

## LETTERS PATENT APPEAL

*Before S. S. Dulat and Prem Chand Pandit, JJ.*

NATIONAL RAYON CORPORATION LIMITED,

BOMBAY,—Appellant.

*versus*

THE ADDITIONAL ASSISTANT EXCISE & TAXATION  
COMMISSIONER, PUNJAB,—Respondent.

L. P. A. No. 263 of 1963

*East Punjab General Sales Tax Act (XLIX of 1948)—  
Ss. 11-A and 21—Power of revision by the Commissioner—  
Whether can be exercised after expiry of 3 years—Central  
Sales Tax Act (LXXIV of 1956)—S. 9—Which State can  
levy sales tax on sales made in the course of inter-State  
trade—Whether the State from where the movement of  
goods starts or the State in which sale is effected—Notice  
issued for revising the previous assessment found to be  
without jurisdiction—Whether should be quashed.*

1964

July, 16th.

*Held*, that the power of revision mentioned in section 21 of the East Punjab General Sales Tax Act, 1948, is altogether separate from and unconnected with the power of re-assessment by an Assessing Authority under section 11-A of the Act and can be exercised at any time. If the Legislature intended to limit the power of the Commissioner under section 21 to a period of three years after the close of an assessment year or even after the disposal of the proceedings by an Assessing Authority, it could, and in the circumstances, almost certainly would have said so in section 21, for the Legislature was aware that a period of limitation had, for purposes of re-assessment by an Assessing Authority, been fixed in section 11-A. The Legislature did not intend to fetter the power of the Commissioner under section 21 by any rule of limitation and, therefore, left it to the Commissioner's discretion to exercise his power at any time.

*Held*, that section 9 of the Central Sales Tax Act, 1956, after its amendment by Act XXXI of 1958, clearly lays

down that the tax payable under the Act on a sale effected in the course of inter-State trade or commerce, whether such sale falls under clause (a) or clause (b) of section 3 of the Act, shall be levied and collected by the Government of India "in the State from which the movement of the goods commenced". The question, whether the sale in fact takes place in one State or another, is no longer of interest, for the tax has now to be levied and collected in the State from which the movement of goods started provided, of course, the tax is on a sale effected in the course of inter-State trade or commerce.

*Held*, that the notices having been issued requiring the appellant to appear and submit to the jurisdiction of the Additional Assistant Excise and Taxation Commissioner, Punjab, who has no jurisdiction to levy any tax under the Central Sales Tax Act in respect of the sales in question, it is only proper that he should be stopped from exercising jurisdiction which does not vest in him by quashing the notices.

*Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment, dated the 24th May, 1963, passed by the Hon'ble Mr. Justice Shamsher Bahadur, in Civil Writ No. 1618 of 1962.*

BHAGIRATH DASS WITH BAL KRISHAN JHINGAN,  
ADVOCATES, for the Appellant.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL  
WITH L. K. SUD, ADVOCATE, for the Respondent.

#### JUDGMENT.

Dulat, J.

DULAT, J.—These three appeals under clause 10 of the Letters Patent (Letters Patent Appeals Nos. 263, 264 and 265 of 1963) arise out of a single judgment of Shamsher Bahadur, J., by which he dismissed three writ petitions brought on behalf of the appellant under Article 226 of the Constitution questioning the jurisdiction of the

Additional Assistant Excise and Taxation Commissioner in respect of levy of sales-tax under the Central Sales Tax Act, 1956.

National  
Rayon Corporation, Limited,  
Bombay

v.

The Additional  
Assistant Excise  
& Taxation  
Commissioner,  
Punjab

Dulat, J.

The appellant is a company with its registered office in Bombay and, at the time, it has a branch office at Amritsar which is managed by Kishan Chand and Company. The company is engaged in the manufacture of rayon yarn in its factory at Bombay and some of it is sent to Amritsar to its branch office for distribution and sale. The company is a registered dealer both under the East Punjab General Sales Tax Act, 1948, and the Central Sales Tax Act, 1956. In respect of three consecutive years—1957-58, 1958-59 and 1959-60—the company filed its returns and the Assessing Authority made an order of assessment in each case. For the year 1957-58 the Assessing Authority made its decision on the 19th February, 1959. For the next year, 1958-59, the decision was made on the 14th of July, 1959 and for the following year 1959-60, it was made on the 7th of October, 1960. The appellant-company was satisfied with these decisions and as we understand, no tax under the Central Sales Tax Act was levied. Later on, this omission was noticed by the Additional Assistant Excise and Taxation Commissioner, Patiala, who, therefore, issued three notices in respect of the three years and the notices, which were identical, were issued on the 18th August, 1962. The Additional Assistant Excise and Taxation Commissioner said that he had “decided to take *suo motu* action under section 21(1) of the Punjab General Sales Tax Act, 1948”, as he was not satisfied with the legality and propriety of the orders previously made by the Assessing Authority, the intention behind these notices obviously being to reopen the previous decisions. The appellant-company

National  
Rayon Corpo-  
ration, Limited,  
Bombay

v.

