

Central Wines Vs. Special Commercial Tax Officer, Intelligence, Hyderabad-i, Secunderabad

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Court : Andhra Pradesh

Decided On : Nov-17-1980

Reported in : [1982]49STC83(AP)

Judge : K. Madhava Reddy and ;Punnayya, JJ.

Acts : Andhra Pradesh General Sales Tax Act, 1957 - Sections 2(1), 3(1), 5, 5(2), 5A, 5B, 5C, 30A and 30B; Bombay Sales Tax Act, 1959 - Sections 37; ;Orissa Sales Tax Act, 1947 - Sections 5(2); [Uttar Pradesh Trade Tax Act, 1948](#) - Sections 3D

Appeal No. : Writ Petition Nos. 5468 of 1979 and 5405 of 1980 and T.R.C. No. 35 of 1980

Appellant : Central Wines

Respondent : Special Commercial Tax Officer, Intelligence, Hyderabad-i, Secunderabad

Advocate for Def. : Government Pleader for Home

Advocate for Pet/Ap. : S. Krishna and ;S. Dasaratharama Reddi, Advs.

Judgement :
ORDER

1. The order of the Court was made by MADHAVA REDDY, J. - In this batch of cases (W.P. No. 5468 of 1979, T.R.C. No. 35 of 1980 and W.P. No. 5405 of 1980) the question that falls for consideration is :

'Whether the sales tax amount realised by the dealer in selling liquor could be included in arriving at the total amount of turnover for assessing the sales tax due from the dealer under the Andhra Pradesh General Sales Tax Act (hereinafter referred to as the 'Act') ?'

2. The petitioner in W.P. No. 5468 of 1979 which is a partnership firm deals in liquors and beer. It sells liquor and beer under bills of sale and delivers the goods on payment of the money charged under the bill. But the sales tax payable thereon is not included in the bill; it is collected and kept in suspense account by way of separate debit notes after the goods are delivered to the buyer. The petitioner-firm has been making monthly returns of the turnover from December, 1978, to March, 1979, but has not been including the sales tax collected by it under suspense account by way of debit notes. It has, however, been informing the commercial tax authority concerned by way of separate letters the amount so collected under debit notes claiming that it was not part of the turnover and as such was not included in the returns. The petitioner-firm has been paying the sales tax due as per its monthly returns. On 3rd July, 1979, the Special Commercial Tax Officer, Intelligence, Hyderabad-I, issued a notice to show cause why the sales tax component mentioned in the debit notes should not be added to the turnover. The petitioner-firm submitted its explanation and produced its account book which disclosed that a sum of Rs. 16,81,240 was collected by the petitioner-firm under the debit notes, as sales tax and kept in suspense account from December, 1978, onwards. These account books supported the petitioner's statement that the sales tax component was not included in the bills and that it was collected under separate debit notes. The Special Commercial Tax Officer, after considering the petitioner's representation, included the said amount in the turnover. It is this action of the Special Commercial Tax Officer, that is impugned in this writ petition.

3. In T.R.C. No. 35 of 1980 another dealer in Indian-made foreign liquor and beer, returned a turnover of Rs. 4,32,529 for the assessment year 1975-76 and claimed

that out of that amount, Rs. 1,06,925 represented sales tax collections which was shown separately in the bills. The petitioner claimed that the said amount of Rs. 1,06,925 cannot be included in the taxable turnover. The Commercial Tax Officer rejected his claim and assessed the petitioner on a turnover of Rs. 5,35,922 and the same was confirmed by the Assistant Commissioner. A further appeal filed by the petitioner before the Sales Tax Appellate Tribunal was also dismissed. The said T.R.C. is framed thus :

'Whether the sales tax amount collected from the buyers and shown separately in the bill can be included in the turnover within the meaning of section 2(1)(s) of the Act ?'

4. During the course of the hearing of these two cases, when the petitioner in T.R.C. No. 35 of 1980 contended that the definition of 'turnover' in section 2(1)(s) of the Act, if construed as including the sales tax component also would be ultra vires of entry 54 of List II of the Seventh Schedule to the Constitution of India and it was pointed out that in a T.R.C., it would not be open to the petitioner to question the vires of any provision of the Act, the petitioner filed Writ Petition No. 5405 of 1980. Apart from the contentions referred to above in this writ petition, it is also urged that section 2(1)(s) of the Act is unconstitutional and ultra vires of entry 54 of List II of the Seventh Schedule to the Constitution and that the sales tax component, if included in the taxable turnover, would, in the circumstances of the case, offend the fundamental right guaranteed to a citizen under article 19(1)(g) of the Constitution, as such, section 2(1)(s) should be either struck down as unconstitutional or should be so read that taxable turnover does not include sales tax component.

5. The assessment years covered by T.R.C. No. 35 of 1980 and W.P. No. 5468 of 1979 are 1975-76 and 1978-79 respectively. During that period sales tax was leviable under item 26 of the First Schedule to the Act but including vodka which reads as follows :

'26. All liquors other than At the point of country liquor but first sale in the including vodka - State. (a) not covered by item (b) 75 paise in below. the rupee. (b) where the consideration for 40 paise in the sale or purchase of the rupee.' liquor includes

the duties of excise payable under the Andhra Pradesh Excise Act, 1968.

It may be noticed that prior to 17th January, 1978, item 26 read as follows :

'26. All liquors other than At the point of 25 paise in country liquor. first sale in the rupee.' the State.

6. Before the item was substituted by section 6(1) of Amendment Act 14 of 1978 no distinction was made in the levy of sales tax on the ground whether the consideration for the sale or purchase of liquor included excise duty payable under the Act or not. It was a uniform rate of 25 paise. Every dealer other than a casual trader and an agent of a non-resident dealer whose total turnover for a year was not less than Rs. 25,000 was liable to pay a tax at the rate of four paise in every rupee of his turnover. Sub-section (2) of section 5 lays down that notwithstanding anything contained in sub-section (1) in the case of goods mentioned in the First Schedule, sales tax shall be levied as the rates and only at the point of the sale specified as applicable thereto on the turnover of sales in each year relating to such goods irrespective of the quantum of turnover effected in the State by the dealer selling them. The turnover is to be determined after making such deductions in such a manner as may be prescribed by the Act and that taxes have to be assessed, levied and collected in the manner prescribed. Section 5 of the Act in so far as it is relevant for our present purpose reads as follows :

'5. Levy of tax on sales or purchases of goods. - (1) Every dealer (other than a casual trader and an agent of a non-resident dealer) whose total turnover for a year is not less than Rs. 25,000 and every agent of a non-resident dealer, whatever be his turnover for the year, shall pay a tax for each year, at the rate of four paise on every rupee of his turnover. Every casual trader shall pay a tax at the rate of four paise on every rupee of his turnover.

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

(a) in the case of the goods mentioned in the First Schedule at the rates and only at the point of the sale specified as applicable thereto effected in the State by the

dealer selling them, on his turnover of sales in each year relating to such goods irrespective of the quantum of turnover;

(b) * * * (c) * * * (3) For the purpose of this section and the other provisions of this Act, the turnover on which a dealer shall be liable to pay tax, shall be determined after making such deductions from his total turnover, and in such manner as may be prescribed.

(4) The taxes under this section shall be assessed, levied and collected in such manner, as may be prescribed :

Provided that -

(i) in respect of the same transaction, the buyer or the seller, but not both, as determined by such rules as may be prescribed shall be taxed;

(ii) where a dealer has been taxed in respect of the purchase of any goods, in accordance with the rules referred to in clause (i) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him.'

7. Section 5-A provides for levy of additional tax if the turnover is rupees three lakhs or more. Turnover is defined in section 2(1)(s) of the Act as follows :

'2. (1)(s) 'Turnover' means the total amount set out in the bill of sale (or if there is no bill of sale, the total amount charged) as the consideration for the sale or purchase of goods (whether such consideration be cash, deferred payment or any other thing of value) including any sums charged by the dealer for anything done in respect of goods sold at the time of or before the delivery of the goods and any other sums charged by the dealer, whatever be the description, name or object thereof :

Provided that in the case of a sale by a person whether by himself or through an agent of agricultural produce grown by himself or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, the amount of the consideration relating of such sale shall be excluded from his turnover when such produce is sold in the form in which it was produced, without

being subjected to any physical, chemical or other process for being made fit for consumption save mere cleaning, grading, or sorting; Explanation. - Subject to such conditions and restrictions, if any, as may be prescribed in this behalf -

(i) the amount of such consideration shall, in relation to a works contract, be deemed to be the money payable to the dealer for the supply of materials if the contract for such supply can be separated from the contract for the service and the work done, although the contracts are embodied in a single document;

(ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover; and

(iii) where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same to the said customer, the sale in respect of such goods shall be included in the turnover of the latter dealer; but not in that of the former.'

