

ASHOK SERVICE CENTRE & ANOTHER ETC.

v.

STATE OF ORISSA

February 18, 1983

[A.P. SEN, E.S. VENKATARAMIAH AND R.B. MISRA, JJ.]

Orissa Sales Tax Act, 1947—Section 8—Orissa Additional Sales Tax Act, 1975 as amended in 1979—Section 3(2)—Levy of tax under the amending Act of 1979 subject to section 8 of the 1947 Act—Section 3(2) provided that provisions of 1947 Act apply mutatis mutandis in relation to additional tax as if they apply in relation to the tax payable under the Principal Act—The two Acts, if should be read together.

Interpretation—mutatis mutandis—Meaning of—Words in an Act are clear—If open to court to go in search of the intention of the Legislature—Later of two Acts provides that the two are to be read together—Whether every part of each Act must be construed as if the two Acts had been one.

Words and phrases : Mutatis mutandis—Meaning of.

The proviso to section 8 of the Orissa Sales Tax Act, 1947 (Principal Act) lays down that the same goods cannot be taxed under it at more than one point in the same series of sales or purchases by successive dealers. In 1975 the State Legislature enacted the Orissa Additional Sales Tax Act (the Act) levying additional sales tax on certain classes of dealers. In 1979 the State Legislature amended the Act by the Orissa Additional Sales Tax (Amendment) Act, 1979 by which sections 2 and 3 of the Act were substituted by new sub-sections 2 and 3. After the amendment section 3 of the Act provided that every dealer shall, in addition to the sales tax payable by him for a year under the said Act be liable to pay additional tax at such rate not exceeding one per cent of his gross turnover (excluding the gross turnover which relates to sale and purchase of declared goods) for that year as may be notified from time to time by the State Government. By a notification the State Government notified the rates of additional tax payable under section 3 of the Act as amended in 1979 at one half per cent of the annual gross turnover. Sub-section (2) of section 3 made it clear that the provisions of the Principal Act would *mutatis mutandis* apply in relation to the additional tax as if they apply in relation to the tax payable under the Principal Act.

Construing section 3 of the Act after its amendment, the State Government took the view that the new levy was in the nature of a multi point tax and that every dealer was liable to pay additional tax on his annual gross turnover irrespective of its taxability under the Principal Act,

A In a number of writ petitions filed before the High Court by dealers it was contended that section 8 of the Principal Act which prohibited the levy of tax at more than one point in the same series of sales or purchases by successive dealers was applicable to the additional tax leviable under the Act as amended in 1979.

B Without referring to the effect of the provisions of section 3 of the Act the High Court held that since the Principal Act and the Act as amended in 1979 had been passed by a competent legislature providing for a different base and for a different scheme it was not open to the assessee to rely upon any of the provisions of the Principal Act relating to incidence and levy of tax.

C In appeal to this Court it was contended on behalf of the appellants that wherever there was no express provision to the contrary in the Act the provisions of the Principal Act, including those relating to the incidence and levy of tax should apply to the additional tax also.

D The Department on the other hand contended that section 3(2) of the Act was intended only to make those provisions of the Principal Act relating to assessment and collection of tax applicable to proceedings under the Act and no part of section 3B to section 8 of the Principal Act would be applicable to the levy of additional tax.

Allowing the appeals,

HELD: If the contention of the Department that only the machinery provisions of the Principal Act become applicable to the proceedings under the Act is accepted it would lead to many anomalies. [377 F]

E Section 8 of the Principal Act which begins with a non-obstante clause is given an over-riding effect over the rest of the provisions of the Principal Act. Levy of tax at a single prescribed point and prohibition against levy of tax at more than one point is an important characteristic of the scheme of the Principal Act. [370 C-D]

F The Act was virtually in the nature of an amendment of the Principal Act. The additional sales tax payable by dealers specified in section 2(a), (b) and (c) as originally enacted was in the nature of an enhancement of their liability to pay tax under the Principal Act by specified percentages but they were prohibited from passing on the incidence of additional tax to the purchasers. [372 E-F]

G Although the provisions of the Act could have been incorporated in the Principal Act itself, by the introduction of sections 2 and 3 in the Principal Act, the State Legislature passed a separate Act. But it was made clear by section 3(2) of the Act that the provisions of the Principal Act would *mutatis mutandis* apply in relation to the additional tax as they apply in relation to the tax payable under the Principal Act. The two Acts, i.e., the Principal Act and the Act as originally enacted had to be read together in order to make the provisions contained in the Act effective. This position continued upto the coming into force of the Amending Act on April 1, 1979 by which sections 2 and 3 of the Act were substituted by new sections 2 and 3. [373 G-H, 374 A-C]

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With the substitution of section 3(2) in 1979 the prohibition of passing of the additional tax, which existed formerly was removed. Secondly the additional tax, instead of being an enhancement of the tax payable by a dealer by a certain percentage, became a percentage of the annual turn over of a dealer. Both the statement of objects and reasons and the Amending Act were silent on the question whether the additional tax payable after the amendment was a multi point levy or a single point levy as also on the classes of dealers liable to pay additional tax. [375 F-H]

