Balabhagas Hulaschand vs State Of Orissa on 9 December, 1975

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Bench: Syed Murtaza Fazalali, Kuttyil Kurien Mathew

PETITIONER:
BALABHAGAS HULASCHAND

Vs.

RESPONDENT:
STATE OF ORISSA

DATE OF JUDGMENT09/12/1975

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
MATHEW, KUTTYIL KURIEN

CITATION:
1976 AIR 1016 1976 SCR (2) 939
1976 SCC (2) 44
CITATOR INFO :
D 1980 SC1468 (18)
RF 1981 SC 446 (6)
E&D 1985 SC1754 (10)
E&D 1992 SC1952 (12,13,15)

ACT:
Central Sales Tax Act, 1956-Ss. 2(g), 3, 4(2)(a) (b)-"Sale"-Ambit of the definition "Sale".
Central Sales tax Act, 1956-Section 3 (a) read with s. 4 of the Sale of Goods Act, 1930-Agreement to sell is an essential ingredient of sale.-
Central Sales Tax Act, 1956, s. 3(a)-Scope of s. 3(a)-Occasions the "movement of goods from one State to another"-Whether the agreement of sale occasions movement-Whether agreement to sell was a forward contract or a contract in respect of unascertainable or future goods does not make any difference for the purposes of application of s. 3(a) of the Act.
Interpretation of statutes-Whether s. 3(a) of the

Central Sales Tax Act is redundant and would apply to contingencies which may not happen at all.

Central Sales Tax Act, 1956-Section 3(a) read with Art. 286(3) of the Constitution of India-Sale "in the course of interstate trade or commerce"-Conditions to be satisfied before a sale can be said to take place in the course of interstate trade or commerce.

HEADNOTE:

The appellant, a firm dealing in buying and selling jute with headquarters at Calcutta, used to purchase raw jute grown in Orissa and despatch them in bags from Cuttack and Dhanmandal Railway Station to the Railway Mills Siding Station in Calcutta. The goods were booked in the name of the buyer "KB & Co" through its licensed broker "EIJ & HE Ltd." and on the arrival of the goods the buyer inspected the goods and if they were found in accordance with the specifications mentioned in the agreement of sale, accepted them and paid their price. On the basis of these concluded transactions of sale the respondent State, levied sales tax under s. 3(a) of the Central Sales Tax Act on the basis that the sales were interstate sales. Since the assessing authorities negatived the contention of the appellant that the sale was merely an internal sale which took place in the State of West Bengal and since the Tribunal refused to make a reference, the appellant moved the High Court under s. 24(3) of the Orissa Sales Tax Act to direct the Tribunal to make a statement of the case to the High Court. The Tribunal referred two points, viz., (i) Did the title to the goods pass in Orissa or in West Bengal and (ii) Even if the title in the goods passed in West Bengal, whether in the facts and circumstances of this case, the transaction constituted "sale in the course of inter-state trade" ? The High Court held that although the title in the goods passed in West Bengal and the sale took place there, since the sale occasioned the movement of goods from Orissa to West Bengal it was an inter-State sale, and, therefore, it was clearly governed by s. 3(a) of the Central Sales Tax Act.

Affirming the judgment of the High Court and dismissing the appeals by special leave, the Court,

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HELD: (1) The definition of "sale" in s. 2(g) of the Central Sales Tax Act postulates the following conditions. (i) There must be a transfer of property in goods by one person to another; (ii) The transfer must be for cash or for deferred payment or for any other valuable consideration; and (iii) That such a transfer includes a transfer of goods on the hire purchase or other system of payment by instalment etc. The word "sale" defined in cl. (g) of s. 2 and used in s. 3(a) , 4(2) (a) and (b) is wide enough to include not only a concluded contract of sale but also a

contract or agreement of sale provided the agreement of sale stipulates that there was a transfer of property or movement 940
of goods. An agreement to sell by which the property did not actually pass was also an element of sale. [944H, 945A, C, G]

Bengal Immunity Co. Ltd. v. The State of Bihar and others, [1955] 2 SCR 603, relied on.

Sales Tax Officer, Pilibhit v. Budh Prakash Jai Prakash, 5 S.T.C. 193, 196, followed.