8. Before we advert to the definition of 'turnover' and consider whether the amount of sales tax collected by the dealer may be included in his turnover, it is necessary to understand when a sale takes place and when does the taxable event occur. In *Madras State v. Gannon Dunkerley & Company* : [1959]1SCR379 , the Supreme Court dealing with the provisions of the Madras General Sales Tax Act observed that '..... in order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods, which presupposes capacity to contract, that it must be supported by money consideration, and that as a result of the transaction property must actually pass in the goods.'

9. Under the scheme of taxation, the liability to pay sales tax arises when there are taxable goods, when the taxable event occurs and when there are taxable persons. There is no dispute that the goods in question are taxable, that the petitioners herein are the persons who have sold the goods and the taxable event, i.e., the sale has occurred when the consideration for sale was paid by the purchaser to the petitioner-seller. It is on payment of this price that the property in

the goods passed on to the purchaser. The delivery of the goods and passing on of the property in the goods from the seller to the purchaser is inseparably linked with the right of the appellant to charge and recover the price, and if that price includes the tax, the tax as well.

10. On a plain reading of this definition of 'turnover' it would be clear that it includes not only the amount set out in the bill of sale as the consideration for sale or purchase of goods, but also includes 'any sums charged by the dealer for anything done in respect of the goods sold at the time of or before the delivery of the goods and also any other sum charged by the dealer whatever be the description, name or object thereof'. The sales tax that is charged and shown in the bill is paid by the purchaser and collected by the seller before the delivery of the goods. It is paid along with the other amount which admittedly forms part of the consideration for the goods. When the total amount of the bill comprises of the amount stated to be the price of the goods plus the amount of sales tax in view of the definition of 'turnover' contained in section 2(1)(s), it cannot but be held that the total amount set out in the bill of sale constitutes the consideration for sale and as such is included within the definition of 'turnover'. The reasons for so holding is not far to seek. Only on payment of the entire amount shown in the bill, i.e., the price of the goods plus sales tax, the goods will be delivered and the title to the goods would pass to the purchaser. It is, therefore, difficult to find any scope for the argument that the sales tax component even in a case where it is set out in the bill of sale does not constitute part of the turnover.

11. The transactions of sale effected by the other petitioner are slightly different. The amount of sales tax is not mentioned in the bill. However, simultaneously with the delivery of the goods the debit notes are made and the exact amount of sales tax due is collected from the purchaser by the seller delivering the goods and kept in the suspense account. It is also stated that there is an agreement to refund the amount after the assessments are completed and the amount so collected is held to be not part of the turnover and the sales tax is not levied thereon. It would be seen that even in these transactions although the amount of sales tax is not set out in the bill of sale, it is collected by the seller at the time of sale immediately after or at the time of delivery of the goods sold, as the amount payable towards

sales tax in the event of it being held to be a part of the turnover. It is kept in the suspense account with the specific understanding that it would be refunded only if it is held to be not part of the turnover. Thus there can be not doubt that it is collected by the seller from the buyer as sales tax.

12. The question, therefore, that arises in both these cases is whether the amount collected by the seller from the buyer which comprises of two components, the actual sale price and the sales tax is part of the 'turnover' and comes within the expression 'any other sums charged by the dealer, whatever be the description, name or object thereof' occurring in the definition of 'turnover' in section 2(1)(s) of the Act. In the former case it is shown expressly as sales tax and in the latter case it is shown in the form of debit notes. But in both the cases it is collected by the seller from the buyer at the time of the sale or rather as a condition of sale.

13. It was contended by the learned counsel Mr. S. Krishna, appearing for one of the dealer herein, and Mr. S. Dasaratharama Reddi, the learned counsel appearing for the other dealer in T.R.C. No. 35 of 1980, that where the amount is collected specifically as tax, it cannot be deemed to be part of the consideration for the sale of the goods and as such it cannot form part of the turnover. According to them, consideration for sale of goods must be understood as having the same meaning as it has under the Sale of Goods Act and any other sum collected not strictly forming part of the consideration for the sale cannot be deemed to be the sale price merely because it is collected at the time of the sale. In this behalf they point out that some times the tax payable under the Andhra Pradesh General Sales Tax Act is at the point of sale and at other times it is at the point of purchase. Every amount of tax collected at the point of sale does not necessarily constitute part of the sale consideration and consequently cannot be deemed as part of the turnover. The same should apply to a case where the amount is collected by the dealer expressly as sales tax from the purchaser at the time of sale. So long as the Act does not prohibit the passing of the sales tax component to the purchaser, the dealer should be deemed to be an agent of the Government for collecting of the sales tax, and in setting out the sales tax component specifically in the bill, he clearly indicates the amount of consideration for the sale and the amount of tax collected by him and as such the sales tax component

cannot be deemed to be part of the turnover. On the other hand, it is contended on behalf of the revenue that the consideration for sale of goods may comprise of several components including sales tax.

'Price' is the amount of consideration which a seller charges the buyer for parting with the title to the goods. It comprises of the amount which the dealer himself had to pay for the purchase of the goods, the expenditure which he had to incur for transporting these goods from the place of purchase to the place of sale, the duties, if any, levied on the particular goods purchased by him, the octroi duty which he may have had to pay during the course of the transport of the goods and his own margin of profit after meeting the handling charges including interest on the capital invested. To these several items he may add the sales tax which he would be liable to pay as a dealer of the goods purchased by him in the event of selling those goods to a third party. The cost price of the goods plus the amount paid by him on these various heads of account including the sales tax would constitute the consideration for which he would part with his title to the goods in favour of the third party who is prepared to pay that consideration. The entire amount of consideration including the sales tax component which the purchaser pays, therefore, constitutes the price of the goods. Under the definition of 'turnover' what is included is not merely the actual price but also 'such other sums charged by the dealer, whatever be the description, name or object'. Merely because part of the consideration is shown as price and part as sales tax, the latter amount does not cease to be part of 'turnover'. It is a sum charged for parting with the title to the goods at the time or before delivery of the goods by the dealer. The amount of sales tax thus realised by the dealer (seller) at the time of sale is certainly part of the 'turnover' as defined sub-section 2(1)(s) of the Act.

14. In *Love v. Norman Wright (Builders) Limited* [1944] 1 All ER 618, Goddard, L.J., observed :

'Of course, if a seller quotes a price of Pounds x plus purchase tax, the buyer must pay the amount of the tax, whatever it may be, as part of the purchase price, although the amount may not be mentioned at the time of the contract is made Where an article is taxed, whether by purchase tax, customs duty or

excise duty, the tax becomes part of the price which ordinarily the buyer will have to pay.

The price of an ounce of tobacco is what it is because of the rates of tax, but on a sale there is only one consideration, though made up of cost plus profit plus tax. So, if a seller offers goods for sale, it is for him to quote a price which includes the tax if he desires to pass it on to the buyer; if the buyer agrees to the price it is not for him to consider how it is made up, or whether the seller has included tax or not.'

15. The same view was approved and more effectively put by Lawrence, J., in *Paprika v. Board of Trade* [1944] 1 All ER 372 thus :

'Whenever a sale attracts purchase tax, that tax presumably affects the price which the seller who is liable to pay the tax demands, but it does not cease to be the price which the buyer has to pay even if the price is expressed as x plus purchase tax.'

16. In *State of Bombay v. United Motors (India) Limited* : [1953]4SCR1069 , it was pointed out that the incidence of sales tax is really on the consumer and it is in substance a tax imposed on the goods on the occasion of sale. The ultimate economic incidence of the sales tax is on the consumer or the last purchaser and whatever he pays for the goods is paid only as price, that is to say, as consideration for the purchase. The statutory liability, however, for payment of sales tax is laid on the dealer on his total 'turnover' whether or not he realises the tax from the purchasers. Generally speaking, the price charged by the dealer would be inclusive of sales tax, for, it is to his interest to pass on the burden of the tax to the purchaser. So far as the dealer is concerned, the payment of a sum covering the tax made by a purchaser on the occasion of sale is really part of the price which the purchaser pays for the goods. A somewhat similar question arose before a Full Bench of this Court in *Government of Andhra v. East India Commercial Company Limited* [1957] 8 STC 114 (FB), not strictly with reference to sales tax, but with reference to what is collected as 'dharmam' at the time of the sale of the goods by dealers in accordance with the prevailing trade custom. On the question whether 'dharmam' collected by the dealers could be included in the

'turnover', divergent opinions were expressed earlier in *State of Andhra v. Bujranga Jute Mills* [1955] 6 STC 376 and *State of Madras v. Tungabhadra Industries Limited* [1955] 6 STC 379 on the one hand and in *Poosarla Sambamurthi v. State of Andhra* [1956] 7 STC 652 on the other. Though the question that arose for consideration in *Government of Andhra v. East India Commercial Company Limited* [1957] 8 STC 114 (FB) was whether 'dharmam' collected could be treated as part of the turnover, Subba Rao, C.J., making the order of reference posed the following question for the consideration of the Full Bench :

'What is the scope of the definition of 'turnover' in section 2(i) of the Madras General Sales Tax Act as amended by the Madras General Sales Tax (Andhra Amendment) Act, 1954 ?'