The Additional  
Assistant Excise  
& Taxation  
Commissioner,  
Punjab

Dulat. J.

objected to that and having found out that tax under the Central Sales Tax Act was proposed to be levied in respect of certain sales in the nature of inter-State trade, the appellant-company put in several objections. Those objections were not considered valid by the Additional Assistant Excise and Taxation Commissioner and the appellant, thereupon, filed three writ petitions in this Court challenging the jurisdiction of the Additional Assistant Excise and Taxation Commissioner in respect of the three years. In substance, the objections to his jurisdiction were two—

- (1) that the assessments were being reopened after a long period of time and as far as the first two years, 1957-58 and 1958-59 were concerned they were being reopened more than three years after the close of the assessment years and that was not possible in view of section 11-A of the East Punjab General Sales Tax Act, 1948; and
- (2) that the goods sold in the course of *inter-State* trade were sent in these cases from Bombay to Punjab and the tax under the Central Sales Tax Act could be levied and collected only in the State of Maharashtra "from which the movement of the goods commenced."

In answer to the first objection, it was said in the return filed on behalf of the Excise and Taxation Commissioner, Punjab, that the period of time mentioned in section 11-A of the East Punjab General Sales Tax Act had no application at all because the Additional Assistant Excise and Taxation Commissioner was not an Assessing Autho-

rity and was not seeking to act under section 11-A, but was merely intending to revise an order previously made by an Assessing Authority and the power of such revision lay with the Additional Assistant Excise and Taxation Commissioner by virtue of section 21 of the East Punjab General Sales Tax Act. Regarding the second objection, the return stated that the Supreme Court of India had in *Tata Iron and Steel Co., Ltd., Bombay v. S. R. Sarkar and others* (1) decided on the 29th August, 1960 that "when a sale is effected by transfer of documents of title to the goods during their movement from one State to another falling under section 3(b) of the Central Sales Tax Act, 1956, the tax is to be levied by the State in which the sale is effected" and that in the present cases the documents of title were transferred at Amritsar while the goods were in movement from Bombay to Punjab and the Punjab State authorities were therefore entitled to levy the tax.

National  
Rayon Corpora-  
tion, Limited,  
Bombay

v.  
The Additional  
Assistant Excise  
& Taxation  
Commissioner,  
Punjab

Dulat, J.

Shamsher Bahadur, J., did not accept the appellant's submission on the first question and held that the Additional Assistant Excise and Taxation Commissioner was competent to revise an order of the Assessing Authority at any time and was not bound by the period of three years mentioned in section 11-A of the East Punjab General Sales Tax Act and on this view concluded that the power of revision intended to be exercised under section 21 of that Act could not be questioned. The first ground, therefore, failed. On the second question, the learned Judge felt satisfied that the tax sought to be levied under the Central Sales Tax Act, 1956, in connection with *inter-State* sales could be levied only in the State of Maharashtra from where the movement of the goods had admittedly started and that it was only

(1) A.I.R. 1961 S.C. 65.

National  
Rayon Corpo-  
ration, Limited,  
Bombay  
v.  
The Additional  
Assistant Excise  
& Taxation  
Commissioner,  
Punjab  

---

Dulat. J.

the authorities in the State of Maharashtra that were competent to assess, collect and enforce the payment of tax on behalf of the Government of India. In spite of this conclusion, the learned Judge felt that it was unnecessary to issue any writ in the present cases as the Additional Assistant Excise and Taxation Commissioner had merely issued notices to the appellant but had not done any other act which would indicate that he intended to exercise jurisdiction which did not properly vest in him. The learned Judge, therefore, decided not to make the rule absolute in the expectation, I suppose, that the Additional Assistant Excise and Taxation Commissioner will on considering the matter himself decline to proceed further. The writ petitions were consequently dismissed.

