The State of Punjab and Others

Vs

M/S. Shakti Cotton Company

The State of Punjab and Others

Vs

M/S. Om Parkash Som Chand

The State of Punjab and Another

Vs

M/S. Babu Ram Brij Lal

The State of Punjab and Others

Vs

Dhani Ram Milkhi Ram

State of Punjab and Others

Vs

Surya Ram and Sons

The State of Punjab

Vs

M/S. Shiveji Ram Sita Ram

State of Punjab and Others

Vs

The Bhucho Aggarwal Trading Co.

Civil Appeals Nos. 2319 and 2320 of 1968 and 1466 to 1470 of 1969

(C.A. Vaidialingam, P. Jagmohan Reddy, K.K. Mathew JJ)

05.11.1971

JUDGMENT

VAIDIALINGAM, J. -

1. These seven appeals, on certificate, are by the State of Punjab, challenging the judgments and orders of the Letters Patent Bench of the Punjab High Court dismissing in limine the appeals filed by the State, against the decisions of the learned Single Judge, either quashing the orders of assessment of sales tax made by the concerned Sales Tax Officer or directing the said officers to reconsider the orders and pass fresh orders of assessment. The assessments, that were challenged before the High Court were made under the Punjab General Sales Tax Act, 1948 (Punjab Act No. 46 of 1948) (hereinafter to be referred as the Act). Civil Appeals Nos. 2320 of 1968 and 1468 of 1969, relate to the assessment year 1960-61, Civil Appeals Nos. 2319 of 1968 and 1467, 1469 and 1470 of 1969, relate to the assessment year 1961-62 and Civil Appeal No. 1466 of 1969, relates to the assessment year 1962-63.

2. The controversy related to the assessment of sales tax under the Act, in respect of cotton, which admittedly is an item of "declared goods" within the meaning of Section 2 clause (c) read with Section 14 of the Central Sales-tax Act, 1956 (Act 74 of 1956), (hereinafter to be referred as the Central Act).

3. As the nature of the dealings and the approach made by the assessing officers in respect of the respondents, who are different assessees, is the same it is enough to refer to the facts in Civil Appeal No. 2319 of 1968. The respondent M/s. Shakti Cotton Company is a partnership firm carrying on business as a registered dealer under the Act. Amongst its other business the firms purchases Kapas or unginned cotton and after ginning, sells cotton and cotton seeds. For the assessment year 1961-62, the firm submitted a return under the Act showing its gross turn-over of purchase at Rs. 23,76,452.68 nP. This amount included the purchase of unginned cotton, i.e. Kapas and the sales were shown as having been made to registered dealers and for inter-State trade and commerce. The firm claimed deduction, from its gross turn-over, value of the entire quantity of cotton it had purchased. According to the firm, it was entitled to so deduct the purchase price under Section 5(2)(a)(vi) of the Act. It appears that there was originally an order of assessment passed on June 30, 1962. On appeal by the firm, the appellate authority by its order, dated February 4, 1963, remanded the matter to the assessing authority for re-examination and re-consideration of the original order of assessment. The assessing authority, Patiala District, took up the assessment proceedings afresh and after an examination of the account books and other vouchers produced by the firm accepted as correct the gross turn-over returned by the dealer. Regarding the various deductions claimed by the firm, particularly in respect of the purchase price of unginned cotton, which had been sold to registered dealers, it is not clear from the assessment orders aid to how exactly the claim for deductions were either allowed or rejected. Ultimately, the assessing authority fixed the taxable turn-over for the purposes of purchase tax at Rs. 3,18,993.27 nP. and levied purchase tax on this amount at the rate of 2 per cent. The assessment order was passed on September 26, 1963. The firm filed in the Punjab High Court Civil Writ No. 452 of 1964, challenging the order of assessment passed by the Sales-tax Officer. The grievance of the firm, as is seen from the said writ, is, that the assessing authority disallowed the claim, made by it, for deduction of purchase price of unginned cotton sold to the registered dealers and for inter-State trade and commerce. The firm's claim before the assessing authority, appears to have been that if three maunds of Kapas is ginned, it gives roughly one maund of ginned cotton, which if disposed of in toto should be equivalent to the purchase price of three maunds of Kapas originally purchased. The assessing authority appears to have proceeded on the basis that out of the total quantity of unginned cotton purchased by the firm, only 1/3rd quantity of the unginned cotton can be considered to have been sold as ginned cotton. Deductions, according to the assessing authority, under Section 5(2)(a)(vi) of the Act from the purchase turn-over of unginned cotton, should be fixed at 1/3rd of the total price paid for the unginned cotton. The assessing authority has also proceeded on the basis that the amount realised by

the firm by sale of cotton seeds, as a result of ginning, cannot be taken into account for calculating the turn-over under Section 5(2)(a)(vi) of the Act, as the said material is something different from cotton. The firm had also challenged the order of assessment that the levy of sales tax on cotton, which is an item of "declared goods" under the Central Act, is illegal and opposed to Section 15 of the Central Act, as no stage for levy of tax had been fixed. As the Excise and Taxation Commissioner of Punjab had given instruction of the assessing authorities to assess cotton in the manner shown in the assessment order, the firm averred that no useful purpose will be served by carrying the assessment orders in appeals before the Departmental Authorities. It was pleaded that as the levy was unconstitutional, the relief can be obtained only from the High Court and hence its jurisdiction under Articles 226 and 227 of the Constitution was invoked.

