Deputy Commissioner Of Sales Tax Etc. ... vs Aysha Hosiery Factory (P) Ltd. Etc. Etc on 16 January, 1992

Equivalent citations: 1992 AIR 874, 1992 SCR (1) 140, AIR 1992 SUPREME COURT 874, 1992 AIR SCW 563, 1992 (1) UPTC 454, 1992 (2) SCC(SUPP) 178, (1992) 1 JT 379 (SC), (1992) 1 SCR 140 (SC), 1992 UPTC 1 454, 1992 SCC (SUPP) 2 178, (1992) 108 TAXATION 319, (1992) 1 KER LT 423, (1992) 85 STC 106

PETITIONER:
DEPUTY COMMISSIONER OF SALES TAX ETC. ETC.

Vs.

RESPONDENT:
AYSHA HOSIERY FACTORY (P) LTD. ETC. ETC.

DATE OF JUDGMENT16/01/1992

BENCH:
RAMASWAMI, V. (J) II
BENCH:
RAMASWAMI, V. (J) II
RANGNATHAN, S.
OJHA, N.D. (J)

CITATION:
1992 AIR 874 1992 SCR (1) 140
1992 SCC Supl. (2) 178 JT 1992 (1) 379
1992 SCALE (1)207

ACT:
Central Sales Tax Act, 1956.
Sections 6(1-A), 8,9: Tax on sale of goods in inter-state trade-Liability of dealer-Rate of tax-Whether applicable under the local Act at the particular point of time.
Kerala General Sales Tax Act, 1963 [1] Kerala Additional Sales Tax Act, 1978 :
Additional levy imposed under the 1978 Act-Whether amounts to amending the Sales tax Act-Such levy-Whether could be applied to interstate sales.

HEADNOTE:
The Kerala Additional Sales Tax Act, 1978 sought to impose an additional sales tax at 10% of the rate of tax

already imposed under the Kerala General Sales Tax Act, 1963, on all taxable sales and purchases in the State.

The assesses challenged before the High Court, the levy of additional sales tax in respect of their inter-state sales on the ground that the said levy could not be considered as a levy under the sales tax law of the appropriate State within the meaning of Section 8(2-A) of the Central Sales Tax Act, and for the purpose of levying Central Sales Tax only the rate of tax as per the original Kerala General Sales Tax Act, 1963 shall be taken into account. It was also contended that the rate of tax on interstate sales payable under Section 8 of the Central Sales Tax Act cannot be increased by any amendment or legislation by the State.

The High Court having upheld the challenge, the State has preferred the present appeals by special leave.

On the question whether the additional tax levied could also be considered as sales tax under the Sale tax law of the State, for the purpose of Central Sales Tax levy.

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Allowing the appeals, this Court,

HELD :1.1 The definition provided by Section 2(i) of the Central sales Tax Act does not say that the sales tax law or the general sales tax law which levies taxes on sale or purchase of goods shall be under a single enactment. What is relevant is whether the tax partakes the character of sales tax or purchase tax. Any other construction would restrict the applicability of Section 8(2-A) of the Central Sales Tax Act to the sales tax law that was in force in 1956 when the Central Sales Tax Act came into force and any amendment to the local law would not have any effect on the applicability of that provision. If a particular intra-state sale transaction in a particular assessment year is subjected to a particular rate of tax that automatically gets reflected in and had to be taken into consideration for finding the rate and the applicability of Section 8(2-A) or section 8(2) (b) of Central Sales Tax Act. [146F-G; 147-A]

1.2 Instead of an additional Sales Tax Act, if the legislature has simply amended the Kerala General sales tax Act by varying the rate, automatically that will come in for consideration and application of the provision of Section 8(2) (b) and 8 (2-A) of the Central Sales Tax Act. For this purpose amendment of the State Act is not considered as an amendment of the Central Sales Tax Act. But since the rate applicable to the intra-state sales at a particular point of time is a relevant consideration for finding out the rate of tax on inter-state sale the amendment of the State Act automatically has the effect of changing the rate provided under Section 8 of the Central Sales Tax Act. That is not to say that the Central Act is amended by the State Legislature. The rates of tax in certain cases under the Central Act are linked to the rates fixed under the local Acts and that is how the amendment of the local Act affects

