

PETITIONER:
KHAZAN CHAND ETC.

Vs.

RESPONDENT:
STATE OF JAMMU AND KASHMIR AND OTHERS

DATE OF JUDGMENT 13/02/1984

BENCH:

ACT:

Constitution of India 1950, Articles 14 and 265.

Jammu and Kashmir General Sales Tax Act 1962 Section 8

(1) (2) and (3)-Whether valid and constitutional.

Taxing Power of State-What is-Comprehends power to provide for collection of tax and prescribe methods for recovery.

Jammu and Kashmir General Sales Tax Act 1962-Section 8 Sales Tax -Payment of-After prescribed period-Charging of interest on sales tax-Whether valid and legal.

Section 8 (2)-tax paid beyond prescribed period-Interest charged at graduated scale-Permissibility of-Whether violative of Article 114.

Section 8 (3)-Goods sold on credit basis-Liability to payment of sales tax by dealer-Whether arises.

HEADNOTE:

The appellants and the petitioners were assesseees registered as dealers under the Jammu and Kashmir General Sales Tax Act, 1962. They filed their quarterly returns within the time prescribed by the Act but without paying the tax due according to such returns. Some of them also filed revised returns thereafter. The tax due was paid by the assesseees after several months and in some cases by instalments. In a few cases, the full amount of tax was not paid even by the date the assessment orders came to be made. In the case of most of the Assesseees the Assessing Authority levied penalty under sub-section (2) of section 8 of the Act before making any assessment. In other cases, orders requiring interest to be paid were made along with the assessment orders.

The assesseees who were appellants in this Court, had filed writ Petitions in the High Court challenging the validity of section 8 of the Act under which interest was sought to be recovered as also the demand for payment of interest. The High Court dismissed the Writ Petitions.

In the Appeals and Writ Petitions to this Court the assesseees were:

- (a) dealers who had filed their returns but had not deposited the full amount of tax due according to such returns, and the Assessing

859

Authority, having accepted the returns, had issued a composite notice of demand calling up them to pay the amount of tax along with interest due on it,

- (b) dealers who had filed their returns but had paid the tax due according to such returns after the expiry of the prescribed time and in whose cases the Assessing Authority had accepted the returns

and had issued a notice of demand asking them to pay interest on the amount of tax for the period for which such payment was delayed, and

- (c) dealers who had filed their returns but had not paid the amount of tax due according to such returns by the prescribed time but had paid it later and notices were issued against them calling upon them to pay interest for the period of default before making any order of assessment.

It was contended on their behalf that:

- (1) The charging of interest from the assesseees was violative of Article 265 of the Constitution as there was no legislative power in the State Legislature to make a law providing for payment of interest if the amount of tax was not paid by the prescribed time, and, for this reason, the provisions of section 8 of the Act in so far as they provide for payment of such interest are beyond the legislative competence of the State Legislature and, therefore unconstitutional.
- (2) Sub-section (2) of section 8 of the Act was void as infringing Article 14 of the Constitution because its provisions are discriminatory, arbitrary and unreasonable.
- (3) The Assesseees carried on business on credit basis and as by the dates when they filed their quarterly returns their customers had not paid to them the price of goods sold to them, the Assesseees were not bound to pay tax along with their returns but were bound to pay tax in respect of these transactions of sales only when the amount of sale price was received by them from their customers.
- (4) In some cases, the amount of interest claimed from the Assesseees exceeded the amount of tax paid by them and, therefore, the demand for such excess amount of interest was bad in law.
- (5) The Assesseees were not liable to pay interest on the amount of tax not paid in time without a notice of demand for payment of tax being first issued.
- (6) Interest was levied by the Assessing Authority for the entire

860

period of default at the maximum rate prescribed by sub-section (2) of section 8 which was contrary to the provisions of that sub-section.

^

HELD : The constitutionality of sub-section (1), (2) and (3) of section 8 of the Jammu and Kashmir General Sales Tax Act 1962 upheld. The State however restrained from recovering from the Assesseees, interest on the amount of quarterly tax paid after the expiry of the date prescribed for payment by sub-section (3) of section 8 of the Act at a rate other than the rate of one per cent per month for the first three months of default and at the rate of two per cent per month for the next three months of default and at the rate of three per cent for the period of default exceeding six months. [881 G-H; 882A]

1. (i) The Constitution of India, does not apply in its entirety to the State of Jammu and Kashmir because that State holds a special position in the Constitutional set up of the country. Article 370 makes special provisions with respect to the State of Jammu and Kashmir. Under sub-clause (c) of clause (1) of Article 370 the provisions of Articles

1 and 370 apply in relation to the State of Jammu and Kashmir and under sub-clause (d) of clause (1) of Article 370 such of the other provisions of the Constitution apply in relation to that State subject to such exceptions and modifications as the President may specify by an order issued with the concurrence of the Government of the State. In exercise of the power conferred by clause (1) of Article 370 the President of India, with the concurrence of the Government of the State of Jammu and Kashmir, has made the Constitution (Application to Jammu and Kashmir) Order, 1954 (C. O. 48) which was amended from time to time. The provisions of the Constitution of India as in force on June 20, 1964. and as amended by the Constitution Amendment Acts set out in clause (2) of that Order apply in relation to the State of Jammu and Kashmir subject to the exceptions and modifications set out in the said clause. By sub-clause (6) (a) of clause (2) of the said Presidential Order, Clause (1) of Article 246 of the Constitution of India was made applicable to the State of Jammu and Kashmir with certain modifications, while clause (3) of Article 246 was not made applicable to the State. Sub-clause (22) of clause 2 of the said Presidential Order applies List I in the Seventh Schedule to the State of Jammu and Kashmir with the omissions and modifications mentioned in the said sub-clause. Entries 92 and 92A of List I apply to the State of Jammu and Kashmir in an unmodified form. By the same sub-clause, List II in the Seventh Schedule, namely, the State List, does not apply to the State of Jammu and Kashmir. [870G-H; 871A-B]