(2) When the statute uses the words "sale or purchase of goods", it automatically attracts the definition of "sale of goods" as given in s. 4 of the Sale of Goods Act, 1930, and is to some extent pari materia to s. 3 of the Central Sales Tax Act so far as the transactions of sale is concerned. The inevitable conclusion that fellows from the combined effect of the interpretation of s. 3 of the Central Sales Tax Act and s. 4 of the Sale of Goods Act is that an agreement to sell is also an essential ingredient of sale provided it contains a stipulation of transfer of goods from the seller to the buyer. [946E-F, 947A]

(3) Since the word "sale" appearing in s. 2(g) as also in s. 3(a) of the Act includes an agreement to sell provided the said agreement contains a stipulation regarding passing of the property, if there is a movement of goods from one State to another, not in pursuance of the sale itself, but in pursuance of an agreement to sell, which later merges into a sale, the movement of goods would be deemed to have been occasioned by the sale itself wherever it takes place. When the movement of goods start, they shed the character of either unascertained goods or future goods. For the purpose of application of s. 3(a) of the Central Sales Tax Act, the question whether the contract is a forward contract or not makes no material difference. [947B, C-D, 948F]

(4) A statutory provision cannot be interpreted in a way which defeats the very object of the Act. It is equally well settled that the Legislature does not waste words or introduce useless or redundant provisions. The contention that s. 3(a) of the Central Sales Tax Act was redundant or would apply to contingencies which may not happen at all, is not correct. [948D]

Indian Chamber of Commerce v. C.I.T., West Bengal II Calcutta, 1976(1) SCR 830, applied.

(5) The following conditions must be satisfied before a sale can be said to take place in the course of interstate trade or commerce:

(i) that there is an agreement to sell which contains a stipulation express or implied regarding the movement of the goods from one State to another.

(ii) that in pursuance of the said contract the goods, in fact, move from one State to another; and

(iii) that ultimately a concluded sale takes place in the State where the goods are sent which must be different

from the State from which the goods move, because the tax is on sale and not on an agreement to sell or a forward contract.

If these conditions are satisfied then by virtue of s. 9 of the Central Sales Tax Act it is the State from which the goods move which will be competent to levy the tax under the provisions of the Central Sales Tax Act. The question whether the agreement to sell is in respect of ascertained or unascertained goods, existing or future goods, make no difference whatsoever so far as the interpretation of s. 3(a) of the Central Sales Tax is concerned. [949A-C, E]

Cement Distributors (P) Ltd. v. Deputy Commercial Tax Officer, Lalgudi and others, 23 S.T.C. 86, 94, distinguished.

Larsen and Toubro Ltd., Madras-2 & others. v. Joint Commercial Tax Officer, 20 S.T.C. 150, 186 & 187; The State of Madras v. N. K. Nataraja Mudaliar [1961] 1 SCR 379, 391; Tata Iron and Steel Co. Ltd. v. S. R. Sarkar and others [1961] 1 SCR 379, 391; State Trading Corporation of India Ltd. v. State of Mysore, [1963] 3 SCR 792, 797-798; Tata Engineering & Locomotive Co. Ltd.
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v. The Assistant Commissioner of Commercial Taxes & Anr., [1970] 3 SCR 862, 866; M/s. Kelvinator of India Ltd. v. The State of Haryana [1973] 3 SCC 561, 560; The State of Tamil Nadu v. The Cement Distributors (P) Ltd. and others [1975] 4 SCC 30 and Oil India Ltd. v. The Superintendent of Taxes and others, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: CAs Nos. 449-454 of 1971 & 888-890 of 1974.

Appeals by special leave from the judgment and order dated the 27-4-1970 and 11-4-1973 of the Orissa High Court at Cuttack in special jurisdiction Cases Nos. 74 to 77 of 1968 and 70-72 of 1971 respectively.

Hardayal Hardy, and Sukumar Ghose, for the appellant in CAs 449-454 of 1971.

Gobind Das, G. S. Chatterjee for the respondent. Sukumar Ghose, for the appellant in CAs 888-890 of 1974.

M. C. Bhandare, B. Parthasarthi for the respondent in CAs 888 and 889 of 1974.

Ex parte for respondent in appeal No. 890 of 1974. The Judgment of the Court was delivered by FAZAL ALI, J.-These are two groups of appeals-one consisting of six appeals by the firm Balabhagas Hulaschand dealing in jute. Civil Appeal No. 449/71 arises from the Judgment of the High Court in S.J.C. No. 41 of 1968 decreed on April 22, 1970 in respect of the assessment for the quarter ending

June 1960. The other five appeals are by the same firm in respect of the sales tax levied by the State of Orissa for the quarters ending December, March 1960 and December 1960 to June 1961, decided by the judgment of the High Court in S.J.C. Nos. 73-77 of 1968 dated April 27, 1970. As all the appeals involve a common point they were consolidated and have been heard together.

