

The State of Mysore Vs. Gujjadi Narayan Nayak and anr.

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Court : Karnataka

Decided On : Mar-22-1963

Reported in : [1964]15STC906(Kar)

Judge : N. Sreenivasa Rau, C.J., ;A. Narayana Pai and ;Iqbal Husain, JJ.

Acts : Mysore Sales Tax Act, 1957 - Sections 5, 5(3), 5(4), 23(1), 40, 43(1), 43(2) and 60; Madras General Sales Tax Act, 1959; Mysore Sales Tax Act, 1948

Appeal No. : S.T.A. No. 130/61-62 and 264/60-61, S.T.R.P. Nos. 4 and 9 of 1962

Appellant : The State of Mysore

Respondent : Gujjadi Narayan Nayak and anr.

Advocate for Def. : T. Krishna Rao, Adv.

Advocate for Pet/Ap. : D.M. Chandrasekhar, High Court Government Pleader

Judgement :

Sreenivasa Rau, C.J.

1. This reference relates to the levy of sales tax under the Mysore Sales Tax Act, 1957. The relevant facts and the question of law giving rise to this reference will be clear from the order of reference which is given below in full :

'The Deputy Commissioner of Commercial Taxes, Mysore Division, Mysore, has filed these revision petitions under section 23(1) of the Mysore Sales Tax Act, 1957 (hereinafter referred to as the 'Act').

2. The principal question that arises for decision in these cases is, what is the meaning of the expression 'sale' by the first or the earliest of successive dealers in the State who is liable to tax under this section' found in section 5(3) of the 'Act'.

3. The material facts in these cases are as follows :

The respondents in these petitions are 'dealers' in coffee seeds. They have their place of business at Mangalore. Admittedly they purchased coffee seeds with which we are concerned in these petitions from other 'dealers' in the State before 1st October, 1957, though they sold those coffee seeds after 1st October, 1957, the date on which the 'Act' came into force. The question is whether they are liable to be assessed to sales tax in respect of sales of coffee seeds effected by them after the 'Act' came into force.

4. The Sales Tax Appellate Tribunal has come to the conclusion that the respondents are not the first or the earliest of successive dealers in the State who are liable to pay tax under section 5. The correctness of this conclusion is disputed on behalf of the petitioner.

5. Section 5 is the charging section. Section 5(1) without the proviso reads :

'Every dealer shall pay for each year tax on his total turnover at the rate of two per cent. of such turnover.'

6. The next relevant sub-section for our present purpose is sub-section (3)(a) of section 5 excluding the proviso. That sub-section reads :

'Notwithstanding anything contained in sub-section (1), the tax under this Act shall be levied - (a) in the case of the sale of any of the goods mentioned in column (2) of the Second Schedule, by the first or the earliest of successive dealers in the State who is liable to tax under this section, a tax at the rate specified in the corresponding entry of column (3) of the said Schedule, on the turnover of sales of

such dealer in each year relating to such goods;'

7. Coffee seeds are included in Entry 43 of the Second Schedule. 'Year' is defined in section 2(x) as "year' means the financial year commencing on the first day of April; but, for purposes of assessment a dealer may at his option declare that he will adopt the year for which the accounts of that dealer are ordinarily maintained in his books and where no such declaration is made the year commencing on the first of April and ending on the 31st of March shall be reckoned as the assessment year'

8. In these cases financial year is the year of account.

9. Before the 'Act' came into force, the 'Madras Area' of the Mysore State which includes the District of South Kanara was governed by the Madras General Sales Tax Act in the matter of the sales tax. Under that Act, sales tax on multiple point was levied on the turnover in respect of sales of coffee seeds at the rate of three pies on a rupee, whereas under the 'Act', sales tax on sales of coffee seeds is levied at five per cent. but at single point.