(ii) Thus under section 5 of the Constitution of Jammu and Kashmir the executive and legislative power of the State extends to all matters with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India under the Constitutional provisions applicable to the State of Jammu and Kashmir, the power of the State Legislature to enact a law relating to taxes on intra-State sale or purchase of goods is the same as that of the Legislatures of other States in India. By sub-clause (7) of clause 2 of the said Order, Article 265 is made applicable to the State of Jammu and Kashmir. Section 114 of the Constitution of

861

Jammu and Kashmir is in terms identical with Article 265 of the Constitution of India which provides that "No tax shall be levied or collected except by authority of law." [871B-D]

(iii) The power to make a law with respect to tax comprehends within it the power to levy that tax and to determine the persons who are liable to pay such tax, the rates at which such tax is to be paid and the event which will attract liability in respect of such tax. This is done by the charging sections of the particular tax law. The taxing power of the state will also comprehend within it the power to provide for quantification of the liability of persons made liable to pay the tax. This is done by the provisions relating to assessment. The taxing power will also comprehend within it the power to provide for collection of tax including prescribing the methods of recovery of the amount of tax due if the person liable to pay the tax does not voluntarily pay it. The power to make a law with respect to a tax includes not only what has been set out above but also a power to make provisions in the relevant statute with respect to all matters ancillary and incidental to the levy, assessment, collection and recovery of tax. Collection of tax by the State may be either after the liability is quantified by assessment or may be prior to

actual assessment by requiring the assessee to pay before any assessment is made the amount of tax admitted to be due and payable by him. [872B-E]

Whitney v. Commissioners of Inland Revenue, L.R. 1926 A.C. 37, 51 H. L. 10 T. C. 79, 110; Chaturam and others v. Commissioner of Income Tax, Bihar (1947) F.C.R.116, 126; (1947) 15 I.T.R 302, 308; Messrs Chaturam Horilram Ltd. v. Commissioner of Income Tax, Bihar and Orissa, [1955] 2 S.C.R. 280, 297-8; (1955) 27 I.T.R. 708, 715-6 referred to.

(iv) One of the methods of collection of revenue adopted by the Act, is to require that tax due according to the quarterly returns should be paid before filing such returns and it was within the legislative competence of the Legislature of the State of Jammu and Kashmir to provide for recovery of the amount of tax due under quarterly returns if default is made in paying such amount by the prescribed time. [872H; 873A]

(v) Payment of interest in case of default in payment of tax is a means of compelling an assessee to pay the tax due by the prescribed date. It is a mode of recovery of tax and well within the legislative power of the State. [873C]

2. (i) Inter-State trade and commerce is a matter which affects all the States in India and thus the whole country. It is for this reason that in the Seventh Schedule to the Constitution the subject of taxes on the sale or purchase of goods taking place in the course of inter-State trade or commerce has been put in List I and made a Union subject. Taxes on the sale or purchase of goods taking place within the State affect only those who carry on the business of buying and selling goods within the State and, therefore, this subject has been put in List II of Seventh Schedule, namely the State List. [874C-D]
862

(ii) Sales tax is the biggest source of revenue for a State and it is for the State to decide how and in what manner it will raise this revenue and to determine which particular transactions of sale or purchase of goods taking place within that State should be taxed and at what rates. and which particular transactions of sale or purchase of goods should be exempted from tax or taxed at a lower rate having regard to the subject-matter of sale, as for instance, where particular goods constitute necessities for the poorer classes of people or where the goods in question are of such a nature as are required to be exempted from tax or taxed at a lower rate in order to encourage a local industry. Consideration of these matters must, therefore, differ from State to State. Similarly it is for the each State to determine the methods it will adopt to collect its revenue from this source and to decide which methods would be most efficacious for this purpose. If the provisions of the legislation of every State on a particular topic are to be identical in every respect, there is no purpose in including that topic in the State List and it may as well be included in the Union List. Merely because the provisions of a State law differ from the provisions of other State laws on the same subject cannot make such provisions discriminatory. [874D-G]

(iii) Interest is payable under sub-section (2) of section 8 on the amount of tax paid after the expiry of the prescribed date of payment. The rate of two per cent per month and particularly the rate of three per cent per month can be said to be on the high side, but this would not render the provisions of that sub-section void or unconstitutional. Providing for payment of interest in case of delayed payment of tax is a method usually adopted in

fiscal legislation to ensure that the amount of tax which is due is paid by the prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. It is for the State to provide by what means payment of tax is to be enforced and a person who does not pay the amount of tax lawfully and admittedly due by him can hardly complain of the measures adopted by the State to compel him to pay such amount. [875A-C]

(iv) Under the Act, the same rates of interest apply both to the dealer who has made default in payment of tax due by him and to the State Government in case of default made by it in making payment of the amount of tax or penalty which has become refundable as a result of an appellate or revisional order. The graduated rate of interest provided by sub-section (2) of section 8 cannot, therefore be characterised as arbitrary or unreasonable. [875F-G]

3. (i) Under the Act, the liability to pay sales tax is cast upon the dealer. This is made clear by sections 4, 6, and clauses (G), (L) (1), (L) (II), and (n) of section 2. It is immaterial whether the price of goods has been paid to the dealer or is payable to him. The fact that a dealer has sold goods on credit is, therefore, wholly immaterial. This liability is irrespective of the fact whether the dealer has made profit or loss in his business and whether he has received the sale price or not. [876H; 877A-B]

(ii) Section 64-A of the Sale of Goods Act, 1930 does not deal with the liability of the seller to pay sales tax to the Government. [878E]

863

In the instant case, the Assesseees were bound to pay the tax due according to the quarterly returns filed by them before filing such returns and the fact that their customers had not paid to them the sale price did not exempt them from their statutory liability. [878G]

4. The recovery provisions of the Act are meant for speedy and prompt collection of revenue. These provisions are not meant for the benefit of defaulting tax-payers and such defaulters cannot claim that the amount of interest payable by them on delayed tax payment should be scaled down as if they were entitled to claim relief under a debt-relief law. [879 B-C]

