Supreme Court of India
Singareni Collieries Co. Ltd vs State Of Andhra Pradesh And Others on 12 October, 1965
Equivalent citations: 1966 AIR 563, 1966 SCR (2) 190
Author: S C.
Bench: Gajendragadkar, P.B. (Cj), Wanchoo, K.N., Hidayatullah, M., Shah, J.C., Sikri, S.M.

PETITIONER:
SINGARENI COLLIERIES CO. LTD.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH AND OTHERS

DATE OF JUDGMENT:
12/10/1965

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
HIDAYATULLAH, M.
SIKRI, S.M.

CITATION:
1966 AIR 563 1966 SCR (2) 190
CITATOR INFO :
R 1966 SC1216 (9,10)
R 1967 SC1348 (3)
RF 1968 SC 339 (6)
R 1979 SC1160 (15)
RF 1992 SC1952 (8)

ACT:
Hyderabad General Sales Tax Act, 1950, s. 2(k)-Supply of coal to consumers outside State pursuant to allotment orders under Colliery Control Order, 1945-Whether allotment order covenant or incident of contract of sale-Whether sales tax under State Act leviable-Or whether exempt under Explanation to Art. 286(1) (a) or as inter-State sales.

HEADNOTE:
The appellant company carried on the business of mining coal from its collieries and supplying it to consumers both within and outside the State. In proceedings for assessment to Sales tax, the company claimed that it was not liable to pay sales tax under the Hyderabad General Sales Tax Act, 1950, on the price of coal supplied to allottees outside the

taxing State pursuant to the directions of the Coal Commissioner issued under the Colliery Control Order, 1945. This claim was rejected by the Sales Tax Officer on the ground that the coal in question was sold F.O.R. colliery siding and was actually delivered to the consumers within the State when it was loaded on their account in Railway Wagons at the colliery siding. The appeals against that decision to the appellate authorities as well as to the High Court were dismissed.

On appeal to this Court,

HELD : The sales in question were not liable to be taxed under the Hyderabad General Sales Tax Act, 1950. [203 D]

Sales of coal between April, 1, 1954 and September 6, 1955, for delivery to consumers outside the State could not be taxed under the Hyderabad Act because they were covered by the explanation to Art. 286(1) (a) before it was amended. [201 F]

Under the Colliery Control Order, supply, use and disposal of coal were regulated from the stage of production till consumption. Coal supplied was meant for consumption by the allottee; therefore when the allottee was outside the State, it was supplied for the purpose of consumption in the State in which the allottee resided or carried on business. The expression "actually delivered" used in Explanation to Art. 286(1) (a) does not include mere symbolical or notional delivery e.g. by entrusting goods to a common carrier, or by delivery of documents of title like railway receipts. [194 H, 196 B, 200 F]

Shree Bajrang Jute Mills v. The State of Andhra Pradesh, 15 S.T.C. 430, followed.

Similar Sales during the period September 7, 1955 to September 10, 1956 were also exempt because the Explanation continued to remain in force till the latter date and furthermore during that period the State had no power to levy tax on inter-State sales. [201 G-H]

Bengal immunity Co. Ltd. Y. State of Bihar, (1955] 2 S.C.R. 603, referred to.

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For the period September 11, 1956 to January 4, 1957 although Art. 286(2) stood repealed, there was no power in the State to tax inter-state sales; and from January 5, 1957 to March 31, 1957 the power to tax inter-state sales rested exclusively with the Central Government under the Central Sales Tax Act, 1956. Coal was transported from the colliery of the company to consumers outside the taxing State as a result of a covenant or incident of the contract of sale and therefore the sale must be regarded as an inter-State sale within the meaning of s. 3 (a) of the Central Act and not liable to be taxed under the Hyderabad Act. [202 D, 203 B]

Tata Iron & Steel Co. Ltd. v. S. R.Sarkar, [1961] 1 S.C.R. 379, State Trading Corporation of India Ltd. v. State of Mysore, 14 S.T.C. 188 and Cement Marketing Co. of India v. State of Mysore, 14 S.T.C. 1751, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 950-952 of 1963.