Appeals Nos. 888-890/74 have been filed by the firm M/s Kaluram Ramkaran in respect of the assessment of tax made by the State of Orissa for the quarters ending September 30, 1961, June 30, 1962 and September 30, 1962. These appeals arise out of the judgment of the High Court given in S.J.C. Nos. 70-72/1971 dated April 11, 1973. The High Court in these cases followed its previous judgment, which is the subject-matter of the six appeals mentioned above, and held that the levy was valid. The points of law arising in these appeals also are identical to the points arising in the other six appeals referred to above, and in view of the common points of law involved in all these appeals we propose to dispose them of by one common judgment.

The appellant Balabhagas Hulaschand is a firm dealing in buying and selling jute and has its Head Office in Calcutta. The firm used to purchase raw jute grown in Orissa and send the same to its buyers in the State of West Bengal. The modus operandi was that after the goods were received by the appellant firm they were despatched in bags from Cuttack and Dhanmandal railway stations to the Railway Mills Siding in Calcutta. The bags were booked in the name of the buyer mills through their broker. The goods on arrival in the Mills Railway siding at Calcutta were inspected by the buyer firm and if they were found to be in accordance with the specifications mentioned in the agreement of sale they were accepted. The appellants in appeals Nos. 888-890/74 are a firm dealing in similar business with this difference that it has got its purchasing centre at Kendupatna in the District of Cuttack, and it was from Cuttack that the goods were despatched to the buyers in West Bengal.

The transaction of sale was entered into through a licensed broker "East India Jute and Hessian Exchange Ltd." and the buyers were the Managing Agents of the firm Kettlewell-Bullen & Co., Ltd., Calcutta. A letter has been produced by the parties which appears at p. 24 of the Paper Book which forms the contract or agreement of sale entered into between the parties in pursuance of which the goods were despatched to the buyer firm at Calcutta. Under the contract the responsibility in respect of the quality, moisture, shortage in weight and risk in transit lay on the seller. It is also not disputed that in all these appeals a concluded sale takes place when the goods despatched in the name of the Calcutta firm were ultimately accepted by the said firm and the price of the said goods was paid to the appellants. On the basis of these concluded transactions of sale the Government of Orissa levied sales tax under s. 3(a) of the Central Sales Tax Act, 1956, on the basis that the sales were inter-State sales and, therefore, fell within the ambit of that section. The assessing authorities upto the stage of the Tribunal negatived the contention of the appellants that the sale was merely an internal sale which took place in the State of West Bengal and not an inter- State sale. Thereafter the appellants moved the Tribunal for making a reference to the High Court of Orissa but failed to persuade the Tribunal to make a reference. The appellants then moved the High Court of Orissa under s. 24(3) of the Orissa Sales Tax Act to direct the Tribunal to make a statement of the case to the High Court. Accordingly the Tribunal referred the following points for consideration:

"(1) Did title to the goods pass in Orissa or in West Bengal?

(2) Even if title in the goods passed in West Bengal whether in the facts and circumstances of this case, the transaction constituted "sale in the course of inter-State trade ?"

After considering the entire evidence and the circumstances and the law on the subject the High Court by its judgment dated April 22, 1970 negatived the plea taken by the appellants and held that although the title in the goods passed in West Bengal and the sale took place there, since the sale occasioned the movement of the goods from Orissa to West Bengal it was an inter-State sale, and, therefore, it was clearly governed by s. 3(a) of the Central Sales Tax Act. Thereafter the appellants moved the High Court, for granting leave to appeal to this Court, which having been rejected, the appellants filed an application to this Court for grant of special leave to appeal and the same having been granted, these appeals have been set down for hearing before us.

Mr. Hardy learned counsel for the appellants in Appeals Nos. 449-454/71 has submitted only one point for our consideration. He has contended that on the facts found it would appear that the movement of goods from Orissa to West Bengal took place in pursuance of an agreement of sale and not in pursuance of the sale itself which actually took place in West Bengal, and, therefore, the sale is not covered by s. 3(a) of the Central Sales Tax Act and the levy made by the State of Orissa was illegal. Mr. Ghose who followed Mr. Hardy and was appearing in appeals Nos. 888- 890/74 further added that the agreements in the instant cases were merely forward contracts in respect of unascertained and future goods, and, therefore, fell beyond the ambit of the provisions of the Central Sales Tax Act.

Mr. Gobind Das appearing for the State of Orissa repelled the contentions of the appellants and submitted that the circumstances clearly point out to the conclusion that although the sale took place in West Bengal it undoubtedly occasioned the movement of goods from one State to another, namely, from Orissa to West Bengal, and, therefore, were clearly covered by s. 3(a) of the Central Sales Tax Act, and the High Court was right in rejecting the contention of the appellants.