2. The view of the High Court that the two Acts were independent of each other was not correct. It is necessary to read and to construe the Principal Act and the Act together as if the two were one, and while doing so to give effect to the provisions of the Act which is a later one in preference to the provisions of the Principal Act wherever the Act has manifested an intention to modify the Principal Act. [377 B-C]

The definition of *mutatis mutandis* given in legal dictionaries is "with the necessary changes in points of detail meaning that matters or things are generally the same, but to be altered when necessary" as to names, offices and the like. [378 E-F]

Extension of an earlier Act *mutatis mutandis* to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject to express provisions made in the later Act. [378 H, 379 A]

In the instant case section 3(2) of the Act shows that the State Legislature intended not to depart substantially from the Principal Act except with regard to matters in respect of which express provision had been made in the Act. Though the Act had the usual features of a statute, it could not be considered as an independent statute but must be read together with the Principal Act to be effective. [379 A-C]

Earl Jowitt's The Dictionary of English Law (1959) ; Black's Law Dictionary (revised 4th edn. (1968) Bouvier's Law Dictionary (3rd Revision) Vol. II, referred to.

The additional tax levied under the Act could be passed on to consumer after the amendment. The object of the amendment made in 1979 as set out in the statement of objects and reasons was to rationalise the scheme of additional sales-tax and to introduce flexibility in the implementation of the Act. If the object of the amendment was to make the additional tax a multi-point levy, nothing was easier than using the appropriate words in the Act by excluding the application of section 8 of the Principal Act expressly in section 3(2) of the Act. In the absence of any such words in the Act, by reason of section 3(2) of the Act section 8 of the Principal Act must be construed as being applicable to the levy of an additional tax also. The gross turnover referred to in section 3(1) should, therefore, be understood as that part of the gross turnover which is taxable under the Principal Act. [380 A-G]

If section 3(1) is read as "every dealer (who is liable to pay tax under the Principal Act) shall in addition to the tax payable by him for a year under the

A said Act, be liable to pay additional tax at such rate not exceeding one per cent of his gross turnover (which is taxable under the Principal Act) for that year as may be notified from time to time by the State Govt....." there would not be any anomaly. On the other hand it would effectuate the intention of the legislature. [381 A-B]

B It is true that if the words used in a statute are clear it is not open to the Court to go in search of the intention of the legislature and to arrive at a meaning different from what the words of the statute convey. When the Act is read as a whole it becomes inevitable that it has to be read together with the Principal Act. It is a well settled principle of construction that where the later of the two Acts provides that the two are to be read together every part of each Act must be construed as if the two Acts had been one, unless there is some manifest discrepancy making it necessary to hold that the later Act has, to some extent, modified the provisions of the earlier Act. When section 3(1) of the Act is read in the light of sub-section 2 thereof, section 8 of the Principal Act which prescribes a single point levy becomes immediately attracted. [381 C-F]

C The argument that since section 8 of the Principal Act opens with the words "notwithstanding anything to the contrary in 'this Act'" the operation of that section should be confined to the tax payable under the Principal Act and could not be extended to the additional tax payable under the Act has no force. When the Principal Act was enacted, section 8 could apply only to the liability under the Principal Act, but by reason of section 3(2) of the Act, section 8 has been made applicable to the levy, assessment and collection of additional tax under the Act. If this argument is accepted, many provisions of the Principal Act which are necessary for making the levy under the Act effective would become inapplicable, as for example section 13 relating to the machinery for recovery of tax and penalty. [381 F-H, 382 A]

D The second proviso to section 3(1) of the Act does not in any way curtail the effect of section 3(2) of the Act which forms an integral part of the charging section. Consequently any exemption granted under sections 6 and 7 of the Principal Act would also be applicable in the case of levy of additional tax under the Act. [382 C-D]

E **CIVIL APPELLATE JURISDICTION :** Civil Appeal Nos. 1408-16, 2650-67, 2498-2524, 2640-47, 1874-79, 2127-38 and 3255 of 1982.

F Appeals by special leave from the Judgments and Orders dated the 4th and 5th February, 1982 of the Orissa High Court in Original Jurisdiction Case Nos. 1391 of 1979, 218, 320/1981, 2060, 2051/80, 35/81, 525/80, 1567 and 1569/80, 1196, 319, 1194, 1162, 1658, 337, 2044, 1905, 1168, 1766, 1165, 1166, 336, 1659, 1662, 1884, 1161, and 1159 of 1981, 694, 1031, 945, 944, 400, 617, 375, 697, 616/81, 2015 and 2016/80, 118, 1935, 2803, 1646, 1647, 2831, 2167, 59, 1637, 602, 603, 695, 1224, 1195, 1230, 60, 1360, 1359, 1393, 1394, 604, 2152 of 1981, 846/80, 57/81, 1464/80, 595, 797, 1538, 1537 of 1981,

1584/80, 676, 677 of 1981, 1008/80, 1009/80, 2379/81, 1915/80, 235/81, 236/81, 1837/80, 1839/80, 1533/79, 1649/81 and 535 of 1981.