In support of the present appeals Mr. Bhagirath Dass contends that the view of the learned Single Judge about the meaning of section 21 of the East Punjab General Sales Tax Act is not sound and that, although the power of the Additional Assistant Excise and Taxation Commissioner is not expressly limited to the period of three years mentioned in section 11-A of that Act, the intention is that it should be governed by the same rule of limitation. Section 11-A of that Act authorises the Assessing Authority to re-assess the sales-tax after an assessment has been made if that authority finds that there has been an under-assessment or escaped assessment but this power is by the terms of that section to be exercised within three years following the close of the year for which the turnover is proposed to be reopened. Section 21 of the Act authorises the Commissioner—and the Additional Assistant Excise and Taxation Commissioner in the present cases had the said power—to call for the record of any proceedings

disposed of by an Assessing or appellate authority and after considering the legality or the propriety of the decision made by the Assessing Authority, the Commissioner is authorised to make such order in relation to the proceedings as he may think fit. The argument before us is that this power of the Commissioner mentioned in section 21 of the Act is really a power to re-open a previous assessment and make a re-assessment and that we must read into it the same limitation as is expressly mentioned in section 11-A of the Act. I am wholly unimpressed by this argument. It is obvious that if the Legislature intended to limit the power of the Commissioner under section 21 to a period of three years after the close of an assessment year or even after the disposal of the proceedings by an Assessing Authority, it could, and in the circumstances almost certainly would, have said so in section 21, for the Legislature was aware that a period of limitation had for purposes of re-assessment by an Assessing Authority been fixed in section 11-A. The conclusion, in my opinion, must be that the Legislature did not intend to fetter the power of the Commissioner under section 21 by any rule of limitation and, therefore, left it to the Commissioner's discretion to exercise his power at any time. Mr. Bhagirath Dass says that it is improbable that such power unlimited in time could have been entrusted to the Commissioner, but I can find nothing improbable about it, and the argument, that the Commissioner may decide to reopen a matter settled twenty or thirty years previously, does not lead anywhere. The power of revision mentioned in section 21 is altogether separate from and unconnected with the power of re-assessment by an Assessing Authority under section 11-A of the East Punjab General Sales Tax Act. In my opinion, therefore, the learned Single

National  
Rayon Corpo-  
ration, Limited,  
Bombay

v.

The Additional  
Assistant Excise  
& Taxation  
Commissioner,  
Punjab

---

Dulat, J.

National  
Rayon Corpo-  
ration Limited,  
Bombay

v.

The Additional  
Assistant Excise  
& Taxation  
Commissioner,  
Punjab

Dulat, J.

Judge was right in holding that the Additional Assistant Excise and Taxation Commissioner had authority to revise the previous orders made by the Assessing Authority in the present cases.

On the second question, however, Mr. Bhagirath Dass is on fairly firm ground. The Additional Assistant Excise and Taxation Commissioner proposes to levy tax under the Central Sales Tax Act in respect of inter-State sales on the view that the documents of title had been transferred at Amritsar in the State of Punjab while the goods were in movement from Bombay to Punjab. This view has been taken on the authority of the Supreme Court decision in *Tata Iron and Steel Co., Ltd., Bombay v. S. R. Sarkar and others* (1). Mr. Bhagirath Dass points out that that decision of the Supreme Court was concerned with the interpretation of section 9 of the Central Sales Tax Act as it stood prior to the 1st of October, 1958. At that time, that is, before the 1st October, 1958, section 9 authorised the levy and collection of tax in the appropriate State and the expression 'appropriate State' was defined in section 2(a) of the Act as the State in which a dealer had his place of business, and in relation to a dealer who had more than one place of business the 'appropriate State' meant every such State with respect to the place of business within its territory. There was then an Explanation added to section 2(a) which defined the 'place of business' as the place where the sale is effected in case of a sale falling within clause (b) of section 3, while in respect of a sale falling under clause (a) of section 3 the 'place of business' meant the place from which the goods were moved. Clause (b) of section 3 referred to those sales which were effected by transfer of title deeds while the goods were in movement. It was in that connection that the