the rates under the Central Act. It is still the Central Act that is applied but only for purposes of fixing the rate of tax leviable under the Central Sales Tax Act, the provisions of the local Act are looked into. So construed there is not doubt that in all cases where the rate of tax under the local law is less than four per cent that will be the rate applicable to the inter-state sales of the same commodity if the provisions of Section 8(2-A) of the Central Sales Tax Act are applicable. The dealer undoubtedly would be paying at the rate as enhanced by the Additional Sales Tax Act and therefore that will be the rate that is including the additional tax, that is to be taken into consideration for finding out the applicability of Section 8(2-A) of the Central Sales Tax Act and the rate of tax in respect of his inter-state sales turnover. Therefore the respondents are liable to pay sales tax at the rate including the additional sales tax in respect of their inter-state sale under the Central Sales Tax assessment orders.

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1.3 For the purpose of applicability of Section 8(2-A) of the CST Act one has to look to the rate of tax applicable for the time being under the local Act and not a rate of tax which was applicable under the local Act at the time when the CST Act was enacted. Any amendment in the local Act ultimately will have a reflection in the assessment of the inter-state sales. [147A-F]

1.4 However, where a notification has been issued under Section 8(5) of the Central Sales Tax Act, the amendment to the State Act will not have any affect on the notification.

Janta Expeller Company & Ors. v. Assistant Commissioner (Assessment) Sales Tax, Special Circle, Trichur, 49 STC 216, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4042 of 1987 etc. etc. From the Judgment and Order dated 11.7.1986 of the Kerala High Court in T.R.C. No. 9 of 1985.

P.S. Poti and K.R. Nambiar for the Appellants. A.S. Nambiar, G. Vishwanatha Iyer, G.B. Pai, P.H. Parekh, P.K. Manohar, Smt. Shanta Vasudevan, Ms. Malini Poduval, S. Sukumaran and N. Sudhakaran for the Respondents.

The Judgment of the Court was delivered by V. RAMASWAMI, J. Leave granted in Special Leave Petition Nos. 8417 and 8492-93 of 1987.

In this batch of appeals the appellants are the State of Kerala. The respondents are registered dealers under the Kerala General Sales Tax Act, 1963, hereinafter called the State Act as well as under the Central Sales Tax Act, 1956 hereinafter called the Central Act. Some of the assesses carry

on the business of sales and purchase of Coir products which is taxable under the State Act at 2%, some of the dealers carry on business of Hosiery which is taxable at 3%. The respondents-assessee in Civil Appeal Nos. 1426-27 of 1988 deal in automobile spares which is taxable at 15% and the assessee in Civil Appeal No. 1015 of 1988 deals in transformer which is taxable at 10%. The respondent in Civil Appeal No. 4386 of 1988 is a dealer in titanium dioxide, Cement, and Paints products which are taxable at 10% and the respondent in Civil Appeal No. 189 of 1990 is a dealer of Sewing Thread which is taxable at 3%. The assessee in Civil Appeal No. 5557 of 1990 is a dealer in rice taxable at 2%. Under the Kerala Additional Sales Tax Act (20 of 1978) all taxable sales and purchases in the State including the local sales of Coir, Hosiery, Rice, Automobile parts, titanium dioxide, Cement, Paints and transformers etc. With which we are concerned, were subjected to an additional sales tax calculated at 10% of the rate of tax already imposed under the Kerala General Sales Tax Act, 1963. The result of it was where the rate of tax was 2% the tax payable became 2.2% where it was 3% it was 3.3%, 10% became 11%, 15%. In all these cases the assessments in question were under the Central Sales Tax Act. The Kerala Additional Sales Tax Act came into force with effect from 1st April, 1978. In the present appeals the assessment year in question were either 1978-79 or subsequent thereto. The assessing officers sought to levy tax in respect of the inter-state sales of the assesses by including the additional sales tax. The assesses questioned the inclusion of the additional sales tax levy in respect of their inter-state sale on ground that the levy under the Kerala Additional Sales Tax Act is not and could not be considered as a levy "under the sales tax law of the appropriate State" within the meaning of section 8(2-A) of the Central Act and for the purpose of levying Central Sales Tax in view of the provision of section 8(2-A) of the CST Act only the rate of tax as per the original Kerala General Sales Tax Act, 1963 shall be taken into account. They also contended that the rate of tax on inter- state sales payable under section 8 of the Central Act cannot be increased by an amendment of the State Act or any legislation by the State. All the revision petitions filed by the assesses were allowed by the High Court of Kerala accepting their contention following the judgment of the Division Bench of the same Court reported in Assistant Commissioner (Assessment) Sales Tax v. Janata Expeller Company and Ors., 64 STC 435 which confirmed a Single Judge judgment in Janata Expeller Company & Ors. v. Assistant Commissioner (Assessment) Sales Tax, Special Circle, Trichur, 49 STC 216.