10. In view of section 5 read with section 2(x), the turnover of the respondents which is liable to sales tax is the turnover for the whole of the financial year 1957-58. The respondents' case is that they had purchased coffee seeds from dealers' in the State who are liable to pay sales tax under section 5 and therefore they cannot be taxed in respect of the turnover relating to the sale of those coffee seeds after 1st October, 1957. It is urged that for getting exemption under section 5(3) what is relevant is, whether the first 'dealer' in the State is liable to be taxed under section 5 and not whether the sale of coffee seeds in question had suffered tax after 1st October, 1957. All that sub-section (3) of section 5 says is that on the sale of any goods mentioned in column (2) of the Second Schedule a tax shall be payable by the first or the earliest of successive dealers in the State who is liable to tax under section 5 and that at the rate specified in the corresponding entry of column (3) of the Second Schedule on the turnover of sales of such dealer in each year relating to such goods. The language of that sub-section does not appear to support the contention that 'the first or the earliest of successive dealers' mentioned therein is the first 'dealer' who sells the coffee seeds in question after

1st October, 1957.

11. Section 40 of the 'Act' repeals the Sales Tax Laws that were operating in the various parts of the State till 1st October, 1957. But, in view of the proviso to that section, previous operation of the repealed enactments or anything duly done or suffered thereunder are preserved. That provision also preserves obligation or liability already accrued or incurred. Section 43(1) provides :

'Notwithstanding anything contained in section 40 or in any enactment repealed by that section, any person assessed or assessable to tax or taxes under any of the said enactment during the assessment year prior to the commencement of this Act, shall be liable to tax or taxes on his total turnover or turnovers during the period of the assessment year ending on the date of commencement of this Act, at the rate or rates specified in the said enactments whatever his total turnover or turnovers for the whole of the assessment year may be.'

12. The effect of this provision, in our opinion, is that though the turnover contemplated under section 5(1) is the turnover for the entire assessment year, in computing the tax payable that portion of the turnover which relates to transactions effected before the 'Act' came into force should be assessed to tax according to the provision of the relevant repealed enactment, but the turnover relating to the transactions effected on or after 1st October, 1957, should be assessed to tax according to the provisions of the 'Act'. The turnover with which we are concerned in these cases is that relating to transactions effected after 1st October, 1957. That turnover is governed by the provisions of the 'Act'. If the respondents are not the first or the earlier of successive dealers of the coffee seeds in question in the State, then they cannot be asked to pay sales tax as regards the turnover in question.

13. We see considerable force in the arguments advanced by Sri T. Krishna Rao, the learned counsel for the respondents, which we have set out above. No provision in the 'Act' was brought to our notice showing that the first dealer mentioned in section 5(3) is the first dealer after the 'Act' came into force. Even if it is considered that the language of section 5(3) is ambiguous, though we do not see any ambiguity in it, the benefit of that ambiguity cannot go to the Revenue.

14. Though we are inclined to accept the contention advanced on behalf of the respondents, we are bound by the decision of this Court in *B. P. Krishnamurthy v. State of Mysore* ((1960) 40 Mys. L.J. 436; 13 S.T.C. 436). Therein it was held that for the purpose of section 5(3) of the Act, the only material question would be as to who is the first or the earliest of the successive dealers after the new Act came into force on 1st October, 1957; the fact that there were other dealers who dealt in those goods before that date and the fact that the first and earliest dealers after the Act came into force had purchased before 1st October, 1957, the goods from any one of those dealers are immaterial considerations.

15. For the reasons mentioned above, we are of the opinion that the correctness of the above decision is open to doubt and hence there is need to reconsider the same. Hence we direct that the papers in these cases be placed before the Hon'ble the Chief Justice for constituting a Full Bench, to consider as to what is the true effect of the expression 'by the first or the earliest of successive dealers in the State, who is liable to tax under this section' found in section 5(3) of the Act'.

16. As mentioned in the above order, section 5 of the Act is the charging section. Sub-section (1) makes every dealer liable to pay for each year of assessment, tax on his total turnover at the rate of 2% of such turnover. This provision read with the definition of 'turnover' shows that every sale or purchase is liable to the tax at every point. The proviso to sub-section (1) and sub-sections (2) to (5)(b) are exceptions to this provision. Sub-sections (6) to (9) relate to the determination of the turnover and the levy and collection of the tax.

