PETITIONER:
SALES TAX OFFICER, WARD 2 MORADABAD AND 2 ORS.

Vs.

RESPONDENT:
ORIENTAL COAL CORPORATION MORADABAD.

DATE OF JUDGMENT12/01/1988

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
MUKHARJI, SABYASACHI (J)

CITATION:
1988 AIR 648 1988 SCR (2) 562
1988 SCC Supl. 308 JT 1988 (1) 101
1988 SCALE (1)33

ACT:
Central Sales Tax Act, 1956: Section 9-Amendment t-Central Sales Tax (Amendment) Act 1976, Sec- Effect of-Whether prospective or retrospective.

HEADNOTE:
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The respondent, an unregistered firm of coal merchants with its place of business in Bihar and an office in U.P., was assessed to sales tax by the first appellant in respect of the turnover of coal supplied by the respondent-assessee for the assessment years 1967-68 and 1968-69. The assessee filed writ petitions alleging that the assessment orders were without jurisdiction on several grounds.

The High Court allowed the writ petitions holding that s. 9 of the Central Sales Tax Act as it stood at the relevant time cast a liability to tax only on a 'registered dealer' and not an 'unregistered dealer'.

In the appeals it was contended on behalf of the Department that by virtue of s. 9 of the Central Sales Tax (Amendment) Act, 1976, cl. (b) of the proviso to s. 9(1) of the Central Sales Tax Act was deemed to have been in force since 5.1.57 and, therefore, the position was as if the Act had always imposed a liability to pay tax even on unregistered dealers just as it had originally done on registered dealers, and that the amendment only affected the venue of taxation, and being procedural in nature, it was required to be construed retrospectively,

Dismissing the appeals,
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HELD: 1. Clause (b) of s. 9(1) of the Central Sales Tax Act, 1956 is operative only from 7.9.76. [573]

The instant case is, therefore, governed by the earlier provision, and the respondent-assessee being an unregistered dealer is not liable to pay tax. [573D]

State v. Kasturi Lal Har Lal, [1987] 67 STC 154 SC, relied on.
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2.1 Where the statute, Central Sales Tax (Amendment) Act, 1976, on its face, clearly indicates retrospective effect where intended, there can be no justification to read

retrospectivity into the amendment made by cl. (c) of s. /6 of the Amending Act, which does not contain any words to that effect. [571D]

2.2 The language of the validation section clearly concerns only penalties which are dealt with under s. 9(2). The amending Act refers to s. 9 in general and not to s. 9(2) only because s. 9(1) also contains a reference to sub-section (2). From this circumstance alone it cannot be inferred that retrospectivity to the amendment of s. 9(1) also is intended. [572C-D]

2.3 The employment of word "also" cannot be treated as an indication of intention by the Legislature that the amendment of s. 9(1) by s. 6 of the Amending Act was to be effective from 5.1.57. If the Legislature had intended it, the intention could and would have been expressed clearly in cl. (a) of s. 6 itself as it had been in the other clauses and in the other sections. If s. 9(1) of the Amendment Act had been inserted as cl. (d) in s. 6 thereof, it could not have changed the prospective effect of cl. (a). The position is not different merely because this provision is contained in s. 9 and not s. 6 of the Amendment Act. Section 9(1) of the Amendment Act talks only of reading these extra words into s. 9(1) of the Principal Act between 5.1.57 and 7.9.76. It does not contain any operative words that require s. 9(1) of the Principal Act being read in the form in which it has been amended by s. 6 during that earlier period. [572E-G]

All that the provision requires is that for the period 5.1.57 to 7.9.76, the section is to be read as if it also included the additional substantive provisions referred to therein. It was earlier not clear whether all these provisions could be read into the section before 7.9.76, the date when the amendment Act came into force. So, the validation section declares that the section should be read, even earlier, as if it comprehended also these substantive provisions. It is in this context that the word "also" is used. [572D-E]

2.4 The question whether a charge to tax can be imposed in one State or another is not a mere question of venue. It may have an impact on the rate of tax in certain cases and it also regulates the rights inter se of States to levy taxes on such inter-state sales. [573B-C]

