

readily available immediately on his release from the Armed Forces he must wait till such post becomes available and it may never become available. In the meanwhile, he is precluded from accepting an inferior post even to keep his body and soul together. Surely, that is not how we repay our debt to those that readily shed their blood for us.

(7) We questioned the learned Deputy Advocate General whether there was any other obstacle such as want of vacancy in the way of the petitioner, apart from Rule 3(iii) (cc) (ii) (b). We were assured there was none. We therefore, direct the respondents to consider expeditiously the fitness of the petitioner for appointment under Rules 4 and 5 of Part A of the Punjab Civil Services (Judicial Branch) Rules and if found fit, thereafter to do expeditiously all things necessary to appoint the petitioner to the Punjab Civil Services (Judicial Branch). The direction is in identical terms as the direction issued in the case of R. N. Moudgil. We understand that the decision of this Court in Moudgil's case has become final as the Supreme Court has dismissed an application for special leave to appeal against that decision.

N.K.S.

FULL BENCH

Miscellaneous Civil

Before O. Chinnappa Reddy, S. C. Mital, Ajit Singh Bains, Harbans Lal and Surinder Singh, JJ.

MOOL CHAND CHUNI LAL.—*Petitioner.*

versus

MANMOHAN SINGH and another,—*Respondents.*

Civil Writ Petition No. 4154 of 1976

May 6, 1977.

Punjab General Sales Tax Act (XLVI of 1948)—as amended by Act (IX of 1974)—Section 14-B, sub-sections (7) and (8)—Constitution of India 1950—Schedule VII, List II Entry 54—Sub-sections (7) and (8) of Section 14-B—Whether ultra-vires.

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Held, that the new provision for the levy of penalty contained in section 14-B(7) of the Punjab General Sales Tax Act 1948 is no longer based on any assumption that the goods were transported after sale within the State. Its present basis is the attempt to evade tax and it prescribes a condition precedent to the levy of penalty. The condition precedent is that the authorised officer should record a finding that there has been an attempt to evade the tax due under the Act. Prevention of evasion of sales-tax is a power incidental or ancillary to the levy of sales tax and falls within Entry 54 of List II of Schedule VII of the Constitution of India 1950. Section 14-B(7) which provides for detention of goods and levy of penalty if there has been an attempt to evade the tax under the Act, cannot, therefore, be said to be without constitutional sanction. While section 14-B(8) as it stood originally provided for the payment of the tax recoverable and a penalty, present section 14-B(7) does not provide for recovery of the tax but provides for the imposition of the penalty which is calculated not on the basis of the tax payable but on the basis of the value of the goods. There can be an attempt to evade tax due under the Act before the liability to pay the tax arises. A scheme or device to evade the tax may start operating long before the actual liability to pay the tax arises. As soon as the scheme or device is set in motion there is an attempt to evade the tax due under the Act and it will not be necessary to wait till the liability to pay the tax actually arises. If an attempt to evade the tax is discovered earlier, the liability to be subjected to penalty is straightaway attracted. There is, therefore, no repugnancy between the provision for levy of penalty under section 14-B(7) when an attempt to evade tax is discovered and the general scheme of the Act which provides for the levy of tax at the point of first sale within the State. (Paras 4 and 6).

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the order passed by respondent No. 1 dated the 23rd June, 1976 (Annexure P. 3) and directing the respondent to immediately release 90 bags of tea which were seized on the 23rd June, 1976 and to declare sub-sections (7) and (8) of Section 14-B as amended, as illegal, ultra vires and unconstitutional and further praying that pending the decision of the petition the goods, which are lying with the respondent No. 1 at Shambhu Barrier, be immediately released to the petitioner.

Bhagirath Dass & Co. Advocate, for the Petitioner.

I. S. Tiwana, Deputy Advocate-General, Punjab, for the Respondents.

JUDGMENT

O. Chinnappa Reddy, J.

(1) These three writ petitions (C.W.P. No. 4154 of 1976, and C.W.P. Nos. 506 and 507 of 1977) raise the question of the *vires* of sub-sections (7) and (8) of Section 14-B of the Punjab General Sales Tax Act, 1948 as amended by Punjab Act No. 9 of 1974. It was contended by Shri Bhagirath Das Seth, learned counsel for the petitioners, that sub-sections 7 and 8 of Section 14-B were beyond the competence of the State Legislature as they did not fall within the ambit of Entry 54 of List II of Schedule VII of the Constitution.