A.B. Divan, A.K. Sen, Shankar Ghose, P.R. Mridul and S.T. Desai, Talat Ansari, Ashok Sagar, Sandeep Thakore, Ms. Rainu Walia, D.N. Mishra, D.P. Mukherjee, J.R. Das M.C. Dhingra, Laxmi Kant Pandey, B.R. Agarwala, Miss Vijaya-lakshmi Menon, U.P. Singh, B.B. Singh, B.S. Chauhan, Anil Kumar Sharma, Praveen Kumar, A.T. Patra, Vineet Kumar, A.K. Jha, M.P. Jha, R.S. Sodhi, Hardev Singh, A. Minocha, Mrs. Indu Goswamy S.K. Sinha, Vinoo Bhagat, P.N. Mishra, K.K. Jain and Pramod Dayal, for the Appearing Appellants.

K. Parasaran, Sol. Genl. C. Rath, Advocate General for the State of Orissa, S. Rangarajan and M.C. Bhandari, F.S. Nariman, CSS Rao, Pramod Swarup, R.B. Mahto, U.S. Prasad, A.K. Panda and R.K. Mehta for the appearing Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The usual complaint against some of the modern fiscal statutes is that they are unduly long and therefore complex. But here we have an Orissa Act which is very short but clarity is not certainly its virtue.

The only point for determination in these appeals by special leave is whether the levy of additional tax under the Orissa Additional Sales Tax Act, 1975 (Orissa Act 24 of 1975) (hereinafter referred to as 'the Act') as amended by the Orissa Additional Sales Tax (Amendment) Act, 1979 (hereinafter referred to as 'the Amending Act') is a single point levy or a multi point levy.

In order to understand the contentions of the parties it is necessary to give briefly the legislative history of the sales tax law of the State of Orissa and to refer to some of its salient points.

The Orissa Sales Tax Act, 1947 (Orissa Act XIV of 1947) (hereinafter referred to as 'the Principal Act') was enacted and brought into force in the year 1947. It has continued to remain in force even now, although a number of changes have been introduced into it by successive legislative amendments. It is a law intended for levying taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A, of List I of the Seventh Schedule to the

A Constitution. Section 3-B, 4, 4-A, 5, 6, 7 and 8 of the Principal Act together lay down the extent of the charge. Section 4 (1) of the Principal Act reads :

B “4 (1) Subject to the provisions of sections 3-B, 5, 6, 7 and 8 and with effect from such date as the State Government may, by notification, in the Gazette, appoint, being not earlier than 30 days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the date of commencement of the Orissa Sales Tax (Amendment) Act, 1981 exceeding Rs. 50,000 shall be liable to pay tax under this Act on sales and purchases effected after the date so notified.”

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D This provision imposes the liability to pay tax in accordance with the provisions of the Principal Act on every dealer whose gross turnover (during a fiscal year exceeds Rs. 50,000. According to section 2(dd) of the Principal Act ‘gross turnover’ means the total of ‘turnover of sales’ and ‘turnover of purchases’, ‘Turnover of sales’ is defined in section 2 (i) of the Principal Act as the aggregate of the amounts of sale prices and tax, if any, received and receivable by a dealer in respect of sale or supply of goods other than those declared under section 3-B of the Principal Act and ‘turnover of purchases’ is defined in section 2 (j) of the Principal Act as the aggregate of the amounts of purchase prices paid and payable by a dealer in respect of the purchase or supply of goods or classes of goods declared under section 3-B of the Principal Act. Sub-sections (2) to (5) of section 4 of the Principal Act deal with the point of time at which such dealer would become liable to pay tax, the period during which he would remain liable to pay the tax and the time at which he would cease to be liable to pay tax after his annual gross turnover has failed to exceed Rs. 50,000. Unless he is a casual dealer as defined in section 2 (bb) of the Principal Act who is liable to pay tax irrespective of his gross turnover as provided in section 4-A of the Principal Act, every dealer would become liable to pay tax under the Principal Act only when his gross turnover exceeds Rs. 50,000, otherwise not. The expression ‘dealer’ is defined in section 2 (c) of the Principal Act as a person who carries on the business of purchasing, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment or for commission, remuneration or other valuable consideration and includes others mentioned in that clause. It may be noted that this definition does not specify the extent of the gross turnover of such person as a

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qualification for being treated as a dealer. Every person who carries on the activities specified in section 2 (c) of the Principal Act is a dealer for purposes of the Principal Act. Section 2(f) of the Principal Act defines the expression 'registered dealer' as a dealer registered under it. Section 9 of the Principal Act imposes the obligation on every dealer who is liable to pay tax under section 4 of that Act to register himself and to obtain a registration certificate. On such registration he becomes a registered dealer. Section 9-B (1) (a) of the Principal Act lays down that no person who is not a registered dealer shall collect in respect of any sale by him any amount by way of tax under the Principal Act and a registered dealer can collect such tax only in accordance with the said Act and Rules made thereunder. Section 9-A of the Principal Act, however, provides for voluntary registration of a dealer whose annual gross turnover exceeds Rs. 10,000 even though he is not liable to pay tax under section 4 of that Act and every such dealer on such registration is entitled to collect tax under that Act and to pay it to Government as long as such registration remains in force. There are corresponding provisions made in section 9-C of the Principal Act for provisional registration of certain other kinds of dealers. Section 10 of the Principal Act provides for the publication of the list of registered dealers. Any other dealer cannot collect tax from his customers. There are other provisions in the Principal Act providing for the machinery for assessment and recovery of the tax due under it. Before proceeding further it is necessary to quote section 8 of the Principal Act. It reads:

"8. Power of the State Government to prescribe points at which goods may be taxed or exempted.