Learned counsel for both the parties have cited a number of authorities of this Court and other High Courts before us. But before going to the authorities we would like to deal with the scope and ambit of the Central Sales Tax Act and try to determine the incidents of a sale which would attract the provisions of s. 3(a) of the Central Sales Tax Act. Before, however, taking up this point it may be necessary to mention the admitted circumstances in the case on which both the parties are agreed. They are- (1) that there was an agreement or contract of sale between the appellant firms and the Calcutta firms by which the appellants agreed to sell raw jute of certain specifications of weight and quality to the Calcutta firms; (2) that at the time when the contract of sale was entered into, the raw jute was not in existence as it was being grown;

(3) that after the goods were ready the same were booked in bags by the appellants not in their names but in the names of the buyer firms in Calcutta;

(4) that the goods were booked from Cuttack and Dhanmandal railway stations in Orissa to the Railway Sidings of the buyer Mills at Calcutta; and (5) that all the goods which are the subject-

matter of the sales tax levy in all these appeals were ultimately accepted by the buyers at Calcutta and a concluded sale took place at Calcutta in West Bengal.

In view of these admitted circumstances, we have to determine the legal position. To begin with it would appear that the Central Sales Tax Act was passed in the year 1956 and before that there was some amount of controversy regarding the authority which was to levy tax in case of inter-State trade. In The Bengal Immunity Company Ltd. v. The State of Bihar and Others(1), Venkatarama Ayyar, J., speaking for the Court quoted Rottschaefer on Constitutional Law (1939 Edition) where sale in the course of inter-State commerce was defined thus: (p. 785):

> "The activities of buying and selling constitute inter-State commerce if the contracts therefor contemplate or necessarily involve the movement of goods in inter-State commerce."

The learned Judge also observed in that case:

> "A sale could be said to be in the course of inter-State trade only if two conditions concur: (1) A sale of goods, and (2) a transport of those goods from one State to another under the contract of sale. Unless both these conditions are satisfied, there can be no sale in the course of inter-State trade."

This Court, therefore, accepted the ingredients of an inter- State sale.

It appears that soon after the decision in the Bengal Immunity Company Ltd's case(1) was handed down it received statutory recognition in the shape of s. 3(a) of the Central Sales Tax Act, which was enacted by the Parliament to remove any doubts or misgivings regarding the competence of a State Legislature to levy tax on inter-State sales. Section 2(g) of the Central Sales Tax Act defines "sale" thus:

> "'sale', with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of goods on the hire-purchase or other system of payment by instalments, but does not include a mortgage or hypothecation of or a charge or pledge on goods;"

Analysing this definition it would appear that it postulates the following conditions:

> (i) there must be a transfer of property in goods by one person to another;
>
> (ii) the transfer must be for cash or for deferred payment or for any other valuable consideration; and

(iii)that such a transfer includes a transfer of goods on the hire-purchase or other system or payment by instalments, etc. It would thus be seen that the word 'sale' has been given a very wide connotation by the Parliament so as to include within its fold not only sales of goods which are usually known in common parlance but also transactions which legally cannot be called sales, for instance, a transfer of goods on the hire-purchase system. It seems to us that the Parliament wanted to give the widest amplitude to the word 'sale' and that is why, while in s. 3 the words 'sale of goods' have been used in s. 4(2) clauses (a) & (b) which deal with the situs of the sale the words 'contract of sale' have been used in the same sense. In other words, the word 'sale' defined in clause (g) of s. 2 and used in s. 3 and other sections is wide enough to include not only a concluded contract of sale but also a contract or agreement of sale provided the agreement of sale stipulates that there was a transfer of property or movement of goods. In The Sales Tax Officer, Pilibhit v. Budh Prakash Jai Prakash(1) quoting Benjamin on Sale, (8th Edn.) Venkatarama Ayyara, J., who spoke for the Court observed as follows:

" "The distinction between a sale and an agreement to sell under Section 1 of the English Act is thus stated by Benjamin on 'Sale', Eighth Edition, 1950:- "In order to constitute a sale there must be- (1) An agreement to sell, by which alone the property does not pass; and (2) an actual sale, by which the property passes.

It will be observed that the definition of a contract of sale above cited includes a mere agreement to sell as well as an actual sale."

This distinction between sales and agreements to sell based upon the passing of the property in the goods is of great importance in determining the rights of parties under a contract."

It would thus appear that this Court clearly held that an agreement to sell by which the property did not actually pass was also an element of sale. Of course in that case the Court had to decide a different point, namely, whether it was within the competence of a State Legislature to tax not a sale but even an agreement to sell where an actual sale had not taken place. This Court held that the State Legislature was not competent to make such a levy under any statute passed by it Section 3 of the Central Sales Tax Act, 1956 runs thus:

"3. A sale or purchase of goods shall be 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."