4. The appellants contested the writ petition on various grounds. But the material averment, which has to be noted is to the effect that the assessee was entitled to deduction only on the purchase of cotton sold by it as required under Section 5(2)(a)(vi) of the Act and that too on the purchase value of the commodity sold and not on its sale price. It was further averred that cotton seeds are different from cotton and the price realised by the sale of the former does not qualify for deduction under the said provision of the Act as the cotton seeds are not the same commodity as cotton that had been originally purchased. Hence, it was pointed out that the assessing authority had acted according to law in allowing the deduction only on the purchase value of cotton sold by the firm.

5. The State further pleaded that the stage for levying sales tax in respect of "declared goods" is indicated under the Act and the firm is liable for payment of purchase tax on the purchase of cotton made by it subject to the proper deductions allowable under Section 5(2)(a)(vi) of the Act.

6. At the time when the writ petition was heard by the learned Single Judge of the High Court, there was already a decision of a Division Bench of the same High Court reported in Patel Cotton Company Private Ltd. v. The State of Punjab and Others. [(1964) 15 STC 865.] We will refer later to the scope of this decision. The learned Single Judge, by his order, dated March 5, 1965, held that there is no indication in the order of assessment that full deduction permissible to a dealer under Section 5(2)(a)(vi) of the Act, as laid down by the Division Bench, in the above decision, has been granted to the firm. In this view, the learned Single Judge allowed the writ petition, and directed the Sale-tax Officer to re-decide the matter and modify and make an assessment order, in accordance with the law laid down in Patel Cotton Company Private Ltd.'s case (supra). The State filed Letters Patent Appeal No. 182 of 1965, under clause (x) of the Letters Patent Act, which was dismissed, in limine, by the Division Bench on July 23, 1965.

7. In Civil Appeal No. 2320 of 1968, the order of assessment is, dated February 24, 1964. The assessee filed Civil Writ No. 454 of 1964 and the High Court passed a similar order in his favour on March 5, 1965. The Letters Patent Appeal No. 196 of 1965, filed by the State was rejected in limine on July 23, 1965.

8. In Civil Appeal No. 1466 of 1969, the assessment order is, dated March 10, 1964. The assessee filed Civil Writ No. 810 of 1964. The learned Single Judge by his order, dated February 3, 1965, allowed the writ petition following the decision in Patel Cotton Company Private Ltd. (supra) and quashed the order of assessment. The Letters Patent Appeal No. 127 of 1965, filed by the State was dismissed in limine on May 17, 1965.

9. In Civil Appeal No. 1547 of 1969, the assessment order is, dated March 9, 1964. The assessee filed Civil Writ No. 608 of 1964 in the High Court. The learned Single Judge by his order, dated

January 29, 1965, allowed the writ petition and directed the assessing authority to reconsider and modify the order of assessment in accordance with the law laid down by the Division Bench of the High Court. The Letters Patent Appeal No. 141 of 1965, filed by the State was dismissed in limine on May 28, 1965.

10. In Civil Appeal No. 1468 of 1969 the order of assessment is, dated June 11, 1963. Civil Writ No. 1599 of 1963 filed by the assessee was allowed by the learned Single Judge on February 26, 1965 and the assessing authority was directed to modify the order assessment according to the decision of the High Court. The Letters Patent Appeal No. 145 of 1965, filed by the State was dismissed in limine on May 27, 1965.

11. In Civil Appeal No. 1469 of 1969, the order of assessment is, dated March 22, 1963. Civil Writ No. 635 of 1963, filed by the assessee was allowed on February 26, 1965 and the learned Single Judge gave the same direction regarding the assessment order to be reconsidered and modified. The Letters Patent Appeal No. 149 of 1965 filed by the State was dismissed in limine on May 28, 1965.

12. In Civil Appeal No. 1470 of 1969, the order of assessment is, dated December 12, 1963. Civil Writ No. 205 of 1964 filed by the assessee was allowed by the High Court on January 29, 1965 and similar directions were given to the assessing authority. The Letters Patent Appeal No. 172 of 1965, filed by the State was dismissed in limine on May 26, 1965.