Notwithstanding anything to the contrary, in this Act, the State Government may prescribe the points in the series of sales or purchases by successive dealers at which any goods or classes or descriptions of goods may be taxed or exempted from taxation and in doing so may direct that sales to or purchases by a person other than a registered dealer shall be exempted from taxation :

Provided that the same goods shall not be taxed at more than one point in the same series of sales or purchases by successive dealers.

Explanation—Where in a series of sales, tax is prescribed to be levied at the first point, such point, in respect of

A goods despatched from outside the State of Orissa shall mean and shall always be deemed to have meant the first of such sales effected by a dealer liable under the Act after the goods are actually taken delivery of by him inside the State of Orissa."

B The proviso to section 8 of the Principal Act which is of considerable significance in these cases clearly lays down that the same goods cannot be taxed under the Principal Act at more than one point in the same series of sales (or purchases) by successive dealers. Section 8 of the Principal Act which begins with a non-obstante clause is given an over-riding effect over the rest of the provisions of the Principal Act and the proviso found in it also naturally has a similar over-riding effect. Levy of tax at a single prescribed point and prohibition against levy of tax at more than one point is an important characteristic of the scheme of the Principal Act and such prescription was introduced deliberately by the State Legislature to prevent hardship to consumers which would be caused by the gradual increase of prices as the goods pass from dealer to dealer before they reach the consumer which would be the natural result of a multi-point levy of sales tax and also to make collection of sales tax more convenient. Even though the language of section 8 of the Principal Act by itself was sufficient to prevent a multi-point levy and to prescribe a single point levy in order to emphasise the principle of single point levy of tax, section 4 (1) of the Principal Act was expressly made subject to section 8.

F When such was the position, with a view to augmenting the resources of the State Government, the Orissa Legislature enacted the Act in the year 1975 levying additional sales tax on certain classes of dealers. The Act as it was originally passed read thus :

"ORISSA ACT 24 OF 1975

THE ORISSA ADDITIONAL SALES TAX ACT, 1975

G AN ACT TO PROVIDE FOR LEVY OF ADDITIONAL TAX ON SALE OR PURCHASE OF GOODS IN ORISSA

H Be it enacted by the Legislature of the State of Orissa in the Twenty-Sixth Year of the Republic of India, as follows ;

1. (1) This Act may be called the Orissa Additional Sales Tax Act, 1975. A

(2) It shall extend to the whole of the State of Orissa.

(3) It shall be deemed to have come into force on the 1st day of April, 1975. B

2. (1) The tax payable by a dealer for a year under the Orissa Sales Tax Act, 1947 (hereinafter referred to as the said Act) shall be increased by an additional tax at the rate of - C

(a) two percent of the tax, if his gross turnover for that year does not exceed one lakh of rupees;

(b) three percent of the tax, if his gross turnover for that year exceeds one lakh of rupees but does not exceed five lakhs of rupees; D

(c) five percent of the tax, if his gross turnover for that year exceeds five lakhs of rupees -

Provided that where in respect of declared goods the tax payable by such dealer under the said Act together with the additional tax payable under this sub-section exceeds the maximum percentage of the sale or purchase price thereof specified, from time to time, under clause (a) of section 15 of the Central Sales Tax Act, 1956, the rate of additional tax in respect of such goods shall be reduced to such an extent that the tax and the additional tax together shall not exceed such maximum percentage of the sale or purchase price of such goods. E

Explanation—"Declared goods" shall have reference to declared goods as defined in the Central Sales Tax Act, 1956. F

(2) The provisions of the said Act shall, *mutatis mutandis* apply in relation to the said additional tax as they apply in relation to the tax payable under the said Act. G

(3) Notwithstanding anything contained in the said Act, no dealer referred to in sub-section (1) shall be entitled to collect the additional tax payable under this Act. H

A 3. (1) Any dealer who collects the additional tax payable under this Act, in contravention of the provisions of sub-section (3) of section 2 shall be punishable with fine which may extend to one thousand rupees.

B (2) No Court inferior to that of a Judicial Magistrate of the first class shall try an offence under this Act.

4. (1) The State Government may make rules for carrying out the purposes of this Act.

C (2) All rules made under this Act shall, as soon as may be after they are made, be laid before the State Legislature for a total period of fourteen days which may be comprised in one session or in two or more successive sessions and if during the said period the State Legislature makes modifications, if any, therein, the rules shall thereafter have effect only in such modified form; so, however, that such modifications shall be without prejudice to the validity of anything previously done under the rules."