Appeals from the judgment dated the November 15, 1960 of the Andhra Pradesh High Court in T.R.C. No. 17 of 1960 and dated the July 25, 1961 in Special Appeals Nos. 1 & 2 of 1961. N. A. Palkhivala, S. N. Andley, Rameshwar Nath, P. L. Vohra and Mohinder Narain, for the appellant. D. Munikanniah and T. V. R. Tatachari, for the respondents.

M. Adhikari, Advocate-General, Madhya Pradesh and I. N. Shroff, for intervener no. 1.

M. C. Setalvad, N. A. Palkhivala, A. P. Sen, R. K. P. Shankardass, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for intervener no. 2.

N. A. Palkhivala, A. P. Sen, R. K. P. Shankardas, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for intervener no. 3.

J. B. Dadachanji, for intervener no. 4.

S. V. Gupte, Solicitor-General and R. N. Sachthey, for inter-intervener no. 5.

The Judgment of the Court was delivered by Shah, J. The question which falls to be determined in these appeals is "whether the appellant Company is liable to pay sales-tax assessed under the Hyderabad General Sales Tax Act, 1950 on the price of coal supplied to allottees outside the taxing State pursuant to directions of the Coal Commissioner issued under the Colliery Control Order, 1945". The Company which has its registered office at Hyderabad in the former Part 'B' State of Hyderabad, and now in the State of Andhra Pradesh, carried on the business of mining coal from its collieries and supplying it to consumers within and outside the State of Hyderabad. These appeals relate to three financial years 1954-55, 1955- 56 and 1956-57, during which coal was a controlled commodity, and its disposal and use could be made only under orders issued by the appropriate authority under the Colliery Control Order, 1945. The Company claimed that Rs. 1,75,67,286/1/2 in the year 1954-55, Rs. 1,17,39,636/11/8 in the year 1955-56, and Rs. 1,55,18,937/6/5 in the year 1956-57 were not liable to be included in the taxable turnover for levying sales tax under the Hyderabad General Sales Tax Act, 1950, because the State Legislature which enacted that Act was, by Art. 286 of the Constitution, prohibited from imposing tax on transactions of supply of coal outside the limits of the State under orders of the Coal Commissioner. The Commercial Tax Officer, Hyderabad, admitted the claim of the Company for the years 1954-55 and 1955-56 for exemption from liability. The claim of the Company for the year 1956- 57 was however rejected. The Company appealed to the Deputy Commissioner of Commercial Taxes and to the Sales-tax Appellate Tribunal, Hyderabad, against the order of assessment for the year 195657, but without success. The Company then applied to the High Court of Andhra Pradesh in its revisional jurisdiction, and submitted in support of its claim that a part of its turnover was exempt from liability to sales-tax under the Hyderabad General

Sales Tax Act because the turnover was in respect of sales, (a) which had taken place outside the State within the meaning of Art. 286(1)(a) read with the Explanation thereto, and (b) which were effected in the course of inter-State trade or commerce, and the Parliament had not by law removed the ban against imposition of tax on such sales by the State Legislature. The High Court rejected these contentions. In the meanwhile the Commissioner of Commercial Taxes issued notices to the Company to show cause why the orders of assessment for the years 1954-55 and 1955-56 should not be reopened and why the sales which were exempted by the. order of the Commercial Tax Officer should not be charged to tax, and by his orders respectively dated February 8, 1961 and November 16, 1960 for the two years 1954-55 and 1955-56 brought to tax the turnover which was previously treated as exempt. The orders were carried to the High Court in appeal and the same grounds which were set up in the revision application relating to the assessment year 1956-57 were set up, beside the ground that the action for reopening the assessments by the Commissioner of Commercial Taxes was barred by limitation and was therefore incompetent. The High Court rejected these contentions. With certificate granted by the High Court, these appeals are preferred by the Company. At the material time, by s. 2(k) of the Hyderabad General Sales Tax Act, 1950, the expression "sale" was defined as under :

> "'Sale' with all its grammatical variations and cognate expressions means every transfer of property in goods by one person to another in the course of trade of business for cash or for deferred payment or other valuable con- sideration and includes also a transfer of property in goods involved in the execution of a works contract, but does not include a mortgage, hypothecation, charge or pledge. Explanation 2. -Notwithstanding anything to the contrary in any other law for the time being in force, a transfer of goods, in respect of which no tax can be imposed by reason of the provisions contained in Article 286 of the Constitution, shall not be deemed to be 'sale' within the meaning of this clause."

