Before Ashok Bhan and N.K. Agrawal, JJ.

THE STATE OF PUNJAB,—*Petitioner*

versus

M/S MAHAVIR SPINNING MILLS(P) LTD.,—*Respondent*

G.S.T.R. No. 30 of 1989

2nd September, 1997

Punjab General Sales Tax Act. 1948—S. 5-A-Central Sales Tax Act, 1956—S. 8.(2)-Whether additional tax at the rate of 2% levied over and above the tax already imposed under the Punjab General Sales Tax Act, could be levied on inter State Sales made by the Assessee—Held, that additional tax imposed under the State law would partake the character of original tax on inter-state transactions and would enhance the rate of tax applicable to the goods—S.8(2) of the Central Act does not exclude the applicability of the additional rate of tax.

Held that, Deputy Commissioner of Sales Tax v. *Aysha Hosiery Factory(P) Ltd.* etc. (1992)85 STC 106, additional tax imposed under the State law would partake the character of the original tax in the inter-State transactions and would enhance the rate of tax applicable to the goods. Section 8(2-A) of the Central Sales Tax Act, 1956, would not exclude the applicability of the additional rate of tax.

(Para 7)

Charu Tuli, DAG, Punjab, *for the Appellant.*

None, *for the Respondent.*

JUDGMENT

Ashok Bhan, J.

(1) Point for consideration in this reference petition is as to whether the additional tax imposed under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the State Act) at the rate of 2% of the tax payable by a dealer under the act *ibid,* can be treated as a base for determining the rate of tax under section 8(2) of the Central Sales Tax Act, 1956 (hereinafter referred to as the Central Act.)

(2) Assessing Authority, Hoshiarpur, while framing the assessment for the years 1976-77 and 1977-78 did not levy additional tax of 2% of the tax payable by the dealer on the inter-State Sales made by him on cotton yarn, waste cotton yarn and yarn other than the cotton yarn. This was done ignoring the additional tax at the rate of 2% payable under section 5-A of the State Act. Original tax imposed was at the rate of 2% on the cotton yarn and waste yarn and 1% on yarn other than cotton yarn.

(3) Revisional Authority took *suo motu* action and issued notice to the assessee proposing that the rates of sales tax on cotton yarn and waste cotton yarn at 2.04% and on yarn other than cotton at 1.02% i.e. after including the additional tax imposed by the State of Punjab under section 5A. Assessee-respondent put in appearance before the revisional authority and raised a contention that under the Central Act, there is no provision for imposition of additional tax. Additional tax imposed under the State Act would be applicable to intra State sales and not to the inter state sales. It was contended that additional tax should not be taken into consideration while levying the tax on the inter state sales. This contention of the assessee was rejected by the revisional authority. It was held that on the declared goods inter state tax could not exceed 4% but where the tax levied including the additional tax was less that 4% then the rate fixed by the State including the additional sales tax as in the present case would be applicable to the inter state sales as well.

(4) Department aggrieved against the aforesaid order filed two revision petitions relating to the two assessment years 1976-77, 1977-78 under section 9(2) of the Central Act read with section 21(3) of the State Act against the order of the revisional authority creating additional demand of Rs. 1962.91 and Rs. 1861.85 for the year 1976-77 and 1977-78 respectively. Sales Tax Tribunal, Punjab (hereinafter referred to as the Tribunal) following the decision of the Karnataka High Court in *The State of Karnataka and another* v. *P.K.P. Abdul Hakeem and Co. etc.* (1), accepted the appeal. It was held that section 8 of the Central Act, was a charging section and it did not create liabilities. Section 6 of the Central Act is the charging section. As no additional tax has been imposed under the charging section of the Central Act, the additional tax imposed under the State Act could not be levied on the inter State Sales.

(5) On these facts, at the instance of the department, the

(1) (1985) 59 S.T.C 203

following question of law has been referred to this Court for its opinion:

> "Whether, in the facts and circumstances of the case, the additional tax partakes the character of the original tax in the inter-State transactions and enhances the rate of tax applicable to the goods and that section 8(2) of the Central Sales Tax Act, 1956, does not exclude the applicability of the additional rate of tax?"