Section 3 consists of two clauses. But in the instant case we are not concerned with clause (b) but only with clause

(a). Analysing clause (a) of s. 3 of the Central Sales Tax Act it would appear that before s. 3 can apply, the following facts must be established:

(i) that there is a sale or purchase of goods;

and

(ii) that the sale occasions the movement of goods from one State to another.

If these two conditions are satisfied the sale becomes an inter-State sale on which tax could be levied under the Central Sales Tax Act.

The serious question that arises for consideration in this case is whether or not the term 'sale of goods' as used in s. 3 includes an agreement to sell. It has already been pointed out that an agreement to sell is undoubtedly an element of sale. In fact a sale consists of three logical steps-(i) that there is an offer; (ii) that there is an agreement to sell when the offer is accepted; and (iii) that in pursuance of the said agreement a concluded sale takes place. When the statute uses the words "sale or purchase of goods" it automatically attracts the definition of sale of goods as given in s. 4 of the Sale of Goods Act. 1930 which is a statute passed by the same Parliament and is to some extent in pari materia to the Central Sales Tax Act so far as transaction of sale is concerned. Section 4 of the Sale of Goods Act runs thus:

"4. (1) A contract of sale of goods is a contract where by the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred."

Section 4(1), therefore, clearly provides that a contract of sale of goods includes also an agreement to transfer property in goods to the buyer for a price. The inevitable conclusion that follows from the combined effect of the interpretation of s. 3 of the Central Sales Tax Act and s. 4 of the Sale of Goods Act is that an agreement to sell is also an essential ingredient of sale provided it contains a stipulation for transfer of goods from the seller to the buyer. This being the position if there is a movement of goods from one State to another, not in pursuance of the sale itself, but in pursuance of an agreement to sell, which later merges into a sale, the movement of goods would be deemed to have been occasioned by the sale itself wherever it takes place. In this view of the matter the

question as to whether agreement to sell was a forward contract or a contract in respect of unascertainable or future goods would make no difference for the simple reason that when once a sale takes place, or for that matter when the goods start moving from one State to another in pursuance of the agreement to sell they cease to be future goods because they are in existence and they become also ascertainable. The argument of the learned counsel for the appellant is based on a clear fallacy because it seeks to draw an artificial distinction between a contract of sale of ascertainable goods and a contract of sale of unascertainable or future goods. This argument fails to take note of the fact that when the movement of the goods start they shed the character of either unascertained goods or future goods. Hence for the purpose of application of s. 3(a) of the Central Sales Tax Act the question whether the contract is a forward contract or not makes no material difference.

Further more, we can hardly conceive of any case where a sale would take place before the movement of goods. Normally what happens is that there is a contract between the two parties in pursuance of which the goods move and when they are accepted and the price is paid the sale takes place. There would, therefore, hardly, be any case where a sale would take place even before the movement of the goods. We would illustrate our point of view by giving some concrete instances:

> Case No. I-A is a dealer in goods in State X and enters into an agreement to sell his goods to in State X. In pursuance of the agreement A sends the goods from State X to State Y by booking the goods in the name of B. In such a case it is obvious that the sale is preceded by the movement of the goods and the movement of goods being in pursuance of a contract which eventually merges into a sale the movement must be deemed to be occasioned by the sale. The present case clearly falls within this category.
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> Case No. II.-A who is a dealer in State X agrees to sell goods to B but he books the goods from State X to State Y in his own name and his agent in State Y receives the goods on behalf of A. Thereafter the goods are delivered to B in State Y and if B accepts them a sale takes place. It will be seen that in this case the movement of goods is neither in pursuance of the agreement to sell nor in the movement occasioned by the sale. The seller himself takes the goods to State Y and sells the goods there. This is therefore, purely an internal sale which takes place in State Y and falls beyond the purview of s. 3(a) of the Central Sales Tax Act not being an inter-State sale.
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> Case No. III-B a purchaser in State Y comes to State X and purchases the goods and pays the price thereof. After having purchased the goods he then books the goods from State X to State Y in his own name. This is also a case where the sale is purely an internal sale having taken place in State X and the movement of goods is not occasioned by the sale but takes place after the property is purchased by B and becomes his property.

> Generally these are the only type of cases that can occur in the day to day commercial transactions. It is, therefore, manifest that there can hardly be a case where once a sale takes place the movement is subsequent to the sale. Mr. Hardy was unable to cite a single instance where such a contingency could arise and he accordingly submitted with his usual fairness that if no such contingency arose, then s. 3(a) of the Central Sales Tax Act will have no application and the levy cannot be made. We are unable to accept this contention because it is well settled that a statutory provision cannot be interpreted in a way which defeats the very object of the Act. It is equally well settled that the Legislature does not waste words or introduce useless or redundant provisions. In Indian Chamber of Commerce v. C.I.T. West Bengal II, Calcutta(1) a Division Bench of this Court to which I was also a party observed as follows:
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> "Section 2(xv) must be interpreted in such a manner that every word is given a meaning and not to treat any expression as redundant or missing the accent of the amendatory phrase."