The Explanation was evidently introduced into the definition with a view to avoid its operation on transactions which are outside the taxing power of the States by virtue of Art. 286 of the Constitution.

In these appeals, the Company submitted in the first instance that within the meaning of the Hyderabad General Sales Tax Act, there was no sale of coal which was supplied to the consumers pursuant to directions issued by the Coal Commissioner and therefore the taxing provisions of the Act were not attracted, and placed reliance in support thereof on the judgment of this Court in New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar(1). But this contention was never raised at any stage before the taxing authorities or even before the High Court, and on the view we take on the other contentions raised in these appeals, we need not consider this contention. We proceed to deal with these appeals on the footing that the transactions under which coal was supplied by the Company to the consumers as directed by the Coal Commissioner were sales under the general law of sale of goods.

Two questions arise for determination :

(1) Whether the transactions of sale were "Explanation sales" and on that account hit by Art. 286 (1) (a) of the Constitution, before it was amended by the Constitution (Sixth Amendment) Act, 1956; and (1) 14 S.T.C. 316.

(2) whether those transactions were sales which took place in the course of inter-State trade or commerce.

It is urged that for a part of the period to which these appeals relate, the sales are hit by both the legislative bans contained in Art. 286 (1) (a) and Art. 286 (2), and for the rest by one or the other of such bans.

It is necessary in the first instance to summarise the provisions of the Colliery Control Order, 1945, and to set out the manner in which coal was supplied by the Company to its constituents. The Central Government was authorised by notification to fix the price of coal or different prices for different grades of coal which may be sold by colliery owners (cl. 4). The colliery owners and their agents were prohibited from selling, or offering for sale coal at a price different from the prices fixed in that behalf under cl. 4, and from granting or agreeing to grant any commission, rebate or such other concession in any form having the effect of reducing either directly or indirectly the said price (cl. 5). A colliery owner could with the consent of the Deputy Coal Commissioner sell coal at the price fixed under cl. 4 direct to a consumer, if an allotment was made by the Deputy Coal Commissioner to the consumer -for such direct sale (cl. 6). The Central Government could issue directions to any colliery owner regulating the disposal of his stocks of coal or of the expected output of coal in the colliery during any period (cl. 8); and notwithstanding any contract to the contrary, every colliery Owner to whom a direction was given under cl. 8 had to dispose of coal in accordance therewith and could not dispose of coal in contravention thereof (cl. 9). The Coal Commissioner could order that coal dispatched by any colliery owner to any person which was in transit (terminal whereof were defined by the Explanation) shall subject to terms and conditions if any imposed by the Coal Commissioner be diverted and delivered to another person specified in the order [cl. 10-A(1)]. As soon as an order was made under sub cl. (1), all the rights of the consignee, the owner of the colliery, or other person in that consignment of coal were, subject to the terms of the order, to devolve upon and vest in the person to whom the coal was to be delivered under the order [cl. 10-A(2)]. An allottee of coal could not use it otherwise than in accordance with the conditions of the order of allotment, nor divert or transfer any such coal to any other person except under a written authority from the Central Government (c]. 12-B) : and no person could acquire or purchase or agree to acquire or purchase coal from a colliery, and no colliery owner could dispatch or agree to dispatch or transport any coal from the colliery except under the authority and in accordance with the authority of the Central Government (cl. 12-E).