The amendment changes the position that an unregistered dealer
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is not taxable under the proviso and imposes a substantive liability on such a dealer. It is also one which confers jurisdiction on an officer in a particular State to levy a tax which he otherwise cannot. It is thus a substantive provision. [573B]

The amendment cannot, therefore, be treated as purely procedural and hence necessarily retrospective. [573C]

S.T.O. v. Coal & Coke Supplies Corporation JT, [19871 4 S.C. 472; Khemka v. State, [1975] 3 SCR 753 and Shiv Dutt Rai v. Union, 119831 3 S.C.C. 529 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 953 954 (NT)/ 1975.

From the Judgment and order dated the 15th February 1974 of the High Court of Allahabad in Civil Misc. Writ Petitions Nos. 6904 and 6906 of 1973.

S.C. Manchanda and A.K. Srivastava for the Appellants.

Harish N. Salve, Mrs. A.K. Verma, J. Peres and D.N.

Mishra for the Respondent.

The Judgment of the Court was delivered by

RANGANATHAN, J. These are two appeals by certificate from the common order. dated 15.2.74, of the Allahabad High Court in Civil Miscellaneous Petition Nos. 6904 and 6906 of 1973. They can be disposed of together since the question raised is the same. This common question arises out of the assessment to central sales tax of the respondent, oriental Coal Corporation of Moradabad (hereinafter referred to as the assessee), for the assessment year 1967-68 and 196869.

2. The relevant facts bearing on the controversy may be briefly stated. The assessee is a firm of coal merchants with its place of business in Jharia (Bihar State) and an office at Moradabad (in U.P.). It is not registered either under the Central or the State Sales Tax Act. According to the assessee it places orders for coal on the collieries at Jharia on behalf of constituents in Uttar Pradesh, realises the sale proceeds and remits the same to Jharia. The Sales Tax officer assessed the assessee to sales tax in respect of the turnover of the coal thus

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supplied by the assessee. The assessee filed two writ petitions alleging that the assessment orders were without jurisdiction on several grounds. The High Court allowed the writ petitions on one of these grounds and hence did not go into the other contentions. It referred to s. 9 of the Central Sales Tax Act, as it stood at the relevant time, and held that the provision cast a liability to tax only on a registered dealer and not an unregistered dealer like the assessee. It is the correctness of this decision that is challenged in the present appeals.

3. Section 9 relied upon by the High Court, reads thus:

3. "9.(1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-state trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of subsection (2), in the State from which the movement of the goods commenced.

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods, the tax shall, where such sale does not fall within subsection (2) of section 6, be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or, as the case may be, could have obtained, the form prescribed for the purpose of clause (a) of subsection (4) of section 8 in connection with the purchase of such goods.

(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general

sales tax law of the State; and the Provisions of such law, including provi-

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sions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of or successor to such business transfer of liability of any fir n or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appe als, reviews, revisions, references, 3(refunds, rebates, penal ties) compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section."

The High Court pointed out that, under the terms of the section, tax on sales of goods effected by a dealer in the course of inter-state trade or commerce shall be levied in the State from which the movement of the goods commenced: in this case, the State of Bihar. The proviso, however, carves out an exception. It provides that, if there is a subseq uent sale of the same goods in the course of their movement from one State to another and such sale is effected by a registered dealer, tax can be levied and collected in the State from which such dealer obtained or could have obtained the forms prescribed under s. 8(4)(a) (popularly known as 'the Form'): in this case, the State of Uttar Pradesh. But, the High Court pointed out, the assessee was not a registered dealer and so there was no scope for his being taxed in the State of U.P. The High Court accordingly quashed the assessments in question and hence these appeals by the State.