5. Under sub-section 8 (1) the tax assessed or any other amount demanded is to be paid within the time specified in the notice of demand. Under sub-section (3), the quarterly tax is to be paid before furnishing the quarterly return but not later than the date prescribed under sub-section (2) of section 7. Accordingly the requirement of sub-section (2) of section 8 that interest will be chargeable from the date specified for payment in the notice of demand cannot be applied to the payment of quarterly tax and necessary alterations as required by sub-section (8) so section 8 will, therefore have to be made in the provisions of sub-section (2) in their application to a default made in payment of quarterly tax and sub-section (2) must be read as providing that interest under sub-section (2) will become payable from the date prescribed by sub-section (3) of section 8 for payment of quarterly tax. [880B-F]

Messrs Royal Boot House etc. v. State of Jammu and Kashmir and others. C.M.P. Nos. 32413 and 32414 of 1983 decided on January 6, 1984 by P. N. Bhagwati, Ag. C. J. and Venkataramiah and Varadarajan, JJ. referred to.

6. Sub-section (2) of section 8 of the Act provides for different rates of interest depending upon the length of the period of default. [881D]

In the instant cases, interest on the amount of quarterly tax not paid in time has been imposed at a uniform rate for the full period of default and not according to the scale of rates prescribed by sub-section (2) of section 8. [881 B]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 12695, 13478-82, 13352 of 1983, 99-100, 133-34, 231, 234-36 of 1984.

[Under article 32 of the Constitution of India]

Civil Appeals Nos. 322-351 of 1984

Appeals by Special leave from the Judgment and Order dated the 24th June, 1983, 19th August, 1983, 1st September, 1983, & 29th December, 1983 of the Jammu and Kashmir High Court in Writ Petition Nos. 430 & 886/82, 364/81, 478/81, 132/82, 338/80, 525/80, 485/80, 67/83, 404/82, 681/82, 679/81, 688/82, 472/81, 678/82, 864 230/81, 229/83, 476/81, 228/83, 471/80, 287/83, 682/82, 344/82 621/82, 302/80, 624/80, 46/83, 912/83, 558/82 and 623/83.

K. K. Venugopal and Anil Dev Singh Satish Vig, S. P. Sharma, L. K. Gupta, Vimal Dave, R. C. Kaushik and Subhash Sharma for the Petitioners/Appellants.

Altaf Ahmed for the Respondents.

The Judgment of the Court was delivered by

MADON, J. This group of Writ Petitions and Appeals by Special Leave challenges the constitutional validity of sub-sections (1), (2) and (3) of section 8 of the Jammu and Kashmir General Sales Tax Act, 1962 (J & K Act XX of 1962) and seeks to quash the orders directing the Petitioners and Appellants before us (herein after for the sake of brevity referred to as "the Assesseees") to pay interest on the amount of tax due according to the quarterly returns filed by them but not paid within the prescribed time.

ALL the Assesseees are registered as dealers under the Jammu and Kashmir General Sales Tax Act, 1962 (hereinafter referred to as "The Act"). Sub-section (1) of section 7 of the Act requires every dealer liable to pay tax under the Act to furnish in the prescribed form a return of his turnover for a year within 120 days from the expiry of that year. Sub-section (2) of section 7 provides as follows:

"Without prejudice to the provisions of sub-section (1), every dealer shall also furnish in the prescribed form quarterly returns for each quarter of the year within thirty days from the expiry of that quarter. Every such return shall be accompanied by a Treasury Receipt or any other proof of having paid the tax due on that return."

Thus, the tax due according to a quarterly return is to be paid by the dealer before filing such return and proof of payment of the tax so due is to accompany such return. Sub-sections (1), (2), (3), (7) and (8) of section 8, omitting what is not relevant for our purpose, provide as follows:

"(1) The tax assessed, or any other amount demanded, under this Act shall be paid in such manner and within

865

such time not being less than fifteen days from the date of the notice of demand. as may be specified in the notice. In default of such payment the whole of the amount then remaining due shall become recoverable in accordance with sections 16 and 16-A.

X X X X X X

(2) If the tax or any other amount due under this Act is not paid by the dealer or any other person, by whom it is payable, within the period specified in demand notice, the dealer or such other person shall be liable to pay interest on the tax or other amount from the date it was payable to the date of actual payment at the following rates-

- (a) If the default is for a period of not exceeding three months at 1% per month;
- (b) If the default is for a period exceeding three months but less than six months at 2% per month;
- (c) If the default is for a period exceeding six months at 3% per month:

Provided that where, as a result of an order under Sections 11, 12, 24 or an order of the Court, the amount of tax or other sum on which interest was payable under this sub-section has been reduced, the interest shall be reduced accordingly and excess interest paid, if any, shall be refunded.

Explanation-Interest shall be charged for full month and not for a part of the month.

(3) Quarterly tax shall be paid before furnishing a quarterly return but not later than the date prescribed under sub-section (2) of Section 7.

X X X X X

(7) Where a dealer furnishes a revised return under sub-section (4) of Section 7 and the tax payable is more than the tax paid on the basis of original return, he shall pay the extra tax payable before furnishing the revised return;

866

Provided that if the tax already paid is in excess of the tax payable, such excess amount shall be treated to have been paid towards the tax payable for the quarter next following the date of furnishing such revised return.

(8) Notwithstanding anything contained in this Act, if a dealer fails to pay the tax payable under this Section, the provisions of sub-section (2) of this Section, Section 16 and Section 16-A shall apply mutatis mutandis to the recovery thereof.

Explanation (1)-Quarterly Tax means the tax payable on the basis of a quarterly return required to be furnished by sub-section (2) of Section 7.

Explanation (2)-Interest under sub-section (2) of this Section on the extra tax payable on the basis of revised return shall be payable from the date next following the date on which the tax was payable on the basis of original return."