Broadly speaking the scheme of the Colliery Control Order was that no person could acquire or purchase or agree to acquire or purchase any coal from a colliery and no colliery owner could sell or agree to sell or dispatch coal from the colliery, except under the authority and in accordance with the conditions prescribed by the Coal Commissioner, and that the person to whom coal was supplied also could not utilise it for a purpose other than the purpose for which it was supplied, nor could he dispose of coal supplied to him. Supply, use and disposal of coal were therefore regulated from the

stage of production till consumption. The manner in which the Colliery Control Order was administered is illustrated by certain documents on the record. The Coal Commissioner addressed a letter to a colliery authorising it to dispatch on the request of the specified consumers coal not exceeding the quantities mentioned during certain months and according to the schedule appended. In the Schedule appended to the letter were set out the names of the concerns to whom coal was to be supplied. Intimation of the dispatch instructions was given to the consumers individually. Acting upon this intimation, the consumer addressed a letter to the colliery requesting that the quantities of coal allotted may be dispatched to him by train and gave instructions regarding booking, the name of the person to whom coal may be consigned, and also about the collection of price of coal supplied. The colliery then loaded coal in railway wagons making out a "sale note" men- tioning the cost per ton F.O.R. Colliery with "freight to pay" and dispatched the same by rail to the consumer at the destination requested. In the "sale note" were set out the name of the buyer, grade and quantity of coal allotted, the terms of sale, cost per ton F.O.R. Colliery, other charges, and particulars of dispatch, such as the name of the Railway Station to which the coal should be booked and the name of the consignee. The sale note was subject to conditions of sale, that the colliery shall not be responsible for non-de- livery of coal or for any loss occasioned in consequence of fire, snow, heat, flood, strikes, lockouts, shortage of wagons, restrictions on booking, accidental losses, etc. that any taxes, export duty, cess or other charges not in force imposed by the Government after the date of the sale note shall be borne by the purchaser; that the colliery reserved the right to demand payment in advance and to have a right of lien on all. coal despatched until it was paid for : that the sale note was subject to the quantity allotted by the Deputy Coal Commissioner for buyers outside the State and in the event of the Deputy Coal Commissioner cancelling the whole or any part of the said allotment, such cancellation shall be deemed to apply equally to -the sale note.

Under the terms of the "sale note" the property in the coal consigned passed, so far as the colliery was concerned, to the allottee original or substituted-when the goods were loaded into the railway wagons for conveyance, and thereafter all losses and any new taxes imposed were to be borne by the purchaser, the colliery having only a right of lien on coal not paid for. Coal supplied was meant for consumption by the allottee : therefore when the allottee was outside the State, it was supplied for the purpose of consumption in the State in which the, allottee resided or carried on business.

In view of the legislative developments which we will presently notice, the period of the three assessment years may be divided into four sub-periods. They are : April 1, 1954 to September 6, 1955; September 7, 1955 to September 10, 1956; September 11, 1956 to January 4, 1957 and January 5, 1957 to March 31, 1957. In making this sub-division we have not taken into account the application of the States Reorganisation Act as a result of which on November 1, 1956, the Part 'B' State of Hyderabad ceased to exist and the State of Andhra Pradesh came into existence by merger of certain areas including parts of the State of Hyderabad. The effect of the Reorganisation Act had a bearing only on the territorial operation of the constitutional prohibitions under Art. 286.

Under the Government of India Act, 1935, it was open to every Provincial Legislature to enact legislation authorising_ the levy of tax on sale of goods in respect of transactions whether within or outside the Province, provided the Province had a territorial nexus with one or more elements constituting the sale. This resulted in levy of sales tax by many Provinces in respect of the same

transaction--each Province fixing upon one or more elements constituting the sale with which it had a territorial nexus. The Constitution with a view to prevent imposition of manifold taxes on the same transaction of sale imposed by Art. 286 restrictions on the levy of sale and purchase taxes on certain classes of transactions. Article 286, as it was originally enacted, read as follows "(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place-

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation. For the purposes of sub-clause

(a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce :

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the com-

munity shall have effect unless it has been reserved for the consideration of the President and has received his assent."

