

them into 'ballis' the assessee did not alter their character as timber or used them for manufacture of 'other goods' within the meaning of section 8(1) of the M.P. General Sales Tax Act, 1958. Mr. Harbans Lal, learned counsel for the Department, drew our attention to a Singh Bench decision of the Calcutta High Court in *Shaw Bros. and Co. v. The State of West Bengal* (5), wherein it has been held that chopping of timber into fire wood is a manufacturing process, and therefore, fire wood is a manufactured article. With great respect we are unable to agree with this view, for the reasons recorded in the earlier part of the judgment. In the light of the discussion above we hold that the business of fire wood carried on by the assessee firm could not be called a manufacturing business nor could the assessee firm be called a manufacturer and the liability of the assessee firm to pay the tax arose at Rs. 50,000. Consequently the answer to the question referred to us is returned in the negative, i.e., against the Department. The assessee firm shall have its costs in both the References separately which are assessed at Rs. 150 each.

N.K.S.

MISCELLANEOUS CIVIL

*Before Bal Raj Tuli, J.*

M/S. NARAINDAS RAJARAM & CO. PVT. LTD.—*Petitioner.*

*versus*

THE STATE OF PUNJAB AND ANOTHER—*Respondents.*

Civil Writ 1497 of 1973.

November 12, 1973.

*Punjab General Sales Tax Act (XLVI of 1948)—Section 5—Dealers purchasing goods in the State of Punjab and exporting them out side the country within 6 months of the purchase—Whether entitled to deduction of the purchase price of the goods so exported under Section 5(2)(a) (vi).*

(5) (1963) 14 S.T.C. 878.

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and others, (Tuli, J.)

Held, that under Section 5 of the Punjab General Sales Tax Act, 1948, the assessing authority has to determine first as to who is the dealer to pay purchase tax according to the provisions of Section 5(3) of the Act and then the taxable turnover on which the purchase tax is leviable in accordance with Section 5(2) after allowing deductions mentioned in sub-clause (i) to (vii) of clause (a) of this sub-Section out of the gross turnover. While determining the taxable turnover, the deductions of the purchase value of goods sold to a registered dealer or in the course of inter-State trade or commerce or in the course of exporting out of the territory of India made within 6 months of the date of purchase, is to be allowed under section 5(2)(a)(vi) of the Act. In case it is found by the assessing authority that the goods subject to the levy of purchase tax have been disposed of in one of the three methods stated in Section 5(2) (a)(vi) within 6 months from the date of purchase, the deduction of the purchase value of those goods has to be allowed out of the gross turnover in order to determine the taxable turnover. Hence a dealer who purchases goods in Punjab & exports them outside the country within 6 months from the date of purchase is entitled to deduction of the purchase price of the goods so exported under section 5(2)(a)(vi) of the Act.

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ order or direction be issued quashing the impugned assessment order passed by the Second Respondent on 28th March, 1972 as being illegal and without authority of law and to prohibit the respondents from giving effect to the impugned assessment order and recovering the sum of Rs. 25,423.35 levied against the Company by resorting to penal action or other coercive measures of recovery and grant interim stay order restraining the respondents from recovering the amount of tax assessed as a consequence of the impugned assessment order.

H. L. Sibal, Senior Advocate, with R. N. Narula, S. C. Sibal, and S. C. Garg, Advocates, for the petitioner.

J. S. Wasu, Advocate General Punjab, with S. K. Sayal, Advocate, for the respondents.

#### JUDGMENT

TULI, J.—This order will dispose of Civil Writs Nos. 1497 of 1972 (Messrs Naraindass Rajaram and Company (Pvt.), Limited v. State of Punjab and another), 1498 of 1972 (Messrs Kotak and Company v. State of Punjab and another), 1499 of 1972 (Messrs Shri Laxmi Traders (Private) Limited v. State of Punjab and another), 1500 of 1972 (Messrs International Cotton Corporation (Private) Limited v.

State of Punjab and another), 1501 of 1972, (Messrs Shri Laxmi Cotton Traders (Private) Limited *v.* State of Punjab and another), 1502 of 1972, (Messrs N. Fatehally and Company *v.* State of Punjab and another), 1503 of 1972, (Messrs International Cotton Corporation (Private) Limited *v.* State of Punjab and another), 1504 of 1972, (Messrs Kotak and Company *v.* State of Punjab and another), 842 of 1972 (Messrs International Cotton Corporation (Private) Limited *v.* State of Punjab and another), 843 of 1972 (Messrs Khimji Virran and Sons *v.* State of Punjab and another), 3590 of 1972, (Messrs Dhanraj Mal-Gobind Ram *v.* State of Punjab and another), 858 of 1972 (Messrs Mohan Lal-Moti Lal *v.* State of Punjab and another), 3450 of 1972, (Messrs Mohan Lal-Moti Lal *v.* State of Punjab and another), 3451 of 1972 (Messrs Mohal Mal-Moti Lal *v.* State of Punjab and another), 3452 of 1972 (Messrs Mohal Lal-Moti Lal *v.* State of Punjab and another), and 977 of 1973, (Messrs Rallis India Limited, *v.* State of Punjab and another), as a common question of law arises in all these petitions and that alone has been argued.