In view of these circumstances we cannot hold that s. 3(a) of the Central Sales Tax Act was redundant or would apply to contingencies which may not happen at all. In these circumstances, therefore, the conclusions at which we arrive may be summarised as follows:

> (1) That the word 'sale' appearing in s. 2(g) as also in s. 3(a) of the Central Sales Tax Act includes an agreement to sell also provided the said agreement contains a stipulation regarding passing of the property. Even in the Bengal Immunity Company Ltd's case (supra) this Court observed thus:
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> ".... the expression "contract of sale" in this context has the same meaning as the words "contract of buying and selling" in the definition of inter-State commerce given by Rottschaefer in the passage already quoted, and they both refer to the bargain resulting in the sale irrespective of whether it is in the stage of an agreement to sell, or whether it is a sale in which title to the goods has passed to the purchaser. That is also the definition of "contract of sale" in section 5(1) of the Indian Sale of Goods Act."

(2) That the following conditions must be satisfied before a sale can be said to take place in the course of inter-State trade or commerce:

> (i) that there is an agreement to sell which contains a stipulation express or implied regrading the movement of the goods from one State to another;
>
> (ii) that in pursuance of the said contract the goods in fact move form one State to another;

and If these conditions are satisfied then by virtue of s. 9 of the Central Sales Tax Act it is the State from which the goods move which will be competent to levy the tax under the provision of the

Central Sales Tax Act. This proposition is not, and cannot, be disputed by the learned counsel for the parties.

Lastly another aspect of the matter is that in order to determine whether a sale has taken place in the course of inter-State trade or commerce the matter has to be approached only after a concluded sales has taken place because unless the sale takes place or in other words the agreement to sell merges into a concluded sale the question regarding the application of the provisions of the Central sales Tax Act does not arise at all because the tax is on sale and not on an agreement to sell or a forward contract.

Finally if all these conditions are satisfied the question whether the agreement to sell is in respect of ascertained or unascertained goods, existing or future goods, makes no difference whatsoever so far as the interpretation of s. 3(a) of the Central Sales Tax Act is concerned.

Applying these principles let us see what is the position in the present appeals? The letter at p. 24 of the Paper Book in Civil Appeals Nos. 449-454/71 which may be quoted in extenso runs thus:

> "THE EAST INDIA JUTE & HESSIAN EXCHANGE LTD., CALCUTTA Transferable Specific Delivery Contract for Raw Jute.
>
> Calcutts 1st April 1960 No. S.G.M./16/21 To Messrs Balabhagas Hulaschand 161/1, Mahatma Gandhi Road, Calcutta. Dear Sirs, We have, subject to the terms and conditions hereinafter referred to, this d ay sold to M/s Fort Gloster Industries Ltd., New Mill M/Agents M/s Kettlewell Bullen & Co. Ltd., Cal., by your order and on your account, the following goods which are Jute:-
>
> Crop 1959-1960 . . . . 1400 (one thousand four Cuttuck; Dhanmandal . . . hundred only) maunds of the White Jute. mark, assortment and quality as per margin and in sound dry storing 748 mds. Bot @ Rs.34/- per md. . condition at the rate of:- 748 mds. Bot @ Rs.34/- per md. . Rupees Thirty four only for 652 mds. Bot @ Rs.32/- per md. . white B. Br. jute.-

_____ 1400 mds. Rupees thirty two only for Marks: B.H.. . . . white Jute Bot. free to Jute Bales of:- . . . . buyer's mill, siding and/or 1 1/2 to 5 mds. . . . . ghat. Weight guarantee at buyers' mill.

Delivery to . . . . Fort Gloster, New Mill.

Shipment or despatch during . April: May 1960. Payment:- . . . . 90% Cash against documents and rest on approval.

Arbitration . . . . M/s Bengal Chamber of Commerce Industry L. M. D. Re-weighment . . . . As per rules of M/s Bengal Chamber.

Insurance . . . . M/s. Marine & General insurance Co. Ltd. Cal.

> "The foregoing terms and conditions as well as other terms and conditions applicable to this contract are as per the terms and conditions of the transferable Specific Delivery Contract for Raw jute of the East India Jute & Hessian Exchange Ltd., Calcutta, and are subject to the Bye-Laws of that Exchange for trading in Transferable Specific Delivery Contracts for Raw Jute in force for the time being.
>
> Brokerage at one per cent.
>
> Yours faithfully, Shree Gopalji Sahay Meghraj Sd./- Illegible Licensed Broker The East India Jute & Hessian Exchange Ltd."