17. Viswanatha Sastri, J., who delivered the opinion of the Full Bench in that case, *Government of Andhra v. East India Commercial Company Limited* [1957] 8 STC 114 (FB), prefaced it in the following words :

'Though the terms of the reference are very wide and general we understand it in the context of the finding of the Sales Tax Appellate Tribunal to raise the question whether the sales tax collected by a dealer from buyers of goods and payments made by buyers to the dealers on the occasion of sale for dharmam or charity should be included in the total 'turnover' of the dealer'.

18. In that context after referring to the above two English cases on the question as to what constitutes consideration for sale or price for the sale of goods, Viswanatha Sastri, J., proceeded to consider whether sums collected by a dealer from a purchaser as 'dharmam' or 'charity' on the occasion of the sales should be included in the turnover, and repelling the contentions to the contrary, made certain observations which are pertinent to the contentions now raised before us. Viswanatha Sastri, J., observed :

'The fact that the payment is voluntary does not affect the question. Even the sale and the payment of the price are voluntary in the sense that the seller is not obliged to sell and the buyer is not obliged to buy except by their own choice and

on their own terms. The fact that the payment to charity is made as a matter of trade usage only shows it is an incident that attaches to every contract for sale of goods, though not expressly stipulated, because it is so well-known and so widely recognised and acted upon. The fact that the payment is not shown in the bill or invoice as part of the price but separately as an item charged to the purchaser is not a decisive factor. So are processing and packing charges and sales tax payable by the dealer and yet they are included in his turnover. Dharmam is usually a small percentage of the price proper and is charged to the buyer. The buyer has to pay the total amount of the bill though it is split up into price plus packing charges plus sales tax plus dharmam plus sundry charges. Nor does the fact that the collection for dharmam is utilised by the dealer for charitable purposes decide the issue. The consideration for sale is the whole of the amount paid by the purchaser and it makes no difference to him whether the consideration is paid to the dealer or to a third person on his direction. The detriment to the buyer is the same whether his payment goes into the pockets of the dealer or for the benefit of anyone else designated by the dealer. From the standpoint of the buyer the total amount paid by him to the dealer is the price of the goods. The aggregate amount represents the consideration for the sale moving from him though it might be split up into several heads in the bill The obligation of a purchaser to make a small payment for dharmam is attached by mercantile usage to a contract for sale of goods and the parties enter into dealings on that basis. Therefore, it is as if the dealer contracts to sell his goods to the buyer for a lump sum of money, a part of which is towards the price and another part for the charities to which the dealer intends to contribute and then sells the goods to the buyer on receipt of the agreed amount and issues a bill specifying the amounts received by him under the different heads. The amended definition of 'turnover' in section 2(i) particularly the last limb of that clause, is designedly made so wide as to catch within its net, amounts collected by a dealer towards 'dharmam' on the occasion of a sale and as part of the sale transaction.'

19. We may notice that the definition of 'turnover' in section 2(1)(s) of the Andhra Pradesh General Sales Tax Act is designed with the same purpose in 'very wide terms' to borrow the expression employed by the Full Bench, 'to catch within its net' amounts collected by a dealer towards sales tax as well on the occasion of the

sale and as part of the transaction.

20. Mr. Dasaratharama Reddi, the learned counsel for the petitioner, strenuously contended that this view of the Full Bench cannot be held to be binding on this Court having regard to the fact that the decision was rendered with reference to the definition of 'turnover' contained in section 2(i) of the Madras General Sales Tax Act and not with reference to section 2(1)(s) of the Andhra Pradesh General Sales Tax Act. He contends at the outset that these observations of the Full Bench are obiter inasmuch as that arose out of a case relating to the question whether 'dharmam' collected by the seller from the purchaser should be included as part of turnover and not in a case raising the question whether the sales tax collected by the seller should be included as part of his taxable turnover. According to him, it cannot be said to be an authority for the proposition that sales tax passed on to the purchaser should be computed as part of the taxable turnover of the dealer. He also contends that even otherwise this view of the Full Bench has been considerably shaken by the subsequent decisions of the Supreme Court which, according to him, have proceeded to hold that it would be part of the taxable turnover only if such amount has gone into his common till. He also argues that the subsequent decisions rendered by the Supreme Court draw a distinction on the basis whether a particular tax was payable by the seller or the buyer and whether it was intended by the legislature that it may be passed on or not by seller to the buyer. He urges that only if the seller is prohibited by law from passing on the sales tax component to the buyer at the time of the sales of the goods can it be included in the turnover of the dealer. According to the learned counsel, in cases where the tax liability itself is on the purchaser or where the Act expressly or by necessary implication permits the seller to pass on the tax to the buyer and even in a case where the Act does not expressly prohibit the same from passing on the tax and if in fact the seller collects the amounts from the buyer by way of sales tax, irrespective of whether it is set out in the bill or not, so long as it is specifically collected as sales tax, it cannot be included as part of the taxable turnover. To this aspect of the matter and the distinction sought to be emphasised by Mr. Dasaratharama Reddi, the learned counsel, we may advert to a little later. We may for the present take note of the fact that the Full Bench decision of our High Court has not been expressly dissented from, much less overruled by any later decision

of this Court or by any decision of the Supreme Court. On the other hand as discussed hereinafter, the principles laid down therein have been in a way affirmed by the Supreme Court wherever it had an occasion to refer to it. We may here itself point out Court that the decision in State of Andhra v. Bujranga Jute Mills Ltd. [1955] 6 STC 376 which had laid down that sales tax collected by a dealer from the consumers cannot be included in his net turnover and it is not liable to be taxed again, was expressly overruled by the Full Bench. So also State of Madras v. Tungabhadra Industries Ltd. [1955] 6 STC 379 which held that even under the Madras General Sales Tax Act, 1939, as amended by the Andhra State Act 13 of 1954, and the Rules framed thereunder, sales tax collected by dealer could not be included in the 'turnover' for the purpose of assessing the sales tax was overruled by the Full Bench. Later when in Poosarla Sambamurthi v. State of Andhra [1956] 7 STC 652, the Division Bench of the Andhra High Court had to consider the question whether the amount collected by the seller by way of charity under the heading 'charity' (dharmam) at the time of the sale of goods could be included as part of the turnover, it referred the matter to the Full Bench obviously to consider whether the amount collected by way of 'dharmam' or charity in one case and sales tax in another case from the buyer stood on the same footing and was 'other sum collected' for passing the title in the goods to the buyer at the time of sale and consequently was a sum includible as part of the taxable turnover. When the matter had thus come up before the Full Bench, the Full Bench in our opinion was specifically seized of the question whether the sales tax component could be treated as part of the taxable turnover of a dealer. Having regard to the scope of the reference and the opinion handed out by the Full Bench, we are unable to accept that the principle laid down by the Full Bench should be confirmed merely to the fact of that case and govern only the question 'whether 'dharmam' collected by the seller should be included in the taxable turnover and not cover cases relating to sales tax component'. The question referred to the Full Bench and the answer of the Full Bench, in our view, is wide enough to cover the question whether the sales tax component as well could be included in the taxable turnover. In any event, quite apart from whether the view expressed by the Full Bench is as obiter or a binding decision, the reasons given by the Full Bench in the aforesaid decision, to hold that such sums are includible in the taxable turnover, in our view,

apply with equal force to the sales tax component realised by the seller from the buyer at the time of the sale of the goods. That reasoning has in fact received the approval of the Supreme Court in the subsequent decisions to which we may forthwith refer.

21. In *George Oakes (Pvt.) Ltd. v. State of Madras* : [1962]2SCR570 , the Supreme Court was considering the question whether under section 8-B of the Madras General Sales Tax Act, 1939, a dealer could pass on the tax to the buyer and whether the Madras General Sales Tax (Definition of Turnover and Validation of Assessments) Act, 1954, was constitutionally valid. While upholding the validity of the Validation Act, the Supreme Court, in the course of its judgment, referred with approval to the observations made by the Full Bench decision in *Government of Andhra v. East India Commercial Company Limited* [1957] 8 STC 114 (FB), which are as follows :

'The ultimate economic incidence of the sales tax is on the consumer or the last purchaser and whatever he pays for the goods is paid only as price, that is to say, as consideration for the purchase. The statutory liability, however, for payment of sales tax is laid on the dealer on his total 'turnover' whether or not he realises the tax from the purchasers. Generally speaking, the price charged by the dealer would be inclusive of sales tax, for, it is to his interest to pass the burden of the tax to the purchaser. So far as the dealer is concerned, the payment of a sum covering the tax made by a purchaser on the occasion of sale, is really part of the price which the purchasers pay for the goods.'

