to tax such subsequent sales effected by the enforcement of documents to parties in U.P. ? There is a specific provision in the Act, which is proviso to s. 9(1), to cover cases such as the present case. Section 9(1) reads :

"The tax payable by any dealer under this Act on sales of goods effected by him in the course of interstate trade or commerce, whether such sales fall within clause (a) or clause (b) of s. 3, shall be levied by the Government of India and the tax so levied shall be collected by that government in accordance with the provisions of sub-section (2) in the State from which the movement of goods commence :

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods, the tax

A shall, where such sale does not fall within sub-section (2) of section 6, be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or, as the case may be, could have obtained, the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods."

B Sub-s. (2) of s. 9 merely provides that the appropriate State on behalf of the Government of India shall assess, re-assess, collect and enforce payment of tax under the Act as if the tax under the Act was a tax payable under the general sales tax law of the State. Therefore, it is that the tax to be collected under the Act is by the appropriate State for and on behalf of the Government of India. In the case of al first sales, the substantive provisions of C s. 9(1) are clear and unequivocal. Section 9(1) selects out of several States one particular State and empowers it to levy and collect C.S.T. That State alone has the power to levy the tax and all other States by implication are debarred. This was a simple device adopted in order to fix the forum and jurisdiction of the particular State to make the assessment in respect of first sales. A simple test was evolved to avoid multiplicity of imposition of tax by more than one State in respect D of the same goods and that was to link the tax with the commencement of the physical movement of the goods on their journey from one State to another. This was simple to comprehend and execute. Therefore, the appropriate State was the one from where the movement of goods started on their interstate journey. That problem does not concern us here as the States of Bihar and Bengal from where the movement of E coal commenced have duly assessed the tax u/s 9(1) of the Act.

The question, however, is which is the State which can tax the subsequent sale in the instant case. For this purpose the proviso had to be enacted as admittedly CST is multipoint in nature and there is no provision for a single point tax. The only exemption is to be found in s. 6(2) which is the charging section and if the transaction does not satisfy all the three conditions of s. 6(2), viz., (a) the F purchaser is a registered dealer, (b) who by a certificate of registration is authorised to purchase his goods, and (c) the selling dealer furnishes to his assessing authority :—

(i) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form G obtained from the prescribed authority;

and (ii) a declaration in C Form duly filled and signed by the registered dealer to whom the goods were sold.

(*see* Chaturvedi's 3rd edition, page 383).

No attempt has been made by the appellant-assessee in the instant case H even to allege, what to say of proof, that the aforesaid three conditions were satisfied. Therefore, s. 6(2) which provides for exemption in respect of subsequent sales, albeit of declared or undeclared goods, will have no application. The position therefore would be that the

subsequent sales in the instant case would not be exempt u/s 6(2). Therefore, the subsequent sales have to be taxed and the only question is which State would have jurisdiction to assess the subsequent sales. It was fairly conceded that the subsequent sales would be assessable u/s 9(1), except sales of declared goods. The argument was built up merely on the omission of cl. (a) from s. 8(3) of the Act with effect from 1-4-1963. Prior to that date section 8(3) ran as follows :

> "The goods referred to in clause (b) of sub-section (1)—
>
> (a) in the case of declared goods or goods of the class or classes specified in the certificate or registration of the registered dealer purchasing the goods as being intended for resale by him. ."

The above was omitted by s. 2(iii) (a) of the C.S.T. Amendment Act (No. 8 of 1963) with effect from 1st April, 1963. From this omission it was assumed that it was no longer necessary for declared goods to be specified in the declaration prescribed under rule 12 and the Form C. This assumption is wholly unwarranted and is contrary to the provisions of the Amending Act (No. 8 of 1963), The omission of cl. (a) and certain words in cl. (b) of s. 8(3) was necessitated as the legislature probably wanted to do away with the distinction between declared goods and undeclared goods for purposes of s. 8(3). Hence it deleted clause (a) in its entirety and the words "in the case of goods other than declared goods" from cl. (b) of s. 8(3). Thus with effect from 1-4-63 so far as mentioning of goods in the certificate of registration of purchasing dealer for purpose of re-sale etc. are concerned they made only one category and specified the same rate of tax as was applicable u/s 8(1) both for declared and undeclared goods, provided Form C was duly submitted. The above interpretation also finds support from Chaturvedi's Central Sales Tax Law, 3rd edition, 1973 at page 325, paras 7 and 8, which read as :—