17. Sub-sections (3) and (4) provide for levy of the tax at a single point of sale or purchase. When there are successive transactions in relation to the same goods, the tax is leviable on only one of those transactions and not on all of them and if there is only one transaction the tax will be leviable in respect of that transaction. The categories of goods, the point of levy as also the rate of tax are given in the respective Schedules. Sub-section (3) consists of two clauses, namely, (a) which provides for a single point levy on sales, and (b) which provides for a single point levy on purchases. Sub-sections (3) and (4), omitting the proviso to sub-section (3)(a), which has no bearing on the question for consideration, read as follows :

'(3) Notwithstanding anything contained in sub-section (1), the tax under this Act shall be levied -

(a) in the case of the sale of any of the goods mentioned in column (2) of the Second Schedule, by the first or the earliest of successive dealers in the State who is liable to tax under this section, a tax at the rate specified in the corresponding entry of column (3) of the said Schedule, on the turnover of sales of such dealer in each year relating to such goods;

(b) in the case of purchase of any of the goods mentioned in column (2) of the Third Schedule, at the rate and only at the point specified in the corresponding entries of columns (4) and (3) of the said Schedule, on the dealer liable to tax under this Act, on his turnover of purchases in each year relating to such goods.

(4) Notwithstanding anything contained in sub-section (1) a tax under this Act shall be levied in respect of the sale or purchase of any of the declared goods mentioned in column (2) of the Fourth Schedule at the rate and only at the point specified in the corresponding entries of columns (4) and (3) of the said Schedule on the dealer liable to tax under this Act on his turnover of sales or purchases in each year relating to such goods.'

18. It will be noticed that while in sub-section (3)(a) it is stated that the tax shall be levied in respect of the first or the earliest of successive dealers in the State, sub-section (3)(b) and sub-section (4) state that tax shall be levied 'only' at the point specified in the corresponding entries of the relative Schedules. The word 'only' does not appear in sub-section (3)(a) and from this it might be argued that the first or the earliest of successive dealers in the State in respect of specified goods coming under the relative Schedule has to pay the tax at the rate indicated in that Schedule, while the subsequent transactions are to be taxed in accordance with section 5(1). But the learned Government Pleader has not taken up that stand and it appears to us that what is contemplated under sub-section (3)(a) is also a single point levy, particularly in view of the wording at the commencement of the Second Schedule which reads :

'Goods on the sale of which a single point tax is leviable on the first or earliest of successive dealers in the State under section 5(3)(a).'

19. In this connection, we may also point out that the words 'a tax' occurring before the words 'at the rate specified in the corresponding entry of column (3) of the said Schedule' in sub-section (3)(a) appear to be superfluous.

20. Coming to the main question, it is contended for the assessee that there is nothing in sub-section (3)(a) to indicate that the first or the earliest of successive dealers in the State is the first or the earliest in the State after the Act came into force and that what is contemplated is that in respect of any specified goods falling under any of the categories in the Second Schedule the sale transaction in respect of which the tax can be levied should be the first of the series of transactions or the only transaction irrespective of when it took place. On the other hand, it is contended by the learned Government Pleader that, since such dealer should be one who is liable to tax 'under this section', i.e., under section 5, there can be no liability under the section until after the Act came into operation; in other words, the first or the earliest of successive dealers renders himself liable to tax in respect of such transaction even though there may have been earlier transactions in respect of those goods prior to the coming into operation of the Act. As stated in the order of reference a decision of a Division Bench of this Court reported in *B. P. Krishnamurthy v. State of Mysore* ((1962) 40 Mys. L.J. 436; 13 S.T.C. 436) has taken the view that for the purpose of section 5(3) of the Act, the only material question would be as to who is the first or the earliest of the successive dealers after the Act came into force and that the fact that there were other dealers who dealt in those goods before that date and the fact that the first and earliest dealers after the Act came into force had purchased before that date the goods from any one of those dealers were immaterial considerations. The relevant passage may be quoted :

'It is contended by Mr. Srinivasan that, on 1st October, 1957, when the new Mysore Sales Tax Act came into force, the petitioner was not the first or the earliest of the successive dealers in the State, since by then, he had already purchased the goods sold by him from more than one dealer. He proceeded to

submit that the petitioner was, therefore, on that date, either the second dealer or a dealer who had purchased from someone who had made a purchase from a second or third dealer.