22. It would also be pertinent to note that the Supreme Court approved what was stated in *Sundararajan and Company Limited v. State of Madras* [1956] 7 STC 105, where the validity of the Act was challenged and it was contended that sales tax collected by the seller could not be included in the taxable turnover the court pointed out that,

'The decision in *Deputy Commissioner of Commercial Taxes v. Krishnaswami Mudaliar's case* [1954] 5 STC 88 was not that the Act could not make the amounts collected by a registered dealer by way of tax under section 8-B part of the assessable turnover, but that the Act as it stood then did not make it part of the

assessable turnover. The legislature had the competence to enact section 8-B and it had therefore the power to repeal it also. If section 8-B had been repealed, amounts collected to cover the sales tax by a registered dealer could legitimately have been included in his taxable turnover

Even if the registered dealer collects the amount by way of tax under the authority of section 8-B, the payment is by the purchaser on the occasion of the sale by the dealer. Vis-a-vis the dealer it is in reality part of the price the purchaser has to pay the seller for purchasing the goods

23. The Supreme Court in *George Oakes (Pvt.) Limited v. State of Madras* : [1962]2SCR570 after referring to the two English cases in *Paprika Limited v. Board of Trade* [1944] 1 All ER 372 and *Love v. Norman Wright (Builders) Limited* [1944] 1 All ER 618 stated that :

'.... the observations (therein) are apposite even in the context of the provisions of the Acts we are considering now, and there is nothing in those provisions which would indicate that when the dealer collects any amount by way of tax, that cannot be part of the sale price. So far as the purchaser is concerned, he pays for the goods what the seller demands, viz., price even though it may include tax. That is the whole consideration for the sale and there is no reason why the whole amount paid to the seller by the purchaser should not be treated as the consideration for the sale and included in the turnover.'

24. In *Hindustan Sugar Mills Limited v. State of Rajasthan* : [1979]1SCR276 , though there was no specific reference to the Full Bench judgment of our Court, the Supreme Court did observe that :

'Take for example, excise duty payable by a dealer who is a manufacturer. When he sells goods manufactured by him, he always passes on the excise duty to the purchaser. Ordinarily, it is not shown as a separate item in the bill, but it is included in the price charged by him. The 'sale price' in such a case could be the entire price inclusive of excise duty because that would be the consideration payable by the purchaser for the sale of the goods. True, the excise duty component of the price would not be an addition to the coffers of the dealer, as it

would go to reimburse him in respect of the excise duty already paid by him on the manufacture of the goods. But, even so, it would be part of the 'sale price' because it forms a component of the consideration payable by the purchaser to the dealer. It is only as part of the consideration for the sale of the goods that the amount representing excise duty would be payable by the purchaser. There is no other manner of liability, statutory or otherwise, under which the purchaser would be liable to pay the amount of excise duty to the dealer. And, on this reasoning, it would make no difference whether the amount of excise duty is included in the price charged by the dealer or is shown as a separate item in the bill. In either case, it would be part of the 'sale price'. So also, the amount of sales tax payable by a dealer, whether included in the price or added to it as a separate item, as is usually the case, forms part of the 'sale price'. It is payable by the purchaser to the dealer as part of the consideration for the sale of the goods and hence falls within the first part of the definition. This position is now well-settled as a result of the decision of this Court in *George Oakes (Pvt.) Limited v. State of Madras* : [1962]2SCR570 where the view taken by the Madras High Court in *Sri Sundararajan and Company Limited v. State of Madras* [1956] 7 STC 105 was approved

25. Then their Lordships referred to what S. K. Das, J., said about the observations in the two English cases mentioned above.

26. In *McDowell & Company v. Commercial Tax Officer* : [1977]1SCR914 the Supreme Court noted :

'The reason for inclusion of tax or a duty in the turnover was explained in two decisions of this court bearing the same cause title, viz., *George Oakes (P.) Ltd. v. State of Madras* : [1962]2SCR570 .'

27. In the first of these cases, it was observed :

'Under the definition of turnover the aggregate amount for which goods are bought or sold is taxable. This aggregate amount includes the tax as part of the price paid by the buyer. The amount goes into the common till of the dealer till he pays the tax. It is money which he keeps using for his business till he pays it over to

Government. Indeed, he may turn it over again and again till he finally hands it to Government.'

28. In the other decision, *George Oakes v. State of Madras* : AIR 1962 SC1352 , Hidayatullah, J. (as he then was), said :

'In laws dealing with sales tax, turnover has, in England and America also, been held to include the tax. The reason for such inclusion is stated to be that the dealer who realises the tax does not hand it over forthwith to Government but keeps it with him, and turns it over in his business before he parts with it. Thus, the tax becomes, for the time being, a part of the circulating capital of the tradesman, and is turned over in his business. Again, it was said that the price paid by the purchaser was not so much money for the article plus tax but a composite sum. Therefore, in calculating the total turnover, there is nothing wrong in treating the tax as part of the turnover, because 'turnover' means the amount of money which is turned over in the business.'

29. In *McDowell & Co. v. Commercial Tax Officer* : [1977]1SCR914 , on the question whether excise duty and countervailing duty on liquor could be included in the taxable turnover of the 'dealer' in view of the definition of 'turnover' contained in section 2(1)(s), the court observed that these sums did not go into the common till of the appellant and did not become part of the circulating capital of the dealer and that they were not included in the bills of the sale as consideration for the sale and consequently could not be included in the 'turnover'. The Supreme Court thus approved the view taken in *Kanpur Vanaspati Stores v. Commissioner of Sales Tax* : [1973]3SCR424 and overruled the view taken in *State of Andhra v. Bujranga Jute Mills Limited* [1955] 6 STC 376 and *State of Madras v. Tungabhadra Industries Limited* [1955] 6 STC 379. It is clear from the above that the dicta laid down by the Full Bench of this Court, far from being dissented from, received the approval of the Supreme Court in so far as it laid down that sales tax passed on to the buyer by the seller is in fact part of the consideration received by the seller for the sale of the goods and as such this other sum collected by him forms part of the taxable turnover. Even as an obiter, we feel bound by the weighty reasoning.

30. Mr. Dasaratharma Reddi, the learned counsel for the petitioner, contended that there are some equally weighty reasons to reconsider the view of the Full Bench in the present case. He points out that the scheme of the A.P. General Sales Tax Act would disclose that sales tax collected by the seller was never intended to be treated as part of the turnover at least in cases where the monthly returns are filed by the dealers. Return A-2 form is required to be made under rule 17 by every dealer whose turnover exceeds rupees one lakh and every newly registered dealer irrespective of the total amount of turnover. Form A-2 prescribed for returning the monthly turnover specifically requires the dealer to enter the amount of sales tax collected by him. He also refers to the several G.Os., i.e., G.O.Ms. No. 645, Revenue (S.T.), dated 13th April, 1978, G.O.Ms. No. 791, Revenue, dated 10th May, 1978, G.O.Ms. No. 606, Revenue (S.T.), dated 7th April, 1978, and G.O.Ms. No. 878, Revenue (S.T.), dated 25th May, 1978, which specifically exempt a dealer from payment of tax, if no sales tax is charged by him. He also points out that section 30-A of the Andhra Pradesh General Sales Tax Act provided that if sales tax was collected by a dealer, he should pay the same. That provision was held to be ultra vires by the Supreme Court (sic) in *Lakshminarayana Commercial Corporation v. Commercial Tax Officer* [1972] 29 STC 527 (AP) and section 30-B provided that if any person collected any amount by way of sales tax even though sales tax was not payable, it is liable to be forfeited to the State Government. These provisions having been struck down, by Act 7 of 1966, sections 5-B and 5-C and 30-A and 30-B were decided (sic). Mr. Dasaratharama Reddi, the learned counsel for the petitioner, points out that these provisions and the statement of objects and reasons regarding the amending Act emphasise that these provisions were deleted not with a view to prohibit the passing on of the sales tax by the seller to the purchaser, but only to clarify that no amount collected by a dealer can be forfeited to the Government merely because he has collected the amount by way of sales tax. He also points out that provisions similar to sections 30-A and 30-B contained in section 46(1) and (2) and section 37 of the Bombay Sales Tax Act were later upheld by the Supreme Court in *R. S. Joshi, Sales Tax Officer, Gujarat v. Ajit Mills Limited* : [1978]1SCR338 , and contends that any provision for forfeiture of any amount collected by way of sales tax where none is leviable, perhaps, may be treated as 'turnover', but where the sales tax is leviable and the

seller collects it from the purchaser and thus passes it on to him, it cannot be treated as part of the sale price and as such cannot be computed as part of the taxable turnover. He also relies on rule 45(1)(ii) and rule 45(1)(iii) of the Rules framed under the A.P. General Sales Tax Act, which require the dealer to record in the bill the particulars of the goods sold and the price thereof, his registration number and the amount of tax collected by him. Hence, if any sales tax over and above what is leviable under the Act is collected, that amount cannot be treated as part of the turnover.

31. In our view the several provisions referred to above only indicate that the seller should disclose the entire amount collected by him under each head. May be the provisions contained in sections 30-A and 30-B and sections 5-A and 5-B which declare that any amount collected by a dealer by way of sales tax which is not leviable under the Sales Tax Act shall be forfeited to the Government is invalid. But in our view that does not lead to the conclusion that it is not 'other sum collected', It would be a sum collected by the dealer for parting with the title with goods and thus being the price realised by sale of goods would be properly part of taxable turnover. Those provisions in fact give an indication that nothing prohibits the seller from passing on the tax leviable on the dealer to the buyer.