> "Clause (a) of s. 8(3) was omitted by s. 2(iii) (a) of the Amendment Act, 1963 with effect from 1-4-63. Before that the rate of tax for sales covered in sub-section (1) was 1 p.c. and all the sales or purchases of declared goods under the said Act could be subjected to tax at the rate upto 2% by virtue to s. 15 of the principal Act.
>
> "Sales covered under sub.-s. (1) could enjoy a concessional rate of 1 p.c. instead of the state rate of 2 p.c. But when by the CST Amendment Act (No. 8 of 1963) the rate of tax for sales covered by sub-s. (1) was enhanced also to 2 p.c. there was no use of cl. (a) of sub-s. (3) and it was omitted.
>
> "In cl. (b) of sub-s. (3), the opening words 'in the case of goods other than declared goods' were omitted by s. 2(iii) (b) of the C.S.T. Amendment Act, 1963 with effect from 1-4-63."

A Thus it is manifest that the argument laboriously built up had no foundation and the omission of sub-cl. (a) from s. 8(3), if anything, goes against the contention of the assessee and fully supports the contention of the Department as that vividly demonstrates that if there was ever any intention of the legislature to make any distinction between declared and undeclared goods insofar as the sale of such goods was made to government or to a regd. dealer that was B done away with after 1-4-63. The contention for the Department was that there was never any distinction made between declared and undeclared goods even in the Act and the Rules prior to 1963-64 in the matter of specification of the class or classes of goods in the application under Form A, the certificate under Form B and the requisite declaration under Form C under rr. 5 and 12 of the CST C Rules.

The only place where the words "declared goods" occur is in section 8(2) (a) which merely provides the rate of tax applicable for sales without furnishing Form C and not for any other reason. Thus the Act, the Rules and the Forms make no distinction between declared and undeclared goods whatsoever. The main argument, therefore, has no force and in the absence of the condition u/s 6(2) having been D satisfied, declared goods are taxable and the assessee being a regd. dealer registered in U.P. both under the Central Act and the U.P. Act and the subsequent sale having been effected by such registered dealer in the State of U.P. the proviso to s. 9(1) is clearly attracted.

To sum up, in the instant case the State of U.P. would have the jurisdiction to assess, levy and collect C.S.T. on subsequent sales E effected by the assessee under the proviso to s. 9(1), provided the following conditions are satisfied :

(1) The sale is a subsequent sale made during the movement of goods from the States of W. Bengal and Bihar to the State of U.P. This condition was fairly conceded by the learned counsel for the assessee to be satisfied.

F (2) The subsequent sale is in respect of the same goods. This was also conceded.

(3) That the goods do not fall within s. 6(2), that is, the sale was to a registered dealer other than Government, if the goods are of the description referred to in Sub-section (3) of S. 8. Such subsequent sale would be exempt provided the necessary certificate in G Form C is produced.

(4) The registered dealer effecting the subsequent sale obtained or could have obtained the form prescribed for purposes of cl. (a) of sub.-s. (4) of s. 8, that is, Form C.

The last two conditions according to the learned counsel do not H require to be satisfied in case of declared goods. As already stated there is no express warrant nor does the scheme of the Act support any distinction for C.S.T. between declared and undeclared goods except in the concessional rate applicable.