It is true that section 5(3) in terms declares that in respect of goods specified in column (2) of the Second Schedule, the only person from whom tax can be demanded is the first or the earliest of the successive dealers in the State. It is not disputed that after the Mysore Sales Tax Act, 1957, came into force the petitioner was the first or the earliest of the successive dealers in the State in respect of the goods sold by him. The question is, whether in spite of the fact that after the Mysore Sales Tax Act, 1957, came into force, the petitioner was the first or the earliest of the successive dealers in the State, no tax can be demanded of him by reason of the fact that by the time the Act came into force he had already purchased the goods sold by him from someone else.

There are, in my opinion, two answers to the contention urged by Mr. Srinivasan. It should be remembered - and that is the clear provision contained in section 5(3) - that the person who is liable to pay the tax in respect of sales of goods mentioned in column (2) of the Second Schedule is the first or the earliest of the successive dealers in the State after the Mysore Sales Tax Act, 1957, came into force. Before that Act came into force, sales of those goods were exempt from the payment of sales tax and there could have been no dealer during that period who was liable to pay sales tax in respect of the sales of such goods. For the first time, the new Act made sales tax payable even in respect of those sales, and it indicated the first or the earliest of the successive dealers in the State as the person who was liable to pay such tax.

For the purpose of section 5(3), the only material question could be as to who is the first or the earliest of the successive dealers after the new Act came into force on 1st October, 1957. The fact that there were other dealers who dealt in those goods before that date and the fact that the first and earliest of the dealers after the Act came into force had purchased before 1st October, 1957, the goods from any one of those dealers, are quite immaterial considerations. The incidence of liability is on the first or the earliest of the successive dealers who sells the goods

after 1st October, 1957. The petitioner, being admittedly the first dealer who sold the goods after 1st October, 1957, is, it is plain, the person who is liable to pay the tax in respect of those goods. That, in my opinion, is the construction which we should place upon section 5(3) of the Act.

There is another reason why we should repel the argument advanced by Mr. Srinivasan. Even on the opposition that the dealer from whom the tax could be demanded is not the dealer who sells the goods for the first time after 1st October, 1957 - and I have no doubt in my mind that for making that supposition there is no justification whatsoever - it is clear that, as expressly provided by section 5(3)(a), the person who is liable to pay the tax under that sub-section is the first or the earliest of the successive dealers in the State who is liable to tax under the Act. If there were other dealers who sold the goods before 1st October, 1957, and the petitioner was only a purchaser from one of those dealers, those other dealers who sold the goods were not liable to pay any sales tax since under the law as in force during that period no sales tax was exigible in respect of sales of liquor including beer. The petitioner was, therefore, the first dealer who was liable to pay tax under the new Act, since all the other dealers who dealt in the goods before 1st October, 1957, were persons who were not liable to pay tax not only for the reason that no tax was exigible but also for the reason that they were not liable to pay tax under the new Mysore Sales Tax Act, 1957, which came into force only on 1st October, 1957.'

21. It will be noticed that in para 3 of the above extract it is stated :

'It should be remembered - and that is the clear provision contained in section 5(3) - that the person who is liable to pay the tax in respect of sales of goods mentioned in column (2) of the Second Schedule is the first or the earliest of the successive dealers in the State after the Mysore Sales Tax Act, 1957, came into force.'

22. If we may say so with respect, there is no clear provision under section 5(3) showing that the dealer should be the first or the earliest after the Act came into force though, of course, it would be open to come to that conclusion as a matter of inference. The next sentence in that paragraph is based upon the particular

circumstance in that case, namely, that the goods in question were exempt from the payment of sales tax under the Mysore Sales Tax Act, 1948, and that therefore no tax was leviable in respect of sales effected prior to the date on which the new Act came into operation. That is not the position in the case on hand, since sales tax was leviable on coffee seeds even under the old Act, and whether the fact that no tax could be levied in respect of any particular category of goods prior to the new Act coming into operation would make any difference in the position requires examination. In the next and last paragraph in the above extract, it is stated that any person dealing with the specified goods before the new Act came into operation is not only not liable to tax under the earlier Act (this circumstance being applicable to the category of goods that their Lordships were considering and not to the category of goods with which we are concerned, as already stated above) but such dealer is not liable to pay tax under the new Act since it had not come into operation and therefore in terms of section 5(3)(a) of the new Act he cannot be the first or the earliest dealer in the State who is liable to tax under that section. It would follow as a necessary inference that the first or the earliest of successive dealers in the State is the one who made the sale after the new Act came into force.

