

**(1979) 03 P&H CK 0005**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 1390 of 1975**

Chaman Lal Jai Kumar

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

**Date of Decision :** 01-03-1979

**Acts Referred:**

Constitution of India, 1950 — Article 19  
Punjab General Sales Tax Act, 1948 — Section 5, 6

**Citation :** (1979) 2 ILR (P&H) 441 : (1979) 44 STC 173

**Hon'ble Judges :** S.S. Sandhawalia, C.J.; S.S. Dewan, J

**Bench :** Division Bench

**Advocate :** R.P. Sawhney, Bhagirath Dass, R.N. Narula and D.V. Sehgal, for the Appellant; S.C. Mohunta, Advocate-General and B.L. Gulati, for the Respondent

**Final Decision :** Dismissed

## Judgement

S.S. Sandhawalia, C.J.—The constitutional validity of the third proviso to Section 27(1)(a)(ii) of the Haryana General Sales Tax Act, 1973, has been assailed on the ground of its being violative of Article 19(1) (f) and (g) of the Constitution of India in this set of thirty-five connected writ petitions. In addition, an equally vehement challenge has been laid to the retrospectivity given to this very provision with effect from 1st May, 1949, by Section 1(3) of the said Act.

2. As is manifest, the issue being pristinely legal, the facts pale into insignificance. Indeed the galaxy of the Learned Counsel hardly referred thereto and it would suffice to make a passing reference to the averments in Civil Writ No. 1390 of 1975 (Chaman Lal Jai Kumar v. Haryana State and Ors.) in order to provide the factual background. The petitioner-firm therein is engaged in the business of dealing in utensils and foodgrains at Jagadhri in District Ambala and was duly registered as a dealer under the Punjab General Sales Tax Act, 1948, as applicable to the State of Haryana, and the Central Sales Tax Act, 1956. Whilst filing the necessary sales tax returns, the petitioner-firm claimed the statutory deductions available to them u/s 5(2)(a)(ii) of the Punjab General Sales Tax Act,

1948, which was then extended to and enforced in the State of Haryana. These included sales to the tune of Rs. 1,40,000 and odd to Messrs. Bhagwati Metal Works, Jagadhri, alleged to be a registered dealer under the Act. However, the Assessing Authority by an order dated 22nd October, 1971, rejected the aforesaid sales apparently as being not genuine and aggrieved thereby the petitioner-firm preferred an appeal to the Deputy Excise and Taxation Commissioner, Ambala. The latter by his order dated 25th September, 1973, upheld the disallowance of the claim to the petitioner-firm except a sum of Rs. 1,40,297.51 in respect of Messrs. Bhagwati Metal Works, but remanded the matter to the Assessing Authority to examine this claim in view of the amended provisions of the law consequent upon the enactment of the Haryana General Sales Tax Act, 1973. Pursuant to the said order, the Assessing Authority then issued a notice to the petitioner-firm requiring them to show cause as to why the deductions in respect of sales to Messrs. Bhagwati Metal Works be not disallowed and in the very notice it was pointed out that the recently inserted third proviso to Section 27(1)(a)(ii) of the Act would be attracted to the case in view of the fact that retrospectivity had been accorded to the same by the statute with effect from 1st May, 1949. In reply to the said notice, the petitioner-firm took up various pleas including the one that the third proviso was not attracted to the case and further that the conditions laid therein were impossible of compliance. However, the Assessing Authority vide order annexure P-1 held that his enquiry reveals that the sales made to Messrs. Bhagwati Metal Works, Jagadhri, were not genuine and disallowing the deductions claimed therefore he reassessed the petitioner-firm with regard to those sales at the rate of six per cent and directed the recovery of the tax thereon at the amounts calculated. Aggrieved by the aforesaid orders, the petitioner-firm preferred the present writ petition primarily on the constitutional grounds noticed at the very outset.