Section 15 only places restrictions and conditions in regard to intra-state sales of declared goods. This has no application to inter-state sales and, therefore, the single point tax provided in s. 15 cannot be imported into the other provisions of the Act. Therefore, C.S.T. is multipoint in the absence of any specific provision to make it single point. A

The relevant sections are section 3 which artificially determines when sale of goods can be said to take place in the course of inter-state trade or commerce. B

Section 6 is the charging section. It is significant that it charges tax on all sales. Therefore unless there is a specific exemption, sales of both declared and undeclared goods would be taxable. It is well settled that the burden of proof lies heavily on the person who claims such exemption. C

Section 6(2) deals with the charge to be levied in respect of a subsequent sale effected by transfer of documents to a regd. dealer which would be exempt provided the conditions specified in the proviso thereto are satisfied. These conditions undoubtedly have not been satisfied. The case of the assessee is that they do not require to be satisfied in the case of declared goods. D

S. 7(3) requires in the certificate of registration under r. 5 and for the purposes of s. 8(1) the class or classes of goods to be specified and it is only in respect of those goods so specified that the exemption or concessional rate is available and not otherwise.

S. 8 merely provides the rates of tax on inter-state sales. There is a concessional rate of 3% for sales to regd. dealers provided the goods are of the description referred to in s. 8(3) which refers to s. 7(3) and the application in Form A and the certificate in Form B issued under rr. 3 and 5 of the Rules. Section 8(2) refers specifically to the concessional rate for declared goods *vis-a-vis* undeclared goods. For declared goods it is 3% being the rate in the appropriate State, and 10% for undeclared goods. Beyond this concessional rate there is no other distinction made between declared and undeclared goods. E F

S. 8(3) refers back to s. 7(3), rr. 3 and 5 and Forms A and B and only those goods, declared and undeclared, which find a place in the certificate are entitled to the concessional rate and none others.

The proviso to s. 9(1) specifically covers the instant case. The assessee is a regd. dealer, and the sales do not fall within the exemption u/s 6(2) and being a regd. dealer in U.P. he could have obtained the Form C from the Sales Tax Officer of his Circle. It, therefore, follows that in the instant case there can be no doubt whatsoever that the admitted subsequent sales are taxable in the State of U.P. for and on behalf of the Government of India u/s 9(1) of C.S.T. G

B. *Contentions* 2 *and* 3. These may be dealt with together. The argument of the learned counsel for the assessee in short was that there was no error apparent on the face of the record and, therefore, H

A s. 22 of the U.P. Act read with s. 9(2) of the Central Act could not be invoked. It must be remembered that this point is taken in a writ under Art. 226 when there was no possibility of the appeal or revisional courts going into the facts of the case. In these circumstances the facts as found by the Sales Tax Officer in his order u/s 22 and by the High Court in its judgment dismissing the writ petition will have to be taken as sacrosanct. At page 92 of volume II is the order u/s 22.
B At page 94, line 4, it is stated —

> "The assessee is registered in this office under C.S.T. Act and their Central regn. No. is 2931 which had been in existence since 4-12-65. In the case of M/s Karam Chand Thapar & Bros. for the year 1965-66 the High Court had held that sales made by them were exempt from C.S.T. or
C U.P. Sales Tax and the authorities of Bihar or West Bengal only could assess the tax. Thereafter the Hon'ble High Court of Allahabad in many cases held that if the assessee was registered under the CST the authority of that State had jurisdiction to make assessments. Therefore, the S.T.O. Moradabad has jurisdiction to assess the assessee. In the meanwhile the High Court of Allahabad held in several cases
D that only dealers who are registered under the C.S.T. are liable to be assessed under the Act as for example....."

At page 96, line 2

> "In the present case of the assessee this error is apparent because if this fact that it was registered under the C.S.T. had been placed before the High Court ..... for the
E year 1965-66, the decision would have been against them as happened in the above mentioned two cases."

At page 97, line 4 —

> "In the above mentioned case the error of law is clear because u/s 9(1) the jurisdiction of assessment of tax lies
F only with that State where from the dealer has received their Central Regn. No. and wherefrom the dealer receives C Form."

Similarly, the judgment of the High Court is at page 1, of volume I and at page 2, last paragraph, the finding is :

> The petitioner claimed that the turnover of Rs. 30.07
G lakhs was exempt from tax and that of Rs. 5.59 lakhs could not be taxed in the State of U.P. The S.T.O. relying upon the observations made by the High Court in petitioner's own assessment case for the year 1965-66 accepted his case that his turnover amounting to Rs. 5.59 lakhs could not be taxed in U.P. Subsequently in a number of cases this Court
H ruled that in a case where a dealer effecting a second sale in the course of inter-state trade is a registered dealer, sales tax on the turnover of such goods is to be realised in the State where the dealer effecting the sale is registered."