The Assessee filed their quarterly returns within the time prescribed by the Act but without paying the tax due according to such returns. Some of them also filed revised returns thereafter. The tax due was paid by the Assessee after several months and in some cases by instalments. In a few cases, the full amount of tax was not paid even by the date the assessment order in their cases came to be made. In the case of most of the Assessee, the Assessing Authority levied penalty under sub-section (2) of section 8 of the Act before making any assessment. In other cases, orders requiring interest to be paid were made along with the assessment orders. It may be mentioned that in cases where the assessment orders were made, the returns filed by the Assessee were accepted as correct. Those Assessee who are Appellants before us filed writ petitions in the Jammu and

Kashmir High Court challenging the validity of section 8 of the Act under which interest was sought to be recovered from them as also the demand for payment of interest. These writ petitions were heard along with other writ petitions in which other questions arose. The High Court dismissed all these writ petitions but made no order as to the costs thereof.

The petitioners before the High Court fell into four categories, namely-

867

- (1) Dealers who had neither filed their returns nor deposited the tax due from them and the Assessing Authority had determined the amount of tax payable by them and issued a composite notice of demand calling upon them to deposit the amount of tax along with interest due on it.
- (2) Dealers who had filed their returns but had not deposited the full amount of tax due according to such returns and the Assessing Authority, having accepted the returns, had issued a composite notice of demand calling upon them to pay the amount of tax along with interest due on it.
- (3) Dealers who had filed their returns but had paid the tax due according to such returns after the expiry of the prescribed time and in whose cases the Assessing Authority had accepted the returns and had issued a notice of demand asking them to pay interest on the amount of tax for the period for which such payment was delayed.
- (4) Dealers who had filed their returns and had paid the tax due according to such returns by the prescribed time but the Assessing Authority had not accepted the returns and had enhanced the amount of tax payable by these dealers and had issued a composite notice of demand calling upon them to pay the amount of tax so enhanced along with interest on it.

We are concerned in these Petitions and Appeals only with dealers who fall under categories (2) and (3) above as also with those dealers who had filed their returns but had not paid the amount of tax due according to such returns by the prescribed time but had paid it later and notices were issued against them calling upon them to pay interest for the period of default before making any order of assessment. We are not concerned in these Petitions and Appeals with those dealers who fall under categories (1) and (4) above.

At the hearing of these Petitions and Appeals, no arguments whatever were advanced before us in support of the contention that sub-section (1) of section 8 was unconstitutional and the challenge

868

to that sub-section must, therefore, fail. The only contentions which were urged at the hearing were as follows:

- (1) The charging of interest to the Assessees is violative of Article 265 of the Constitution of India as there was no legislative power in the State Legislature to make a law providing for payment of interest if the amount of tax was not paid by the prescribed time and, for this reason, the provisions of section 8 of the Act in so far as they provide for payment of such interest are

- beyond the legislative competence of the State Legislature and, therefore, unconstitutional.
- (2) Sub-section (2) of section 8 of the Act is void as infringing Article 14 of the Constitution because its provisions are discriminatory, arbitrary and unreasonable
 - (3) The Assesseees carried on business on credit basis and as by the dates when they filed their quarterly returns their customers had not paid to them the price of goods sold to them, the Assesseees were not bound to pay tax along with their returns but were bound to pay tax in respect of those transactions of sale only when the amount of sale price was received by them from their customers.
 - (4) In some cases, the amount of interest claimed from the Assesseees exceeded the amount of tax paid by them and, therefore, the demand for such excess amount of interest was bad in law.
 - (5) The Assesseees were not liable to pay any interest on the amount of tax not paid in time without a notice of demand for payment of such amount of tax having been first issued to them.
 - (6) Interest was levied by the Assessing Authority for the entire period of default at the maximum rate prescribed by sub-section (2) of section 8 which was contrary to the provisions of that sub-section.

We will first examine the correctness of the contention that the impugned provisions of section 8 of the Act are violative of Article 265 of the Constitution of India. Article 265 of the Constitution

869

provides that "No tax shall be levied or collected except by authority of law." Thus, Article 265 postulates that before any tax can be levied and collected there must be a valid law enacted by an appropriate legislature imposing such tax and providing for its collection. The submission on behalf of the Assesseees was that under the Constitution the Legislature of the State of Jammu and Kashmir has no legislative power to provide for payment of interest in case of late payment of tax. It was not the contention of the Assesseees, as indeed it could not be, that the Legislature of the State of Jammu and Kashmir had no legislative power to enact a law levying a tax on the sale or purchase of goods taking place within the State and making provisions for the collection of such tax, because the constitutional position in this behalf is clear and indisputable. Under clause (1) of Article 246 of the Constitution of India, Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to the Constitution referred to as the "Union List" and under clause (3) of the same Article the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II of the Seventh Schedule to the Constitution referred to as the "State List". Taxes on the sale or purchase of newspapers and on advertisements published therein fall under Entry 92 of the Union List and taxes on the sale or purchase of goods, other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce fall under Entry 92A of the Union List, while taxes on the sale or purchase of goods, other than newspapers, subject to the provisions of Entry 92A of List I, fall under Entry 54 of the State List.

Thus, so far as sales tax is concerned, the Constitution bifurcates the legislative field of taxation between the Union and the States. As a result of this bifurcation, the subject of taxes on intra-State sale or purchase of goods (other than newspapers) falls exclusively within the State power of taxation. The Constitution of India, however, does not apply in its entirety to the State of Jammu and Kashmir because that State holds a special position in the constitutional set up of our country. Article 370 of the Constitution of India makes special provisions with respect to the State of Jammu and Kashmir. Under sub-clause (c) of clause (1) of Article 370 the provisions of Articles 1 and 370 apply in relation to the State of Jammu and Kashmir and under sub-clause (d) of clause (1) of Article 370 such of the other provisions of the Constitution apply in relation to that State subject to such exceptions and modifications as the President may specify by an order issued with the concurrence of the Govern-