13. It will be noted that in all the above appeals, except Civil Appeal No. 1466 of 1969, the assessing authority had been directed to reconsider and modify the orders of assessment already passed by it. It is only in Civil Appeal No. 1466 of 1969, that the order of assessment was quashed by the learned Single Judge of the High Court. In all the appeals, certificates have been granted by the High Court. The High Court, while granting the certificates has observed that though Letters Patent Appeals were dismissed in limine, certificates are being granted in view of the fact that the decision in Patel Cotton Company Private Ltd. case (supra), on the basis of which the present decision had been given, was the subject of appeal before this Court. In view of this consideration, certificates of fitness have been granted by the Letters Patent Bench. We may also add that though the question, regarding the legality of the assessment under the Act as being opposed to the Central Act, on the ground that no stage for collection of tax has been fixed, was raised by all the assessees, that point was not adjudicated upon by the High Court in any of these matters.

14. Mr. V. G. Mahajan, learned counsel for the State, pointed out that the decision in Patel Cotton Company Private Ltd. (supra) which was relied on by the High Court, has been over-ruled by this Court in State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others. [(1969) 3 SCR 849 : 1969(1) SCC 695 : AIR 1969 SC 1073 : (1969) 2 SCJ 798.] In consequence, he urged that all the State appeals will have to be allowed and the assessment orders should be allowed to stand.

15. On the other hand, Mr. S. V. Gupte, learned counsel appearing for the respondent in Civil Appeal No. 2319 of 1968, whose contentions have been adopted by the other counsel appearing for the respondents in other appeals, urged that the decision of this Court, relied on by Mr. Mahajan, had no occasion to consider the position regarding collection of sales tax in respect of "declared goods" coming under the Central Act, after the Act was amended by Punjab Act 7 of 1967. He further pointed out that neither the principles laid down by this Court in Khawani Cotton Mills Ltd. v. State of Punjab and Another [(1967) 3 SCR 577 : AIR 1967 SC 1616 : (1967) 2 SCA 485.]; nor the effect of the amendments made to the Act by Punjab Act 7 of 1967, regarding levy and collection of sales tax in respect of "declared goods" have been considered in State of Punjab and

Others v. M/s. Chandulal Kishori Lal and Others (supra).

16. Mr. Gupte in this connection, relied on the various aspects discussed in Bhawani Cotton Mills Ltd. case (supra), and the relevant provisions of the Punjab General Sales Tax (Amendment and Validation) Act, 1967 (Act 7 of 1967) (hereinafter referred to as the Amendment Act). He further stressed that the Amendment Act has changed the whole scheme of taxation regarding "declared goods" and a duty has been cast on the assessing authority to reopen the assessment and pass fresh orders in accordance with the amendment Act. The counsel further pointed out that State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others (supra), except deciding that cotton seeds do not come under "declared goods", had no occasion to consider the language of Section 5(2)(a)(vi) of the Act regarding how the deduction is to be allowed.

17. It is now necessary to consider the provisions of the Act, as it stood on April 1, 1960. Even here we may say that the entire scheme of the Act and the Rules as well as of the Central Act has been elaborately considered by this Court in Bhawani Cotton Mills Ltd. case (supra). Hence it is unnecessary to cover the same ground in these appeals. It is enough to note that the expressions "dealer" "goods" "prescribed" "purchase" "sale" "turn-over" and "year" are defined in clauses (d), (e), (f), (ff), (h), (i) and (j) of Section 2 respectively. Item I of Schedule C of the Act dealing with "Cotton" is as follows :

> "Cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste."

Section 2(c) of the Central Act defines "declared goods" as "goods declared under Section 14 to be of special importance in inter-State trade or commerce." Section 14 declares the various goods referred to therein as of special importance in inter-State trade or commerce. Therefore, it follows that those goods are "declared goods" under Section 2(c) of the Central Act. Item II of Section 14 of the Central Act dealing with cotton is identical with Item I of Schedule C of the Act. It is also necessary to note that the definition of "sale" in Section 2(h) of the Act, excluded goods specified in Schedule C and that the expression "purchase" under Section 2(ff) took in the goods specified in Schedule C of the Act. Section 5 of the Act dealt with the levy of tax on the turn-over of a dealer at the rates mentioned therein and other consequential matters. Sub-section (2) dealt with the taxable turn-over, as well as the various deductions which a dealer is eligible to claim in the computation of the said taxable turn-over. The claim for deduction was made by the assessees before us under Section 5(2)(a)(vi) of the Act whcih is as follows :

> "5(2). In this Act the expression taxable turn-over means that part of a dealer's gross turn-over during any period which remains after deducting therefrom -
>
> (a) his turnover during that period on -
>
> (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."