32. Mr. Dasaratharama Reddi, the learned counsel for the petitioner, however, points out that with respect to certain fees and duties and certain taxes, even though collected by the seller from the buyer at the time of sale, the later Supreme Court decisions have held that they cannot be treated as part of the consideration for the sale and as such they cannot be included as part of the taxable turnover and cannot be assessed to sales tax. We may refer to those several decisions on which Mr. S. Dasaratharama Reddi, the learned counsel for the petitioner, placed reliance in this context.

33. In *State of Orissa v. Utkal Distributors (P.) Ltd.* : [1966]3SCR55 , the Supreme Court held :

'The Central sales tax paid by the assessee at the time of purchase and realised from the customers under the provisions of the notification did not form part of the price paid by the customers to the assessee, as the valuable consideration for the

sale was only the price fixed by the Government. Nor did the Central Sales Tax realised by the assessee fall within the expression 'any sum charged anything done by the dealer in respect of the goods at the time of or before delivery thereof'. Such Central sales tax realised by the assessee from its customers could not therefore be included in the taxable turnover for the purpose of determining the sales tax payable under the Orissa Sales tax Act, 1947.'

34. If we keep in view the definition of the expression 'taxable turnover' under section 5(2) of the Orissa Sales Tax Act which is as follows :

'5. (2) In this Act, the expression 'taxable turnover' means that part of a dealer's gross turnover during any period which remains after deducting therefrom -

* * * * (b) the tax, if any, paid by the purchaser to the dealer', the reason for the conclusion reached therein would be at once clear. Under the said Act, the tax paid by the purchaser to the dealer was specifically deductible from the gross turnover to arrive at the 'taxable turnover'. The definition of the 'taxable turnover' itself thus excluded the tax paid by the purchaser to the dealer. A distinction was made between 'turnover' which was defined in section 2(i) as meaning the aggregate of the sale prices and tax, if any, received or receivable by a dealer, in respect of the sale or supply of goods or carrying out of any contract effected or made during a given period, and 'taxable turnover' as defined under section 5(2) of the Act. Further, the goods sold with which the Supreme Court was concerned in the said case was iron and steel which were subjected to the Control Orders which fixed the price and regulated sale. Condition No. 4(ii) of the notification issued under the Iron and Steel (Control) Order dated 18th October, 1958, stipulated as follows : 'The customer shall pay to the controlled stock-holder the Central sales tax incurred by the controlled stock-holder in obtaining the material and also pay such additional Central sales tax, if any, incurred on the sale to the customer.'

35. The dealer could not charge anything more than what was permitted by the then existing Control Order. The notification issued under the Control Order authorised the stock-holder, i.e., the dealer, to charge the customer Central sales tax incurred by the stock-holder in obtaining the material and also such additional Central sales tax, if any, incurred on the sale to the customer. Thus, the payment

of Central sales tax having been made the liability of the purchaser of the controlled commodity the dealer or the stock-holder was treated as a mere agent for the collection of the tax at the time of the sale of the controlled commodity. The sales tax so collected was declared to be not part of the 'taxable turnover' under the special provisions of the Orissa Sales Tax Act on the ground that as per the definition of 'taxable turnover' under that Act the tax, if any, paid by the purchaser to the dealer was excludible in arriving at the 'taxable turnover', and not on the ground that it was not part of the price for sale of the goods. The Supreme Court did not lay down as a general principle that any amount collected by the dealer specifically as sales tax, must necessarily be excluded in computing the 'turnover' irrespective of the definition of 'turnover' under the provisions of any particular enactment. The principle cannot, therefore, be extended to the case of a dealer in liquor for determining his turnover under the A.P. General Sales Tax Act where the dealer in question is not required to sell the goods at any controlled price and he is not expressly authorised by the Act to collect the tax paid by him from the customer. Further under the provisions of the A.P. General Sales Tax Act, the definition of 'taxable turnover' does not exclude therefrom the tax paid by the purchaser to the dealer. Under the A.P. General Sales Tax Act, it is the dealer that is liable to pay the tax and the Act does not impose any liability on the purchaser to pay any tax to the dealer. If he pays any amount over and above the actual price of the goods to the dealer, the buyer pays it and the dealer receives it as consideration for the sale of goods and not as sales tax. In the absence of any express provision excluding the tax from the sale consideration, it would be 'other sums charged by the dealer, whatever be the descriptive, name or object thereof' and as such constitutes part of the consideration for the sale.

36. The next case upon which reliance is placed by Sri S. Dasaratharama Reddi, the learned counsel for the petitioner, is Joint Commercial Tax Officer v. Spencer & Co. : AIR 1975 SC1801 . In that case, dealing with the question whether the tax collected by the dealer under section 21-A of the Madras Prohibition Act, 1937, could be included in the turnover under the Madras General Sales Tax Act (1 of 1959) for determining the sales tax payable by the dealer, the Supreme Court held :

'Under section 21-A the tax payable is on the price of the liquor and that tax is to be paid by the purchaser; the seller is required to collect the tax from the purchaser which he has to pay over to the Government. Section 21-A makes the seller a collector of tax for the Government, and the amount collected by him as tax under this section cannot therefore be a part of his turnover. Under the Madras General Sales Tax Act, 1959, the dealer has no statutory duty to collect the sales tax payable by him from his customer, and when the dealer passes on to the customer the amount of tax which the former is liable to pay, the said amount does not cease to be the price for the goods although 'the price is expressed as X plus purchase tax'. But the amounts collected by the assesseees concerned in these appeals under a statutory obligation cannot be a part of their taxable turnover under the Madras General Sales Tax Act, 1959.'

37. In coming to that conclusion the Supreme Court did not differ from the principle laid down in *George Oakes (P.) Ltd. v. State of Madras* : [1962]2SCR570 or *Delhi Cloth and General Mills Co. Limited v. Commissioner of Sales Tax, Indore*, : AIR 1971 SC2216 . In fact, it affirmed that view and distinguished the case before it in the following words :

'So long as there is no law empowering the dealer to collect tax from his buyer or seller, there is no legal basis for saying that the dealer is entitled to collect the tax payable by him from his buyer or seller. Whatever collection that may be made by the dealer from his customers, the same can only be considered as valuable consideration for the goods sold. It is clear from section 21-A of the Madras Prohibition Act, 1937, that the sales tax which the section requires the seller of foreign liquor to collect from the purchaser is a tax on the purchaser and not on the seller. That is what makes the authorities on which counsel for the appellants relied inapplicable to the cases before us.'

38. This decision far from helping the contention of the petitioner's counsel lends support to the conclusion reached by us above.

39. Reliance is also placed on another judgment of the Supreme Court reported in *McDowell & Co. v. Commercial Tax Officer* : [1977]1SCR914 . Dealing with the case of excise duty and countervailing duty paid by the purchasers of Indian

liquors and the question whether they could properly be treated as part of the 'turnover' of the dealer, the Supreme Court observed :

'Excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. It is an indirect duty which the manufacturer or producer passes on to the ultimate consumer, that is, its ultimate incidence will always be on the customer The method of collection does not affect the essence of the duty, but only relates to the machinery of collection for administrative convenience. This will show that the taxable event in the case of duties of excise is the manufacture of goods and the duty is not directly on the goods but on the manufacture thereof Excise duty is a duty on the production or manufacture of goods produced or manufactured within the country though laws are to be found which impose a duty of excise at stages subsequent to the manufacture or production

40. It further held that apart from the manufacturer of Indian liquors and an owner of a bonded warehouse, who are primarily responsible for payment of the excise duty and countervailing duty respectively, the Rules, particularly rules 79 and 81 to 84 of the Andhra Pradesh Distillery Rules, 1970, make every intending purchaser of Indian liquors who seeks to obtain distillery passes, liable for payment of the excise duty before lifting the quantities mentioned therein from the distillery or the distributor, as the case may be. Thus, the intending purchasers of Indian liquors, who seek to obtain distillery passes are also legally responsible for payment of the excise duty which is collected from them by the authorities of the excise department. Having regard to the above position under the relevant rules, the Supreme Court observed that the phrase 'any sums charged by the dealer' has to be understood in its ordinary popular sense. It also observed that so construed the phrase means 'what is demanded and collected or received by the dealer'. In the case of excise duty or countervailing duty paid directly to the excise authorities by the purchasers of Indian liquors before the quantity is lifted from the distilleries or the bonded warehouses on the strength of the distillery or the warehouse passes, the amount so paid is not included in the bill of sale as consideration for the sale. Thus, the excise duty or the countervailing duty is not charged by the dealers, but is charged by the excise authorities and is deposited directly by the buyers of the

liquor in the State exchequer. Hence, the sales tax authorities were not competent to include that amount of excise duty and countervailing duty paid by the purchasers in the turnover of the appellants. The reasons for inclusion of such tax or duty in the 'turnover' as explained in George Oakes case : [1962]2SCR570 and George Oakes (P.) Ltd. v. State of Madras : AIR 1962 SC1352 were not dissented from in this case. In fact the Supreme Court categorically observed as follows :

'Under the definition of turnover in the principal Act the aggregate amount for which goods are bought or sold is taxable. This aggregate amount includes the tax as part of the price paid by the buyer. The amount goes into the common till of the dealer till he pays the tax. It is money which he keeps using for his business till he pays it over to Government. Indeed, he may turn it over again and again till he finally hands it to Government.'

and on the facts pointed out the distinction in the following words :

'In the instant cases, the excise and countervailing duties did not go into the common tills of the appellants and did not become a part of their circulating capital. We are, therefore, of the view that the sales tax authorities were not competent to include in the turnovers of the appellants the excise duty and the countervailing duty which was not charged by them but was charged by and paid directly to the excise authorities by the buyers of the liquors.'