Page 7, para 2 : A

"In the instant case we find that while making the assessment order of 27-3-71 and holding that petitioner's turnover amounting to Rs. 5.59 lakhs was not liable to tax in U.P., the S.T.O. relied upon a decision of this Court which, as subsequently clarified in the case of *Shinghal Bros. & Co.* v. *State*.....did not lay down that even in B the case of a registered dealer effecting a subsequent sale in the course of inter-state trade or commerce would not be liable to be taxed in the State where he is registered. Accordingly, the S.T.O. applied the law laid down in this Court's earlier judgment to the facts of the present case under some misapprehension and it is not disputed that in subsequent cases this Court has very clearly laid down that in the case C of a subsequent sale effected during the course of interstate trade and commerce by a regd. dealer the turnover of such sale is to be assessed in the State where the dealer is registered. It is thus clear that there was a mistake in the assessment order dt. 27-3-71. The mistake was apparent on the face of the record inasmuch as the S.T.O. applied the observations made by this Court in a case which had been decided D on the footing that the concerned dealer was an unregistered dealer to a case where the dealer was admittedly a registered dealer. This mistake did not require any elaborate argument or prolonged debate on the merits or on the questions of law involved in the case."

In view of these categorical findings by two courts that there was a E clear and obvious mistake resulting from a mistake which had crept into the judgment of the High Court in the assessee's own case for the A/year 1965-66 which the S.T.O. was bound to follow and could not ignore, the mistake in the subsequent assessments could be rectified u/s 22 within the period of limitation of 3 years. Action could also have been taken u/s 21 under the U.P. Act for a re-assessment where the period of limitation is 4 years. It is well F settled that ss. 21 and 22 are not mutually exclusive and the same action may be taken under either of the sections provided the conditions specified therein are satisfied. The notice u/s 22 was issued within the period of three years and there was yet another year to run for action u/s 21, and in these circumstances a technical point of this nature raised in a writ petition should not be countenanced. The G main point that the sum of Rs. 5.59 lakhs was taxable not being in dispute as stated by the High Court, no assessee has a vested right to the forum or to succeed on mere technicalities.

The contention that the notice u/s 22 and the order passed thereunder should have been communicated to the assessee within three years is wholly unsupported by any authority. Section 22 merely re- H quires the order to be made within three years. No rights of the assessee are affected by the passing of the order and it is only when the additional demand is served upon him under the provisions of

A s. 22(2) of the Act that the period of limitation for any appeal, revision, etc. would begin to run.

Authorities

Rectification—Glaring and obvious mistake of law

34 ITR 143 SC

B 53 Cal Weekly Notes 869

87 ITR 669 Cal

100 ITR 118 A.P.

Date of order—meaning of

34 S.T.C. 257 SC

46 ITR 529 All.

C 86 ITR 141 SC

22 ITR 296 Pb

31 ITR 231 All.

The Judgment of the Court was delivered by

GUPTA, J. The appellant in Civil Appeal No. 928 of 1975, D M/s. Karam Chand Thapar and Brothers, is a limited company incorporated under the Companies Act, (referred to hereinafter as the Company), and the six branches of the Company at Allahabad, Moradabad, Kanpur, Varanasi, Gorakhpur and Lucknow are the appellants in Civil Appeal No. 929 of 1975. The Company carries on business as coal agents and is registered under the Uttar Pradesh Sales Tax Act, 1948 and the Central Sales Tax Act, 1956 with the Sales E Tax Officer at Moradabad in Uttar Pradesh. We shall refer to these two statutes as the U.P. Act and the Central Act for the sake of brevity. The Company used to arrange supply of coal from collieries situate in West Bengal and Bihar to consumers in Uttar Pradesh. The collieries used to send the coal by rail and the railway receipts were prepared either in the name of the Company or in the name of the F consumer in Uttar Pradesh on whose behalf the order for supply of coal was placed. The collieries sent the bills and invoices in respect of the coal despatched to Uttar Pradesh to the Company's head office in Calcutta; the Company forwarded the railway receipts to the consumers in cases where the receipts were in the names of the consumers and endorsed the receipts that were in the Company's name in favour of the consumers for whom the coal had been despatched. These G two appeals, brought on certificates of fitness granted by the Allahabad High Court, arise out of two writ petitions filed in the High Court respectively by the Company and its aforesaid branches. The petition filed by the Company leading to Civil Appeal 928, is directed against an order made under section 22 of the U.P. Act giving rise to the question whether section 9(1) of the Central Act was applicable to the case enabling the State of Uttar Pradesh to levy and collect H Central sales tax in respect of subsequent sales of coal effected by the Company to consumers in Uttar Pradesh by endorsement of the documents of title; in the other writ petition, filed by the Company's six branches, the applicability of section 9(1) of the Central Act was