Article 286, thus imposed qua sales four bans upon legislative power of the States. Clause (1) prohibited every State from imposing or authorising, the imposition of, a tax on outside sales and on sales in the course of import into or export outside the territory of India. By cl. (2) the State was prohibited from imposing tax on the sale of goods where such sale took place in the course of inter-State trade or commerce. But the ban could be removed by the legislation made by the Parliament. By cl. (3) the Legislature of a State was incompetent to impose or authorise imposition of a tax on the sale or purchase of any goods declared by the Parliament by law to be essential for the life of the community, unless the legislation was reserved for the consideration of the President and had received his assent.

This Court in The Bengal Immunity Company Ltd. v. State of Bihar(1) held that the operative provisions of the several parts of Art. 286, namely cl. (1)(a), cl. (1)(b), cl. (2) and cl. (3), are intended to deal with different topics and one cannot be projected or read (1) [1955] 2 S.C.R. 603.

into another, and therefore the Explanation in cl. (1)(a) cannot legitimately be extended to cl. (2) either as an exception or as a proviso thereto or read as curtailing or limiting the ambit of cl. (2). This Court further held that until the Parliament by law made in exercise of the powers vested in it by cl. (2) of Art. 286 provides otherwise, no State may impose or authorise the imposition of any tax on sales or purchases of goods when such sales or purchases take place in the course of inter-State trade or commerce, and therefore the State Legislature could not charge inter- State sales or purchases until the Parliament had otherwise provided. The judgment in The Bengal Immunity Company's case(1) was delivered on September 6, 1955. The President then issued the Sales Tax Laws Validation Ordinance, 1956, on January 30, 1956, the provisions of which were later embodied in the Sales Tax Laws Validation Act, 1956. By this Act notwithstanding any judgment, decree or Order of any Court, no law of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods where such sale or purchase took place in the course of inter-State trade or commerce during the period between the 1st day of April, 1951 and the 6th day of September, 1955, shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such sale or purchase took place in the course of inter-State trade or commerce; and all such taxes levied or collected or purported to have been levied or collected during the aforesaid period shall be deemed always to have been validly levied or collected in accordance with law. The Parliament thereby removed the ban contained in Art. 286(2) of the Constitution retrospectively but limited only to the period between April 1, 1951 and September 6, 1955. All transactions of sale, even though they were inter-State could for that period be lawfully charged to tax. But Art. 286(2) remained operative after September 6, 1955 till the Constitution was amended by the Constitution (Sixth Amendment) Act, i.e., September 11, 1956. By the amendment, the Explanation to cl. (1) of Art. 286 was deleted and for cls. (2) & (3) the following clauses were substituted :

> " (2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).
>
> (3) Any law of a State shall, in so far as it imposes,, or authorises the imposition of, a tax on the sale or purchase of goods "declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the (1) [1955] 2 S.C.R. 603;
>
> system of levy, rates and other incidents of the tax as Parliament may by law specify."

By cl. (2) of Art. 286 as amended, the Parliament was authorised to formulate principle for determining when a sale or purchase of goods takes place in any of the ways mentioned in cl. (1), namely, outside the State or in the course of the import into, or export out of the territory of India. By the Constitution (Sixth Amendment) Act, the Parliament was entrusted with power under Art. 269(3) to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce; and to effectuate the conferment of that power in the

Seventh Schedule, Entry 92A was added in the First List and Entry 54 in the Second List was amended. The Parliament enacted, in exercise of that power, the Central Sales Tax Act 74 of 1956 (which became operative as from January 5, 1957) to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, and to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter- State trade or commerce etc. For the period April 1, 1954 to September 6, 1955 therefore transactions which were inter-State were deemed, because of the Sales Tax Laws Validation Act, taxable by the States-the bar contained in Art. 286(2) having been retrospectively removed. For the period September 7, 1955 to September 10, 1956 Art. 286(2) having remained in operation and the Sales Tax Laws Validation Act, 1956, not having been extended to cover that period, interState sales could not be taxed by the State Legislature. During the period September 11, 1956 to January 4, 1957 Art. 286(2) stood repealed by the Constitution (Sixth Amendment) Act, 1956. but the Parliament had assumed to itself the power under Entry 92A of the First List in the Seventh Schedule to tax sale or purchase of goods where such sale or purchase takes place in the course of inter-State trade or commerce. In exercise of the power to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce, the Parliament enacted the Central Sales Tax Act, 1956 which was brought into force on January 5, 1957, and after that date interState sales could be taxed under the provisions of the Central Sales Tax Act.