18. Section 15 of the Central Act imposes restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. Section 15(a) placing a restriction on the rate of tax as well as a prohibition regarding such collection at more than one stage is as follows :

> "15. Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :
>
> (a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed three per cent. of the sale or purchase price thereof, and such tax shall not be levied at more than one stage.
>
> #x x x x x"##

19. We have broadly outlined the scheme of the Act, as well as the Central Act. There is no controversy that cotton is liable to purchase tax under the Act. It is now necessary to advert to the decision of the Punjab High Court in Patel Cotton Company Private Ltd. case (supra). The assessee therein claimed that out of the unginned cotton, which they had purchased and in respect of which they had become liable to pay purchase tax, certain quantities of ginned cotton as well as cotton seeds obtained after ginning, had been sold to registered dealers within the prescribed period or sold in the course of inter-State trade and commerce. They further claimed that the purchase price of those quantities of ginned cotton and cotton seeds so sold should be deducted in calculating the taxable turn-over under Section 5(2)(a)(vi) of the Act. The assessing authority allowed the deduction of the sale price (as against the purchase price) of the ginned cotton sold to registered dealers as also the sale price of the ginned cotton exported out of India or sold in the course of inter-State trade or commerce. The Sales-tax Officer, however, declared to allow any deduction for similar sales on cotton seeds. The assessee contended before the High Court that the sale of cotton seeds, was a sale of the goods purchased by them, in respect of which, purchase tax was payable and since the sale were made to registered dealers or in the course of inter-State trade, the taxable turn-over should be determined after deducting the purchase price of the goods sold from the gross turn-over.

20. On behalf of the State, it was contended that unginned cotton and ginned cotton are two different things and if unginned cotton is purchased and purchase tax paid on it and later on the cotton is ginned and sold, no part of the goods purchased can be considered to have been sold. It was urged that cotton seed is a different thing from cotton and therefore the sale price of cotton seeds cannot be deducted under Section 5(2)(a)(vi).

21. The High Court held that no manufacturing process is involved in ginning cotton and in the process of ginning no new commodity is created. The High Court further held that when a dealer buys unginned cotton, which is mixed with cotton seeds and separates the two, by process of ginning and proceeds to sell both the ginned cotton and the cotton seeds, the dealer in fact sells the entire goods which he had purchased. As deduction under Section 5(2)(a)(vi) is to be the turn-over on the purchase of goods which are sold and as the goods (ginned cotton and cotton seeds) sold are the same as purchased, the dealer is entitled to a full deduction. As the assessing authority has not made the assessment in accordance with the principles laid down by the High Court, the order of assessment was quashed and the assessing authority was directed to make a fresh assessment, in accordance with the decision of the High Court. This decision was rendered on May 14, 1964.

22. Certain other decisions of the Punjab High Court, similar to the one in Patel Cotton Company (P) Ltd. case (supra), were the subject of appeals and they were disposed of by this Court on February 27, 1969, in State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others (supra), to which we will refer later.

23. In the meanwhile, certain other dealers dealing in cotton, had challenged before the Punjab High Court the levy of purchase tax under the Act on the ground that the levy is opposed to the Central Act. One of the contentions was that no stage for collection of the tax, as is mandatory under the Central Act, has been provided for in the Act. The Punjab High Court, by its judgment and order, dated November 23, 1965, dismissed the writ petitions filed by the assessees. The assessee, Bhawani Cotton Mills Ltd., came to this Court in appeal on certificate. This Court after a very elaborate and exhaustive consideration of the Act, as well as the Central Act, by majority, upheld the contention of the assessee and held in Bhawani Cotton Mills Ltd. v. State of Punjab and Another (supra), that the scheme of levy of purchase tax under Section 2(ff), read with Section 5 and specially the terms of Section 5(2)(a)(vi) of the Act is illegal in that, contrary to the provisions of Section 15 of the Central Act, no definite stage at which the purchase tax in respect of cotton, a declared commodity, is to be levied, has been indicated. The judgment and order of the High Court were reversed and the assessment orders quashed. This decision was rendered on April 10, 1967. The years with which this Court was concerned, in the said decision, were the years of assessment 1960-61 and 1961-62.

24. The decision in Patel Cotton Company (P) Ltd. case (supra), was the subject of appeals in this Court in The State of Punjab and Others v. M/s. Patel Cotton Co. (P) Ltd., Bhatinda and Others. [C.As. Nos. 1120, 1123 and 1214 of 1966, decided on 18-4-1967.] This Court, by its judgment, dated April 18, 1967, did not think it necessary to consider the correctness or otherwise of the decision of the High Court that the assessees, when they sold ginned cotton and cotton seeds, had sold the same commodity that had been purchased by them. The State appeal was dismissed on the short ground that the levy of purchase tax was opposed to the Central Act, as held by this Court in Bhawani Cotton Mills Ltd. (supra). Thought the High Court had directed fresh assessments to be made in accordance with its decision, this Court, however, quashed the orders of assessment also.