(2) The point of law arising in all these petitions is whether a dealer, who purchases cotton in the State of Punjab and exports it outside the country within 6 months from the date of purchase, is entitled to deduction of the purchase price of the cotton so exported under section 5(2) (a) (vi) of the Punjab General Sales Act, 1948?

(3) The facts of Civil Writ No. 1497 of 1972 (Messrs Naraindass Rajaram and Company (Private) Limited, Bhatinda *v.* The State of Punjab and another) may me briefly stated for the decision of the above point of law. The petitioner is a Private Company incorporated under the Companies Act with its registered office at Bombay. It has a branch office at Bhatinda in the State of Punjab and is registered as a 'dealer' under the Punjab General Sales Tax Act, 1948, (hereinafter called the Act). The business of the Company is to purchase cotton and sell the same within the State of Punjab or in the course of inter-State trade or commerce or in the course of export out of the territory of India. Sometimes it is also transferred to the Company's own offices in other States. Cotton is one of the goods specified in Schedule 'C' appended to the Act and is liable to tax in the hands of the last purchaser. Section 5 of the Act, which is the charging section, prescribes the rate of tax to be levied, the taxable turnover, the manner of its determination and the stage at which the declared goods are to be assessed to sales-tax or purchase.

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tax, as the case may be. The taxable turnover, according to section 5(2) means:—

“\* \* that part of a dealer's gross turnover during any period which remains after deduction therefrom—

- (i) \* \* \* \* \*
- (ii) \* \* \* \* \*
- (iii) \* \* \* \* \*
- (iv) \* \* \* \* \*
- (v) \* \* \* \* \*

(vi) the purchase of goods which are sold not later than six months after the close of the year to a registered dealer, or in the course of inter-State trade or commerce or in the course of export out of the territory of India:

Provided that in the case of such a sale to a registered dealer, a declaration, in the prescribed form and duly filled and signed by the registered dealer to whom the goods are sold, is furnished by the dealer claiming deduction.

- (vii) \* \* \* \* \*
- (b) \* \* \* \* \*

(3) Notwithstanding anything contained in this Act:—

- (a) in respect of declared goods, tax shall be levied at one stage and that stage shall be—
  - (i) in the case of goods liable to sales-tax, the stage of sale of such goods by the last dealer liable to pay tax under this Act;
  - (ii) in the case of goods liable to purchase tax, the stage of purchase of such goods by the last dealer liable to pay tax under this Act;
- (b) the taxable turnover of any dealer for any period shall not include his turnover during the period on any sale or purchase of declared goods at any stage other than the stage referred to in sub-section (i), or, as the case may be, sub-section (ii) of clause (a).”

(4) The petitioner-company purchased cotton worth Rs. 29,59,327.70 paise, out of which cotton worth Rs. 7,97,258.37 paise was exported out of India. The export was proved to the satisfaction of the assessing authority but the deduction of the purchase price of the exported cotton was not allowed to the petitioner-company on the ground that the purchase tax payable by the petitioner-company was to be determined in accordance with the provisions of section 5(3) of the Act and no deduction under section 5(2) (a) (vi) of the Act could be allowed. Reliance was placed on the judgment of the Supreme Court in *The State of Punjab and others v. Shakti Cotton Company* (1). I have gone through that judgment very carefully and find that in that judgment their Lordships never decided that the deduction under section 5(2) (a) (vi) of the Act was not to be allowed in the case of cotton while assessing it to purchase tax. In that case, the respondent-firm purchased unginned cotton and after ginning, sold ginned cotton and cotton seeds to registered dealers or in the course of inter-State trade. Cotton was liable to purchase tax under the Act and the firm claimed that in computing its gross turnover for the year 1961-62, the entire purchase price of the unginned cotton had to be deducted under section 5(2) (a) (vi) of the Act. The assessing authority, in his assessment order passed on September 23, 1963, gave deduction only for a part of the price paid for the unginned cotton on the ground that the exemption was not available in relation to the sale of cotton seeds. The respondent-firm filed a writ petition in the High Court challenging the assessment, claiming—(i) that the entire purchase price of unginned cotton should have been deducted under section 5(2) (a) (vi), and (ii) that the levy of sales tax on cotton, which was an item of 'declared goods' under the Central Sales Tax Act, 1956, was illegal and opposed to section 15 of the Act as no stage for levy of tax had been fixed under the Punjab Act. Following the decision in *Patel Cotton Company (Private) Limited v. State of Punjab* (2), a learned Single Judge of this Court allowed the writ petition and directed the Sales Tax Officer to make a fresh assessment. A Division Bench dismissed the State's appeal *in limine*. On appeal to the Supreme Court it was contended on behalf of the State that since the decision in *Patel Cotton Company's case* (supra), which was relied on by the High Court, had been overruled by the Supreme Cour in *The*