41. In that judgment, their Lordships expressly referred to the Full Bench judgment of this Court in Government of Andhra v. East India Commercial Company Limited [1957] 8 STC 144 (FB) with approval. That could only be on the ground that the charity or 'dharmam' collected by the dealer from the purchaser on the occasion of the sales was part of the consideration for sale and went into the common till of the dealer and as such part of the 'turnover'. This decision, far from supporting the petitioners, reiterates the position laid down in the above Full Bench decision of the Andhra Pradesh High Court and the George Oakes case : [1962]2SCR570 .

42. In the latest unreported decision of the Supreme Court in (C.A. No. 3345 of 1979) Anand Swarup Mahesh Kumar v. Commissioner of Sales Tax [since reported in : [1981]1SCR707] in which Venkataramiah, J., dealt with the question

whether the market fees collected under the U.P. Kisi Utpadan Mandi Adhiniyam (U.P. Act No. 25 of 1964) is includible in the turnover of purchases made by the dealer for purposes of levy of sales tax under section 3-D of the U.P. Sales Tax Act. Referring to the specific provisions of the U.P. Act, as amended and in force at the relevant time, which expressly laid down that the commission agent may realise the market fee from the purchaser and shall be liable to pay the same to the committee, the court upheld the second contention raised by the dealer, namely, that the market fees payable under the 'Adhiniyam', being sum which can be collected from the purchaser by virtue of the provision contained in section 17(iii)(b) of the Adhiniyam by the commission agent who is required to pay the same to the market committee, cannot be considered as forming part of consideration paid or payable by the purchaser to the commission agent in respect of purchase of goods and therefore cannot be included in the turnover of purchases for purposes of levy of tax. It rejected the third contention, namely, that the commission payable by a purchaser of goods to the commission agent operating within the market area being a tax payable by the purchaser by virtue of section 10(2) of the Adhiniyam read with rule 79(3) of the Rules framed thereunder cannot also be included in the turnover of purchases. Reiterating the principles laid down in *George Oakes case* : [1962]2SCR570 and *Delhi Cloth and General Mills Company Limited v. Commissioner of Sales Tax, Indore* : AIR 1971 SC2216 his Lordship emphasised the distinction in the following words :

'..... where a dealer is authorised by law to pass on any tax payable by him on the transaction of sale to the purchaser, such tax does not form part of the consideration for purposes of levy of tax on sales or purchases but where there is no statutory provision authorising the dealer to pass on the tax to the purchaser, such tax does form part of the consideration when he includes it in the price and realises the same from the purchaser. The essential factor which distinguishes the former class of cases from the latter class is the existence of a statutory provision authorising a dealer to recover the tax payable on the transaction of sale from the purchaser. It is on account of the above distinction that this court held in *Joint Commercial Officer, Division-III, Madras-2 v. Spencer & Co.* : AIR 1975 SC1801 that the sales tax which a seller of foreign liquor was liable to pay under section 21-A of the Madras Prohibition Act, 1937, did not form part of the turnover on

which sales tax could be levied under the Madras General Sales Tax Act, 1959, because the seller was entitled to recover the sales tax payable by him from the purchaser.'

43. The rejection of the third contention also is based on the above principle enunciated by the Supreme Court. Under the provisions of the Act, the commission chargeable by the commission agent is not a sum which he is required to charge the buyer under any law which he in turn has to pay to an authority either by way of tax or by way of fee, but was only a reward for the services rendered by him.

44. The Supreme Court in *Delhi Cloth and General Mills Company Limited v. Commissioner of Sales Tax* : AIR 1971 SC2216 was considering the case of a dealer who, while collecting the price of a controlled commodity, included in the price, the tax payable by him to the Government. The court observed therein :

'..... he (the dealer) cannot be said to be collecting the tax payable by him from his buyers. The levy and collection of tax is regulated by law and not by contract. So long as there is no law empowering the dealer to collect tax from his buyer or seller, there is no legal basis for saying that the dealer is entitled to collect the tax payable by him from his buyer or seller. Whatever collection that may be made by the dealer from his customers the same can only be considered as valuable consideration for the goods sold.'

45. The Supreme Court further observed :

'If the dealer passes on his tax burden to his purchasers he can only do it by adding the tax in question to the price of the goods sold. In that event, the price fixed for the goods including the tax payable becomes the valuable consideration given by the purchaser for the goods purchased by him. If that be so, the tax collected by the dealer from his purchasers becomes a part of the sale price fixed as defined in section 2(o).'

46. Even while so laying down, the Supreme Court declared that where the provisions in the Sales Tax Acts confer power on the dealers to pass on the

incidence of tax to the purchasers, may call for different considerations. It must be noted that so far as the Andhra Pradesh General Sales Tax Act is concerned, which renders the dealer liable to pay tax, it does not contain any such special provision authorising the dealer to pass on the burden of tax to the purchasers.

47. Reliance was also placed by the learned counsel for the petitioners on a Division Bench judgment of this Court reported in *Hyderabad Race Club v. Betting Tax Officer* (1979) 1 An WR 231 which concerns payment of tax by the Hyderabad Race Club on the collection made by it for admitting persons into its enclosures. On a consideration of the provisions of the Andhra Pradesh (Telangana Area) Horse Racing and Betting Tax Regulation, the court held :

'..... the payment of tax at the rate of 25 per cent of the gross sum arises in cases of the tax payable by way of consolidated payment under the permission obtained from the Government subject to certain conditions as may be prescribed

The Rules made it clear that only in a case where the race club is permitted under section 3(2)(a) to pay the amount of tax by means of consolidated payment, the 25 per cent of tax can be levied on the gross sum received by it on account of payments for admission. On the other hand, under section 3(1) read with rule 12 as well as the second set of Rules, the race club collects the tax at the rate of 25 per cent on the admission fee as an agent of the Government and pays the same every week by submitting the returns, viz., one of the methods of payment recognised under the Rules. The contention of the learned counsel for the petitioner that the race club collects the tax as an agent of the Government and any levy of further tax on the gross amount will amount to tax on tax, has to be accepted.'

48. There is no such provision under the Andhra Pradesh General Sales Tax Act with regard to tax on sale of liquors.

49. It was next contended that section 64A of the Sale of Goods Act would give an indication that where tax is payable on the sale or purchase of goods, it could be passed on to the purchaser, as such when the sales tax on liquor is passed on to the purchaser, it is validly passed on, and therefore the tax component of the bill

amount should not be treated as part of the turnover. We must point out that even by the time the Supreme Court rendered the decision in *Delhi Cloth and General Mills Company Limited v. Commissioner of Sales Tax* : AIR 1971 SC2216 section 64A of the Act had come into force and the turnover with which the Supreme Court was concerned, for at least one year, related to the period subsequent to the enactment of section 64A. If section 64A were to have any bearing on the question in issue, the Supreme Court could not be assumed to have lost sight of it. That apart, section 64A of the Act itself does not deal with the question whether the seller or the purchaser is liable to pay sales tax on any transaction. That provision deals with contracts of sale under which there is no provision by the contracting parties determining the liability to pay the increased amount of certain tax or the amount to be deducted in case of decrease in the amount of tax subsequent to the date of the contract of sale. Section 64A of the Sale of Goods Act statutorily lays down that in such cases, if there is an increase of customs duty or excise on goods and any tax on the sale or purchase of goods, in the absence of any contract to the contrary, the seller may add such increased amount of tax to the contract price. It also provides that if there is any decrease or remission, the buyer may deduct so much amount from the contract price as would be equivalent to the decrease of tax or remitted tax. This provision does not deal with the existing liability to tax; it only deals with the liability in respect of increase or decrease in tax or duty subsequent to the date of contract. Further, it only authorises the seller to add to or deduct from the contract price. Such a provision, in our view, does not affect the principle laid down by the Supreme Court that in determining whether the tax collected by a dealer at the time of the sale of the goods should be included in his turnover or not.