Supreme Court said that when a sale is effected by transfer of documents, the sale is effected at the place in which the transfer of documents takes place and tax under the Central Sales Tax Act could be levied in the State in which such transfer took place. This situation has, however, changed since the 1st October, 1958; and section 9 of the Central Sales Tax Act now says unambiguously that the tax payable under the Act on a sale effected in the course of inter-State trade or commerce, whether such sale falls under clause (a) or clause (b) of section 3, shall be levied and collected by the Government of India "in the State from which the movement of the goods commenced". The question, whether the sale in fact takes place in one State or another; is no longer of interest, for the tax has now to be levied and collected in the State from which the movement of goods started provided, of course, the tax is on a sale effected in the course of inter-State trade or commerce. In the present cases, the sales in question are admittedly sales effected in the course of inter-State trade and, as the learned Single Judge has said, there can be no doubt at all that tax on such inter-State sales can be levied and collected only in the State from where the goods began to be moved which in the present cases is admitted to be the State of Maharashtra.

Nothing much has been said in opposition to this view on behalf of the respondents and it appears quite clearly that the view of law, in pursuance of which the Additional Assistant Excise and Taxation Commissioner thought that he could deal with the disputed sales, is not sound. It is said in this connection that, in any case, the Additional Assistant Excise and Taxation Commissioner has not really done anything illegal so far and it is unnecessary to issue any writ. It is,

National  
Rayon Corpo-  
ration, Limited,  
Bombay

v.  
The Additional  
Assistant Excise  
& Taxation  
Commissioner,  
Punjab

---

Dulat, J.

National  
Rayon Corpo-  
ration, Limited,  
Bombay  
v.  
The Additional  
Assistant Excise  
& Taxation  
Commissioner,  
Punjab

Dulat, J.

however, clear that notices have been issued and those notices require the appellant to appear, and submit to the jurisdiction of the Additional Assistant Excise and Taxation Commissioner, Punjab. If, in fact; however; the Additional Assistant Excise and Taxation Commissioner, Punjab, has no jurisdiction to levy any tax under the Central Sales Tax Act in respect of the sales in question, then he can obviously not be permitted to proceed further in pursuance of the notices issued by him, for this is a matter of jurisdiction and if it is clear that the officer in question intends to exercise jurisdiction which in law does not vest in him, then I think it is only proper that he should be stopped.

The original assessments were made in February, 1959 for the year, 1957-58; in July, 1959; for the year 1958-59 and in October, 1960 in respect of the year 1959-60. At none of these times, that is, in February, or July, 1959; or October, 1960 did the Sales Tax authorities in the Punjab have power to levy or collect tax under the Central Sales Tax Act in respect of the disputed sales and only the authorities in the State of Maharashtra, from where the movement of the goods had commenced had such power. It is urged on behalf of the respondents that up to the 1st October, 1958 the Punjab State authorities could levy and collect tax and therefore in respect of the assessment year 1957-58 and also for a part of the next assessment year there was such power with the Punjab Sales Tax authorities and that power can now be legitimately exercised by the Additional Assistant Excise and Taxation Commissioner as the appropriate Assessing authorities failed to exercise that power at the proper time. This argument, however, ignores the fact that even the Assessing Authority had no power to levy the tax in question

at the time the Assessing Authority proceeded to consider the matter, that, is, in February; 1959; at the earliest; and the Additional Assistant, Excise and Taxation Commissioner can obviously not do anything which the Assessing Authority, whose orders he seeks to revise, could not in law have done. It is true that the liability to pay tax under the Central Sales Tax Act, which may have accrued prior to the 1st October, 1958, is not intended to be wiped out by the amendment made on that date, but the appellant-company does not claim that it is not liable to pay tax under the Central Sales Tax Act, in respect of the assessment years in question and all it claims is that the authorities in the Punjab State have no jurisdiction to make an assessment and levy and collect such tax. This is simply a matter of procedure and it seems to me that as from the 1st October, 1958, the Punjab State authorities could not levy or collect tax under the Central Sales Tax Act in respect of the sales effected in the course of inter-State trade where the movement of goods had commenced from the State of Maharashtra. I would, therefore, hold that in the present cases the Additional Assistant Excise and Taxation Commissioner has no legal authority to levy or collect tax under the Central Sales Tax Act.

National  
Rayon Corpo-  
ration, Limited,  
Bombay  
v.  
The Additional  
Assistant Excise  
& Taxation  
Commissioner,  
Punjab  
Dulat, J.

In the result, I would allow these appeals and quash the notices issued by the Additional Assistant Excise and Taxation Commissioner on the 18th August, 1962 but considering all the circumstances leave the parties to bear their own costs.

PREM CHAND PANDIT, J.—I agree.

Pandit, J.

R.S.