23. It may be stated at once that, as contended by the learned Advocate for the assessee, there is nothing in section 5(3)(a) specifically showing that the dealer effecting the sale of the goods to be liable to tax should be the first or the earliest of the successive dealers in the State with reference to the date on which the Act came into operation. Such relation can, therefore, only be a matter of necessary inference. Such inference is sought to be made by the learned Government Pleader from the circumstance that the dealer contemplated is one liable to tax under section 5 and such liability could not exist before the Act came into operation. On the other hand, according to the learned Advocate for the assessee, the object of providing that the dealer should be one who is liable to tax under the section is only to see that the exemption from taxation given to a dealer whose total turnover is less than Rs. 7,500 under sub-section (5) is not nullified. In other words, the dealer in the specified goods should factually be the first dealer irrespective of the time when the sale took place and if such first dealer is exempt from liability to sales tax because his turnover is less than Rs. 7,500 then it should

be the next in the series of dealers who sell the specified goods and whose turnover exceed Rs. 7,500.

24. We have already indicated above that there is nothing in section 5(3)(a) in explicit terms to show that the first or the earliest of successive dealers contemplated under that provision is the first or the earliest with reference to the date on which the Act came into operation. It cannot be assumed that as the provisions of the Act become effective only from the date of its operation the words 'first or the earliest of successive dealers' have reference to such date. On the other hand, the normal meaning of that term would be that with reference to a series of transactions in relation to the specified goods the dealer should be the first or the earliest of successive dealers irrespective of when such transaction took place. It remains to be seen whether there is anything else in section 5(3)(a) to lead to a necessary or reasonable inference that the above description of the word 'dealer' has reference to the operation of the Act. The provision says that such first or earliest of successive dealers should be one who is liable to tax under the section and it appears to be their Lordships' view that, as that section would come into operation only at the same time as the Act, the liability could only be with reference to a transaction after the date of the operation of the Act - in other words a transaction taking place after such date. That is the position contended for by the learned Government Pleader on behalf of the State. It is no doubt true that the single point liability in respect of a transaction relating to any specified goods coming under the Second Schedule, in the sense that such transaction is to be included in the turnover of sales of such dealer in each year relating to such goods, is to be fixed on the first or earliest of successive dealers in the State and that such dealer should be liable to tax under section 5. But it will be noticed that while the provision says that the liability of the dealer should be under that section, it does not say that the liability should be with reference to the particular transaction in question. The liability for the turnover may or may not include the liability in respect of such transaction. What is required is that such dealer should be one who is liable under that section whatever might be the transactions resulting in such liability. In other words, he should not be a dealer who is exempt from liability under that section.

25. It may be remembered that the Act replaces various sales tax enactments which were in operation in the different integrating areas which went to make up the new State of Mysore and under those enactments the general scheme was that all sales including successive sales of the same goods had to be taken into account in reckoning the turnover though in respect of a small number of categories of goods like hides and skins there was a single point levy. The occasion for replacing them by a uniformly applicable new enactment appears to have been taken to put into effect the single point levy in respect of a large number of categories of goods. As mentioned earlier, section 5(3)(a) relates to certain categories of goods (mentioned in the Second Schedule) in respect of which the single point levy is with reference to sales; section 5(3)(b) relates to such levy in respect of purchases of certain other categories of goods (mentioned in the Third Schedule) and section 5(4) relates to declared goods (mentioned in the Fourth Schedule). The object obviously was to make the levy at one of the points if there was a series of transactions in respect of specified goods, either the first or the last. But such first or last dealer might be one exempt from taxation, since section 5(5) says 'that a dealer whose total turnover in any year is less than Rs. 7,500 shall not be liable to pay tax for that year under this section.' Hence section 5(3)(a) made the next unexempted dealer in the series liable for the levy. It may be noticed that section 5(3)(a) itself refers to the liability of the first or the earliest of successive dealers in the State, while section 5(3)(b) and section 5(4) do not make such a reference. But the result is the same, since in the corresponding Schedule, i.e., Second and Third Schedules, it is made clear in column (3) indicating the point of levy, that the sale or purchase is to be by the first or earliest of successive dealers in the State liable to tax. There is, however, one difference, namely, that while under section 5(3)(a) such dealer is to be one who is liable to tax under that section, i.e., section 5, under sections 5(3)(b) and 5(4) as also in the Third and Fourth Schedules such dealer is to be one who is liable to tax under the Act. This aspect of the matter will be dealt with later.