4. We may at once say that the conclusion of the High Court is unassailable in view of the decision of this Court in State v. Kasturi Lal Harlal, 4 J.T. 1987 3 S.C. 234 affirming the view taken on this issue by the Allahabad High Court in an earlier case Kasturilal Harlal v. State, [1972] 29 STC 495. Shri Manchanda, however, submits that this view can no longer hold the field in view of a retrospective amendment of the Central Sales Tax Act by the Central Sales Tax (Amendment) Act No. 103 of 1976. Two provisions of this Amendment Act may be extracted:

"6. Amendment of section 9. In section 9 of the Principal Act-(a) in sub-section (1) for proviso, the following pro

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viso shall be substituted, namely. A

"Provided that, in the case of sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods and being also a sale which does not fall within sub-section (2) of section 6, the tax shall be levied and collected-

(a) where such subsequent sale has been effected by a registered dealer, in the State from which the registered dealer obtained or, as the case may be could have obtained, the form prescribed for the purposes of clause (a) of subsection (4) of section 8 in connection with the purchase of such

goods, and
(b) where such subsequent sale has been effected by an unregistered dealer in the State from which such subsequent sale has been effected."
(b) in sub-section (2), before the words "compounding of offences", the words "charging or payment of interest", shall be inserted and shall be deemed always to have been inserted .
(c) after sub-section (2), the following sub-section shall be inserted, namely:
(2A) All the provisions relating to offences and penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions relating to matters provided for in sections 10 and lOA) of the general sales tax law of each State shall, with necessary modifications, apply in relation to the assessment, reassessment, collection and the enforcement, of payment of any tax required to be collected under this Act in such State or in relation to any process connected with such assessment, re-assessment, collection or enforcement of payment as if the tax under this Act were a tax under such sales tax law.
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9. Validation (1) The provisions of section 9 of the principal Act shall have effect and shall be deemed always to have had effect in relation to the period commencing on the 5th day of January, 1957, and ending with the date immediately preceding the date of commencement of this Act as if that section also provided-
(a) that all the provisions relating to penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment on conviction for an offence but excluding the provisions relating to matters provided for in sections 10 and 10A of the principal Act and the provisions relating to offences) of the general sales tax law of each State shall, with necessary modifications, apply in relation to-
(i) the assessment, re-assessment, collection and enforcement or payment of any tax required to be collected under the principal Act in such State; and
(ii) any process connected with such assessment, re-assessment, collection or enforcement of payment, and
(b) that for the purpose of the application of the provisions of such law, the tax under the principal Act shall be deemed to be tax under such law.
(2) Notwithstanding anything contained in any judgment, decree or order of any court or tribunal or other authority, all penalties under the general sales tax law of any State imposed or purporting to have been imposed in pursuance of the provisions of section 9 of the principal Act, and all proceedings, acts or things taken or done for the purpose of, or in relation to, the imposition or collection of such penalties, before the commencement of this Act shall, for all

purposes be deemed to be and to have always been imposed, taken or done as validly and effectively as if the provisions of sub-section (1) had been in force when such penalties were imposed or proceedings or acts or things were taken or done and accordingly,-

(a) no suit or other proceedings shall be maintained or continued in or before any court or any tribunal or other

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authority for the refund of any amount received or realised by way of such penalty;

(b) no court, tribunal or other authority shall enforce any decree or order directing the refund of any amount received or realised by way of such penalty;

(c) where any amount which had been received or realised by way of such penalty had been refunded before the commencement of this Act and such refund would not have been allowed if the provisions of sub-section (1) had been in force or the date on which the order for such refund was passed, the amount so refunded may be recovered as an arrear of tax under the principal Act;

(d) any proceeding, act or thing which could have been validly taken, continued or done for the imposition of such penalty at any time before the commencement of this Act if the provisions of sub-section (1) had then been in force but which had not been taken continued or done, may after such commencement be taken, continued or done.

(3) Nothing in sub-section (2) shall be construed as preventing any Person-

(a) from questioning the imposition or collection of any penalty or any proceedings, act or thing in connection, therewith or

(b) from claiming any refund, in accordance with the provisions of the principal Act read with sub-section(1)."

Shri Manchanda contends that, by virtue of s. 9 of the Amendment Act, clause (b) of the proviso to s. 9 (1) of the Central Sales Tax Act is deemed to have been in force since 5.1.1957. The position according to him, therefore, is as if the Act had always imposed a liability to pay tax even on unregistered dealers just as it had originally done on registered dealers.