one of the points raised in the High Court, but this was the only point urged before us in Civil Appeal No. 929. The assessment year in question in Civil Appeal 928 is 1966-67, and that in Civil Appeal 929 is 1969-70. As the Company's appeal covers the question involved in the other case and raises two additional questions, we shall state only the facts of Civil Appeal 928 to indicate how these questions arise.

In the assessment year 1966-67, the Company filed quarterly returns showing its turnover of coal in two categories :

(a) turnover in cases where the railway receipts had been prepared in the names of the consumers amounting to Rs. 30,07,439/02p.; and

(b) turnover in cases where the railway receipts had been prepared in the name of the Company but subsequently endorsed in favour of the consumers in Uttar Pradesh amounting to Rs. 5,59,172/32p.

The dispute in this case relates to the amount of Rs. 5,59,172/32p. which according to the Company could not be taxed in the State of Uttar Pradesh. Before we proceed further, it would be convenient to set out the relevant provisions of the two Acts. Taking the Central Act first, section 2(c) defines "declared goods" as the goods declared under section 14 to be of special importance in inter-State trade or commerce. Section 14 which declares certain goods to be of special importance in inter-State trade or commerce mentions coal as one of them. Under section 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 a transfer of documents of title to the goods during their movement from one State to another. The sales we are concerned with in this case were of this second type. Sub-section (1) of section 6 provides that subject to the other provisions of the Act, every dealer shall be liable to pay tax under this Act on sales of goods effected by him in the course of inter-State trade or commerce. Sub-section (2) of section 6 states that notwithstanding what is provided in sub-section (1), any subsequent sale of goods effected by a transfer of documents of title to the goods,-(A) to the Government, or (B) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act. There are two provisos to this sub-section, but it is not necessary to refer to them. Section 7(1) requires every dealer liable to pay tax under this Act to apply for registration. Sub-section (3) of section 7 provides that if the application is in order, the prescribed authority shall register the applicant and grant to him a certificate of registration in the prescribed form which shall specify the class or classes of goods for the purpose of sub-section (1) of section 8. Rule 3 of the Central Sales Tax (Registration and Turnover) Rules, 1957, states that an application for registration under section 7 shall be made in Form A, and Form A requires the purpose or purposes for which the goods or

A classes of goods are purchased by the dealer in the course of inter-State trade or commerce to be specified; as would appear from the Form, 're-sale' is one such purpose. Rule 5(1) of the Rules provides that the certificate of registration must be in Form B. Section 8(1) provides that every dealer who in the course of inter-State trade or commerce, (a) sells to the Government any goods; or (b) sells to a registered dealer other than the Government goods of the description B referred to in sub-section (3) of this section, shall be liable to pay tax under this Act at the rate of three per cent of his turnover. Sub-section (2) of section 8 states that the tax payable by any dealer on his turnover relating to the sales of goods in the course of inter-State trade or commerce which does not fall within sub-section (1) shall be—(a) in the case of declared goods, at the rate applicable to the C sale or purchase of such goods inside the appropriate State, and (b) in the case of goods other than declared goods, at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher. The goods referred to in clause (b) of sub-section (1) are specified in sub-section (3) of this section as goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being D intended for re-sale by him. Sub-section (4) of section 8 says that 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) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority;" rule 12(1) E of the Rules states *inter alia* that the declaration referred to in sub-section (4) of section 8 shall be in Form C. Clause (b) of sub-section (4) is not relevant to the present purpose. Section 9(1) reads :

"9. (1) *Levy and collection of tax and penalties.*

F The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced :

G

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods, the tax shall, where such sale does not fall within sub-section (2) of section 6, be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or, H as the case may be, could have obtained, the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods."

