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COMMISSIONER OF SALES TAX, U.P.

v.

M/S GENERAL MANAGER, NORTH EASTERN RAILWAY,
GORAKHPUR, ETC. ETC.

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JULY 14, 1994

[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

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U.P. Sales Tax Act, 1948—U.P. Sales Tax Rules, 1948—Rules 6 & 54—Assessment against North Eastern Railway—Application for registration filed by its Chief Commercial Superintendent—Principal place of business declared as Gorakhpur—Sales Tax return filed by Chief General Manager, Gorakhpur—Assessment made by Sales Tax Officer, Gorakhpur—Validity challenged—Whether application for registration validly filed—Held, Yes—Whether Sales Tax Officer at Gorakhpur had jurisdiction to make assessment—Held, Yes.

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The North Eastern Railway sells, firewood, cigarettes, meals, vegetables and certain other articles at various stations. In the assessment year 1965-66, an application for registration under the U.P. Sales Tax Act, 1948 was filed by the Chief Commercial Superintendent, North Eastern Railways, wherein the principal place of business was declared as Gorakhpur. The sales tax return was, however, filed by the Chief General Manager, Gorakhpur on the basis of which assessment proceedings were held and sales tax imposed. However the final revising authority held that the transactions in question had taken place outside the territorial jurisdiction of the Sales Tax Officer and, as such, the assessment orders were without jurisdiction. The High Court dismissed the revision filed against the order. It held that, although the headquarters of the North Eastern Railway were situated at Gorakhpur, and the General Manager, North Eastern Railway had his office there, the Sales Tax Officer, Gorakhpur could make the assessment only in case the General Manager had declared Gorakhpur to be the principal place of business. In the present case there is no such declaration. Even if the registration application filed is treated as a declaration that cannot be taken to be the declaration by the General Manager, who is the assessee as it was filed by the Chief Commercial Superintendent. In view of this, and in the absence of any order by the Commissioner under Rule 6(b) or Rule 81, the Sales Tax Officer,

Gorakhpur had no jurisdiction to make the assessment.

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This appeal by way of special leave petition has been filed against the judgment of the High Court.

Allowing the appeal, this Court

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HELD : In the instant case the High Court fell into patent error in interpreting the Rules. It cannot be disputed that the assessee in this case is the North Eastern Railway and the assessment made by the Sales Tax Officer can only be treated as one having been made against the North Eastern Railway. The Railway not being a natural entity, had to move the application for registration through one of its officers. Rule 54(1)(e) specifically states that the application for registration can also be made by any officer duly authorised by the head of the office. It is nobody's case that the Chief Commercial superintendent who moved the application for registration was not authorised by the North Eastern Railway. The North Eastern Railway being an assessee any responsible officer could move an application for registration on its behalf. An assessment order made against the North Eastern Railway through any of its officers whether General Manager or Chief Commercial Superintendent or Controller of Stores has to be ordinarily treated as an assessment order against the North Eastern Railway. It has not been the case of the North Eastern Railway at any stage that the officer of the railway who filed the registration application and the officer in whose name the assessment order was passed had no authority to act on behalf of the North Eastern Railway. This Court is of the opinion that the application for registration was validly filed by the Chief Commercial Superintendent on behalf of the North Eastern Railway. In the application it was specifically stated that the principal place of business was situated at Gorakhpur and as such, the Sales Tax Officer at Gorakhpur had the jurisdiction to deal with the matter. The Sales Tax Officer at Gorakhpur was fully justified in undertaking the assessment proceedings in respect of the North Eastern Railway under the Act. [584-G-H, 589-A-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3037 of 1980 etc. etc.

From the Judgment and Order dated 17.4.79 of the Allahabad High Court in S.T.R. No. 509 of 1976.

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A R.C. Verma, T.N. Singh and R.B. Misra for the Appellant.

N.N. Goswamy, B. Parthasarthy and R.N. Poddar for the Respondents.

The Judgments of the Court was delivered by

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KULDIP SINGH, J. The North Eastern Railway sells coal, firewood cigarettes, meals, vegetables and certain other articles at various railway stations. In the assessment year 1965-66 an application for registration under the U.P. Sales Tax Act, 1948 (the Act) was filed by the Chief

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Commercial Superintendent, North Eastern Railway wherein the principal place of business was declared as Gorakhpur. The application was allowed by the Sales Tax Officer. The sales tax return was, however, filed by the Chief General Manager, Gorakhpur on the basis of which assessment proceedings were held and sales tax was imposed. A separate assessment was also made by the Sales Tax Officer against the Controller of Stores.

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Both, the General Manager and the Controller of Stores filed revisions against the assessment orders. While upholding the assessment on merits, the revising authority remanded the matter to the Sales Tax Officer on the ground that two assessment orders could not be made in respect of the North Eastern Railway, Gorakhpur. The railway authorities filed further

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revisions before the higher authorities under the Act. The final revising authority under the Act came to the conclusion that the transactions in question had taken place outside the territorial jurisdiction of the Sales Tax Officer and, as such, the assessment orders were without jurisdiction. It was further held that the railway authorities were not dealers as defined under the Act and, as such were not liable to pay the sales tax. Although

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a reference was made to the High Court by framing six questions of law but keeping in view the amendment to the Act, the High Court treated the reference as a revision petition. The High Court by its order dated April 17, 1979 dismissed the revision petition. This appeal by way of special leave petition is against the judgment of the High Court.