It is conceded by counsel for the appellants that this letter or other letters in identical terms form the basis of the contracts of sale. The first part of the contract clearly mentions that the goods have been sold by the seller to the buyer. But of course that does not make the letter a concluded sale because the letter read as a whole would show that it is in respect of some future goods which have yet to be grown. We are, however, unable to agree with the learned counsel for the appellant that this contract is in respect of unascertained goods because the quality and the colour of the jute, the weight, the price, the markings etc. are all mentioned in the contract. Therefore the goods are no doubt ascertainable and must be according to the specifications mentioned in the agreement. This contract was entered into on April 1, 1960 and in some appeals a little later. A perusal of this contract also shows that the appellant undertook to send the goods from Cuttack to the buyers' Mills siding in Calcutta and it is not disputed that after the jute was ready it was to be booked in bags from railway stations in Orissa to the Mills Siding of the buyer in Calcutta. It is, therefore, clear that the goods moved in pursuance of the terms of the agreement from the seller in Orissa to the buyer in Calcutta. It is also clear that the movement of the goods from Orissa to West Bengal forms a clear stipulation or incident of the agreement to sell. The agreement also provides that there has been a transfer of property from the seller to the buyer which is the effect of the first para referred to above. It is also not disputed that after the goods reached Calcutta they were finally accepted by the buyers and a concluded sale took place in Calcutta in the State of West Bengal. In view of these circumstances there can be no manner of doubt that the sale falls squarely within s. 3 (a) of the Central Sales Tax Act and since the goods moved from the State of Orissa it is the State of Orissa alone which is competent to levy the tax under s. 9 of the Central Sales Tax Act.

We shall now discuss the various authorities cited by counsel for the parties to show that the view taken by us in this case is amply supported by a long catena of decisions of this Court handed down during the last two decades. The learned counsel for the appellant heavily relied on the observations made by the Madras High Court in Cement Distributors (P) Ltd. v. Deputy Commercial Tax Officer, Lalgudi & Ors.(1):

> "Thus if the goods are unascertained, then until it is appropriated to the contract by a known process, sale is not complete. Central sales tax is not leviable by the despatching State in such cases, notwithstanding inter-State movement of the goods, as they are considered in section 4 as "out-of-State."

To begin with, this case has no application to the facts of the present case, because the decision in the Cement Distributors (P) Ltd.'s case (supra) was governed by the provisions of s. 4 of the Central Sales Tax Act and the High Court of Madras came to a finding that the sale was not at all complete, in view of the fact that the goods were unascertained. Further more, the decision was given on the peculiar facts in that case by which the branch at Calcutta had merely been authorised by the State Trading Corporation of India Ltd to receive the goods despatched and it is doubtful whether there was a complete transaction of sale in that case. If however, that case is taken to be an authority for the proposition that where the goods are unascertained and even if there is an inter-State movement of goods the sale is not an inter-State sale, we find ourselves difficult to agree with that view which is not in consonance with our interpretation of the provisions of the Central Sales Tax Act.

The appellant then relied on another decision of the Madras High Court in Larsen and Toubro Ltd. Madras-2 & others v. Joint Commercial Tax Officer(2). To begin with, this case appears to have been overruled by this Court in The State of Madras v. N. K. Nataraja Mudaliar(1) on another point. Even so, we are unable to see how this case is of any assistance to the appellant. Veeraswami, J., as he then was, speaking for the Court, observed as follows:

> "The essential tests of a sale or purchase in the course of inter-State trade, commerce and inter-course or import into or export out of the territory of India are, (1) whether there is movement of goods from one State to another or into or out of the territory of India, (2) whether such movement is occasioned by the contract of sale or purchase and (3) alternatively whether, during such movement, the sale or purchase is effected by transfer of documents of title to the goods."

The learned Judge also observed:

> "A sale could be said to be in the course of inter-State trade only if two conditions concur: (1) A sale of goods, and (2) a transport of those goods from one State to another under the contract of sale. Unless both these conditions are satisfied, there can be no sale in the course of inter State trade."

Thus the ratio laid down by the Court is entirely in consonance with the view taken by us regarding the conditions of an inter-State sale.

Reliance was also placed on Tata Iron and Steel Co. Ltd. v. S.R. Sarkar and Others(2) where Shah, J., while delivering the majority judgment of the Court, observed as follows:

> "In our view, therefore, within cl. (b) of s. 3 are included sales in which property in the goods passes during the movement of the goods from one State to another by transfer of document of title thereto:
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> cl. (a) of s. 3 covers sales, other than those included in cl. (b), in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State."