The dispute in this case turns on whether the proviso to section 9(1) is applicable to the case. Reference may also be made to section 15 which provides the restrictions and conditions in regard to the tax on sale or purchase of declared goods within a State. The tax on sale or purchase of such goods inside the State is not to exceed three per cent of the price thereof, and such tax is not to be levied at more than one stage.

The only provision of the U.P. Act which is relevant is section 22 which is in these terms :

> "22. *Rectification of mistakes.* (1) The assessing, appellate, revising or additional revising authority may, at any time within three years from the date of any order passed by it, rectify any mistake apparent on the record;
>
> Provided that no such rectification, which has the effect of enhancing the assessment shall be made unless the authority concerned has given notice to the dealer of his intention to do so and has allowed him a reasonable opportunity of being heard.
>
> (2) Where such rectification has the effect of enhancing the assessment, the authority concerned shall serve on the dealer a revised notice of demand in the prescribed form and therefrom all the provisions of the Act and the rules framed thereunder shall apply as if such notice had been served in the first instance."

The Sales Tax Officer had accepted the contention that the turnover amounting to Rs. 5,59,172/32p. was not taxable in Uttar Pradesh. In taking this view the Sales Tax Officer appears to have proceeded upon the observations in a Judgment of the Allahabad High Court in the Company's own assessment case for the year 1965-66. However, in several subsequent decisions, the High Court held that in a case where a registered dealer effected a second sale in the course of inter-State trade and commerce, sales tax on the turnover was to be realised in the State where the dealer effecting the sale was registered. In one of these cases, *M/s. Singhal & Co.* v. *State & Ors.*(1) it was pointed out that the earlier decision of the High Court had completely overlooked the proviso to section 9(1) of the Central Act. The Company being admittedly a registered dealer under the Central Act and liable to pay tax under that Act, the Sales Tax Officer thought that there was an apparent error in the order of assessment made on March 27, 1971 exempting the turnover amounting to Rs. 5,59,172/32 p. which in view of the proviso to section 9(1) of the Central Act was taxable in Uttar Pradesh. Accordingly, he proposed to rectify the error under section 22 of the U.P. Act, and on March 21, 1974 he issued a notice to the Company requiring it to appear before him on March 25, 1974. In response to the notice a representative

(1) (1973) U. P. Tax Cases 466.

A of the Company appeared, contended against the proposed rectification, and also filed a written objection. The Sales Tax Officer recorded an order on March 26, 1974 overruling the objections and rectified the order of assessment dated March 27, 1971. A copy of the order passed on March 26, 1974 rectifying the mistake in the earlier assessment order was served on the Company on March 31, 1974. The Company challenged the order dated March 26, 1974 by a writ B petition in the Allahabad High Court which was dismissed giving rise to this appeal.

Mr. Nariman appearing for the appellants in these appeals pressed the following grounds :

C (1) the proviso to section 9(1) of the Central Act has no application to goods declared to be of special importance in inter-State sales or commerce under section 14 of the Central Act;

(2) section 22 of the U.P. Act was not applicable as there was no mistake apparent on the face of the record; D and

(3) in any event, the order made under section 22 of the U.P. Act was barred by limitation.

The argument that the proviso to sub-section (1) of section 9 does not apply to declared goods proceeds as follows : Sub-section E (1)(b) and sub-section 2(a) of section 8 of the Central Act deal with two different types of goods. Sub-section (1)(b) speaks of goods of the description referred to in sub-section (3), and sub-section (2) relates to declared goods. Sub-section (3) of section 8 only mentions the goods referred to in sub-section (1)(b) which are goods of the class or classes specified in the certificate of registration of the dealer purchasing the goods as being intended for re-sale. Sub-F section (4) requires a declaration for the purposes of sub-section (1)(b), and as sub-section (1)(b) does not speak of declared goods, the declaration referred to in sub-section (4) would not be necessary in the case of sale or purchase of declared goods.

