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STATE OF PUNJAB & ORS.

v.

M/S. CHANDU LAL KISHORI LAL & ORS. ETC.

February 27, 1969

B [M. HIDAYATULLAH, C.J., V. RAMASWAMI AND G. K. MITTER, JJ.]

Punjab Sales Tax Act (Punj. 46 of 1948), s. 5(2)(a)(vi)—Deduction of sale price of cotton seeds from purchase turnover if permissible.

The respondent a dealer purchased unginned cotton and after ginning the cotton and removing the seeds sold the ginned cotton to customers outside the State. The respondent paid purchase tax on the purchase turnover. In respect of cotton seeds sold by it to registered dealers, the respondent claimed deduction from the purchase turnover under s. 5(2)(a)(vi) of the Punjab Sales Tax Act, 1948. But the assessing authority did not allow the deduction holding that the goods sold *viz.*, cotton seeds were not the goods in respect of which purchase tax had been levied as the unginned cotton underwent a manufacturing process and the goods produced were different from those purchased. The respondent filed a writ petition in the High Court, which was allowed and the State's Letters Patent Appeal was dismissed. Allowing the State's appeal, this Court;

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HELD : The respondent was not entitled to deduction under s. 5(2)(a)(vi) of the Act in respect of cotton seeds sold by it to registered dealers.

E "Declared goods" in s. 14 of the Central Sales Tax Act 1956 are individually specified under separate items. "Cotton ginned or unginned" is treated as a single commodity under one item of declared goods. It is evident that cotton ginned or unginned being treated as a single commodity and as a single species of declared goods cannot be subject under s. 15(a) of the Central Sales Tax Act to a tax exceeding two per cent of the sale or purchase price thereof or at more than one state. But so far as cotton seeds are concerned it cannot be held that the sale of cotton F seeds must be treated as a sale of declared goods for the purpose of s. 15(a) or (b) of the Central Sales Tax Act, 1956. Cotton in its unginned state contains cotton seeds, but it is by a manufacturing process that the cotton and the seed are separated and it is not correct to say that the seed so separated is cotton itself or part of the cotton. They are two distinct commercial goods though before the manufacturing process the seeds might have been a part of the cotton itself. [853 E]

G *Patel Cotton Company Private Ltd.* v. *State of Punjab & Ors.*, 15 S.T.C. 865, disapproved.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2516 to 2519 of 1966.

H Appeals from the orders dated February 10, 1965, March 31, 1965 and March 19, 1965 of the Punjab High Court in Letters Patent Appeals Nos. 38, 36, 100 and 74 of 1965, respectively and Civil Appeals Nos. 806 and 807 of 1967.

Appeals from the judgments and orders dated September 28. 1964 of the Punjab High Court in Civil Writ Nos. 2159 and 2309 of 1963. A

V. D. Mahajan and *R. N. Sachthey*, for the appellants (in all the appeals).

Hardev Singh, for the respondents (in C.As. Nos. 2517 and 2519 of 1966) and for the respondents (in C.As. Nos. 806 and 807 of 1967). B

Civil Appeal No. 2518 *of* 1966

The Judgment of the Court was delivered by C

Ramaswami, J. In this case the respondent is a partnership firm carrying on the business of buying and selling cotton and also of ginning and pressing cotton at Barnala. The respondent purchased unginned cotton and after ginning the cotton by a mechanical process and removing the seeds sold the ginned cotton to customers outside the State. For the period from 1st April, 1961 to 31st March, 1962 the respondent paid purchase tax on the purchase turnover. In respect of cotton seeds sold by it to registered dealers, the respondent claimed deduction from the purchase turnover under s. 5(2)(a)(vi) of the Punjab Sales Tax Act, 1948 (Act No. 46 of 1948). But the assessing authority did not allow the deduction holding that the goods sold *viz.*, cotton seeds were not the goods in respect of which purchase tax had been levied. In other words, the assessing authority took the stand that the unginned cotton underwent a manufacturing process and the goods produced were different from those purchased. So the respondent firm was assessed to pay a tax of Rs. 16,452 by the order of the assessing authority dated 11th September, 1963. The respondent firm thereafter filed a writ petition No. 1917 of 1963 in the Punjab High Court for quashing the assessment. The writ petition was allowed by the High Court which quashed the assessment and directed the assessing authority to re-determine the tax in the light of its judgment. In allowing the writ petition of the respondent the High Court followed its previous decision in *Patel Cotton Company Private Ltd.* v. *State of Punjab & Ors.*(1). The appellants preferred a Letters Patent Appeal which was dismissed. The present appeal is brought by certificate from the judgment of the Punjab High Court dated 31st March. 1965. D E F G

It is necessary at this stage to set out the relevant provisions of the Punjab Sales Tax Act. 1948 (Act No. 46 of 1948) (hereinafter called the Act). Section 2(ff) omitting immaterial portions defines 'purchase' thus :— H

(1) 15 S.T.C. 865.

A " 'Purchase' with all its grammatical or cognate expressions means the acquisition of goods specified in Schedule C....."

Schedule C Entry (1) and Entry (3) read thus :

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

"(3) Oil seeds, that is to say, seeds yielding non-volatile oils used for human consumption or in industry, or in the manufacture of varnishes, soaps and the like
C or in lubrication and volatile oils used chiefly in medicines, perfumes, cosmatics and the like".

Section 5(2)(a)(vi) of the Act is to the following effect :

"5(2). In this Act the expression "taxable turnover" means that part of dealer's gross turnover during
D 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 Regis-
E tered Dealer, or in the course of inter-State trade or commerce, or in the course of export out of the country".