The Company claims that the transactions which are sought to be charged for the period between April 1, 1954 to September 6, 1955 are not taxable, because they were covered by Explanation to cl. (1)(a) of Art. 286 of the Constitution, before it was amended.For the period between September 7, 1955 and September 10, 1956, it is claimed that the transactions are not taxable, because they are covered by the Explanation to Art. 286(1) and also because they are inter-State sales. For the period September 11, 1956 to January 4, 1957 the transactions are not taxable, because they are interState sales not chargeable under any statute--State or Parliamentary-and for the period January 5, 1957 to March 31, 1957, the transactions are not chargeable by the State, because they are interState and are chargeable under the Central Sales Tax Act alone. The true effect of Explanation to Art. 286(1) and Art. 286(2) gave rise to conflicting opinions, but it is unnecessary to enter upon a discussion of the earlier cases, for the principles applicable thereto have now been settled by decisions of this Court as to what transactions are covered by the Explanation to cl. (1) of Art. 286 before it was amended.

In Shree Bajrang Jute Mills Ltd. Guntur v. The State of Andhra Pradesh(1), it was held by this Court that a sale falls within the Explanation to Art. 286(1)(a) if goods have actually been delivered as a direct result of the sale for the purpose of consumption in the State in which they are delivered, and the expression "actually delivered" in the context in which it occurs can only mean physical delivery of the goods, or such other action as puts the goods in the possession of the purchaser. The expression "actually delivered" does not include mere symbolical or notional delivery e.g. by entrusting the goods to a common carrier, or even by delivery of documents of title like railway receipts. It was said that the rule contained in S. 39(1) of the Indian Sale of Goods Act, 1930 has no application in dealing with a constitutional provision which while imposing a restriction upon the legislative power of the States en- trusts exclusive power to levy sales tax to the State in which the

goods have been actually delivered for the purpose of consumption. The Court also held that if the goods were actually delivered for consumption in another State it was immaterial whether the property in the goods passed in the State from which they were dispatched.

Counsel for the State of Andhra Pradesh contended that in the present case coal dispatched from the territory of the taxing State to purchasers in other States was actually delivered within the tax-

(1) 15 S.T.C. 430.

ing State and therefore the principle of Shree Bajrang Jute Mills' case(1) did not apply to those transactions. That contention has however no force. The Explanation defines the State in which the goods have actually been delivered for consumption, as the State in which for the purpose of cl. (1)(a) of Art. 286 the sale shall be deemed to have taken place. That State alone in which the sale is deemed to take place has the power to tax the sale, and for this purpose it is immaterial that property in the goods has under the general law relating to sale of goods passed in another State in which the allotted resided or carried on business. Delivery of coal to the Railway Administration may amount to delivery to the allottee for the purpose of the general law relating to sale of goods, but thereby coal cannot be said to be "actually delivered" within the meaning of the Explanation to Art. 286(1)(a). It is also true that under the terms of the sale-note under which coal was dispatched on terms F.O.R. Singareni the Company was not responsible for loss or damage to the consignment after it was loaded in the wagons, that may indicate that the Company had no property in the goods after it was in transit. But determination of the State in which sale shall be deemed to have taken place is artificially determined not by terms of the contract of sale, nor by the legal concept of passing of property in the goods sold by the delivery for the purpose of consumption.. As observed by Das Ag. C.J. in the Bengal Immunity Company's case(1) "The shifting of situs of a sale or purchase from its actual 'situs' under the general law to a fictional 'situs' under the Explanation takes the sale or purchase out of the taxing power of all States other than the State where the 'situs' is fictionally fixed."