We fail to see any valid distinction between declared goods and G other goods for the purpose of the applicability of sub-section (1) of section 8. The distinction was made by Mr. Nariman inferentially from the Central Sales Tax (Amendment) Act (8 of 1963) which omitted with effect from April 1, 1963, clause (a) from sub-section (3) of section 8 as it stood prior to that date. Sub-section (3), it may be recalled, specifies the goods referred to in section 8(1)(b). Prior to April 1, 1963, section 8(3) listing such goods, stated in H clause (a) —

"(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 re-sale by him." A

Clause (b) of section 8(3) then began with the words : "in the case of goods other than declared goods, are.....". By the same Amendment Act (8 of 1963) the opening words of clause (b), "in the case of goods other than declared goods", were consequentially omitted, also with effect from April 1, 1963. The omission of clause (a) is the basis of the argument that declared goods are altogether outside the purview of sub-section (3) and, therefore, of sub-section (1) of section 8, and, as the declaration referred to in sub-section (4) of section 8 was required where sub-section (1) of the section was applicable, it was not possible for the Company to obtain such a declaration. B

The contention seems to us untenable. Section 9(1) of the Central Act contains a general rule that tax payable by any dealer under this Act shall be levied and collected in the State from which the movement of the goods commenced. The proviso to section 9(1) qualifies this rule in the case of a subsequent sale which is not exempt from tax under section 6(2), and states that the tax on such subsequent sale would be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or could have obtained the form prescribed for the purposes of section 8(4)(a). No exemption under section 6(2) is claimed in this case. The declaration referred to in section 8(4)(a) is necessary for the dealer to avail of the benefit of the rate of tax mentioned in section 8(1). Under section 7(3) the certificate of registration granted to a dealer has to specify the class or classes of goods for the purposes of section 8(1). Rule 3 of the Central Sales Tax (Registration and Turnover) Rules, 1957 requires an application for registration under section 7 to be made in Form A, and Form A requires the purpose for which the goods or class of goods are purchased by the dealer to be specified; re-sale is one of the purposes mentioned in Form A. Thus section 7(3) makes no distinction between declared goods and other goods; it is impossible to argue therefore that declared goods purchased by a dealer for re-sale need not be specified in his certificate of registration. Reading sub-section (1) and sub-section (3) of section 8 together, it is clear that all sales to a registered dealer other than the Government, whether of declared goods or other goods, are covered by sub-section (1) of section 8. Clause (a) was omitted from sub-section (3) of section 8 by the Amendment Act (8 of 1963) presumably because it was considered unnecessary to retain clause (a) to deal with declared goods when clause (b) apparently covered all goods, both declared and other than declared. The Act and the rules and the prescribed forms make no distinction between declared goods and other goods except for the purpose of the rate of tax. There is no valid reason why the Company could not have obtained a declaration in Form C as required by the proviso to section 9(1). It follows therefore that the order of assessment dated March 27, 1971 was wrong as it held, contrary to the proviso to section 9(1), that the sales in question were not taxable in the State of Uttar Pradesh where the Company was registered as a dealer under this Act. C D E F G H

A Another point sought to be made against the applicability of the proviso to section 9(1) was this. The proviso refers to the Form prescribed for the purpose of section 8(4)(a) which should contain a declaration duly filled and signed by the registered dealer to whom the goods were sold. It was argued that as the declaration was required only where the sale was to a registered dealer, and as there was no finding in this case that the sales were to registered dealers, B the proviso was not attracted. It appears, however, that the Company never claimed before the Sales Tax Officer that the sales were not to registered dealers; in the written objection filed before the Sales Tax Officer pursuant to the notice under section 22 of the U.P. Act, the only ground taken was that no declaration was required to be filed in the case of declared goods. The point was taken for the first time in the writ petitions. We do not think we should allow this question, C which is one of fact, to be raised at this stage.