3. It is obvious that at the very outset it becomes necessary to read the relevant provisions of Section 27 of the Act:

27. (1) In this Act, the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom his turnover during that period--

(a) on account of--

(i) sale of goods specified in Schedule B;

(ii) sales to registered dealers of goods other than the sale of goods specified in Schedule C and of goods liable to tax at the first stage of sale under Sections 17 and 18:

Provided....

Provided....

Provided further that for the purposes of allowing deduction under this clause, the Assessing Authority or any other person appointed to assist the

Commissioner under Sub-section (1) of Section 3 may examine the genuineness or otherwise of any such sale or declaration with reference, among other things, to the financial position, capacity to make purchases, nature and extent of business, and subsequent disposal of goods by the registered dealer to whom the sale is shown to have been made against declaration;

It then suffices to point out that by Section 1(3) of the Act aforesaid the third proviso quoted above is deemed to have come into force on 1st May, 1949.

4. I would first advert to the constitutional challenge laid against the impugned provision. Mr. R.P. Sawhney had been vehement in contending that this proviso places such an utterly unreasonable restriction on the petitioner's fundamental right to hold property and to carry on its business, that it is palpably violative of the guaranteed freedoms under Article 19 of the Constitution. Counsel was eloquent in arguing that the nature of the obligation placed on the registered dealer thereby was so onerous as to be virtually impossible of compliance and, therefore, plainly irrational. It was submitted that the return and the declaration made by the selling dealer with regard to the sales made to the registered dealers for the purpose of deductions from the taxable turnover were conclusive and no burden could ever be cast on him with regard to the genuineness thereof in any circumstances whatsoever. It was submitted that the selling dealer could not possibly have any control over the sold goods or the wherewithal to establish the financial and business capacity of the purchaser. Reliance was placed on Commissioner of Income Tax, Bombay Vs. Walchand and Co. Private Ltd., to contend that the reasonableness or otherwise of a provision has to be primarily viewed from the point of view of the trader alone.

5. Whilst there is no quarrel with the legal proposition with regard to the approach as to the reasonableness or otherwise of a restriction on the fundamental right to carry on business and trade, I am unable to see how the broad guideline laid down in the third proviso can be characterised as unreasonable or irrational. In essence, it does no more than clothe the Assessing Authority with the power to examine the genuineness or otherwise of the transactions contained in the return or declaration thereof by an assessee. Therefore, on a plain reading of the said provision, no exception can possibly be taken thereto. It appears to be axiomatic that, in a tax return, the authority, to whom it is submitted, must inevitably have the right to determine whether the same is factually true or otherwise. On the other hand, in effect, what is sought to be claimed on behalf of the petitioners seems to be that the Assessing Authority should have no right to make any inquiry into the bona fides of the transactions or the declarations, howsoever suspicious the circumstances thereof may appear to be. In its actual practical effect, the Learned Counsel for the petitioners seeks a total and absolute protection of the declaration from the Assessing Authority of the transactions contained therein, howsoever blatantly bogus they may be. It was said that, once a statutory declaration has been filed, the duty of the selling dealer comes to an end and the Assessing Authority

should have no right to go behind that. On the face of it, such an argument does not commend itself to me on principle, because it would tend to place a premium on fraud in the case of dealers who may be minded to indulge in the unethical practice of tax evasion. Consequently, even a plain reading of the provisions of the third proviso does not show even remotely anything unreasonable or irrational therein.