870
ment of that State. Thus, by reason of the application of Article 1 to the State of Jammu and Kashmir by sub-clause (c) of clause (1) of Article 370 the State of Jammu and Kashmir is one of the States which form the Union of India and by virtue of sub-clause (d) of clause (1) of that Article so far as the provisions of the Constitution, other than those of Articles 1 and 370, are concerned, the President of India has the power, with the concurrence of the Government of the State of Jammu and Kashmir, to issue an order specifying which of them shall apply to that State and whether such provisions shall apply in their entirety or subject to such exceptions and modifications as may be specified in that order. Article 370 also envisages the convening of a Constituent Assembly for that State and the framing of a separate Constitution for it. In exercise of the power conferred by clause (1) of Article 370 the President of India, with the concurrence of the Government of the State of Jammu and Kashmir, has made the Constitution (Application to Jammu and Kashmir) Order, 1954 (C. O. 48). This order deals with the entire constitutional position of the State of Jammu and Kashmir within the framework of the Constitution of India, except only the internal Constitution of the State Government to be framed by the Constituent Assembly of that State. The Constituent Assembly of the State of Jammu and Kashmir framed its own Constitution repealing and replacing its earlier Constitution. This new Constitution, called the "Constitution of Jammu and Kashmir", was adopted and enacted by the Constituent Assembly of that State on November 17, 1965.

By the Constitution (Application to Jammu and Kashmir) Order, 1954 (C. O. 48), as amended from time to time, the provisions of the Constitution of India as in force on June 20, 1964, and as amended by the Constitution Amendment Acts set out in clause (2) of that Order apply in relation to the State of Jammu and Kashmir subject to the exceptions and modifications set out in the said clause. By sub-clause (6) (a) of clause (2) of the said Presidential Order, clause (1) of Article 246 of the Constitution of India is made applicable to the State of Jammu and Kashmir with certain modifications with which we are not concerned, while clause (3) of Article 246 is not made applicable to that State. Sub-clause (22) of clause 2 of the said Presidential Order applies List I in the Seventh Schedule to the State of Jammu and Kashmir with the omissions and modifications mentioned in the said sub-clause. These omissions and modifications are, however, irrelevant for our purpose inasmuch as Entries

95 and 92A of List I apply to the State of Jammu and
871

Kashmir in an unmodified form. By the same sub-clause, List II in the Seventh Schedule, namely, the State List, does not apply to the State of Jammu and Kashmir, Section 5 of the Constitution of Jammu and Kashmir, however, provides as follows:

"5, Extent of executive and legislative Power of the State- The executive and legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India."

Thus, under the constitutional provisions applicable to the State of Jammu and Kashmir, the power of the State Legislature to enact a law relating to taxes on intra-State sale or purchase of goods is the same as that of the Legislatures of other States in India. By sub-clause (7) of clause 2 of the said Order, Article 265 is made applicable to the State of Jammu and Kashmir. Further, section 114 of the Constitution of Jammu and Kashmir is in terms identical with Article 265 of the Constitution of India and equally provides that "No tax shall be levied or collected except by authority of law."

The question which we, therefore, have to consider is "Whether in the exercise of its power to make a law with respect to taxes on the sale or purchase of goods taking place within the State, the Legislature of that State has the legislative competence to provide for payment of interest on the amount of tax due according to the return filed by an assessee but not paid within the prescribed time?"

As was pointed out by Lord Dunedin in *Whitney v. Commissioner of Inland Revenue*(1); a passage cited with approval by the Federal Court in *Chatturam and others v. Commissioner of Income Tax, Bihar*,(2) and by this Court in *Messrs Chatturam Horilram Ltd. v. Commissioner of Income Tax, Bihar and Orissa*(2):

"Now, there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment.

872

Liability does not depend on assessment. That, ex hypothesis, has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."

It would follow from the above decisions that the power to make a law with respect to a tax comprehends within it the power to levy that tax and to determine the persons who are liable to pay such tax, the rates at which such tax is to be paid and the even which will attract liability in respect of such tax. This is done by the charging sections of the particular tax law. The taxing power of the State will also comprehend within it the power to provide for quantification of the liability of persons made liable to pay the tax. This is done by the provisions relating to assessment. The taxing power will also comprehend within it the power to provide for collection of tax including prescribing the methods of recovery of the amount of tax due if the person liable to pay the tax does not voluntarily pay it. The power to make a law with respect to a tax includes not only what has been set out above but also a power to

make provisions in the relevant statute with respect to all matters ancillary and incidental to the levy, assessment, collection and recovery of tax. Collection of tax by the State may be either after the liability is quantified by assessment or may be prior to actual assessment by requiring the assessee to pay before any assessment is made the amount of tax admitted to be due and payable by him. This is done by making provisions such as those for advance payment of tax and for self-assessment contained in the Income Tax Act, 1961. This is also what sub-section (3) of section 8 of the Act does by requiring that the quarterly tax payable on the basis of a quarterly return required to be furnished by sub-section (2) of section 7 shall be paid before furnishing such return. This is a mode of collection of revenue in advance before quantification of the actual tax liability and the Legislature would be well within its right and would be competent to provide for recovery of such amount if it is not by the prescribed time. The Act, as its long title shows is "An Act to provide for the levy of a general tax on the sale or purchase of goods in the State and for other matters connected therewith" and one of the methods of collection of revenue adopted by it is to require that tax due according to the quarterly returns should be paid before filing such returns and it was within the legislative competence of the Legislature of the State of Jammu and Kashmir to provide for recovery of the amount of tax due under quarterly

873

returns if default is made in paying such amount by the prescribed time. This has been done by the State Legislature by enacting subsection (8) of section 8 under which the provisions of sub-section (2) of section 8 and of sections 16 and 16-A are made applicable mutatis mutandis to the recovery of tax payable by a dealer if he fails to pay it. Sub-section (2) of section 8 provides for payment of interest, section 16 provides for recovery of tax as arrears of land revenue, and section 16-A provides for issue of a garnishee notice to a person from whom money is due, or may become due, to the assessee or to a person who holds, or may subsequently hold, money for or on account of the assessee to pay to the Assessing Authority as much of the money as is sufficient to pay the amount due by the assessee by way of tax. Thus, payment of interest in case of default in payment of tax is a means of compelling an assessee to pay the tax due by the prescribed date. It is a mode of recovery of tax and well within the legislative power of the State.