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(1) (1972) 29 S.T.C. 706.

(2) (1964) 15 S.T.C. 865.

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*State of Punjab and others v. Chandu Lal Kishori Lal and others* (3), the appeal had to be allowed. On the other hand, it was contended for the respondent—(i) that the Supreme Court had no occasion to consider in *Chandu Lal Kishori Lal's case* (supra), the position regarding collection of sales tax in respect of declared goods after the Punjab Act was amended in 1967, and (ii) that neither the principles laid down by the Supreme Court in *Bhawani Cotton Mills Limited v. State of Punjab and another* (4) nor the effect of the amendments made by the Punjab General Sales Tax (Amendment and Validation) Act, 1967, regarding the levy and collection of sales tax in respect of declared goods, had been considered. The Supreme Court held:—

- "(i) that, in view of the amendments made by the Act of 1967 in the Act of 1948, an entirely new scheme had been evolved in the matter of assessment to sales tax of declared goods, and a fresh assessment had to be made under section 11-AA so as to bring it into conformity with the amended provisions, and the question whether the assessee came under section 5(3) (a) (ii) of the Act of 1948, as amended in 1967 for the levy of purchase tax, which was a question of fact, had to be investigated.
- (ii) that the decision of the Supreme Court in *Chandu Lal Kishori Lal's case* (3) (supra) was no bar to the respondent urging its objections regarding the validity of the order of assessment. The decision could at the most be considered to have decided that cotton seeds were not declared goods and that it was by a manufacturing process that cotton and cotton seeds were separated. . . .  
the Supreme Court had no occasion to consider;
- (a) whether, when unginned cotton had been purchased and the entire quantity of ginned cotton obtained therefrom had been sold, the price obtained from the latter was 'a turnover on the purchase of goods which were sold' within the meaning of section 5(2) (a) (vi);
- (b) whether the purchase price or the sale price had to be taken into consideration under section 5(2) (a) (vi);

(3) (1970) 25 S.T.C. 52.

(4) (1967) 20 S.T.C. 290 (S.C.).

(c) whether the mere sale of cotton seeds will make any difference though the entire ginned cotton obtained from the unginned cotton had been sold."

(5) It is thus apparent that it was not ruled by the Supreme Court in *Shakti Cotton Company's case* (1) (*supra*) that no deduction could be allowed under section 5(2) (a) (vi) of the Act while levying purchase tax on cotton a declared goods and, therefore, no help can be sought by the respondents from that judgment.

(6) After a careful reading of section 5 of the Act, I am of the opinion that the assessing authority has to determine the dealer who is liable to pay the purchase tax according to the provisions of section 5(3) of the Act while the taxable turnover on which purchase tax is leviable has to be determined in accordance with the provisions of section 5(2), that is, the taxable turnover has to be determined after allowing deductions mentioned in sub-clauses (i) to (vii) of clause (a) of sub-section (2) of section 5 of the Act out of the gross turnover. While determining the taxable turnover, the deduction of the purchase value of the goods sold to a registered dealer or in the course of inter-State trade or commerce or in the course of export out of the territory of India made within six months of the date of purchase has to be allowed under section 5(2) (a) (vi) of the Act. In case, it is found by the assessing authority that the goods subject to the levy of purchase tax have been disposed of in one of the three methods stated in section 5(2) (a) (vi) within 6 months from the date of purchase, the deduction of the purchase value of those goods has to be allowed out of the gross turnover in order to determine the taxable turnover. It follows that the view taken by the assessing authority, while passing the impugned assessment order, with regard to the deduction in respect of the sale of cotton in the course of export out of territory of India within six months from the date of purchase is wrong in law. Accordingly, I accept all these writ petitions and quash the impugned assessment orders passed by the assessing authorities and direct them to pass fresh assessment orders in accordance with law keeping in view the observations made above. The parties are, however, left to bear their own costs since the matter was not free from difficulty.

K.S.K.