50. It was also contended that the Supreme Court has drawn a distinction between cases where the prices of goods are controlled by law and cases of free sales or voluntary sales. The learned counsel urges that in a later case, *Vishnu Agencies (Pvt.) Ltd. v. Commercial Tax Officer* : [1978]2SCR433 , where the sale was a compulsory sale for a fixed price, the court held that no sales tax is leviable. But in those cases, the question was not whether the tax collected is a part of the turnover. The question considered therein was whether the transaction is one of sale at all so as to attract sales tax and the contention was that in case of

compulsory sale, as in the case of compulsory levy or in the case of sale of a controlled commodity, in favour of a permit-holder, there is no sale at all, and the court held :

'The transaction of supply of cement by a licensed stockist of cement to a permit-holder under the provisions of the West Bengal Cement Control Act, 1948, and the Orders made under section 3(2) of that Act amounts to a sale within the meaning of section 2(g) of the Bengal Finance (Sales Tax) Act, 1941, and the turnover representing those sales is exigible to sales tax. Similarly, the transaction of purchase of paddy from paddy growers by the licensed procuring agents under the Andhra Pradesh Paddy Procurement (Levy) Order and the transaction of supply of rice by rice millers to the wholesale or retail dealers under the Andhra Pradesh Procurement's (Levy) and Restriction on Sale Order, 1957, are sales within the meaning of section 2(1)(n) of the Andhra Pradesh General Sales Tax Act, 1957, and the turnovers relating to those purchases or sales are exigible to purchase tax or sales tax as the case may be.'

51. In the course of the judgment, their Lordships observed :

'The limitations under the Cement Control Act and the Orders made thereunder on the normal rights of dealers and consumers to supply and obtain the goods, the obligations imposed on the parties and the penalties prescribed thereunder do not militate against the position that eventually the parties must be deemed to have completed the transaction under an agreement by which one party bound itself to supply the stated quantity of goods to the other at a price not higher than the notified price and the other party consented to accept the goods on the terms and conditions mentioned in the permit or the order of allotment issued in its favour by the concerned authority. Offer and acceptance need not always be in an elementary form, nor does the law of contract or of sale of goods require that consent to a contract must be express. Offer and acceptance can be spelt out from the conduct of the parties which covers not only their acts but omissions as well.'

52. So much so, in *Hindustan Sugar Mills Limited v. State of Rajasthan* : [1979]1SCR276 , the freight charges added to the controlled price of a controlled

commodity and recovered from the purchaser was held to be part of the consideration for the sale and was treated as part of the turnover liable to tax. In this, the view taken in George Oakes case : [1962]2SCR570 was reaffirmed.

53. Reliance was also placed by the learned counsel for the petitioners on the decision of the Supreme Court in P. S. S. Kharkhane (P.) Ltd. v. State of Mysore [1973] 32 STC 104. That was a case where notwithstanding that the Board's standing order specifically directed not to include the sales tax in the taxable turnover, it was included in the turnover of the dealer. The contention of the dealer that having regard to the Board's standing orders and the price list which specifically stated that the sales tax would be extra the sales tax component should not be computed in the turnover, was upheld. The court held that the bills must be viewed in the context of the price and so viewed, levy of the sales tax was on the purchaser.

54. In view of the above discussion, the contention based on these decisions that a different note was struck by the Supreme Court, having regard to the provisions of section 64A of the Sale of Goods Act and having regard to the incidence of tax, that the one laid down in George Oakes (Pvt.) Ltd. v. State of Madras : [1962]2SCR570 and Delhi Cloth and General Mills Company Limited v. Commissioner of Sales Tax : AIR 1971 SC2216 and a Full Bench judgment of our Court reported in Government of Andhra v. East India Commercial Co. Ltd. [1957] 8 STC 114 (FB) cannot be accepted. What is deducible from these decisions and in fact uniformly laid down is that the burden of payment of sales tax is on the 'dealer'. If any tax is levied by a particular enactment on the purchaser and if such tax is collected by the dealer at the time of sale specifically showing that he has paid it as tax, then the dealer, in such a case, collects it not as part of the price for the sale of the goods but collects it as tax as an agent of the Government. In such an event, the tax so collected, not being the consideration for the sale of goods, is not includible in the turnover, much less is it includible in the taxable turnover. Also in a case where a particular enactment expressly authorises the dealer to pass on the tax to the purchaser and in fact it is passed on at the time of sale to the purchaser, the amount of tax so collected by the dealer cannot be treated as part of the consideration for the sale of the goods and as such cannot be treated as

part of the turnover. But where the particular enactment is silent and the seller collects a certain amount for the sale of the goods, even if he specifies part of that amount in the bill to be sales tax and the rest of the the amount to be the price of the goods, the entire amount so collected from the purchaser is paid by the purchaser as price for the purchase of goods. When the seller is not expressly empowered by law to collect tax under the provisions of the Act, from the purchaser, the amount so paid forms part of the consideration for the purchase of the goods.

55. The contention of the learned counsel for the petitioners, however, is that so long as the seller is not prohibited from passing on the burden of tax to the purchaser, he should stand in the same position as a seller who is authorised by the enactment to expressly pass on the tax to the purchaser. We are unable to agree for the simple reason that as laid down by the Supreme Court in *Delhi Cloth and General Mills Company Limited v. Commissioner of Sales Tax* : AIR 1971 SC2216 , the burden of tax is imposed by the statute and not regulated by contract. Unless expressly authorised by the provisions of the particular Sales Tax Act, a dealer cannot recover the tax from the buyer. If at all, he can recover it only by virtue of a contract for sale under which the buyer either expressly or impliedly agrees to pay only the price of the goods as such but also the tax as part of the consideration for the goods purchased by him. Of course, where there is express prohibition against passing on of the tax to the buyer, even if the seller were to recover the amount from buyer as consideration, such amount would be includible in the taxable turnover. So also where any amount of tax over and above the tax imposed by the statute is collected, that excess amount is paid as consideration for sale and as such would also be includible in the taxable turnover. As the incidence of tax is regulated by law and not by contract and where the law does not expressly authorise the levy of tax on the buyer or authorises the seller to pass it on to the buyer even if in fact it is passed on to the buyer, it is done only as part of the contract for the sale of the goods and the purchaser pays that amount as part of the consideration for the purchase of the goods. He does not pay to the seller under any statutory obligation imposed upon him. Such a payment cannot be other than the price for the goods purchased by him and the amount received by the dealer from the buyer cannot but be part of his turnover. Since there is no

provision under the Andhra Pradesh General Sales Tax Act to exclude any portion of such amount received by him in computing the taxable turnover, the petitioners cannot claim the deduction of that amount.

56. It was next contended that where the amount is shown in suspense account and not shown in the bills, it cannot be treated as part of the turnover. It is claimed by the petitioner, for whom Mr. Krishna, the learned counsel appears, that the same should be the position where the amount is collected under special agreement and is not included in the turnover, for this amount is refundable to the purchaser after the assessments are over. Reliance is placed in this behalf on the decision reported in *State of Mysore v. Mysore S. & M. Co. Ltd.* [1960] 11 STC 734. But that was a case where a registered dealer received certain amounts from its constituents merely by way of deposits on the express understanding or undertaking that the moneys would be refundable to the constituents if the assessee was held not liable to include the relevant sales in its taxable turnover. The court found that the assessee held the moneys as a mere custodian and on the fulfilment of the conditions became a trustee for the depositors. The court further held :

'When once the tax authorities determined that the proceeds of the sales were not within the taxable turnover of the assessee, the beneficial ownership became vested in the depositors and the assessee ceased to have any right to continue to hold the moneys. The fact that the physical control of the moneys passed from the 'depositors' to the assessee did not render the receipt a 'collection' by way of tax of any amount under section 11(2) of the Mysore Sales Tax Act, 1948.'

57. This decision, in our view, does not in any way advance the case of the petitioner. There the liability of the entire turnover to tax was itself in doubt and it was a case where the consideration for a particular transaction was includible in turnover and assessable to tax and not a case where part of consideration of a transaction of sale was or was not liable to be included in the turnover. The dispute is not as the quantum of turnover, but whether the particular transaction was liable to tax.

58. When the sales tax payable on the sale of goods is collected by the seller from the purchaser to part with his title in the goods to the purchaser, that becomes part of the price and that amount is includible in the turnover of the dealer. A dealer cannot escape this liability by merely adopting any particular method of accounting. The fact that the amount realised by the dealer from the purchaser for the sale of goods is kept in the suspense account till the assessment of the seller is completed or that it is not included in the bill or in the invoice and recorded separately is not material. What is material is whether that amount was collected from the purchaser by the seller to part with his title in the goods and the purchaser paid that entire amount for acquiring title to the goods. As observed by Viswanatha Sastri, J., in *Government of Andhra v. East India Commercial Co. Limited* [1957] 8 STC 114 at 125 (FB) :

'The fact that the payment is not shown in the bill or invoice as part of the price but separately as an item charged to the purchaser is not a decisive factor The buyer has to pay the total amount of the bill though it is split up into price plus packing charges plus sales tax plus dharmam plus sundry charges From the above standpoint of the buyer, the total amount paid by him to the dealer is the price of the goods. The aggregate amount represents the consideration for the sale moving from him though it might be split up into several heads in the bill. For purposes of book-keeping, the dealer might split up and distribute the amount paid by the buyer among convenient heads like cost price of the goods, labour charges, packing materials, sales tax, dharmam and profit, but the buyer would, in his books, enter the total amount paid by him to the dealer as the cost price of the goods. So far as the buyer is concerned, the whole amount has been paid by him in consideration of the sale and as the price of the goods bought ...'