D A reading of the Act shows that it was virtually in the nature of an amendment of the Principal Act. It, however, followed the pattern of the Tamil Nadu Additional Sales Tax Act, 1970, the validity of which arose for consideration in *S. Kodar v. State of Kerala*⁽¹⁾. The additional sales tax payable by the dealers specified in clauses (a), (b) and (c) of section 2 of the Act as it was originally enacted was in the nature of an enhancement of their liability to pay tax under the Principal Act by the specified percentages but they were prohibited from passing on the incidence of additional tax to the purchasers. The Statement of Objects and Reasons attached to the Bill which was latter on enacted as the Act read thus :

E "STATEMENT OF OBJECTS AND REASONS"

G To mobilise additional resources for the Plan, it has been proposed to impose an additional sales tax in addition to the sales tax payable by dealers under the general sales tax law of the State. This additional sales tax may be said to be in the nature of surcharge on the State sales tax payable by dealers.

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(1) [1975] 1 S.C.R. 121.

2. The proposed legislative measure contains a provision that the incidence of the tax cannot be passed on to consumers. Perhaps, a view may be taken that the proposed additional tax would be added to the price of goods sold and thereby jack up prices. But as this additional sales tax would be on a graded scale and a specific provision is proposed to be made in the Act debarring dealers to pass on the incidence to consumer, it will be difficult for dealers to pass on the incidence of this tax to consumers. It may not be possible to increase the price of goods by an amount equivalent to the amount of additional sales tax as there is statutory price control in respect of certain goods and where there is no statutory price control, there is keen competition between dealers for sale of goods. Moreover, the rate of the additional sales tax on big dealers will be more than that in the case of small dealers. To meet the competition from the small dealers, the big dealers cannot increase the price of goods so as to recoup themselves, of the amount of additional sales tax paid by them. Moreover, if dealers increase the price of goods so as to recoup themselves, they will be liable to pay more sales tax under the general sales tax law of the State and their turnover will also increase as a result of which the rate of additional sales tax may be more. Besides, if they increase the price exceeding the amount of additional sales, their profit will increase as a result of which they will be liable to pay more income tax. It may not, therefore, be a pragmatic step to pass on the incidence of this new tax to consumers.

3. The Bill seeks to achieve the above objective."

The contents of the above Statement of Objects and Reasons show the concern of the mover of the Bill regarding the likely increase in the burden on the consumers by reason of the probable escalation in the prices of goods as a result of the new levy.

The provisions of the Act set out above could have very well been incorporated in the Principal Act itself by the introduction of sections 2 and 3 set out above in the Principal Act. But the State Legislature following the pattern of the Tamil Nadu Act referred to above passed a separate Act. It was, however, made clear by section 2 (2) thereof that the provisions of the Principal Act would *mutatis*

A *mutandis* apply in relation to the additional tax as they apply in relation to the tax payable under the Principal Act. The additional tax thus levied being only an enhancement of the tax payable under the Principal Act by a specified percentage, it did not affect the general scheme of the Principal Act including the principle of single point levy contained in section 8 of the Principal Act. The two Acts **B** i.e. the Principal Act and the Act as it was originally enacted had to be read together in order to make the provisions contained in the Act effective. This position continued upto the coming into force of the Amending Act on April 1 1979 by which sections 2 and 3 of the Act were substituted by new sections 2 and 3. After such Amendment, sections 2 and 3 of the Act read thus -

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

(a) "declared goods" shall have the same meaning as in clause (c) of section 2 of the Central Sales Tax Act, 1956;

D (b) words and expressions used but not defined shall have the same meanings as are respectively assigned to them in the Orissa Sales Tax Act, 1947 (hereinafter referred to as the said Act).

E 3. (1) Every dealer shall, in addition to the tax payable by him for a year under the said Act, be liable to pay additional tax at such rate not exceeding one percent of his gross turnover for that year, as may be notified, from time to time, by the State Government;

F Provided that no additional tax as aforesaid shall be payable on that part of the gross turnover which relates to sale and purchase of declared goods :

G Provided further that the State Government may, by notification, subject to such conditions and restriction, if any, exempt any class of dealers or the turnover relating to any goods or class of goods from the levy of the additional tax and likewise withdraw any such exemption.

H (2) The provisions of the said Act shall, *mutatis mutandis* apply in relation to the said additional tax as they apply in relation to the tax payable under the said Act."

Sections 1 and 4 of the Act however remained as before. After the above amendment, section 2 took the form of the interpretation clause of the Act. Clause (a) of section 2 defined the expression 'declared goods' and clause (b) provided that the words and expressions used but not defined shall have the same meanings as are respectively assigned to them in the Principal Act. Section 3, however, altered the pattern of levy of additional sales tax from what it was when the Act was passed in 1975. The object of the alteration is set out in the statement of Objects and Reasons attached to the Bill which later became the Amending Act. It read thus :

'STATEMENT OF OBJECT AND REASONS

With a view to rationalising the scheme of additional sales tax it is proposed to amend the Orissa Additional Sales Tax Act, 1975 to facilitate wider application of first point levy and introduction of flexibility in the implementation of the Act.