6. Principle apart, there is considerable content and merit in the argument of Mr. Mohunta that, even earlier to the enactment of the third proviso in 1973, it was a settled law that the Assessing Authority had the power to go behind the declaration and examine the genuineness of the transactions contained therein. This stand seems to be more than amply borne out by all the judgments prior to 1973. Now it is not in dispute that the corresponding provisions of Section 27 of the Haryana Act of 1973 in the preceding statute of the Punjab General Sales Tax Act, 1948, are those of Section 5(2). It is further the admitted position that prior to 1973, Section 5(2) of the Punjab General Sales Tax Act had been extended to the State of Haryana and, even earlier thereto, was applicable to the erstwhile State of Punjab, which included the territories of Haryana. Construing the said provisions, a Division Bench of this Court in *Ram Pal Madan Gopal v. Punjab State* [1968] 22 S.T.C. 79 has held in no uncertain terms that whilst a declaration u/s 5(2)(a)(ii) of the Punjab General Sales Tax Act read with Rule 26 was prima facie proof that the sales have been made to the registered dealers, but the sales tax authorities can refuse to allow the deduction if there is evidence that the sales are not genuine. This view consistently held the field and was reiterated in *Pahar Chand & Sons v. State of Punjab* [1972] 30 S.T.C. 211 (P & H) and again in *Devinder Kumar Kewal Kumar v. State* [1972] 30 S.T.C. 352 wherein it was categorically observed as follows:

...It is of course open to the Assessing Authority to come to a conclusion on proper evidence that the transactions were not genuine but no such finding can be reached from the circumstance of the cancellation of any registration certificate of a purchaser subsequent to the transaction in respect of which deduction is claimed.

It is thus patent that the aforesaid enunciation of law has never been deviated from and even when pressed, the Learned Counsel for the petitioners, Mr. R.P. Sawhney, could cite no authority which had taken a contrary view. Therefore, the bald assertion on behalf of the petitioners that the return and the declaration filed by the selling dealer should be treated as sacrosanct and conclusive, rests neither on principle nor on authority. It is manifest from the judgments cited above that u/s 5(2) of the Punjab General Sales Tax Act, which is closely analogous to, if not in pari materia with, Section 27, it had been invariably held that the power undoubtedly vested in the Assessing Authority to determine the bona fides of an alleged transaction of sale.

7. Once that is so, it is evident from the plethora of precedents that the Assessing Authority had always been clothed with the power to go into the

genuineness or otherwise of the transactions contained in the return and the declaration. There has never been a hint of dissent that such a power was either irrational or so unguided as to be hit by Article 19. Implicitly, therefore, the earlier authorities are a warrant for the proposition that the power to go behind a transaction to determine its authenticity vested in the Assessing Authority is both reasonable and well-sanctioned by law.

8. On these premises, it is then evident that the corollary of Mr. Mohunta's submission must also be accepted. He was forthright in contending that the third proviso to Section 27 in terms was no more than declaratory of the law, as it stood before the enactment of the 1973 Act. In effect, it had only made explicit what was earlier implicit in the provision and had been so declared by precedent. Indeed, the counsel was on plausible ground in contending that the third proviso far from vesting any uncontrolled and unguided powers in authority had in a way circumscribed the same by broadly indicating the guidelines for determining the genuineness or otherwise of an alleged transaction of sale. These are in no way exhaustive because of the use of general words and, in particular, the words "among other things" would be clearly indicative of the fact that the legislature had not completely constricted the power of the Assessing Authority to these guidelines with regard to determining the bona fides of the transaction. The four guidelines laid therein are:

- (a) financial position of the purchaser;
- (b) his capacity to make the purchase;
- (c) the nature and extent of the business; and
- (d) subsequent disposal of goods by the purchasing registered dealer.

Now it appears to me that the aforesaid criteria cannot possibly be labelled as extraneous to or irrelevant for the purpose of determining the genuineness or otherwise of a sale transaction. Indeed, these are the factors which would plainly and obviously come to one's mind when doubts are raised qua the authenticity of a transaction of sale. In my view, therefore, Mr. Mohunta, the learned Advocate-General, appears to be wholly correct in contending that the contents of the third proviso are wholly reasonable and are merely declaratory of the law as it existed earlier and, in fact, they have circumscribed the earlier unlimited power to examine the genuineness of a sale transaction into canalised guidelines amongst others prescribed now by law.