25. We have already indicated that the certificates were issued in the appeals before use by the High Court in view of the fact that the decision in Patel Cotton Company (P) Ltd. case (supra), was the subject of appeal in this Court. That appeal was disposed of in the manner, referred to above.

26. In view of the decision of this Court in Bhawani Cotton Mills Ltd. case (supra), two Ordinances were issued by the Governor of Punjab, Ordinances Nos. 1 and 12 of 1967, dealing among other matters, with the levy of sales tax regarding declared goods. These Ordinances were replaced by the Amendment Act, which received the assent of the Governor on December 29, 1967 and published in the State Gazette on December 30, 1967. Certain provisions of the Amendment Act, in so far as they relate to declared goods, have to be referred to.

27. Section 2(i) incorporated in the Act after clause (d) of Section 2 a new clause defining "declared goods". The new clause (dd) was as follows :

> "(dd) 'Declared goods' means goods declared under Section 14 of the Central Sales Tax Act, 1956, to be of special importance in inter-State trade or commerce."

28. We have already referred to the fact that clause (e) of Section 2 of the Act defined the expression "goods". Section 5 of the Amendment Act, incorporated various amendments in Section

5 of the Act as follows :

> "Section 5. - Amendment of Section 5 of Punjab Act 46 of 1948. In Section 5 of the principal Act -
>
> (a) in sub-section (1) -
>
> (i) in the second proviso, the words, brackets, letter and figure 'as defined in clause (c) of Section 2 of the Central Sales Tax Act, 1956, and such tax shall not be levied on the purchase or sale of such goods at more than one stage' shall be omitted;
>
> (ii) after the second proviso, the following proviso shall be inserted, namely :
>
> Provided further that with effect from the date of commencement of the Punjab General Salex Tax (Amendment and Validation) Ordinance, 1967, the rate of tax shall not exceed three paise in a rupee in respect of any declared goods;
>
> (b) in sub-section (1-A) for the words 'in respect of such goods' the words 'in respect of such goods other than declared goods' shall be substituted and be deemed to have been substituted with effect from the 16th day of December, 1965;
>
> (c) after sub-section (2) the following sub-section shall be inserted with effect from the 1st day of October, 1958, namely :
>
> (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 that period on any sale or purchase of declared goods at any stage other than the stage referred to in sub-clause (i) or as the case may be sub-clause (ii) of clause (a)."

29. Section 9 of the Amendment Act incorporated a new Section 11-AA in the Act, which is as follows :

> "11-AA. Review of certain assessment, etc., of tax on declared goods. - (1) Notwithstanding anything contained in this Act, the Assessing Authority shall (whether or not an application is made to him in this behalf), review all assessments and re-assessments made before the commencement of the Punjab General Sales Tax (Amendment and Validation) Act, 1967 in respect of declared goods and make such order varying or revising the order previously made as may be necessary for bringing the order previously made into conformity with the provisions of this Act as

amended by the Punjab General Sales Tax (Amendment and Validation) Act, 1967 :

Provided that no proceeding for review shall be initiated without giving the dealer concerned a notice in writing of not less than thirty days.

(2) Any dealer on whom a notice is served under sub-section (1) may within thirty days from the date of receipt of such notice intimate in writing the assessing authority of his intention of abide by the assessment or re-assessment sought to be reviewed and if he does so, the assessing authority shall not review such assessment or re-assessment under this section.

(3) No order shall be made under this section against any dealer without giving such dealer a reasonable opportunity of being heard.

(4) Notwithstanding anything contained in any judgment, decree or order of any Court or other authority to the contrary but subject to the provisions of the foregoing sub-sections any assessment, re-assessment, levy or collection of any tax in respect of declared goods made or purporting to have been made, and any action or thing taken or done or purporting to have been taken or done in relation to such assessment, re-assessment, levy or collection, under the provisions of this Act before the commencement of the Punjab General Sales Tax (Amendment and Validation) Act, 1967, shall be as valid and effective as if such assessment, re-assessment, levy or collection or action or thing had been made, taken or done under this Act as amended by the Punjab General Sales Tax (Amendment and Validation) Act, 1967."