Before we deal with the decision relied on by them it is better we set out the relevant provisions and understand the scope and implications of the same.

> "8. Rates of tax on sales in the course of inter- state trade or commerce-(1) Every dealer, who in the course of inter-State trade or commerce-
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> (a) sells on the Government any goods; or
>
> (b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3); shall be liable to pay tax under this Act, which shall be four percent of the turnover.
>
> (2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not

falling within sub-section (1)-

(a) in the case of declared goods shall be calculated at twice the rate applicable to the sale or purchase of such goods inside the appropriate State; and

(b) in the case of goods other than declared goods, shall be calculated 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;

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

(2A) Notwithstanding anything contained in sub- section (1A) of section 6 or sub-section (1) or clause (b) of sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax four percent (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation- For the purposes of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

(3).....

(4).....

(5) Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the official Gazette, and subject to such conditions as may be specified therein, direct-

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-state trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sale shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification ;

that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made in the course of inter-State trade or commerce, by any class of such dealers as may be specified in the notification, to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be

calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification." In all these appeals the inter-State sales in question which are sought to be taxed admittedly do not fall under sub-section (1) or clause (a) of sub-section (2) of section 8 of the CST Act. The sales were of goods other than the declared goods, therefore, under clause (b) of sub-section (2) of section 8 the tax payable by the dealer on his turnover shall be calculated at the rate of 10% or at the rate applicable to the sale or purchase of such goods inside the State whichever is higher. However, sub-section (2-A) of this section states that notwithstanding anything contained in clause (b) of sub-section (2) the tax payable under the Central Sales Tax Act by the dealer where the intra-state sale of the same under the `sale tax law' of the State is "exempt from tax generally or subject to tax generally at a rate which is lower than four per cent shall be nil or as the case may be shall be calculated at the lower rate." Thus if an intra-state sale by the dealer is exempt then his inter-State sale also will be exempt. If the intra-State sale is taxed at a rate which is lower than four percent, then his inter- State sale of the same commodity shall also have to be taxed at the lower rate applicable in the State. But where the rate of tax applicable to intra-State sale was more than four percent then the rate applicable for inter-State sale will be nil or the rate applicable for the local sale whichever is higher. The question for consideration is as to whether the additional tax levied under Kerala Additional Sales Tax Act is also to be considered as sales tax under the `sales tax law' of the State. The question could not have arisen but for the fact that this additional levy came to be imposed under a separate Act. Had the additional Sales Tax been imposed by simply amending the rates in the original Act the question would not have arisen. But we are of the view that this makes no difference and it is merely a matter of style of legislation. The additional sales tax levied under the Sales Tax Act is also a sales tax of the same category as in the original Act. The Kerala Additional Sales Tax Act provides that "The tax payable under Kerala General Sales Tax Act, 1963 (15 of 1963) (hereinafter referred to as the State Act) for every financial year commencing from the financial year 1978-79 shall be increased by 10 per cent of such tax" instead of increasing the rate of tax for each of the commodities which are covered by the Kerala General Sales Tax Act by one comprehensive provision the tax is increased by 10% over the rate provided under the original Act in respect of all the commodities the sale or purchase of which are taxable. Both take the form of sales tax and in the case of assessment of local sales it makes no difference whether it is called tax and additional tax or one higher percentage of tax. In truth and effect it is a levy of tax on the sales or purchase of the dealers. However, it was contended on behalf of the assesses that the words "under the sale tax law of the appropriate State" in Section 8 (2-A) of the CST refers to only the General Sales Tax Act provisions and not the additional Sales Tax Act provisions. Section 2(i) of the Central sales Tax Act defines `sale tax law' as meaning "any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf and `general sales tax law' means the law for the time being in force in any State or part thereof which provides for the levy of tax on the sale or purchase of goods generally." The definition does not say that the sale tax law or the general sales tax law which levies taxes on sale or purchase of goods shall be under a single enactment. What is relevant is whether the tax partakes the character of sales tax or purchase tax. Any other construction would restrict the applicability of section 8 (2-A) of the CST Act to the sales tax law was in force in 1956 when the Central Sales Tax Act came into force and any amendment to the local law would not have any affect on the applicability of that provisions. We do not see any logic or reason for such a construction. What is relevant is if a particular intra- state sale transaction in a particular