Sales-tax under the Hyderabad General Sales Tax Act on transactions of coal delivered to the Railway or other carrier for carriage to places outside the taxing State and for delivery for consumption therein is therefore not leviable to be taxed by virtue of the Explanation to Art. 286(1).

For the period September 7, 1955 to September 10, 1956, the turnover from sale of coal actually delivered outside the State of Andhra for consumption in those States would also be exempt from liability, because the Explanation continued to remain in force till September 10, 1956. The Company would also be entitled to exemption from liability to tax because the State had during that period no power to levy tax on inter-State sales. As (1) 15 S.T.C 430.

(2) [1955] 2 S.C.R. 603.

pointed out by Venkatarama Ayyar, J., in the Bengal Immunity Company casc(1) :

> "A sale could be said to begin the course of interState 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."

In these transactions relating to supply of coal, which we have, assumed are sales, coal was transported in pursuance of the allotment orders to other States. We have also assumed for the purpose of this argument, that compliance with allotment orders resulted in a contract of sale. The transactions were unquestionably in the course of inter- State trade.

For the period September 11, 1956 to January 4, 1957, Art. 286(2) stood repealed and there was no power in the State to tax an inter-State sale. For the period between January 5, 1957 and March 31, 1957 the power to tax inter-State sales was governed by the Central Sales Tax Act, 1956. By the Constitution (Sixth Amendment) Act amending Art. 286(2) and incorporating Entry 92A in List 1 of the Seventh Schedule read with Art. 269(3) the power to tax sales in the course of interState trade or commerce rested with the Central Government. Sales-tax for the period from January 5, 1957 to March 31, 1957, has not been levied under the Central Sales Tax Act, 1956, and if the transactions by the Company were taxable under that Act, the State of Andhra Pradesh had no power to tax those transactions. As transactions of sale in the course of inter-State trade or commerce within the meaning of s. 3, they could not be taxed under the Hyderabad General Sales Tax Act, 1950. Section 3 of the Central Sales Tax Act, 1956 provides that "a sale . . . of goods shall be deemed to take place in the course of inter-State, trade or commerce if the sale . . . occasions the movement of goods from one State to another or is effected by a transfer of documents of title to the goods during their movement from one State to another". In Tata Iron and Steel Company Ltd. v. S. R. Sarkar (2 ) this Court held that cl. (a) of s. 3 covers sales 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. That view was reaffirmed in The State Trading Corporation of India Ltd. & Another v. The State of (1) [1955] 2 S.C.R. 603.

(2) [1961] 1 S.C.R. 379.

Mysore and Another(1) and Cement Marketing Company of India v. State of Mysore(1).

Coal in the appeals under review was transported from the colliery of the Company to the consumers outside the taxing State, as a result of the covenant or incident of the contract of sale and therefore the sale must be regarded as an inter-State sale and not liable to be taxed under the Hyderabad General Sales Tax Act, 1950. The High Court was, in our view, in error in holding that the turnover of the Company in which coal was loaded in railway wagons for conveyance to places outside the taxing State was taxable under the Hyderabad General Sales Tax Act. In that view we do not think it necessary to decide whether the Commissioner of Commercial Taxes was right in reopening the assessments for the years 1954-55 and 1955-56 in the manner he has purported to do.

The appeals are allowed and the order passed by the High Court is set aside. It is declared that the turnover of the Company amounting to Rs. 1,75,67,286/1/2 for the year 1954- 55; Rs.

1,17,39,636/11/8 for the year 1955-56 and Rs. 1,55,18,957/6/5 for the year 1956-57 was exempt from liability to sales tax under the Hyderabad General Sales Tax Act, 1950. The Company will be entitled to its costs in the appeals in this Court and the High Court. There will be one hearing fee.

Appeals allowed.

(1) 14 T.C. 188.

Sup.CI/66-14 (2) 14 S.T.C 175.