2. The Bill seeks to achieve the above objectives".

Section 3 of the Act after the amendment provided that every dealer shall, in addition to the tax payable by him for a year under the said Act, be liable to pay additional tax at such rate not exceeding one percent of his gross turnover (excluding the gross turnover which relates to sale and purchase of declared goods) for that year as may be notified from time to time by the State Government. By a notification dated March 23, 1979, the State Government notified the rate of additional tax payable under section 3 of the Act as amended in 1979 at one-half percent of the annual gross turnover. The prohibition of the passing of the additional tax which existed formerly was removed. One significant change which was brought about by the amendment was that the additional tax instead of being an enhancement of the tax payable by a dealer by a certain percentage became a percentage of the annual turnover of a dealer. Both the Statement of Objects and Reasons and the Amending Act were however, silent on the question whether the additional tax payable after the amendment was a multi-point levy or single point levy. They were also silent on the class of dealers who were liable to pay additional tax. Controversies arose between the Department and many of the assesseses on the construction of section 3 of the Act after its amendment. The stand of the State Government was that every dealer was liable to pay additional tax on his annual gross

A turnover irrespective of its taxability under the Principal Act. The State Government claims that the new levy was in the nature of a multi point tax. A number of writ petitions were filed before the High Court of Orissa raising a number of contentions including some relating to the constitutionality of the amended Act. All the petitions were dismissed by the High Court. The main judgment was delivered in O.J. Case No. 1391 of 1979, filed by M/s. Ashok Service Centre. Following that judgment, the other writ petitions were dismissed. These appeals are filed against the decision of the High Court with the special leave of this Court.

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C In these appeals, the only contention pressed before us relates to the applicability of section 8 of the Principal Act which prohibits the levy of tax at more than one point in the same series of sales or purchases by successive dealers in the State of Orissa to the additional tax leviable under the Act as amended in 1979. The High Court negated the said contention on the ground that since both the Principal Act and the Act as amended in 1979 had been passed by a competent legislature providing for a different base and for a different scheme and because they happened to be two independent Acts, it was not open to the assesseees to rely upon any of the provisions of the Principal Act relating to incident and levy of tax in support of their contention. The High Court observed in para 8 of the judgment thus :

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F “8. On an analysis of Section 3 (1) of the Act it is also clear that the legislative intention is to raise a tax in addition to the liability under the 1947 Act. If the liability under the 1947 Act in respect of a dealer is taken as ‘X’. Section 3 (1) of the 1975 Act creates an additional liability which has to be within one percent of the gross turnover for that year (the State Government at present has prescribed half percent which may be taken as ‘Y’). ‘Y’ is an additional liability and, therefore, has been nomenclatured as additional tax. Under the 1947 Act, the dealer’s liability to sales tax is on the basis of his taxable turnover which is determined in the manner prescribed by that Act. Under the 1975 Act, the liability of the dealer is with reference to his gross turnover of the year. It was competent for the sovereign Legislature to adopt either of the methods for raising sales tax. While sustaining the scheme under the 1947 Act, it could also raise an additional tax on the gross

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turnover and combine the two for the purposes of computation as also recovery. In the premises, the submission of Mr. Agarwala on this score has also no force."

The High Court was of opinion that the Act being an independent Act it could not be read subject to the provisions of the the Principal Act. It may, however, be noticed that there is no reference in the judgment of the High Court to the effect of the provisions of section 3 (2) of the Act which forms part of the charging section and provides that the provisions of the Principal Act shall *mutatis mutandis* apply in relation to the additional tax levied under the Act as they apply in relation to the tax payable under the Principal Act. There is also no reference in the judgment of the High Court to section 8 of the Principal Act.

It is urged on behalf of the appellants before us depending upon section 3 (2) of the Act that wherever there is no express provision to the contrary in the Act, the provisions of the Principal Act including those relating to incidence and levy of tax, should apply to the additional tax also. On behalf of the State Government, it is urged that section 3 (2) of the Act is intended only to make those provisions of the Principal Act relating to the assessment and collection of tax applicable to the proceedings under the Act and no part of sections 3-B, 4, 4-A, 5, 6, 7 and 8 of the Principal Act would be applicable to the levy of additional tax.

We may straight away say that the contention of the Department leads to some anomalies. Section 3 (1) of the Act states that every dealer shall, in addition to the tax payable by him for a year under the Principal Act liable to pay additional tax at such rate not exceeding one percent of his gross turnover for that year as may be notified from time to time by the State Government. If as stated in section 2 (b) of the Act, we define the expression 'dealer' in section 3 (1) of the Act as provided in section 3 (c) of the Principal Act, and we do not apply the qualification of the minimum annual gross turnover of Rs. 50,000 stipulated in section 4 (1) of the Principal Act, then irrespective of his annual gross turnover every person who carries on the business of purchasing, selling, supplying or distributing goods directly or otherwise would become liable to pay additional tax even though he may not be liable to pay any tax under the Principal Act. If he is not registered as a dealer on account of his annual gross turnover being less than the prescribed