30. From the various amendments made by the Amendment Act, in the Act, the following aspects broadly emerge : There is a definition of "declared goods" under Section 2(dd). Certain omissions were made in the second proviso of the Act in view of the specific definition of "declared goods" under Section 2(dd) and also in view of the fact that the stage at which tax is to be levied in respect of "declared goods" is specifically dealt with under the new sub-section (3) incorporated in Section 5. The third proviso incorporated in sub-section (1) of Section 5 of the Act provided that with effect from the date of the Ordinance No. 12 of 1967, the rate of tax in respect of declared goods was not to exceed 3 pies in a rupee. In sub-section (1-A) of Section 5 of the Act "declared goods" have been excluded from the reference made therein to "such goods". This amendment is also deemed to have come into effect from December 16, 1965. The new sub-section (3) added to Section 5 of the Act was to have effect from October 1, 1958. Under the new sub-section (3), in respect of declared goods, the stage of levy either in respect of purchase or sale has also been definitely fixed. Under clause (b) of Section 3, certain turn-overs in respect of sale or purchase of declared goods, as referred to therein, cannot be included in the taxable turn-over. The new Section 11-AA makes it obligatory on the assessing authority, under the circumstances mentioned therein, to review all assessments and re-assessments made before the commencement of the Amendment Act in respect of declared goods. There is also an obligation cast on the officer to make orders varying or revising the previous orders, so as to bring them into conformity with the provisions of the Act, as amended by the Amendment Act. Even the provisions contained under sub-section (4) of Section 11-AA have been made subject to the provisions of sub-sections (1) to (3) of the said section.

31. It will be seen from the amendments, referred to above, that an entirely new scheme, so as to say, has been evolved in the matter of assessment to sales-tax of declared goods. In the case before us, we are concerned with "cotton" which is an item of "declared goods" under the Central Act.

There is no controversy that purchase tax is to be levied in respect of the said commodity. Under the new sub-section (3) clause (a) sub-clause (2) of Section 5 of the Act, in the case of purchase tax, the levy is to be at the stage of purchase of such goods by the last dealer. Therefore, the question whether the assessee comes under this clause, for levy of purchase tax, which is a question of fact, will have to be investigated.

32. The Amendment Act itself was again challenged before this Court in Writ Petition filed under Articles 32 of the Constitution. We will now refer to the decision in the said Writ Petition of this Court in Ratan Lal and Company and Another v. The Assessing Authority and Another, [(1969) 2 SCR 544 : AIR 1970 SC 1742.] rendered on October 29, 1968. This Court, in the said decision, had to consider the attack made by certain assesses regarding the validity of the Amendment Act. The contention of the assessees was that the same infirmities pointed out by this Court in Bhawani Cotton Mills Ltd. case (supra) still exist even in the Amendment Act and hence the levy of sales-tax on cotton was illegal. After a reference to the infirmities pointed out in the Act as it stood on April 1, 1960, in Bhawani Cotton Mills Ltd. case (supra) and after a reference to the Amendment Act, the contention of the assessees was rejected and it was held that the Amendment Act cannot be struck down on the grounds raised by the assessees. This Court finally held that the Amendment Act was valid and the retrospective effect given to it was also equally valid and that the new Section 11-AA was not discriminatory. In this view, the attack on the Amendment Act was rejected and the writ petition dismissed. From the decisions of this Court in Bhawani Cotton Mills Ltd. case (supra) The State of Punjab and Others v. M/s. Patel Cotton Co. Pvt. Ltd., Bhatinda and Others etc., (supra) and Rattan Lal and Company and Another, case (supra) it is clear that levy of sales-tax, under the Act as it stood on April 1, 1960, on declared goods, is illegal and void.

33. We have already referred to the fact that certain decisions of the Punjab High Court, which had taken a view similar to the one in Patel Cotton Company Private Ltd. case (supra), were also subject of appeals in this Court. They were disposed of on February 27, 1969 by the judgment of this Court in State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others (supra).

34. The claim made by the assessees before the High Court was that in calculating the taxable turn-over under Section 5(2)(a)(vi) of the Act, as it stood on April 1, 1960, deductions must be made on the purchase price of unginned cotton, which has been sold later as ginned cotton and cotton seeds. The High Court had accepted this contention. The State of Punjab had filed the appeals in this Court. This Court, in the above decision, accepted the contention of the State that ginning process is a manufacturing process and that it is by such a manufacturing process that the cotton and the cotton seeds are separated. This Court further held that it is not correct to say that the seeds so separated, is cotton itself or part of the cotton. It is the further view of this Court that they are two distance commercial goods though before the manufacturing process the seeds might have been a part of the cotton itself. It was further held that the contention of the assessees that the sale of cotton seeds must be treated as a sale of declared goods under the Central Act, cannot be accepted. In this view the decision of the High Court was set aside and the appeal of the State was allowed. The orders of the assessing authority declining to grant deduction in respect of cotton seeds sold by the assessees to registered dealers were confirmed.

35. In this decision there is a reference to the decision of the High Court in Patel Cotton Company Private Ltd. case (supra).