assessment year is subjected to a particular rate of tax that automatically gets reflected in and had to be taken into consideration for finding the rate and the applicability of section 8 (2-A) or Section 8(2)(b) of Central Sales Tax Act. As already stated if instead of an additional sales tax Act the legislature has simply amended the Kerala General Sales Tax Act by varying the rate automatically that will come in for consideration and application of the provisions of Section 8(2)(b) and 8(2-A) of the CST Act. For this purpose amendment of the State Act is not considered as an amendment of the Central Sales Tax Act. But since the rate applicable to the intra-state sales at a particular point of time is a relevant consideration for finding out the rate of tax on inter-State sale the amendment of the State Act automatically has the effect of changing the rate provided under Section 8 of the Central Sales Tax Act. That is not to say that the Central Act is amended by the State Legislature. The rates of tax in certain cases under the Central Act are linked to the rates fixed under the local Act and that is how the amendment of the local acts affects the rates under the Central Act. It is still the Central Act that is applied but only for purposes of fixing the rate of tax leviable under the Central Sales Tax Act the provisions of the Local Act are looked into. So construed we have no doubt that in all cases where the rate of tax under the local law is less than four per cent that will be the rate applicable to the inter-state sale of the same commodity if the provisions of Section 8(2-A) of the CST Act are applicable. The dealer undoubtedly would be paying at the rate as enhanced by the Additional Sales Tax Act and therefore that will be the rate that is including the additional tax, that is to be taken into consideration for finding out the applicability of section 8(2-A) of the CST Act and the rate of tax in respect of his inter-State sales turnover. There could be therefore no doubt that the assessees-respondents in all these cases are liable to pay sales tax at the rate including the additional sales tax in respect of their inter-State sales under the Central Sales Tax assessment orders.

The High Court has reversed the order of the assessment in all these cases relying on the decision of a learned Single Judge in Janata Expeller Co. case 49 STC 216 which was affirmed on appeal by the Division Bench of the same High Court in 64 STC 435. That case related to the assessment of a dealer in relation to his inter-State sales turnover of coconut oil and cake. Under the Kerala General Sales Tax Act, 1963 the local sales of coconut oil and cake were taxable at 2%. By reason of the Kerala Additional Sales Tax Act, 1978 the rate of tax had increased to 2.2%. In exercise of the power under section 8(5) of the Central Sales Tax Act the State Government on 1.4.1966 notified that the Government "being satisfied that it is necessary so to do in the public interest, hereby direct that in respect of coconut oil and its cake the tax payable under the said Act by an oil miller having his place of business in the State of Kerala in respect of the sale by him from such place of business of the said goods in the course of inter- State trade or commerce shall be calculated at 1 percent on the sale price of the goods so sold subject to the condition that the turnover of coconut or copra, from which the said goods were produced by him in his mill within the State, is assessed to tax or is liable to tax at his hands under the Kerala General Sales Tax Act. This notification came into force with effect from 1.4.1966. When the assessing authorities sought to levy the additional tax imposed under the additional Sales Tax Act, 1978 in respect of the inter- state sale and called upon the assessees to pay at 1.1%, the dealers questioned the assessment orders on the ground that when once a notification has been made under Section 8(5) of the Central Sales Tax Act fixing the rate for purposes of C.S.T. any change in the rate of tax under the local act will have no impact on the notification itself unless the notification also is modified or amended giving effect to the amendment. This contention was accepted by Kochu Thommen. as he then was, in the judgment in the Janatha Expeller Co. & Ors.