(6) Question referred to us stands concluded by a judgment of the Supreme Court rendered in *Deputy Commissioner of Sales Tax* v. *Aysha Hosiery Factory (P) Ltd. etc.* (2). In this case, the point for consideration before the Supreme Court was as to whether the additional tax levied over and above the tax already imposed under the Kerala General Sales Tax Act, 1963, could be levied in respect of inter State sales made by the assessee. Assessee questioned the inclusion of additional sales tax levied in respect of inter-State sales on the 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 purposes of levying sales tax in view of the provisions of section 8(2-A) of the Cental Act. It was contended that rate of tax on the inter State sales payable under section 8 of the Central Act could not be increased by any amendment of the State Act or any legislation by the State. Repelling this contention of the assessee, it was held by their Lordships that the additional sales tax levied is of the same category as the sales tax in the original Act; that additional sales tax under the Kerala Additional Sales Tax Act could be levied on the inter State Sales or purchase of goods. 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 Acts affects the rates under the Central Act. Consequently, it was held that in cases where rate of tax under the local laws is less than 4% on declared goods then that rate shall be applicable to the inter state sales of the same commodity if the provision of section 8(2-A) of the Central Act are applicable. The dealer would then be liable to pay tax at the rates as enhanced by the additional tax and, therefore, the rate applicable would include the additional tax on the inter State sales as well. It was observed:

> .....The question for consideration is as to whether the additional tax levied under the Kerala Additional Sales Tax Act is also

(2) (1992) 85 S.T.C. 106

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 Additional Sales Tax Act is also sales tax of the same category as in the original Act. The Kerala Additional Sales Tax Act provides that "The Tax payable under the 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% 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 per cent over the rate provided under the original Act in respect of all the commodities the sales 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 purchases of the dealers. However, it was contended on behalf of the assessees that the words "under the sales tax law of the appropriate State" in section 8(2-A) of the Central Sales Tax Act refers to only the General Sales Tax Act provisions and not the Additional Sales Tax Act provisions, Section 2(1) of the Central Sales Tax Act defines "sales 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 sales 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 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. We do not see any logic or reason for such a construction. What is relevant is if a particular inter 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 the Central Sales Tax Act. As already stated if instead of an Additional Sales Tax Act the Legislature has simply amended 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 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 inter 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 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 Acts 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 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(2A) of the Central Sales Tax 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 sale under the Central Sales Tax assessment orders".

(7) Following the dictum of their Lordships of the Supreme Court in the aforesaid judgment, the question referred to us is

answered in the affirmative, that is in favour of the department and against the assessee. It is held that additional tax imposed under the State law would partake the character of the original tax in the inter-State transactions and would enhance the rate of tax applicable to the goods. Section 8(2A) of the Central Sales Tax Act, 1956, would not exclude the applicability of the additional rate of tax. No costs.

R.N.R.

Before V.K. Bali, J.

ANIL BHATIA,—*Petitioner*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents*

CWP 17306 of 1995

4th July, 1997

Constitution of India, 1950—Arts. 226/227—Haryana Affiliated Colleges (Security of Service) Act, 1979—Seniority list maintained of teaching staff in D.A.V. Colleges in Haryana—Prayer to quash the same—Held, that Ordinance XVI of Recognised Colleges clearly mentions that Governing Body having more than one college under it shall maintain one consolidated merit list—It is better to have common seniority list to avoid difficulties in management where jobs are transferable—Writ dismissed.

Held that, while bringing about amendment in Section 2(e) in statement of objects and reasons it has clearly been mentioned that earlier definition was creating administrative and legal difficulties for bodies managing more than one college in the State and in order to enable such managing bodies to overcome these difficulties it was necessary to make suitable amendment in clause (e) of Section 2 of the Act. Further, the matter is clinched by Annexure R-6 dealing with preparation of seniority lists of teachers in non-government recognised colleges. Annexure R-6 came into being in terms of Clause 6 of Appendix IX to Ordinance XVI of the Recognised Colleges. clause 3 whereof clearly talks that a governing body having more than one college shall have one consolidated list of seniority. This Court is even otherwise of the view that where a society, corporate body or any person or authority is having number of educational institutions and the employees working in the said