26. The interpretation of section 5(3)(a) appears to offer no difficulty in its application to determine the liability of a dealer in respect of any assessment year wholly falling in the post-Act period. If a sale takes place in respect of any specified goods coming under the Second Schedule and the dealer who sells the

goods is the first or the earliest of successive dealers in the State and if he is not exempt under section 5(5) from liability to pay tax in consequence of his total turnover in that year being less than Rs. 7,500 that transaction will be included in the turnover of sales of such goods. If he is an exempted dealer, then the transaction of the next dealer in the series who is an unexempted dealer will be included in his turnover. But in the case of a series of sales of specified goods coming under the Second Schedule, if there have been more sales than one, and one or more of such sales has taken place prior to the Act coming into operation, the question arises as to who (if any) is the dealer that is liable to the levy of tax and with reference to which of the sales in the series. The question for consideration is whether the first dealer in the State who sold the specified goods for the first time after the Act came into operation, or, if he is an exempted dealer, the next unexempted dealer who sold the goods, is liable to the levy of the tax in respect of the sale by him. Such a dealer would obviously be liable if no sale of the specified goods by a dealer in the State has taken place prior to the Act coming into operation. But, if there have been one or more sales prior to that date, the earliest of them is the first sale and if the dealer who effected the sale is liable to tax under section 5, the first sale by the unexempted dealer after the Act came into operation will not be a first sale by a dealer liable under the section since the earlier sale, i.e., the earliest one prior to the Act, by a dealer who happens to be liable under the section would fulfil that description and any subsequent dealer in the series would not come under that description. In other words, the two requirements of the liability under section 5(3)(a), namely, that the sale transaction itself should be the first sale or the earliest in the series of sales of the specified goods in question coming under Schedule II in respect of which the sale took place, irrespective of its taking place prior to or after the Act came into operation, and the dealer who makes the transaction being liable under the Section, will not have been satisfied.

27. In this connection, it should be remembered that there is every possibility of a dealer who has dealt with specified goods prior to the Act coming into operation being liable under section 5 of the Act. This would depend upon such dealer having entered into transactions after that date resulting in a turnover which renders him liable to tax. It has already been mentioned above that no difficulty

arises in the application of section 5(3)(a) in regard to the assessment relating to a year falling wholly after the said case. In cases where the year falls partly before that date and partly after that date, section 43(1) of the Act provides that the dealer shall be liable on his total turnover during the prior period whatever the turnover for the whole of the assessment year may be. This, however, cannot be regarded as a liability under section 5 of the Act, which liability can arise only after the Act came into operation. It is a liability under section 40 of the Act which saves liabilities incurred under the repealed enactments. Section 43(2) provides that in respect of that part of the assessment year which falls after the commencement of the Act, the dealer shall be liable to tax on his total turnover during that period whatever the total turnover for the whole of the assessment year may be and this tax is to be in accordance with the new Act, namely, under section 5. Hence, in respect of a series of sales of specified goods coming under Schedule II, if one or more of the sales have taken place prior to the Act, at the hands of a dealer liable to tax as provided under section 43(2) in consequence of his having entered into other transactions after the Act, he will be the first or the earliest dealer in the series who is liable to tax under section 5 and a dealer whose transaction occurs in the series after the Act will not be the first or the earliest dealer liable under section 5 and his transaction cannot be included in his taxable turnover under section 5(3)(a). The same result would follow so long as there is a sale transaction in respect of specified goods under Schedule II occurring earlier than the Act - at whatever time it may be - so long as such a dealer turns out to be liable under section 5 by virtue of his turnover resulting from transactions after the Act, i.e., even in cases where such dealer's assessment year has ended with the commencement of the Act, or even in cases where such dealer has entered into the transaction earlier than the termination of the last assessment year prior to the Act so long as he is liable under section 5 in consequence of his transactions after the Act.