The next question is whether this error in the original order of assessment can be called an apparent error within the meaning of section 22 of the U.P. Act. There is no dispute that an apparent error means a patent mistake, an error which one could point out D without any elaborate argument. The order of assessment relating to the assessment year in question, 1966-67, was made on March 27, 1971 by the Sales Tax Officer relying on a Judgment of the Allahabad High Court on a writ petition made by the Company questioning the validity of the assessment in respect of the assessment year 1965-66. In that Judgment the High Court held, referring to the provisions of section 9(1) of the Act, that "the Sales tax authorities in the State E of U.P. had no jurisdiction to make any assessment even if there was any inter-State sale which could be liable to tax in the hands of the petitioner Company. The only State which could levy tax could be either Bihar or West Bengal. The impugned assessment order passed by the Sales Tax Officer, Moradabad, is therefore clearly without jurisdiction and is liable to be quashed". In this Judgment there is no reference to the proviso to section 9(1). It appears from the F Judgment under appeal that the High Court in a number of latter decisions held that in view of the proviso, tax on a subsequent sale by a registered dealer in the course of inter-State trade or commerce was to be levied and collected in the State where the dealer effecting the subsequent sale was registered. We are of the view that the order of assessment dated March 27, 1971 was apparently erroneous in that it failed to take into consideration the proviso to section G 9(1). It is not that the order dated March 27, 1971 was in accordance with law when it was made but the subsequent decision of the High Court took a different view of the law. For the reasons we have given above, it was patently erroneous when it was made, but in view of the observations of the High Court in the case relating to the assessment of an earlier year, the Sales Tax Officer felt that he H had to dispose of the assessment case for the year 1966-67 in the manner he did. The Judgment of the High Court which the Sales Tax Officer followed in making the assessment for the year in question did not concern itself with the proviso to section 9(1).

The next, and the last, question is whether the order dated March 22, 1974 rectifying the assessment order made on March 27, 1971 was barred by limitation. Under section 22(1) of the U.P. Act any mistake apparent on the record may be rectified at any time within three years from the date of the order. It is not disputed that the other requirements of section 22 have been complied with. The Company's representative appeared before the Sales Tax Officer pursuant to the notice served on them on March 25, 1974, and the objections to the proposed rectification were heard. There is no dispute that the order rectifying the mistake was recorded by the Sales Tax Officer on March 26, 1974, and this order was communicated to the appellant on March 31, 1974 According to Mr. Nariman, the order of rectification must be held to have been made on March 31, 1974 when it was communicated to the assessee which was beyond three years from the date of the order of assessment. Mr. Nariman relied on the well-known rule of fairplay that the rights of a party cannot be affected by an order until he has notice of it. In *Raja Harish Chandra Rai Singh* v. *The Deputy Land Acquisition Officer and another,*(1) this Court considering the meaning of the words "the date of the award" occurring in s. 18 of the Land Acquisition Act, 1894 observed.

> "The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to s. 18 in a literal or mechanical way.
>
> .....where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the order must mean either actual or constructive communication of the said order to the party concerned."

Following this decision, this Court held in a subsequent case under the Indian Forest Act, 1927, *Madan Lal* v. *State of U.P. and others,*(2) that the right of appeal given by s. 17 of the Forest Act should be deemed to be the date when the party aggrieved by an order came to know of that order from which an appeal was sought to be preferred. But how have the Company's rights been affected in this case?

(1) [1962] 1 S.C.R. 676. (2) [1975] 3 S.C.C. 779.

A Section 9 of the U.P. Act gives a right of appeal to "any dealer objecting to any order made by the assessing authority, other than an order mentioned in S. 10-A", within thirty days from the date of service of the copy of the order. In this case the Company was not affected by the order under s. 22 being communicated to it after the expiry of three years from the date of the order because the limitation for an appeal B from that order did not begin to run before the communication of the order. The provisions of s. 9 of the U.P. Act make that clear.

The appeals therefore fail and are dismissed. Considering the circumstances, we direct the parties to bear their own costs here and in the High Court.

C

V.P.S. *Appeals dismissed.*