A minimum, he would not be able to collect the additional tax in view of section 9-B of the Principal Act which says that no person other than a registered dealer shall realise any amount by way of tax under the provisions of the Principal Act. That could never have been the intention of the State Legislature. The 'dealer' referred to in section 3 (1) of the Act should be understood as a 'dealer' who is

B liable to pay tax under the Principal Act as provided in section 4 (1) of the Principal Act. Next 'gross turnover' means the total of 'turnover of sales' and 'turnover of purchase'. If under section 3 (1) of the Act, liability to pay additional tax just on the 'gross turnover' a dealer has to pay additional tax on the aggregate of the purchases of goods declared under section 3-B of the Principal Act and also on the turnover of sales of other goods. To determine the gross turnover it becomes necessary to read section 3-B of the Principal Act into the Act although the said section deals with the liability of certain class of goods to tax under the Principal Act. These anomalies show that the contention of the Department that only machinery provisions of the Principal Act become applicable to the proceedings under the Act cannot be accepted.

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E Section 3 (2) of the Act which makes the provisions of the principal Act *mutatis mutandis* applicable to the levy of additional tax is a part of the charging provision of the Act and it does not say that only those provisions of the Principal Act which relate to assessment and collection of tax will be applicable to the proceedings under the Act. Before considering what provisions of the Principal Act should be read as part of the Act, we have to understand the meaning of the expression '*mutatis mutandis*'. Earl Jowitt's 'The Dictionary of English Law (1959)' defines '*mutatis mutandis*' as 'with the necessary changes in points of detail'. Black's Law Dictionary (Revised 4th Edn. 1968) defines '*mutatis mutandis*' as 'with the necessary changes in point of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like. *Houseman v. Waterhouse*, 191 App. Div. 850, 112 N.Y.S. 249, 251.' In Bouvier's Law Dictionary (3rd Revision, Vol. II), the expression '*mutatis mutandis*' is defined as '(T)he necessary changes. This is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like.

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G Extension of an earlier Act *mutatis mutandis* to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the

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thing changed, subject of course to express provisions made in the later Act. Section 3 (2) of the Act shows that the State Legislature intended not to depart substantially from the Principal Act except with regard to matters in respect of which express provision had been made in the Act. The assumption made by the High Court that the Act was an independent Act having nothing to do with the Principal Act is not correct. The Act only levied some extra sales tax in addition to what had been levied by the Principal Act. The nature of the taxes levied under the Act and under the Principal Act was the same and the Legislature expressly made the provisions of the Principal Act *mutatis mutandis* applicable to the levy under the Act. The additional sales tax was in the nature of a surcharge over and above what was due and payable by assessee under the Principal Act. The Act, though it had a long title, a short title and other usual features of every statute, could not be considered as an independent statute. It had to be read together with the Principal Act to be effective. In the circumstances the conclusion reached by the High Court that the two Acts were independent of each other was wrong. We are of the view that it is necessary to read and to construe the two Acts together as if the two Acts are one, and while doing so to give effect to the provisions of the Act which is a later one in preference to the provisions of the Principal Act wherever the Act has manifested an intention to modify the Principal Act. The following observations of Lord Simonds in *Fendoch Investment Trust Co. v. Inland Revenue Commissioners*⁽¹⁾ made in connection with the construction of certain fiscal statutes are relevant here. He said at page 144 :

“My Lords, I do not doubt that in construing the latest of a series of Acts dealing with a specific subject matter, particularly where all such Acts are to be read as one, great weight should be attached to any scheme which can be seen in clear outline and amendments in later Acts should if possible be construed consistently with that scheme”.

Originally when the Act was passed in 1975, the Act levied an additional tax on dealers whose annual gross turnover did not exceed rupees one lakh at two percent of the tax payable by them under the Principal Act, on dealers whose gross turnover exceeded rupees one lakh but did not exceed rupees five lakhs at three percent

(3) [1945] 2 All E.R. 140 (H.L.).

A of the tax payable under the Principal Act and on dealers whose gross turnover exceeded rupees five lakhs at five percent of the tax payable under the Principal Act. Such additional tax levied under the Act could not be passed on to consumers. The object of the amendment made in 1979 was, as can be seen from the Statement of Objects and Reasons, to rationalise the scheme of additional sales tax and to facilitate 'wider application of first point levy' and to introduce flexibility in the implementation of the Act. What the words 'wider application of first point levy' mean is not very clear. the words 'first point levy' is no doubt a single point levy. Even a last point levy in the same series of sales is a single point levy which is distinguishable from a multi point levy. If the State Legislature wanted that the new levy i.e. the additional tax should be a multi point tax which had to be paid by every dealer irrespective of the fact that the entire annual gross turnover in his hands may not be liable to bear the tax under the Principal Act, it would have expressly said so as it would have amounted to a substantial departure from the general scheme of the Principal Act as set out in the proviso to section 8 of thereof which stipulated that no goods should suffer tax which could be passed on to the purchaser at more than one point in the same series of sales or purchases by successive dealers to which the people of the State of Orissa had become accustomed. If the object of the amendment was to make the additional tax a multi point levy, nothing was easier than using the appropriate words in the Act by excluding the application of section 8 of the Principal Act expressly in section 3 (2) of the Act. In the absence of any such words in the Act, by reason of section 3 (2) of the Act, we have to construe that section 8 of the Principal Act which is given an over-riding effect by the use of the non-obstante clause is applicable to the levy of additional tax also. This construction receives support from the use of the word 'additional' in section 3 (1) which involves the idea of joining or uniting one thing to another so as thereby to form one aggregate (see Black's Law Dictionary). The gross turnover referred to therein should, therefore, be understood as that part of the gross turnover which is taxable under the Principal Act. The definition of the expression 'gross turnover' in section 2 (dd) of the Principal Act does not present any insurmountable difficulty as the words defined in section 2 of the Principal Act have to be given the meaning as indicated in that section unless there is anything repugnant in the subject or context. In view of the foregoing, section 3 (1) of the Act has to be read as :