28. It has already been mentioned that section 5(3)(b) and section 5(4) and the corresponding Schedules refer to the liability of the dealer to tax under the Act and not merely under section 5. Hence it would appear that in cases coming under those provisions, even if the liability of a dealer is under section 43(1), namely, in respect of his turnover prior to the Act coming into operation, he will be a dealer

liable under the Act, since that liability is under a saving provision of the Act. It is difficult to say whether this differentiation was deliberate or merely accidental since no rational criterion is discernible justifying such a differentiation. Indeed, it is equally difficult to say whether the effect of a single point levy in respect of a series of transactions, some of which were prior to the Act, was specifically considered by the Legislature. In such a situation, the only mode of construction is to give the words employed their normal meaning, so long as it does not lead to an absurd or impossible result.

29. Reference has been made in the course of arguments to the provisions of the Madras General Sales Tax Act, 1959, which also introduces a single point sales tax on a large variety of goods. Section 3 of that Act, which is the charging section, provides for the levy of a tax at the rate of 2 per cent. on the taxable turnover. Sub-section (2) provides as an exception a single point tax in the case of goods mentioned in the First Schedule though it should be noted that the tax is leviable whatever be the quantum of turnover in the year of assessment. Sub-section (4) is a similar provision in respect of declared goods. Thus there is no exemption for a dealer in respect of such transactions on the ground that his total turnover is below a particular limit. The single point indicated in the First Schedule is the 'first sale' in the State in respect of some goods, the 'last purchase' in respect of some others and the 'first purchase' in respect of sometimes. The Second Schedule, i.e., that relating to declared goods, specifies as the 'single point' the first sale, the first purchase or the last purchase with reference to categories of goods. As the dealer gets no exemption in regard to the sales or purchases of goods coming under these Schedules there is no reference in the relevant provisions to his position in a series of transactions by dealers with reference to their liability under the Act as in the Mysore Act. Section 60 of the Act reads :

'60. Certain transactions deemed to be first sales or purchases. - Notwithstanding anything contained in this Act, the sale or purchase of such of those goods -

(i) as were not liable to tax only at the point of first sale or purchase before the commencement of this Act; and

(ii) as are liable to tax only at the point of first sale or purchase under sub-section (2) of section 3 of this Act; effected within the State after the commencement of this Act shall be deemed to be the first sale or purchase for the purposes of this Act, although any sale or purchase of such goods has taken place within the State before such commencement.'

30. Reliance is placed upon this provision by the learned Advocate for the assessee in support of his contention that in the absence of such a saving provision in the Mysore Act the first sale after the Act came into operation would not be taxable. On the other hand, the learned Government Pleader urges that the section is only declaratory. As the scheme of the Madras Act is somewhat different from that of the Mysore Act, as indicated above, it may not serve any useful purpose to make a detailed comparison, beyond stating that the term 'first sale' appears to be used in the Madras Act as meaning 'first sale irrespective of whether it took place prior to the Act coming into operation or not' as otherwise it would not have been necessary to enact a deeming provision like section 60. This would support our view that the words 'the first or the earliest of successive dealers in the State' occurring in section 5(3)(a) would have a similar meaning, i.e., they would have no reference to the date of the Act coming into operation.

31. In the result, our opinion on the question referred to us is that under section 5(3)(a) of the Mysore Sales Tax Act, 1957, if any sale or sales have taken place in respect of any specified goods coming under section 5(3)(a) prior to the commencement of the Act, no tax is leviable on a sale of those goods taking place after the commencement of the Act, if any of the dealers who have effected sale of the specified goods earlier to the commencement of the Act is liable to tax under section 5 of the Act, i.e., in consequence of transactions effected after the Act came into operation. It follows that the view expressed in the decision reported in *B. P. Krishnamurthy v. State of Mysore* ((1962) 40 Mys. L.J. 436; 13 S.T.C. 436), to the effect that the first or earliest dealer for the purpose of section 5(3)(a) has to be determined only with reference to the period after the Act came into force is overruled.

32. Reference answered accordingly.