36. According to Mr. Mahajan, the decision of this Court in the State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others (supra) having over-ruled the decision of the Punjab High Court

in Patel Cotton Company Private Ltd., case (supra) though not directly, all the appeals before us must be allowed. Prima facie and on a superficial consideration, it may appear that the contention of Mr. Mahajan is well-founded. Going by the actual decision of this Court in the State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others, (supra) it must be said that the principle laid down by the Punjab High Court in Patel Cotton Company Private Ltd. case (supra) which decision has been relied on by the High Court in the appeals before us, must be considered to have been over-ruled. But there are difficulties in accepting the contention of Mr. Mahajan, that in view of this circumstance, the Stare appeals before us must be allowed.

37. We have already referred to the fact that the levy of sales-tax under the Act as it stood on April 1, 1960, on cotton, which is an item of 'declared goods' was struck down by this Court in Bhawani Cotton Mills Ltd. case (supra). Certain provisions of the Act were also struck down as violative of the provisions of the Central Act. It was in consequence of the decision of this Court in Bhawani Cotton Mills Ltd. case (supra) that the Amendment Act, which was preceded by the two Ordinances, referred to above, came to be enacted. We have also referred to the fact that the scheme of assessment regarding declared goods has been changed and altered by the Amendment Act. When the Amendment Act was again challenged by the before this Court, the constitution Bench in Rattan Lal and Company and Another case (supra) has approved the decision in Bhawani Cotton Mills Ltd. case (supra) and accepted the position that under the Act, as it stood on April 1, 1960, sales-tax in respect of declared goods could not be levied. Further it was pointed out in Rattan Lal and Company and Another, case (supra) that the infirmities that existed in the Act, as it stood on April 1, 1960, had been removed and the Amendment Act was valid. With great respect to the learned Judges, who decided the State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others (supra) it must be held that there is absolutely no reference to the decisions of this Court in Bhawani Cotton Mills Ltd. case (supra) and Rattan Lal and Another case (supra). Nor is there any reference to the decision in The State of Punjab and Others v. M/s. Patel Cotton Co. Pvt. Ltd., Bhtinda and Others etc. (supra) whcih were appeals filed by the State directly challenging the decision of the High Court in Patel Cotton Company Pvt. Ltd. case (supra). All these three decisions, as mentioned by us earlier, have uniformly held that no sales-tax can be levied under the Act, as it stood on April 1, 1960, in respect of declared goods. This Court in The State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others (supra) had to deal with a case of assessment of sales-tax under the Act, as it originally stood, in respect of cotton, which is an item of declared goods, for the assessment year 1961-62. Such an assessment for the said year had been struck down and illegal and void in Bhawani Cotton Mills Ltd. case (supra) and in The State of Punjab and Others v. M/s. Patel Cotton Co. Pvt. Ltd., Bhatinda and others etc. (supra). The decision in State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others (supra) has, however, proceeded on the basis that all the relevant assessments, with which they were concerned, had to be dealt with under the Act, as it stood on April 1, 1960, and that has to be applied to the declared goods.

38. On such a reasoning, Section 5(2)(a)(vi) of the Act was applied and the assessment held to be valid and the deductions declined by the officer were approved. In our opinion, the decision in the State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others (supra) cannot enable the appellant, State, to have the appeals before us straightaway allowed. That will amount to ignoring the decisions of this Court in Bhawani Cotton Mills Ltd., case (supra); Rattan Lal and Company and another case (supra) and The State of Punjab and Others v. M/s. Patel Cotton Co. Pvt. Ltd., Bhatinda and Others etc. (supra).

39. More important than all these, is the circumstance, that by accepting the contention of Mr. Mahajan, we will be completely ignoring the provisions of the Amendment Act which, we have

already said, has evolved a new scheme regarding the levy of sales-tax in respect of declared goods. The decision in the State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others (supra) can at the most be considered to have decided that cotton seeds are not declared goods and that it is by the manufacturing process that cotton and cotton seeds are separated. As the Act, as amended by the Amendment Act, has to be applied in respect of assessment of sales-tax on declared goods, the decision in the State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others (supra) is, in our opinion, no bar to the assessees urging their objections regarding the validity of the orders of assessment. Further this Court had no occasion to consider in the State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others (supra), whether when unginned cotton has been purchased and the entire quantity of ginned cotton obtained therefrom has been sold, the price obtained from the latter is "a turn-over on the purchase of goods which are sold" within the meaning of Section 5(2)(a)(vi), even on the basis that the said provision applies. Further, in the said decision, this Court had no occasion to consider the question whether purchase price or sale price has to be taken into account under clause (vi), nor had it occasion to consider the question whether the mere sale of cotton seeds, even through the entire ginned cotton obtained from unginned cotton originally purchased, had been sold, will make any difference in such circumstances. All these matters have neither been adverted to nor considered by this Court in the said decision. In fact, if we may say so with respect, when an assessment under the Act, as it stood on April 1, 1960, in respect of declared goods is illegal, the question that deduction if any, should or should not be allowed in calculating the turnover in respect of such goods, should not at all arise.