Sarkar, J., who gave a dissenting judgment observed as follows: (pp. 407 & 408) "The question then arises, when does a sale occasion the movement of goods sold ? It seems clear to us that a sale can occasion the movement of the goods sold only when the terms of the sale provide that the goods would be moved; in other words, a sale occasions a movement of goods when the contract of sale so provides."

> "We have then come to this that cl. (a) of s. 3 contemplates a sale where the contract of sale occasions the movement of the goods sold and cl. (b), a sale where transfer of property in the goods sold is effected by a transfer of documents of title to them. Of course, in the first case, the movement of the goods must be from one State to another and in the second, the document of title must be transferred during such movement."

In State Trading Corporation of India Ltd. v. State of Mysore(1) this Court observed as follows:

> "Since the permits with which we are concerned provided that the supply had to be made from one or other factory situate outside Mysore, the contracts must be deemed to have contained a covenant that the goods would be supplied in Mysore from a place situate outside its borders. A sale under such a contract would clearly be an inter-State sale as defined in s. 3 (a) of the Central Sales Tax Act."

Similarly in Tata Engineering & Locomotive Co. Ltd. v. The Assistant Commissioner of Commercial Taxes & Anr.(2) while describing the incidents of an inter-State sale, this Court observed as follows:

> "A sale being transfer of property becomes taxable under s. 3(a) 'if the movement of goods from one State to another is under a covenant or incident of the contract of sale'."

The same view was taken in a later decision of this Court in M/s Kelvinator of India Ltd. v. The State of Haryana(3) where Khanna, J., speaking for the Court observed as follows:

> "It is also plain from the language of Section 3(a) of the Act that the movement of goods from one State to another must be under the contract of sale. A movement of goods which takes place independently of a contract of sale would not fall within the ambit of the above clause. Perusal of Section 3 (a) further makes it manifest that there must be a contract of sale preceding the movement of the goods from one State to another, and the movement of goods should have been caused by and be the result of that contract of sale. If there was no contract of sale preceding the movement of goods, the movement can obviously be not ascribed to a contract of sale nor can it be said that the sale has occasioned the movement of goods from one State to the other."

In that case, however, on the facts found by the High Court this Court held that the sale was not an inter-State sale but an internal sale which took place in Delhi. In that case there was no movement of the goods from one State to another in pursuance of the contract of sale. In other words, the facts

of this case clearly fell within Case No. II, which has been described by us, above.

To the same effect is the recent decision of this Court in The State of Tamil Nadu v. The Cement Distributors (P) Ltd. and Others(4) in which reliance was placed on the earlier decision of this Court in Tata Iron and Steel Co. Ltd. v. S. R. Sarkar & Ors. (supra).

In oil India Ltd. v. The Superintendent of Taxes and Others (1), while lucidly describing the incidents of an inter-State sale, Mathew, J., observed as follows:

> "This Court has held in a number of cases that if the movement of goods from one State to another is the result of a covenant or an incident of the contract of sale, then the sale is an inter-State sale. x x x x x x Even though Clause 7 of the supplemental agreement does not expressly provide for movement of the goods, it is clear that the parties envisaged the movement of crude oil in pursuance to the contract from the State of Assam to the State of Bihar. In other words, the movement of crude oil from the State of Assam to the State of Bihar was an incident of the contract of sale. No matter in which State the property in the goods passes, a sale which occasions "movement of goods" from one State to another is a sale in the course of inter- State trade. The inter-State movement must be the result of a covenant express or implied in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale."

We might mention here that the case cited above appears to be on all fours with the facts of the present case. In that case also the goods were supplied from Assam to Bihar through the pipelines in Assam to Barauni in Bihar. This Court observed that no matter in which State the property in goods passes the sale undoubtedly occasioned movement of the goods which was sufficient to bring the case within the ambit of s. 3(a) of the Central Sales Tax Act.

Thus the authorities discussed above by us fully support the principles and the ratio laid down by us. We have already pointed out that even though the sale took place at Calcutta, as rightly found by the High Court, since the movement of goods preceded the sale in pursuance of the contract of sale which contained a clear stipulation that the goods were to move from Orissa to Calcutta in West Bengal, the movement of goods was occasioned by the sale itself which took place in Calcutta. In these circumstances, therefore, the High Court was legally justified in holding that in all these appeals the cases were clearly covered by the provisions of s. 3(a) of the Central Sales Tax Act.

We, therefore, find no merit in these appeals which are accordingly dismissed, but in the circumstances without any order as to costs.

S.R. Appeals dismissed.