59. Unless the amount of sales tax was also paid by the buyer, the seller would not part with those goods and the buyer would not acquire title to the goods. The amount realised by the seller, though entered in the suspense account, goes into his common till. There is no statutory provision requiring him to keep it in suspense account or prohibiting him from using it as his own funds. The device of entering these amounts in the suspense account or entering into simultaneous contemporaneous agreements agreeing to refund the said amount in the event of

sales tax authorities not computing that amount in arriving at the total taxable turnover of the seller, cannot make it any the less part of the consideration for the sale of the goods.

60. In view of the above discussion, we have no hesitation in rejecting the petitioner's contention that sales tax component should be excluded in computing the taxable turnover.

61. It was lastly contended very strenuously by Sri S. Dasaratharama Reddi, the learned counsel for the petitioners, that if the sales tax is included in the taxable turnover, there would be heavy incidence of tax and now that after the amendment of the Act, sales tax on liquor is as high as 75 per cent, if a dealer is to pass on the tax to the purchaser, in some cases, he may have to collect more than 500 per cent tax on the value of the goods and that would not only stifle his business but even affect the property rights of the petitioner. The goods in question with which we are concerned in these writ petitions are liquor and beer. As laid down by the Supreme Court in *Nashirwar v. State of Madhya Pradesh* : [1975]2SCR861 business in liquor is such that no citizen can claim to have a fundamental right to carry on the same. As reiterated by the Supreme Court in *Har Shankar v. Deputy Excise and Taxation Commissioner* : [1975]3SCR254 even if the business in such goods is wholly prohibited no citizen can complain of any violation of his fundamental rights and if the State in its wisdom, has imposed such a heavy incidence of tax, may be, it has done so, with a view to restrict this business, When the State has an absolute right even to prohibit the sale of liquor, no valid complaint can be made that the incidence of tax is so heavy as to wholly stifle the entire business. Therefore, any complaint on the ground that the petitioner has a fundamental right guaranteed under article 19(1)(g) of the Constitution to carry on business of sale of liquor cannot be countenanced.

62. It was also argued that this heavy incidence of tax would amount to deprivation of property. We are not impressed with this contention either. Even though the sales tax component is included in the taxable turnover, there is no prohibition against passing on of the sales tax to the buyer. We are unable to appreciate as to how it amounts to deprivation of the petitioner's property. The entire amount of

sales tax which a dealer is required to pay would have been collected by him from the buyer. Even if on account of the increase in the turnover he would have to collect a much higher amount from the buyer, he would still be not paying any part thereof from his capital and he would not be deprived of his property. Only the percentage of his profits may come down. Further, the dealer is not prohibited from so arranging his business as to collect even this portion of the tax from the purchaser as was done by the petitioner in W.P. No. 5468 of 1979. In fact, he has so safeguarded his interest that even after paying that extra amount of tax which he would be liable to pay, if the sales tax component is included in his turnover, he would be saving some amount and possibly even more from out of the amounts collected than what was due to him by way of consideration for the sale.

63. The learned counsel, Mr. Dasaratharama Reddi, also contended that if the sales tax component is held to be part of the consideration for sale and is included in the turnover, it would amount to tax on tax and as such would be beyond the competence of a State Legislature and would be ultra vires of entry 54 of List II of the Seventh Schedule to the Constitution, which reads as follows :

'Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92-A of List I.'

64. The contention is that the tax would be on the sale of goods and not on the purchase of goods. But as discussed above, where the tax is sales tax and is not expressly authorised by enactment to be passed on to the purchaser, the sales tax is payable by the dealer, i.e., the seller. The mere fact that the dealer passed on the tax to the purchaser does not render the amount which he collects from the purchaser a tax. As discussed earlier, it is realised by him and paid by the purchaser only as consideration for the sale of goods, i.e., price. Thus the very basis of the contention that it amounts to a tax on tax falls to the ground.

65. Dealing with a similar contention with reference to section 8-B of the Madras General Sales Tax Act and the Madras General Sales Tax (Turnover and Assessment) Rules, the Supreme Court observed in George Oakes case : [1962]2SCR570 as follows :

'..... (a) a registered dealer is enabled to pass on the tax, (b) an unregistered dealer cannot do so, and (c) the amount collected by way of tax is to be shown separately, for it has to be paid over the Government. This does not mean that it is incompetent to the legislature enacting legislation pursuant to entry 54 in List II by suitable provision to make the tax paid by the purchaser to the dealer together with the sale price in consideration of the goods sold, a part of the turnover of the dealer; nor does it mean that the tax as imposed by Government is a tax on the buyer making the dealer a mere collecting agency so that the tax must always remain outside the sale price. When the seller passes on the tax and the buyer agrees to pay sales tax in addition to the price, the tax is really part of the entire consideration and the distinction between the two amounts - tax and price - loses all significance from the point of view of legislative competence.'

66. That decision of the Supreme Court is sufficient to reject the contention of the petitioners.

67. To sum up : under the Andhra Pradesh General Sales Tax Act, the tax is leviable on the turnover as defined under the Act. That includes the total consideration for the sale of the goods. Sales tax is attracted when the taxable event, that is 'the sale' occurs and the dealer is liable to pay tax. Sometimes the incidence of tax is expressly laid by law on the purchaser. But where there is no such specific provision, it is the seller-dealer that is liable to pay tax. Though the dealer invariably passes on the tax to the purchaser of the goods, it is the dealer that is liable to pay tax. Where a dealer is authorised by law to pass on any tax payable by him on the transaction of sale to the purchaser, such tax does not form part of the consideration and therefore does not form part of 'turnover' for the purpose of levy of sales tax. Such amount does not go into the common tills of the dealers and does not become part of the consideration and does not become part of their circulating capital. But there is no specific statutory provision authorising the dealer to pass on the tax to the purchaser, such tax does not (sic) form part of the consideration when he includes it in the price and realises the same from the purchaser. The existence of a specific statutory provision authorising the dealer to recover the tax payable on the transaction of sale from the purchaser constitutes the distinguishing factor between these two classes of cases. Tax may be imposed

only by law and not by contract. When the purchaser is under no statutory obligation to pay the tax but the amount is collected from the purchaser, the dealer who is the seller of the goods collects it only by way of price or valuable consideration for the sale of the goods. Whether this amount is shown in the bill as part of the consideration or expressly as tax or whether the dealer collects this amount under a separate agreement, but none the less collects it for parting with the property in the goods to the purchaser, this amount constitutes the price for the sale of the goods and not tax as such and would be part of the turnover liable for tax. Under the Andhra Pradesh General Sales Tax Act or in any other law governing the sales of liquor in Andhra Pradesh, there is no statutory provision imposing the liability of such tax on the purchaser or expressly authorising the seller to pass on the tax to the purchaser of liquor. As found by the sales tax authorities, this tax is, being realised by the dealer at the time of the sale of the liquor, passed on to the purchasers. The mere fact that there was a contemporaneous agreement to refund the amount in the event of the same not being charged by the commercial tax authorities or the fact that it was kept under suspense account separately and was not shown in the bill, is not decisive of the fact that it was not part of the consideration or that it was not charged by the dealer to transfer the property in the goods to the buyer. Therefore, the amount of tax so collected and passed on to the purchaser also forms part of the price for the sale of the goods and must therefore be treated as 'turnover' exigible to tax.

68. In view of the foregoing discussion, we hold that the sales tax collected by the dealer from the purchasers in respect of liquor sold to them can be validly computed as part of the taxable turnover. All the contentions to the contrary fall to the ground. That fact that the amount of tax specifically shown in the bill as tax or collected by the dealer under a specific agreement makes no difference so long as it is collected by the seller for parting with the property in the goods sold by him. We, therefore, see no merit in these writ petitions and tax revision case and accordingly dismiss the same, but in the circumstances, without costs. Advocate's fee Rs. 250 in each of these cases.

69. Leave rejected. As we have only followed the Full Bench decision of our Court and the decisions of the Supreme Court in regard to the several contentions raised

in the writ petitions and the T.R.C., we are unable to certify that these matters raise such questions of general importance and require the consideration by the Supreme Court. However, as the petitioners seek to move to the Supreme Court by special leave, in the circumstances of the case, while rejecting the request for granting leave to appeal to the Supreme Court, we direct the stay of the recovery of tax involved in these matters for a period of two months from the date of receipt of the judgment.

70. Petitions dismissed.

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