(2) Section 14-B (1) enables the State Government to establish check posts or erect barriers, with a view to prevent or check the evasion of the tax under the Act. Sub-sections (2), (3), (4) and (5) of Section 14-B provide for the documents which should accompany the goods carried in a goods vehicle, for the examination by the officer incharge of the check post or barrier of the documents, packages, etc., for declarations to be made by the owner or person incharge of the goods vehicle and for production for examination all transport and other documents at stations of transport of goods, bus stands etc. We are not particularly concerned with sub-sections (2), (3), (4) and (5) of Section 14-B. Sub-sections (6), (7) and (8) are material. Sub-sections (6), (7) and (8) as they stand now were introduced by the amending Act No. 9 of 1974. Originally sub-sections (6), (7) and (8) were as follows:—

“(6) Any officer not below the rank of an Assistant Excise and Taxation Officer while acting under this section shall have the power to seize any goods not covered by the documents mentioned in sub-section (2) and sub-section (3).

(7) The dealer or any person, including a carrier of goods, acting on behalf of the dealer shall not take delivery of, or transport from, any vessel, station, airport or any other place, whether of similar nature or otherwise, notified in this behalf by the State Government any consignment of goods, the sale or purchase of which is taxable under this Act except in accordance with such conditions as may be prescribed with a view to ensuring that there is no evasion of the tax imposed by or under this Act:

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Provided that no place which is a rail head or a post office shall be so notified by the State Government.

- (8) Where the declaration made under sub-section (3) is false in respect of any particulars mentioned therein, the officer in-charge of the check post or barrier or any other officer not below the rank of an Assistant Excise and Taxation Officer shall have the power to seize the goods in respect of which the declaration is false :

Provided that an officer acting under sub-section (6) or sub-section (8) may, before or after such seizure, give to the person affected an option to pay, in lieu of seizure and in addition to the tax recoverable, a sum of money not exceeding one thousand rupees or double the amount of tax recoverable, whichever is greater.

Explanation.—In this section, the expression ‘goods vehicle’ has the same meaning as is assigned to it in clause (8) of section 2 of the Motor Vehicles Act, 1939, but does not include road transport plying in collaboration with rail transport.”

These sub-sections underwent amendments in 1960, 1963, 1965 and 1974. Sub-sections (6), (7) and (8) as they now stand are as follows :—

- “(6) If the officer incharge of the check post or barrier or other officer as mentioned in sub-section (2) has reasons to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents as mentioned in sub-section (2) or sub-section (4), as the case may be or that the person transporting the goods is attempting to evade payment of tax due under this Act, he may, for reasons to be recorded in writing and after hearing the said person, order the unloading and detention of the goods, for such period as may reasonably be necessary and shall allow the same to be transported only on the owner of goods or his representative or the driver or other person incharge of the goods, vehicle or vessel on behalf of the owner of the goods furnishing to his satisfaction a security or executing a bond with or without

sureties for securing the amount of tax, in the prescribed form and manner, for an amount not exceeding one thousand rupees or twenty per centum of the value of the goods, whichever is greater :

Provided that where any goods are detained a report shall be made immediately and in any case within twenty-four hours of the detention of the goods by the officer detaining the goods to the Excise and Taxation Officer of the district seeking the latter's permission for the detention of the goods for a period exceeding twenty-four hours, as and when so required, and if no intimation to the contrary is received from the latter the former may assume that his proposal has been accepted.

- (7) The officer detaining the goods shall record the statement, if any, given by the owner of the goods or his representative or the driver or other person incharge of the goods vehicle or vessel and shall require him to produce proper and genuine documents as referred to in sub-section (2) or sub-section (4), as the case may be, before him in his office on a specified date on which date the officer shall submit the proceedings along with the connected records to such officer as may be authorised in that behalf by the State Government for conducting necessary enquiry in the matter. The said officer shall, before conducting the enquiry, serve a notice on the owner of the goods and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to evade the tax due under this Act, he shall, by order, impose on the owner of the goods a penalty not exceeding one thousand rupees or twenty per centum of the value of the goods, whichever is greater, and in case he finds otherwise he shall order the release of the goods.
- (8) If the owner of the goods or his representative or the driver or other person incharge of the goods vehicle or vessel does not furnish security or does not execute the bond as required by sub-section (6) within ten days from the date of detaining the goods or goods vehicle or vessel, the officer referred to in that sub-section may order further detention of the goods and in the event of the owner of the

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goods not paying the penalty imposed under sub-section (7) within twenty days from the date of the order imposing the penalty, the goods detained shall be made liable to be sold by the officer, who imposed the penalty, for the realisation of the penalty by public auction in the manner prescribed. If the goods detained are of a perishable nature or subject to speedy or natural decay or when the expenses of keeping them in custody are likely to exceed their value the officer incharge of the check-post or barrier or any other officer referred to in sub-section (2), as the case may be, shall immediately sell such goods or otherwise dispose them of. The sale-proceeds shall be deposited in the Government Treasury and the owner of the goods shall be entitled to only the balance amount of sale-proceeds after deducting the expenses and other incidental charges incurred in detaining and disposing of the goods".