5. We may mention that, while deciding S. T. O. v. Coal & Coke Supplies Corporation, JT 1987 4 S.C. 472, we had assumed the correctness of the contention of Sri Manchanda as, in that case, the above argument that the amendment was retrospective was uncontroverted.

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Sri Harish Salve, appearing for the assessee in this case, however, contests the correctness of Sri Manchanda's contention. We have therefore considered this aspect and reached the conclusion that Sri Salve is right and that no retrospective operation to clause (b) of s. 9(1) can be spelt out as suggested by counsel for the appellant.

6. Act 103/76 received the assent of the President on 7.9.1976 which is, apparently, what is referred to as the date of its commencement in s. 9(1) of the said Act. The Act amended several sections of the Central Sales Tax Act and it did not when its words when it desired to give any degree of retrospective effect to any particular amendment. The amendments to sections 3 and 4 of the Principal Act thus are

clearly retrospective: the provisions added thereto, it is declared, "shall be inserted and shall always be deemed to have been inserted w.e.f. 1.4.1964." The amendments to Sections 2, 7, 14 and IS of the Principal Act are obviously intended to be only prospective. The amendment to s. 9 of the Principal Act, with which we are at present concerned, presents an amalgam. s. 6 of the Amending Act makes three amendments in s. 9 of the Principal Act by its three clauses (a), (b) and (c). In clause (a), there is no hint of any retrospectivity whereas the amendment by clause (b) is expressed to be fully retrospective from 1956. The amendment by clause (b) attracts the penal provisions (including offences) of the relevant State Law and can, in view of Article 20 of the Constitution, only be prospective. However, it appears that, even under the statute as originally framed, such penal provisions had been enforced in several cases and this action needed retrospective validation (in so far as penalties, other than offences were concerned) in view of the decision of this Court in Khemka v. State, [1975] 3 SCR 753. This was the raison d'etre of s. 9 of the Amendment Act which has been extracted above: (see Shiv Dutt Rai v. Union, [1983] 3 S.C.C. 529. This is also clear from paragraph 3 of the Statement of objects and Reasons of the Amendment Act, which reads:

> "Sub-section (2) of section 9 of the Central Sales Tax Act empowers the State sales tax authorities to assess, re-assess collect and enforce payment of Central sales tax. The sub section also authorises the authorities under the State sales tax laws to exercise all the powers which they have under those laws (including inter alia the power to impose penalties) for the purposes of the Central Sales Tax Act also. In Khemka & Co. (Agencies) Private Ltd. v. State of Maharashtra, 35 S.T.C. 57 1, the Supreme Court, by a ma-
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> jority of 3:2, held that the provisions of the State sales tax laws as to penalties do not apply for purposes of the Central Sales Tax. In view of this judgment, the State Governments are faced with the problem of having to refund the amounts collected in the past by way of penalties. The judgment has also resulted in a vacuum being created in regard to levy of penalties, it is, therefore, necessary to amend section 9 of the Central Sales Tax Act to provide expressly that the provisions relating to offences and penalties under the general sales tax law of each State shall. with necessary modifications, apply in relation to the assessment, re-assessment collection and the enforcement of tax under the Central Sales Tax Act. It is also necessary to validate the penalties which have been levied in the past. for the purposes of the Central Sales Tax Act, on the basis of the provisions of the State sales tax laws."

Where the statute thus, on its face, clearly indicates retrospective effect where intended, there can be no justification to read retrospectivity into the amendment made by clause (a) of section 6 of the amending Act which does not contain any words to that effect.