The challenge to sub-section (2) of section 8 on the ground that the provisions of that sub-section infringe Article 14 of the Constitution is a twofold one, namely:

- (1) that the said sub-section is discriminatory, and
- (2) that it is arbitrary and unreasonable.

Sub-clause (4) of clause 2 of the Constitution (Application to Jammu and Kashmir) Order, 1954, makes Article 14 of the Constitution of India applicable to the State of Jammu and Kashmir. With respect to the charge of discrimination, it was submitted that such high rates of interest for non-payment of tax are not to be found in the sales tax law of any other State and, therefore, by enacting the said sub-section (2) of section 8 and providing for payment of interest at the rate of two per cent per month when the period of default exceeded three months but did not exceed six months and for interest at the rate of three per cent per month if the default was for a period exceeding six months, dealers in the State of Jammu and Kashmir were hostilely discriminated against as compared with dealers in other States. This argument wholly overlooks the very basis

of the scheme of distribution of legislative power contained in our Constitution. Our Constitution is federal in its structure and a salient feature of a federal polity is distribution of legislative and administrative powers between the federated unit and the federating units, that is, between the federal government

874

and the State governments. Thus, matters in respect of which our Constitution-makers felt that there should be uniformity of law throughout the country have been placed by them in the Union List (List I in the Seventh Schedule to the Constitution) conferring exclusive power upon Parliament to make laws with respect thereto, while matters which they felt were of local concern and may require laws to be made having regard to the particular needs and peculiar problems of each State have been assigned to the State Legislatures by placing them in List II of the Seventh Schedule, that is, the State List. Inter-State trade and commerce is a matter which affects all the States in India and thus the whole country. It is for this reason that in the Seventh Schedule to the Constitution the subject of taxes on the sale or purchase of goods taking place in the course of inter State trade or commerce has been put in List I and made a Union subject. Taxes on the sale or purchase of goods taking place within the State affect only those who carry on the business of buying and selling goods within the State and, therefore, this subject has been put in List II of the Seventh Schedule, namely, the State List. Sales tax is the biggest source of revenue for a State and it is for the State to decide how and in what manner it will raise this revenue and to determine which particular transactions of sale or purchase of goods taking place within that State should be taxed and at what rates, and which particular transactions of sale or purchase of goods should be exempted from tax or taxed at a lower rate having regard to the subject-matter of sale, as for instance, where particular goods constitute necessities for the poorer classes of people or where the goods in question are of such a nature as are required to be exempted from tax or taxed at a lower rate in order to encourage a local industry. Consideration of these matters must, from the nature of things, differ from State to State. Similarly, it is for each State to determine the methods it will adopt to collect its revenue from this source and to decide which methods would be most efficacious for this purpose. The provisions of the sales tax law of each State must: therefore, necessarily differ in various respects from the provisions of sales tax laws of other States. If the provisions of the legislation of every State on a particular topic are to be identical in every respect, there is no purpose in including that topic in the State List and it may as well be included in the Union List. Merely because the provisions of a State law differ from the provisions of other State laws on the same subject cannot make such provisions discriminatory.

The second part of the challenge under Article 14 was with

875

respect to the rates at which interest is payable under sub-section (2) of section 8 on the amount of tax paid after the expiry of the prescribed date of payment. It is true that the rate of two per cent per month and particularly the rate of three per cent per month can be said to be on the high side, but we fail to see how this would render the provisions of that sub-section void or unconstitutional. Providing for payment of interest in case of delayed payment

of tax is a method usually adopted in fiscal legislation to ensure that the amount of tax which is due is paid by the prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. It is for the State to provide by what means payment of tax is to be enforced and a person who does not pay the amount of tax lawfully and admittedly due by him can hardly complain of the measures adopted by the State to compel him to pay such amount. It neither lies in the default's mouth to protest against the rate of interest charged to him nor is it open to him to dictate to the State the methods which it should adopt for recovering the amount of tax due by him. In this connection, it is pertinent to note that under section 10-B of the Act, where as a result of an order made in appeal or revision, a refund has become due to the dealer or any other person on account of tax or penalty found to have been paid in excess, the State Government is required to pay to such dealer or person simple interest at the rate of 12 per cent per annum on the amount of such refund from the date such payment was made upto the date on which such refund was granted and in case of delay in refunding the excess amount, interest at the rate of 24 percent per annum if the refund is granted beyond a period of three months out before the expiry of six months from the date of the appellate or revisional order and at the rate of 36 per cent per annum if it is granted thereafter. Thus, under the Act, the same rates of interest apply both to the dealer who has made default in payment of tax due by him and to the State Government in case of default made by it in making payment of the amount of tax or penalty which has become refundable as a result of an appellate or revisional order. The graduated rates of interest provided by sub-section (2) of section 8 cannot, therefore, be characterized as arbitrary or unreasonable.

The remaining contentions are directed not against the constitutionality of the impugned statutory provisions but against the legality of the impugned orders. The first of these contentions is that the assessees, having sold goods on credit basis, are not liable to pay the quarterly tax until they have received from their custo-

876
mers the price of goods sold to them. This contention is founded upon an assumption that the liability to pay the tax under the Act is contingent upon receipt of the sale price—an assumption not warranted by the provisions of the Act. Under the Act, the liability to pay sales tax is cast upon a dealer. This is made clear by section 4 of the Act which is headed "Liability to tax under this Act." The relevant provisions of sub-section (1) of section 4 are as follows:

"Subject to the provisions of this Act, every dealer, except the one dealing exclusively in goods declared tax free under Section 5, shall pay for each year tax on his taxable turnover at a rate not exceeding twenty-five per cent of such turnover as may be determined by the Government and notified by the Government in the Government Gazette and such tax shall be charged on the sale of goods once only.