9. Before closing this aspect of the case, it deserves particular mention that Mr. Bhagirath Dass, the Learned Counsel for some of the petitioners other than those represented by Mr. R.P. Sawhney, had with his usual forthright candour conceded that he could not even remotely challenge the constitutionality or the prospective operation of the impugned third proviso to Section 27 of the Act. The Learned Counsel fairly took the stand that the genuineness of a transaction was open for examination by the Assessing Authority even before the enactment of the third

proviso and no bar could possibly be placed in the way of so salutary a provision.

10. I, therefore, conclude on this aspect that the vice of unreasonableness does not even remotely attach to the third proviso to Section 27(1)(a)(ii) and the same is constitutionally valid.

11. Now advertent to the second aspect of this case, the challenge to the retrospectivity of the third proviso has been eloquently presented by Mr. Bhagirath Dass. Herein, the basically impugned provision is Section 1(3) of the Act, whereby the third proviso has been enacted with effect from 1st May, 1949, which apparently is the date of the original promulgation of the Punjab General Sales Tax Act of 1948.

12. Now, herein the core of Mr. Bhagirath Dass's argument is that the third proviso is in sum and substance a qualifying clause to Section 27(1)(a)(ii). That being so, it was contended that whilst Section 27 has itself not been given retrospective effect by the Act, the proviso, therefore, cannot by itself be clothed with retrospectivity. In a rather picturesque language it was argued that the third proviso could not operate in a vacuum prior to 1st May, 1973, because, admittedly, the provisions of Section 27 have no force prior thereto. To put it in other words, the submission was that as a usual canon of construction a proviso to the section is invariably a limb or part of the main clause and, in the absence of the main clause, it cannot stand by itself and, therefore, cannot possibly be operative at a period of time prior to the enactment of the primary clause.

13. At the first flush the argument does seem to have a content of plausibility but a close and deeper analysis thereof would show that, in essence and more so in the peculiar context herein, it rests more on the ingenuity of the counsel rather than on a sound legal or factual foundation. The contention deserves examination from a twin angle and the first one is with regard to the very nature and content of the third proviso.

14. With his illimitable fairness, Mr. Bhagirath Dass had himself conceded that if a proviso is in effect or in sum and substance a substantive clause then there is no legal bar in its standing by itself and having independent statutory force. Once that is so, it was conceded that like any other statutory provision it could be given retrospectivity if the legislature has the competence to do so.

Therefore, in this context, the first and the primary question that arises for determination is whether the third proviso is in its true essence a substantive clause which lays down a rule of action by itself or is it merely an addendum to the principal clause.

15. Since the issue is covered by a precedent of the final court, it is unnecessary to examine it on principle. In *Commissioner of Income Tax, Madras Vs. Ajax Products Ltd.* through its Liquidator, it was held that even though a provision may be couched in the form of a proviso it may in effect really be a substantive section and there may be cases in which the language of the statute may be so

clear that a proviso may truly be construed as a substantive clause.

16. In view of the above, the issue narrows down to this whether the third proviso is merely a qualifying clause or is virtually a substantive provision of the statute. Now, examining its contents, it appears to be plain that in substance it clothes the Assessing Authority with a substantive power of examining the genuineness or otherwise of a sale transaction in the return of the declaration made by the assessee. It lays down a rule of law or action with regard to the examination and determination of the tax liability based on the return aforesaid. It elaborates and without pretending to be exhaustive suggests the guidelines on the basis of which a conclusion regarding the genuineness or otherwise regarding the transaction is to be arrived at. The third proviso is, therefore, in its true essence a substantive clause though couched in the form of a proviso. It perhaps was merely the fancy of the draftsman, who has chosen to name it as a proviso though undoubtedly such a provision could and perhaps should stand by itself. As the counsel had earlier rightly pointed out that the same power of examining the genuineness of a transaction was vested in the Assessing Authority by virtue of judge-made law in an unbroken line of precedent, the proviso when enacted in 1973 has done no more than concretize and give explicit shape to the principle laid out earlier by precedent. Therefore, it cannot be reasonably said herein that the third proviso is merely a limb or addition or subtraction of the earlier clause or that its very nature is such that it cannot stand independently. In fact, it appears on the contrary that in essence it is a positive clause. The Learned Counsel for the respondents has rightly pointed out that if it were to be labelled with a trifling modification of the language as Section 27(1)(a)(ii), neither its contents nor its effect would in any way be affected. It could, therefore, stand either as an independent sub-clause to Clause (1) of Section 27 or for that matter can with equal facility be couched in a full-fledged clause. I would, therefore, hold that the third proviso in effect is a substantive clause, though, in the words of their Lordships of the Supreme Court, couched in the form of a proviso and could have independent operative effect as a substantive provision under the statute. Consequently, the very core of the attack against its retrospectivity is conclusively repelled.