40. From the discussions contained above, it follows that the assessments before us, cannot be confirmed on the basis of the Act, as it stood on April 1, 1960, as urged by Mr. Mahajan. That contention is opposed to the decision of this Court in Bhawani Cotton Mills Ltd. case (supra).

41. It may also be pointed out that even in the writ petition, the assessees have challenged that the levy of sales tax is illegal, as no stage has been fixed as is mandatory under the Central Act. No doubt, the High Court has not considered this question, as it was satisfied that the writ petitions can be disposed of on the basis of the decision in Patel Cotton Company Private Ltd. case (supra).

42. We have already referred to the elaborate provisions made in the new Section 11-AA added in the Act by Section 9 of the Amendment Act. The new section casts a duty on the assessing authority, even without any application being made by the assessee in that behalf, to review all assessments and re-assessments made before the commencement of the Amendment Act in respect of declared goods. There is no controversy that the assessment orders, in the cases before us, have all been made before the date of commencement of the Amendment Act. If so, the assessing authority has to exercise his jurisdiction under Section 11-AA. It is also obligatory on his part to vary or revise the previous orders of assessment, so as to bring them in conformity with the provisions of the Act as amended by the Amendment Act, after following the procedure indicated therein. The fact that there is a judgment of a Court is also no bar to the assessing authority to do his duty cast upon him under Section 11-AA. This has been made clear by sub-section (4) to Section 11-AA, which makes the said sub-section subject to the provisions of sub-sections (1) to (3) of the section.

43. In view of the specific provisions contained in Section 11-AA, we do not think it necessary to consider and express any opinion regarding the contention of Mr. Gupte. The assesses are entitled to raise all objections available to them in law or on facts in respect of declared goods, when the assessing authority takes action under Section 11-AA of the Act, as he is bound to do. But we make it clear that in the fresh assessment proceedings, the assessing authority has to consider the matter,

in the light of the provisions of the Amendment Act incorporated in the Act; and the decision of this Court in the State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others (supra), cannot operate to the prejudice of the assesses. We have already made it clear that the said decision has decided the question of assessment of declared goods under the provisions of the Act, as they stood on April 1, 1960, which provisions have no application for levy of sales tax in respect of declared goods as held by this Court in Bhawani Cotton Mills Ltd. case (supra) and two other cases, referred to above. Therefore, the fresh revised assessments will have to be made, without reference to the decision in the State of Punjab and Others v. M/s. Chandulal Kishori Lal and Others (supra), which decision has no application, when the question has to be now decided, on the basis of the Act, as amended by the Amendment Act.

44. We have already pointed out that in all the appeals, except in Civil Appeal No. 1466 of 1969, the learned Single Judge has directed the assessing authority to reconsider and vary the order of assessment. That direction has been confirmed by the Letters Patent Bench in the said appeals. Those directions, in our opinion, do not require any interference by this Court, except to make it clear that the fresh assessments will have to be made under Section 11-AA of the Amendment Act, and subject to the directions contained in this judgment.

45. Regarding Civil Appeal No. 1466 of 1969, the learned Single Judge has quashed the order of assessment and that has been confirmed by the Letters Patent Bench in Letters Patent Appeal No. 127 of 1965. In our opinion, the High Court was not justified in quashing the assessment order in toto. The proper direction should have been, as given in other writ petitions, namely, to direct the assessing authority to reconsider the assessment order. Therefore, the order of the learned Single Judge in Civil Writ No. 810 of 1964, as confirmed in Letters Patent Appeals No. 127 of 1965, quashing the order of assessment, dated March 10, 1964, will have to be set aside. The assessing authority will reconsider and revise the assessment order, dated March 10, 1964, in accordance with the provisions of Section 11-AA of the Act and pass a revised order of assessment in conformity with the Act, as amended by the Amendment Act.

46. Before closing, we must mention that Mr. Gupte, brought to out notice a decision of the Punjab High Court reported in M/s Aryavarta Industries Pvt. Ltd. v. The State of Punjab and Another, [1970 Rev LR 341.] regarding as to how the assessment is to be made in respect of declared goods, after the Amendment Act. As we have directed the assessing authority to exercise his jurisdiction under Section 11-AA, we do not think it necessary to deal with this decision any further.

47. Subject to the directions and observations contained above, Civil Appeals Nos. 2319 and 2320 of 1968 and 1467, 1468, 1469 and 1460 of 1969 are dismissed. Civil Appeal No. 1466 of 1969 is allowed to the limited extent of modifying the order of the High Court, as indicated earlier. Parties will bear their own costs in all these appeals.

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