X X X X X X"

Under section 6, a dealer who has become liable to pay under section 4 is prohibited from carrying on business as a dealer until he has been registered in accordance with the provisions of the Act. Clause (g) of section 2 inter alia defines a 'dealer' as meaning "any person who carries on (whether regularly or otherwise) the business of selling, purchasing or distributing goods, directly or indirectly,

for cash or for deferred payment, or for commission, remuneration, or other valuable consideration". Clause (L) (1) defines the expression "sale" with all its grammatical variations and cognate expressions as meaning "any transfer of property in goods, otherwise than by mortgage, hypothecation, charge or pledge, by any person for cash or deferred payment or for any other valuable consideration...". Clause (L) (II) defines "sale price" as meaning inter alia "the amount of valuable consideration paid or payable to a dealer for any sale made including any sum paid or payable for anything done by the dealer in respect of the goods at the time of or before delivery thereof other than the actual cost of outward freight or delivery or the cost of installation when such cost is separately charged." Under clause (n) of section 2, "turnover" includes the aggregate of the amounts of sale and purchase and parts of sale and purchase made by any dealer whether as principal, agent or in any other capacity. It is clear from the above statutory provisions that the liability to pay sales tax is that of the dealer and not of the person who purchases goods from him and for the purposes of sales tax, it is

877

immaterial whether the price of goods has been paid to the dealer or is payable to him. The fact that a dealer has sold goods on credit is, therefore, wholly immaterial. This Act imposes the liability to pay sales tax on dealers. This liability is irrespective of the fact whether he has made profit or loss in his business and whether he has received the sale price or not. When the liability to pay sales tax is cast by the statute on the dealer, he may pass on to his customer the amount of tax payable by him but he can only do so as a term of the contract of sale. Unless and until the purchaser agrees to pay to his vendor the amount of sales tax payable by the vendor, he is not bound to pay it to the vendor. Where, however, the purchaser agrees to pay such amount, it forms part of the sale price on which sales tax would be payable to the State. Under the sales tax laws of some States, a dealer is permitted to recover or collect from the purchaser the amount of sales tax payable by him. Even then the dealer can recover or collect such amount only if the purchaser agrees to pay it. In such cases, under those sales tax laws the amount so recovered or collected is not treated, either in whole or in part, as part of the sale price and not taxed, provided the amount not taxed is paid over to the State or tax on the full amount, that is, including the amount of tax so recovered or collected, is required to be paid along with the quarterly or monthly return, as the case may be, and then at the time of assessment refund of the whole or part of the tax on the amount so collected is given to the dealer.

In this connection, a reference was made to section 64-A of the Sale of Goods Act, 1930, (substituted for the original section 64-A by the Sale of Goods (Amendment) Act, 1963, under which unless a different intention appears from the terms of the contract, in the event of any duty of customs or excise on goods or any tax on the sale or purchase of goods being imposed, increased, decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods, without stipulation as to the payment of such duty or tax where duty or tax was not chargeable at the time of the making of the contract, or for the sale or purchase of such goods duty paid or tax paid where duty or tax was chargeable at that time, if such imposition or increase so takes effect that

the duty or tax or increased duty or tax, as the case may be, or any part of such duty or tax is paid or is payable, the seller may add so much to the contract price as will be equivalent to the amount paid or payable in respect of such duty or tax or increase of duty or tax, and is to be entitled to be paid and to sue for and recover such addition, and if

878

such decrease or remission so takes effect that the decreased duty or tax only, or no duty or tax, as the case may be, is paid or is payable, the buyer may deduct so much from the contract price as will be equivalent to the decrease of duty or tax or remitted duty or tax, and is not to be liable to pay or be sued for in respect of such deduction. We do not find Section 64-A of the Sale of Goods Act to have any relevance to the point before us. That section is subject to a different intention appearing from the terms of the contract and gives a right to the seller to add the amount of customs or excise duty or sales tax or purchase tax to the price of goods where such duty or tax is imposed for the first time after the contract of sale is made, where the contract does not contain any stipulation as to payment of duty or tax, or in case the goods are sold duty paid or tax paid, where the rate of such duty or tax is increased, to add the extra duty or tax to the contract price. That section also gives a corresponding right to the buyer to deduct so much from the contract price as will be equivalent to the decrease of duty or tax or remitted duty or tax where any decrease or remittance in duty or tax takes place after the making of the contract of sale. Section 64-A thus provides for the rights and liabilities inter se of a seller and buyer of goods, where any customs or excise duty or any sales tax or purchase tax is imposed or its rate increased or decreased, or such duty or tax remitted in whole or in part after the making of the contract of sale. This section does not deal with the liability of the seller to pay sales tax to the Government.

Under section 8-B of the Act, where a registered dealer realizes any amount by way of tax from the purchaser, he is required to deposit it in the Government Treasury or in the office of the Deputy Sales Tax Commissioner within one month of its realization. Where a dealer so deposits the tax, he would get credit for it against the amount of tax payable by him, but from this it does not follow that where he has not been able to recover the amount of tax or sale price from his customers, he is not bound to comply with the statutory requirements of sub-section (3) of section 8 under which he has to pay tax according to the quarterly return furnished by him before the date prescribed for filing such return. The Assesseees were, therefore, bound to pay the tax due according to the quarterly returns filed by them before filing such returns and the fact that their Customers had not paid to them the sale price did not exempt them from their statutory liability in this behalf.

The next contention, namely, that the Assessing Authority was

879

not entitled to impose interest, the amount of which exceeded the amount of tax in respect of which default had been made in paying it by the prescribed date, is equally without any substance. No reason was advanced in support of this contention and we fail to see on what principle the Hindu Law rule of damdupat can be made applicable to a sales tax legislation. The recovery provisions of the Act are meant for speedy and prompt collection of revenue. These

provisions are not meant for the benefit of defaulting tax-payers and such defaulters cannot claim that the amount of interest payable by them on delayed tax payment should be scaled down as if they were entitled to claim relief under a debt relief law. In taking up such a contention, the concerned Assesseees have overlooked the fact that the amount of interest payable by them would not have exceeded the amount of tax not paid by them by the prescribed date had they paid the tax due earlier as also the fact that they would not have been liable to pay any amount at all by way of interest had they paid the tax due by the prescribed date.