(3) The vires of sub-section (8) of Section 14-B, as it stood originally, was challenged in *Dunlop India Limited v. The State of Punjab and others* (1), Bal Raj Tuli, J., purporting to follow the decision of the Supreme Court in *The Check Post Officer, Coimbatore and others v. K. P. Abdulla and Brothers* (2) held that sub-section (8) of Section 14-B was *ultra vires* the powers of the State Legislature. The decision of Bal Raj Tuli, J. was affirmed on appeal by Harbans Singh, C.J. and P. C. Jain, J. in (3). Since the learned Single Judge as well as the Division Bench purported to follow the decision of the Supreme Court in *K. P. Abdulla's case* (2 supra), it will be useful to notice what the Supreme Court said in that case. The Supreme Court was concerned in that case with the question of the vires of section 42(3) of the Madras General Sales Tax Act, 1959, which provided for the seizure and confiscation of any goods which were under transport by any vehicle and were not covered by the prescribed documents. It was held that the provision for seizure and confiscation was based on the unwarranted assumption that the goods were transported after sale within the State. It was also held that the power to seize and confiscate all goods which were

(1) (1972) 30 S.T.C. 597.

(2) (1971) 27 S.T.C. 1.

(3) 33 S.T.C. 168

carried in a vehicle, whether the goods were sold or not, was not incidental or ancillary to the power to levy Sales-tax. It was said:—

“But, in our judgment, the power to confiscate goods carried in a vehicle cannot be said to be fairly and reasonably comprehended in the power to legislate in respect of taxes on sale or purchase of goods. By sub-section (3) the officer in charge of the check post or barrier has the power to seize and confiscate any goods which are being carried in any vehicle if they are not covered by the documents specified in the three sub-clauses. Sub-section (3) assumes that all goods carried in a vehicle near a check post are goods which have been sold within the State of Madras and in respect of which liability to pay sales tax has arisen, and authorises the Check Post Officer, unless the specified documents are produced at the check post or the barrier, to seize and confiscate the goods and to give an option to the person affected to pay penalty in lieu of confiscation. A provision so enacted on the assumption that goods carried in a vehicle from one State to another must be presumed to be transported after sale within the State is unwarranted. In any event power conferred by sub-section (3) to seize and confiscate and to levy penalty in respect of all goods which are carried in a vehicle whether the goods are sold or not is not incidental or ancillary to the power to levy sales tax. A person carrying his own goods even as personal luggage from one State to another or for consumption, because he is unable to produce the documents specified in clauses (i), (ii) and (iii) of sub-section (3) of section 42, stands in danger of having his goods forfeited. Power under sub-section (3) of section 42 cannot be said to be ancillary or incidental to the power to legislate for levy of sales tax.”

(4) It will be noticed at once that section 14-B (6), as it stood originally, provided for the seizure of any goods not covered by documents and section 14-B (8) provided for the seizure of all goods in respect of which the declaration was false. The seizure might be made irrespective of the question whether there was any attempt to evade tax. The basic but unwarranted assumption underlying both the provisions for seizure, as in the case before the Supreme Court, was that the goods were transported after sale within the

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State. Again, as in the case before the Supreme Court, no attempt was made to specify what goods might be seized. The provisions were considered by Bal Raj Tuli, J., and the Division Bench to fall within the principles laid down in K. P. Abdulla's case (supra). But the position is quite different now. The new provision for the levy of penalty [Amended section 14-B (7)] is no longer based on any assumption that the goods were transported after sale within the State. Its present basis is the attempt to evade tax and it prescribes a condition precedent to the levy of penalty. The condition precedent is that the authorised officer should record a finding that there has been an attempt to evade the tax due under the Act. It cannot possibly be disputed that the prevention of evasion of sales-tax is a power incidental or ancillary to the levy of Sales-tax and falls within Entry 54 of List II of Schedule VII of the Constitution. Section 14-B (7), which provides for detention of goods and levy of penalty if there has been an attempt to evade the tax due under the Act, cannot, therefore, be held to be without constitutional sanction. It is further to be noticed that the goods which are to be detained are also specified in section 14-B (6) as goods meant for trade and not covered by proper and genuine documents.