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Rules 6 and 54 of the U.P. Sales Tax Rules, 1948 (the Rules) to the extent they are relevant are reproduced hereunder:

"Rule 6. Power of Assessment.

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(a) The Sales Tax Officer shall be the assessing authority in

respect of the dealers carrying on business within the limits of his jurisdiction. A

(b) If a dealer carries on business within the limited of jurisdiction of more than one Sales Tax Officer, he shall declare one of the places of his business as the principal place of business in Uttar Pradesh. The Sales Tax Officer within whose jurisdiction the principal place of business so declared by the dealer is situated shall be the assessing authority in respect of such dealer. In case of default on the part of any dealer to declare one of his places of business as the principal place of business in Uttar Pradesh, the Commissioner of Sales Tax shall determine the Sales Tax Officer who will be the assessing authority in respect of such dealer and his decision shall be final : B C

Provided that in the case of any Government Department carrying on business within limits of jurisdiction of more than one Sales Tax Officer, the Commissioner, or any officer authorised by him in this behalf, may order that each Sales Tax Officer within whose jurisdiction that Government Department is carrying on business shall be the assessing authority in respect of the place or places of business within the limits of his jurisdiction, or permit any Government Department to declare one place of business as the principal place of business in Uttar Pradesh in which case the Sales Tax Officer within whose jurisdiction such declared principal place of business is situated shall be the assessing authority in respect of the Government Department concerned. D E

Rule 54. Application for registration. F

(1) An application by a dealer for registration under sub-section (1) of Section 8-A shall be made to the Sales Tax Officer in Form XIV. The application shall be accompanied by copies of passport size photographs of the proprietor, or of each adult male partner of the firm, or of each adult male co-partner of the Hindu Undivided Family, as the case may be, duly attested by a lawyer or a Gazetted Officer, and shall be under the signature of . G

(a)..... H

A (b).....

(c).....

(d).....

B (e) the Head of the office or any other officer duly authorised by him, in the case of a department of a State Government or the Central Government; or

(f).....

C The Allahabad High Court dismissed the revision petition on the following reasoning :

D "In the present case, therefore although the head quarters of the North Eastern Railway were situated at Gorakhpur, and the General Manager, North Eastern Railway had his office there, the Sales Tax Officer Gorakhpur could make the assessment only in case the General Manager had declared Gorakhpur to be the principal place of business. In the present case there is no such declaration. Even if the registration application filed in Form 14 is treated as a declaration that can not be taken to be a declaration by the General Manager, North Eastern Railway, who is the assessee as it was filed by the Chief Commercial Superintendent, North Eastern Railway. In view of this, and in the absence of any order by the Commissioner under Rule 6(b) or Rule 81, the Sales Tax Officer, Gorakhpur had no jurisdiction to make the assessment."

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We are of the view that the High Court fell into patent error in interpreting the Rules. It cannot be disputed that the assessee in this case is the North Eastern Railway and the assessment made by the Sales Tax Officer can only be treated as one having been made against the North Eastern Railway. The railway not being natural entity, had to move the application for registration through one of its officers. Rule 54 (1)(e) specifically states that the application for registration can also be made by any officer duly authorised by the head of the office. It is nobody's case that the Chief Commercial Superintendent who moved the application for registration was not authorised by the North Eastern Railway. The North Eastern Railway being an assessee any responsible officer could move an

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application for registration on its behalf. An assessment order made against the North Eastern Railway through any of its officers whether General Manager or Chief Commercial Superintendent or Controller of Stores has to be ordinarily treated as an assessment order against the North Eastern Railway. It has not been the case of the North Eastern Railway at any stage that the officer of the Railway who filed the registration application and the officer in whose name the assessment order was passed had no authority to act on behalf of the North Eastern Railway. We are of the view that the application for registration was validly filed by the Chief Commercial Superintendent on behalf of the North Eastern Railway. In the application it was specifically stated that the principal place of business was situated at Gorakhpur and, as such, the Sales Tax Officer at Gorakhpur had the jurisdiction to deal with the matter. We, therefore, hold that the Sales Tax Officer at Gorakhpur was fully justified in undertaking the assessment proceedings in respect of the North Eastern Railway under the Act.

It is unfortunate that the assessment under the Act in respect of the assessment year 1965-66 has not as yet been finalised. During the three decades there may have been many changes in the law on the subject. We allow the appeal, set aside the judgment of the High Court and also the orders of the authorities under the Act. We remand the case before the Sale Tax Officer, Gorakhpur with a direction to hold the assessment proceedings afresh. He shall pass fresh assessment order after hearing the railway authorities. The railway authorities shall be at liberty to raise all the objections available to them under the law. The appeal is allowed in the above terms. No costs.

Civil Appeal Nos. 3429-30 of 1991.

We have today pronounced judgment in Civil Appeal No. 3037 of 1980 titled *Commissioner of Sales Tax, U.P., Lucknow v. M/s. General Manager, North Eastern Railway, Gorakhpur*. We allow these appeals on the same reasoning, in similar terms and grant the same relief. The impugned judgment of the High Court dated August 23, 1982 is set aside. The orders of all the authorities under the Act are set aside. The matter is remanded back to the Sales Tax Officer, Gorakhpur to hold the assessment proceedings afresh after hearing the railway authorities. No costs.

A.G.

Appeals allowed.