We now turn to the contention that the Assesseees were not liable to pay interest unless a notice of demand was first issued to them calling upon them to pay the amount of quarterly tax due from them. In support of this submission reliance placed upon subsections (1) and (2) of section 8 of the Act. In our opinion, reliance placed upon those subsections is misconceived for in doing so the Assesseees have overlooked the other relevant provisions of section 8. Sub-section (1) of section 8 requires that the tax assessed, or any other amount demand, under the Act is to be paid in such manner and within such time, not being less than fifteen days from the date of the notice of demand, as may be specified in the notice and it is when default is made in making such payment that the whole of the amount then remaining due becomes recoverable in accordance with sections 16 and 16-A of the Act. Sub-section (2) of section 8 lays down that if the tax or any other amount due under the Act is not paid within the period specified in the notice of demand, the defaulter will become liable to pay interest on the tax or other amount from the date it was payable to the date of actual payment at the rates mentioned in the said sub-section. Under sub-section (3) of section 8, quarterly tax is to be paid before furnishing the quarterly return but not later than the date prescribed under subsection (2) of section 7. As we have seen, under sub-section (2) of section 7 quarterly returns are to be furnished within thirty days from the expiry of the quarter and such return is to be accompanied by a Treasury Receipt or any other proof of payment of tax due

880 according to that return. This requirement implies that the tax due according to a quarterly return has to be paid before the filing of that return by the prescribed date therefor. Under sub-section (8) of section 8, if a dealer fails to pay the tax payable under that section, the provisions of sub-section (2) of section 8 and of sections 16 and 16-A are to apply mutatis mutandis to the recovery thereof. Thus, provisions of sub-section (2) of section 8 apply when quarterly tax is not paid before furnishing a quarterly return under sub-section (3) of section 8 but by the express terms of sub-section (8) of section 8, the provisions of sub-section (2) of that section will apply to the recovery of quarterly tax not in their entirety but "mutatis mutandis". Under sub-section (1) the tax assessed or any other amount demanded is to be paid within the time specified in the notice of demand. Under sub-section (3), the quarterly tax is to be paid before furnishing the quarterly return but not later than the date prescribed under sub-section (2) of section 7. Thus, by sub-section (3) the time for payment of quarterly tax is not made dependent upon the issuance of a notice of demand and the date for payment to be specified in it but it is statutorily fixed and, as under sub-section (8) of section 8 the provisions of

sub-section (2) are to apply mutatis mutandis to the recovery of quarterly tax, necessary changes must be made in the provisions of sub-section (2) in their application to the recovery of quarterly tax payable under sub-section (3). Accordingly, the requirement of sub-section (2) that interest will be chargeable from the date specified for payment in the notice of demand cannot be applied to the payment of quarterly tax and necessary alterations as required by sub-section (8) will, therefore, have to be made in the provisions of sub-section (2) in their application to a default made in payment of quarterly tax and sub-section (2) must be read as providing that interest under sub-section (2) will become payable from the date prescribed by sub-section (3) of section 8 for payment of quarterly tax. There is thus no substance in this contention. We may also mention that in the case of certain other orders made under the Act demanding interest on default being made in payment of quarterly tax, the challenge thereto on the ground that no interest can be charged unless a notice has been issued demanding payment of quarterly tax was negatived by this Court in Messrs Royal Boodi House etc. v. State of Jammu and Kashmir and others.

881

We now turn to the last contention raised before us, namely, that the Assessing Authority was not entitled to charge interest at the maximum rate but could only charge interest at the graduated rate specified in sub-section (2) of section 8.

It appears that in most, if not in all, orders which have been impugned in these Petitions and Appeals, interest on the amount of quarterly tax not paid in time has been imposed at a uniform rate for the full period of default and not according to the scale of rates prescribed by sub-section (2) of section 8. Thus, where the default was for a period exceeding three months but not exceeding six months, interest has been levied for the full period of default at the rate of two per cent per month and where the default was for a period exceeding six months, interest at the rate of three per cent per month has been levied for the entire period of default. In our opinion, this is not warranted by the terms of sub-section, (2) of section 8 of the Act. Sub-section (2) provides for different rates of interest depending upon the length of the period of default. If the default was for a period not exceeding three months, then the interest could only be charged at the rate of one per cent per month and where the default was for a period exceeding three months but not exceeding six months, then the interest which could be charged can only be one per cent month for the first three months of default and two per cent per month for the remaining period. In the same way, if the default was for a period exceeding six months, interest could be charged only at the rate of one per cent per month for the first three months of default, at the rate of two per cent per month for the next three months of default and at the rate of three per cent per month for the remaining period of default. The grievance made by the Assesseees is justified and their challenge to the impugned orders on this ground must, therefore, succeed.

In the result, though we uphold the constitutionality of sub-sections (1), (2) and (3) of section 8 of the Jammu and Kashmir General Sales Tax Act, 1962, we make the rule issued in each of the Writ Petitions before us absolute only to the extent that we restrain the State and Jammu and Kashmir from recovering from the Assesseees who are Petitioners before us interest on the amount of quarterly

tax paid after the expiry of the date prescribed for payment thereof by sub-section (3) of section 8 of the Act at a rate other than the rate of one per cent per month for the first three months of default and at the rate of two per cent per month for the next three

882

months of default and at the rate of three per cent per month for the period of default exceeding six months. We also allow the Appeals filed by the Assesseees who are Appellants before us to the same limited extent by setting aside the order of dismissal of their writ petitions passed by the Jammu and Kashmir High Court and making the rule issued in each of those writ petitions absolute only to the limited extent specified above.

On an application made to us in that behalf, we grant to the Petitioners and Appellants before us three months' time from today to make payment of the amount of interest due and payable by them according to this Judgment and the State of Jammu and Kashmir will not until the expiry of the said period of three months take any steps to recover such amount of interest from any of the Petitioners and Appellants.

As the Petitioners and Appellants before us have partly succeeded in the Writ Petitions and Appeals filed by them, we make no order as to the costs of these Writ Petitions and Appeals.

N.V.K

Appeals & Petitions partly allowed.

883