(5) It was argued by Shri Bhagirath Dass Seth that Section 14-B (7) contemplated imposition of penalty for attempting to evade the tax due under the Act even before the liability to tax had arisen and it was, therefore, repugnant to the general scheme of the Act. He invited our attention to the decision of the Supreme Court in *Commissioner of Commercial Taxes and others v. Ramkishan Shrikishan Jhaver and others*, (4). The Supreme Court, in that case, considered the second proviso to section 41(4) of the Madras General Sales Tax Act, which empowered the officer to order the person concerned to pay the tax recoverable and a penalty. The Supreme Court held that since tax was recoverable only at the point of first sale in the State, the provision for recovery of tax even before the sale was repugnant to the general scheme of the Act. They said :

“By the amendment of 1961, the second proviso was added. That provides that the officer ordering the confiscation shall give the person affected option to pay in lieu of confiscation, in cases where the goods are taxable under the Act, in addition to the tax recoverable, a sum of money not

(4) (1967) 20 S.T.C. 453.

exceeding one thousand rupees or double the amount of tax recoverable, whichever is greater. This provision clearly requires the officer ordering confiscation to do two things :

- (i) to order the person concerned to pay the tax recoverable, and (ii) to pay a sum of money not exceeding one thousand rupees or double the amount of tax recoverable, whichever is greater. We have already indicated that in a large majority of cases covered by the Act the tax is payable at the point of first sale in the State. But under clause (a) of the second proviso the tax is ordered to be recovered even before the sale, in addition to the penalty not exceeding Rs. 1,000 or double the amount of tax recoverable whichever is greater. Therefore clause (a) of the second proviso is clearly repugnant to the general scheme of the Act which in the majority of cases provides for recovery of tax at the point of first sale in the State. In view of this repugnancy one or other of these two provisions must fall. Clearly, it is clause (a) in the proviso which under the circumstances must fall, for we cannot hold that the entire Act must fall because of this inconsistency with respect to recovery of tax under clause (a) of the second proviso even before the taxable event occurs in the large majority of cases which would be covered by the Act. We are therefore of opinion that clause (a) of the second proviso being repugnant to the entire scheme of the Act, in so far as it provides for recovery of tax even before the first sale in the State, which is the point of time in a large majority of cases for recovery of tax, must fall on the ground of repugnancy."

(6) While section 14-B(8), as it stood originally, provided for the payment of the tax recoverable and a penalty, present section 14-B(7) does not provide for recovery of the tax but provides for the imposition of penalty which is calculated not on the basis of the tax payable but on the basis of the value of the goods. The present provision is clearly outside the rule laid down in *Commissioner of Commercial Taxes and others v. Ramkishan Shrikishan Jhaver and others*, (4) (supra). It cannot for a moment be pretended that there can be no

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attempt to evade the tax due under the Act before the liability to pay the tax has arisen. A scheme or device to evade the tax may start operating long before the actual liability to pay the tax arises. As soon as the scheme or device is set in motion there is an attempt to evade the tax due under the Act and it will not be necessary to wait till the liability to pay the tax actually arises. If an attempt to evade tax is discovered earlier, the liability to be subjected to penalty is straightaway attracted. In our view, there is no repugnancy between the provision for levy of penalty under section 14-B (7) when an attempt to evade the tax is discovered and the general scheme of the Act which provides for the levy of tax at the point of first sale within the State.

The writ petitions are, therefore, dismissed with costs.

N.K.S.

FULL BENCH

CIVIL MISCELLANEOUS

Before O. Chinnappa Reddy, S. S. Sandhawalia, Bhopinder Singh Dhillon, M. R. Sharma and Harbans Lal, JJ.

NAND LAL SOHAN LAL,—Appellant.

versus

THE COMMISSIONER OF INCOME-TAX, PATIALA,—Respondent.

Income Tax Reference No. 20 of 1972

May 24, 1977.

Income-tax Act (XLIII of 1961)—Sections 2 (23), 2 (31), 187, 188 and 189—Partnership Act (IX of 1932)—Sections 2, 4, 39 and 42 (c)—Death of a partner of a firm—New partner inducted in place of the deceased—Such induction—Whether results in change in the Constitution of the firm as contemplated by section 187.

Held, (per majority Chinnappa Reddy, B. S. Dhillon, M. R. Sharma and Harbans Lal, JJ. Sandhawalia, J. *contra*) that where the provisions of the Income-tax Act 1961 are clear, resort cannot be had to the provisions of another statute like the Partnership Act, 1932. The purport of section 187 (1) of the Income Tax Act is that the assessment on the firm which undergoes a change in its constitution has to