case (supra). No exception could be taken to this view of the learned Judge. Because section 8(5) of the Central Sales Tax Act is a provision which enable the State Government if it was of the view that it was necessary to do so in the public interest to completely exempt the inter-state sales from payment of tax or reduce the tax payable under the Central Act in respect of inter- state sales. The section itself states the notification will have effect "Notwithstanding anything contained in section 8". Therefore when once a notification is made it will have effect propio vigor and even any amendment of the rate applicable to inter-state sale will not affect the notification under section 8(5) of the Central Sales Tax Act as such unless the notification also is amended along with the amendment of the other provisions in the Section or the amended statute in law the effect of superseding the notification itself. In the case dealt with in Janatha Expeller Co. & Ors. (supra) the levy of additional sales tax could not affect the notification because the notification, though issued by the State Government, was made in exercise of the powers under section 8(5) of the Central Act enacted by the Parliament, and the Kerala Additional Sales Tax Act was made by the State Legislature and that could have the effect of superseding the notification. We may also point out that the learned Judge also had confined his decision to the notification and its effect though he had dealt with the scope of section 8(2-A) of the Central Sales Tax Act also in order to give better understanding of the provisions of section 8(5) of the Central Sales Tax Act. We are unable to see anything in this judgment to support the contention of the respondents-assessees that even in a case which is not covered by any notification under section 8(5) of the CST Act increase in the rate of tax under the local act will not have any effect on the applicability of Section 8(2)(b) and 8(2-A) of the CST Act. Further, for enhancing the rate notified under section 8(5) of the Central Sales Tax Act no reliance can be placed on section 8(2-A) of the CST Act. However, while agreeing with the view of the learned single Judge the Division Bench on appeal in the case of Assistant Commissioner (Assessment) Sales Tax (supra) made certain further observation which in a way supported the contention of the assessees. That passage reads as follows:

> "We are also of the view, that even in cases where tax is exigible under section 8(2A) of the Central Sales Tax for the inter-State sales, the Kerala Additional Sales Tax Act, 1978 (Act 20 of 1978), has no application.
>
> As stated already, in cases where the tax is payable under section 8(2A) of the Central Sales Tax Act, what is crucial or relevant is to ascertain, the appropriate sales tax law of the State, under which the tax is levied for the sale or purchase of the goods or the commodity, in question. Looked at from the angle, we have no doubt, that the appropriate sales tax law of the State, of which tax is levied, is the Kerala General Sales Tax Act, 1963. The Kerala Additional Sales Tax Act, 1978(Act 20 of 1978), does not levy sales tax on the sale or purchase of the goods or commodity, in question. We hold that the provisions of Act 20 of 1978 are inapplicable to a situation, where inter-State sales are to be taxed under section 8 or section 8(2A) or section 8(5) of the Central Sales Tax Act.
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> In the first place these observations are in the nature of obiter in view of the fact that the learned Judges have accepted the interpretation placed by the learned single Judge that in respect of a case where a notification has been issued under Section

8(5) of the CST Act the amendment to the State Act will not have any effect on the notification. That should have been enough to dispose of the case but they have given an alternative reasoning which in our view is not correct and is against the provisions of Section 8(2-A) of the CST Act itself. For the purpose of applicability of Section 8(2-A) of the CST Act we have to look to the rate of tax applicable for the time being under the local Act at the time when the CST Act was enacted. Any amendment in the local Act ultimately will have a reflection in the assessment of the inter-state sales. We have already discussed the scope of Section 8 (2-A) of the CST Act and in the light of those reasonings the passage extracted above in the judgment of the Division Bench is contrary to law and could not be accepted.

As we have stated already in all the appeals under consideration there were no notifications under section 8(5) of the CST Act and simply the applicability of section 8(2- A) of the CST Act alone is involved. The appeals are accordingly allowed. The orders of the High Court are set aside and the respective assessment orders are restored.

However, there will be no order as to costs.

G.N. Appeals allowed.