Section 2(c) of the Central Sales Tax Act, 1956 (Act No. 74 of 1956) defines 'declared goods' to mean goods declared under section 14 to be of special importance in inter-State trade
F or commerce. Under section 14 of this Act certain goods were declared to be of special importance in inter-State trade or commerce and they included cotton, that is to say all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, processed or otherwise, but not including cotton waste. Section 15 of the Central Sales Tax Act, 1956 has been amended from time to time. Originally section 15 read
G as follows :—

"15, *Restrictions and conditions in regard to tax on sales or purchases of declared goods* : Notwithstanding anything contained in the sales tax law of any State, the tax payable by any dealer under that law in respect
H of any sales or purchases of declared goods made by him inside the State shall not exceed two per cent of the sale price thereof, and such tax shall not be levied at more than one stage in a State".

This section was amended by the Central Sales Tax (Amendment) Act (No. 16 of 1957) and again by Central Act No. 31 of 1958 and the amended section reads as follows :— A

> "15. *Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State* : 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 : B
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> (a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed two per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage; C
>
> (b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State". D

On behalf of the appellants the argument was stressed that ginning process was a manufacturing process, and ginned cotton and cotton seeds were different commercial commodities and the respondent was not entitled to the exemption under s. 5(2)(a) (vi) of the Act. It was said that unginned cotton was transformed into two distinct commercial commodities and there was no substantial identity between unginned cotton and ginned cotton or cotton seeds. It was argued that the ginning process required complicated machinery of manufacture. Reference was made in this connection to the mechanical aspect of the ginning process described in Encyclopaedia Britannica, Vol. 6 :— E F

> "Hand separation of lint and seed was replaced rapidly by use of saw-type gins in the United States after the inventions of Eli Whitney in 1794 and of Hokden Holmes in 1796. Whitney's gin was improved upon by Holmes who substituted toothed saws for the hooked cylinder and flat metal ribs for the slotted bar used by Whitney. The saws, metal ribs and doffing brush in these early models persist in modern gins, with no basic change in ginning principle having been made, although some modern gins substitute an air blast for the doffing brushes. G H

A Additional gin machinery has been developed to keep pace with changes in harvesting practices which have resulted in a trend from careful hand picking to rougher hand and machine harvesting. These developments include seed-cotton driers, seed-cotton cleaners, burr extractors, greenboll traps and magnetic devices
B for removing metal. Line cleaners, designed to remove trash from lint after it had been removed from the seed, were added to modern gins in the late 1940s and 1950s. Improvement in grade, which resulted in a higher price for the lint, was, in some cases, offset by the loss in weight. Gin installations include presses for baling the lint and equipment for moving the seed away from
C the gin stands. While some of the seed is saved for planting purposes, most of it moves directly to an oil mill for processing"(1).

In our opinion, the appellants are right in their contention that the ginning process is a manufacturing process. But the question
D presented for determination in the present case is somewhat different *viz.*, whether the respondent is entitled to the exemption under s. 5(2)(a)(vi) of the Act in the context and setting of the language of sections 14 and 15 of the Central Sales Tax Act, 1956. "Declared goods" in section 14 of the Central Sales Tax Act, 1956 are individually specified under separate items. "Cotton ginned or unginned" is treated as a single commodity under one
E item of declared goods. It is evident that cotton ginned or unginned being treated as a single commodity and as a single species of declared goods cannot be subject under s. 15(a) of the Central Sales Tax Act to a tax exceeding two per cent of the sale or purchase price thereof or at more than one stage. But so far as cotton seeds are concerned, it is difficult to accept the contention that
F the sale of cotton seeds must be treated as a sale of declared goods for the purpose of s. 15(a) or (b) of the Central Sales Tax Act, 1956. It is true that cotton in its unginned state contains cotton seeds. But it is by a manufacturing process that the cotton and the seed are separated and it is not correct to say that the seeds so separated is cotton itself or part of the cotton. They are two
G distinct commercial goods though before the manufacturing process the seeds might have been a part of the cotton itself. There is hence no warrant for the contention that cotton seed is not different from cotton. It follows that the respondent is not entitled to deduct the sale price of the cotton seeds from the purchase turnover under s. 5(2)(a)(vi) of the Act. In our opinion, the assessing authority was right in holding that the respondent was
H not entitled to deduction in respect of cotton seeds sold by it to registered dealers. It is conceded that the assessing authority had

(1) Encyclopaedia Britannica, Vol. 6, page 614.

already granted deduction under s. 5(2)(a)(vi) so far as ginned cotton is concerned. A

For these reasons we hold that the judgment of the Punjab High Court dated 31st March, 1965 in Letters Patent Appeal No. 100 of 1965 should be set aside and the writ petition No. 1917 of 1963 filed by the respondent should be dismissed. The appeal is accordingly allowed with costs. B

Civil Appeals Nos. 2516-2517 & 2519 *of* 1966 *and Civil Appeals Nos.* 806 *and* 807 *of* 1967

The question of law arising in these appeals has been the subject matter of consideration in Civil Appeal No. 2518 of 1966. C For the reasons given in that judgment we hold that these appeals also should be allowed and the judgments of the Punjab High Court should be set aside and the writ petitions filed by the respondents in each case should be dismissed. These appeals are accordingly allowed with costs. There will be one hearing fee for these appeals and for Civil Appeal No. 2518 of 1966.

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Y.P. *Appeals allowed.*