7. Counsel for the appellant, however, relied on two circunstances to say that such retrospective effect must necessarily have been intended. Firstly, he placed emphasis (a) on the fact that s. 9(l) of the Amendment Act refers to

section 9 of the principal Act and not merely to S. 9(2) and (b) on the use of the words"as if that section also provided." He submitted that this language can only mean that the legislature intended retrospective effect also to the amendment effected in s. 9 by s. 6 of the Validation Act. Secondly, he submitted that under s. 6 of the Central Sales Act, all dealers registered or unregistered, are liable to pay tax on sales effected by them in the course of inter-state trade or commerce. S. 9(1) imposes the liability on the dealer in the State from which the movement of the goods commences but this is without prejudice to the liability of dealers who make subsequent sales during the course of such movement. Such subsequent sale may be by a registered dealer or an unregistered dealer. It may be to a registered or an unregistered dealer. If the sale is to a registered dealer it is exempt under s. 6(2), whether it is by a registered dealer or an unregistered dealer. Under the proviso to S. 9(1), as it originally stood, if the sale was by registered dealer to an unregistered dealer, it would be taxed in the State from which the registered dealer obtained or could have obtained the Forms. When
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even a sale by a registered dealer is thus made liable, counsel argues, it A could not have been the intention of the State to exempt from liability a sale by an unregistered dealer. The amendment only clarifies this position. It imposes no fresh substantive liability. It is only an amendment of a procedural nature shifting chargeability, in such cases, from the State from which the goods moves, to the State in which the subsequent sale takes place. In this view of the matter, counsel contends the amendment only affects the venue of taxation and, being procedural in nature, requires to be construed retrospectively.

8. We are unable to accept these contentions. So far as the first point is concerned, the language of the validation section clearly concerns only penalties which are dealt with under s. 9(2). The amending Act refers to S. 9 in general and not to s. 9(2) only perhaps because s. 9(l) also contains a reference to sub-section (2). From this circumstance alone, it cannot be inferred that retrospectivity to the amendment of s. 9(1) also is intended. The use of the word ’also’ does not also have the result suggested by counsel. All that the provision requires is that, for the period 5.1.57 to 7.9.1976, the section is to be read as if it also included the additional substantive provisions referred to therein. It was earlier not clear whether all these provisions could be read into the section before 7.9.1976, the date when the Amendment Act came into force. So the validation section declares that the section should be read, even earlier, as if it comprehended also these substantive provisions. It is in this context that the word "also" is used. The employment of this word cannot therefore be treated as an indication of intention by the legislature that the amendment ot s. 9(1) by section 6 of the amending Act was to be effective from 5.1.1957. If the Legislature had intended it, the intention could and would have been expressed clearly in clause (a) of s. 6 itself as it had been in the other clauses . and in the other sections. If s. 9(1) of the Amendment Act had been inserted as clause (d) in section 6 thereof, it could not have changed the prospective effect of clause (a). The position is not different merely because this provision is contained in s. 9 and not s. 6 of the Amendment Act. S. 9(1) of the Amendment Act talks only of reading these extra words into s. 9(1) of the principal Act between 5.1.57 and 7.9.76. It

does not contain any operative words that require s. 9(1) of the Principal Act being read in the form in which it has been amended by s. 6 during that earlier period. We, therefore, do not see in s. 9 of the Amending Act any support to the contention of the counsel for the appellant.

9. The contention that the amendment is purely procedural is

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also misconceived. Assuming the correctness of the contention that a A purely procedural amendment should ordinarily be construed to be retrospective, we are unable to agree that the present amendment is of such nature. The decision of this Court in Kasturi Lal's case, 4JT 1987 3 SC 234 had held that an unregistered dealer is not taxable under the proviso. The amendment changes this position and imposes a substantive liability on such a dealer. It is also one which confers jurisdiction on an officer in a particular State to levy a tax which he otherwise cannot. It is thus a substantive provision. That apart, even the question whether a charge to tax can be imposed in one State or another is not a mere question of venue. It may have an impact on the rate of tax in certain cases and it also regulates the rights inter se of States to levy taxes on such inter-state sales. It is, therefore, difficult to accept the contention that the amendment should be treated as purely procedural and hence necessarily retrospective.

10. In the result, we are of opinion that clause (b) of s. 9(1) of the Central Sales Tax Act, 1956 is operative only from 7.9.1976. The present case is, therefore, governed by the earlier provision and the decision of this Court in Kasturi Lal's case, (supra). The appeals therefore, fail and are dismissed. We, however, make no order as to costs.

N.P.V. Appeals dismissed.

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