"Every dealer (who is liable to pay tax under the Principal Act) shall, in addition to the tax payable by him for a year under the said Act, be liable to pay additional tax at such rate not exceeding one percent of his gross turnover (which is taxable under the Principal Act) for that year, as may be notified from time to time by the State Government.

Provided.....

Provided.....

If section 3 (1) is so read there would not be any anomaly but on the other hand it would effectuate the intention of the State Legislature. We are aware of the principal that a statute has to be interpreted according to the words used therein and if the word used therein are clear it is not open to the Court to go in search of the intention of the Legislature and to arrive at a meaning different from what the words of the statute convey. When the Act is read as a whole it becomes inevitable that it has to be read together with the Principal Act. Craieson Statute Law (7th Edn) says at page 223 that 'where the later of two Acts provides that the two are to be read together every part of each Act must be construed as if the two Acts had been one, unless there is some manifest discrepancy making it necessary to hold that the later Act has to some extent modified the provisions of the earlier Act'. When section 3 (1) of the Act read in the light of subsection (2) thereof, section 8 of the Principal Act which prescribes a single point levy becomes immediately attracted. It was, however, argued on behalf of the Department that since section 8 of the Principal Act opened with the words 'notwithstanding anything to the contrary in this Act', the operation of section 8 should be confined to the tax payable under the Principal Act and could not be extended to the additional tax payable under the Act. We do not find any merit in this submission, since the words 'this Act' were used in section 8 because when the Principal Act was enacted section 8 could apply only to the liability under the Principal Act. Now by reason of section 3 (2) of the Act, section 8 has been made also applicable to the levy, assessment and collection of the additional tax under the Act. If we accept the argument of the Department even section 13 of the Principal Act which provides for the machinery for recovery of tax and penalty would become unavailable for collecting the additional tax under the Act as section 13 also uses the words

A 'tax payable under this Act'. Likewise, many other provisions of the Principal Act which are necessary for making the levy under the Act effective will become inapplicable. The above contention has therefore to be rejected.

B Lastly it was contended on behalf of the State Government that section 3 (1) of the Act should be construed as a complete and self-contained code on the charge created by the Act in view of the second proviso contained in it which conferred powers of exemption on the State Government. That proviso only empowers the State Government to exempt certain dealers or transactions pertaining to certain goods from the levy of additional tax. It does not in any way curtail the effect of sub-section (2) of section 3 of the Act which forms an integral part of the charging section. Consequently any exemption granted under section 6 and section 7 of the Principal Act will also be applicable in the case of levy of additional tax under the Act.

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E In view of the foregoing, we hold that any dealer is not liable to pay tax under the Principal Act either by reason of his not having sufficient gross turnover or by reason of exemption given under section 7 of the Principal Act, is not liable to pay additional tax under the Act. If a dealer is exempted by the State Government under the second proviso to section 3(1) of the Act he is also not liable to pay the additional tax under the Act. If the turnover of a dealer relating to any sales or purchases of goods is exempted under section 6 of the principal Act, such turnover cannot be subjected to any levy of additional tax under the Act by virtue of section 3 (2) of the Act.

F The Government Notifications S.R.O. No. 410/79 dated March 23, 1979 issued under the second proviso to section 3 (1) of the Act exempting the turnover relating to goods whose turnover is exempted from payment of tax under section 6 of the Principal Act from payment of additional tax under the Act is, therefore, redundant. The turnover in respect of goods whose sales or purchases are not taxable under the Principal Act in the hands of any dealer by reason of section 8 of the Principal Act is not liable to the payment of additional sales tax under the Act. The turnover in respect of sales and purchases of declared goods is not taxable under the Act by reason of the first proviso to section 3 (1) of the Act. Any other turnover which is exempted by the State Government under the second proviso to section 3 (1) of the Act is also not taxable under

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the Act. The levy of the additional tax on the gross turnover of a dealer under section 3 of the Act is subject to these conclusions. **A**

In the result the appeals succeed. The judgment of the High Court in each of these cases is set aside. It is hereby declared that the additional tax under the Act can be levied and collected under section 3 of the Act in accordance with our conclusions set out in the previous paragraph. **B**

There shall, however, be no order as to costs.

P.B.R.

Appeals allowed. **C**