17. In the alternative, it has then to be seen whether the third proviso in its retrospectivity can operate inevitably on the corresponding provisions of the Punjab General Sales Tax Act, which admittedly is the predecessor statute of the Haryana General Sales Tax Act, 1973. It is not in doubt that prior to the 1973 Act, the Punjab General Sales Tax Act held a sway over the territories, which now constitute the State of Haryana, from 1949 onwards. The question, therefore, is whether the third proviso can with equal facility fit in the corresponding provisions of the predecessor statute, i.e., the Punjab General Sales Tax Act, 1948. Herein again the matter appears on a closer analysis to be singularly free from any difficulty. It is not in dispute that the corresponding provision of Section 27 of the Haryana General Sales Tax Act is Section 5(2) of the Punjab General Sales Tax Act. Though at first sight the provisions of Section 5(2)(a)(ii) of the

Punjab General Sales Tax Act may seem to be somewhat different as compared to Section 27(1)(a)(ii) of the Haryana General Sales Tax Act, yet a little in-depth examination would show that in essence they are virtually in pari materia. In order to facilitate the point, it would be worthwhile to juxtapose these provisions against each other in order to highlight their similarity and indeed virtual identity:

Section 5(2) of the Punjab General Sales Tax Act, 1948. Section 27(1) of the Haryana General Sales Tax Act, 1973.

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

(a) his turnover during that period during that period-- on-- (a) on account of--

(i) the sale of goods declared tax-free u/s 6; (i) sale of goods specified in Schedule B; (ii) sales to a registered dealer of (ii) sales to registered dealers of goods other than sales of goods liable to tax at the first stage under Sub-section (1-A) specified in Schedule C and of goods declared by him in a liable to tax at the first stage of prescribed form as being intended for sale under Sections 17 and 18." resale in the State of Punjab or sale in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India or of goods specified in his certificate of registration for use by him in the manufacture in Punjab of any goods, other than goods declared tax-free u/s 6, for sale in Punjab or sale in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India and on sales to a registered dealer of containers or other materials for the packing of such goods.

18. Now, examining the aforesaid provisions by comparison, the apparent dissimilarity in language first pertains to the reference to Schedule B in Section 27(1)(a)(i) of the Haryana Act, whilst the corresponding reference is to Section 6 in the Punjab General Sales Tax Act. However, even a cursory reference to Section 6 of the Punjab General Sales Tax Act, 1948, would show that the tax-free goods therein are specified in the first column of Schedule B to the said Act, which is more or less common to both the statutes. Similarly, the disparity in the language used in Section 5(2)(a)(ii) of the Punjab General Sales Tax Act and Section 27(1)(a)(ii) of the Haryana Act is completely explained when a reference is further made to Sections 17 and 18 of the Haryana Act. A mere glance on the provisions of Section 18 of the Haryana Act would make it manifest that these in substance correspond exactly to what was laid down in Sub-section (1-A) of Section 5 of the Punjab General Sales Tax Act, to which reference has been made in Section 5(2)(a)(ii). A corresponding similarity between the provisions of Section 17 is then evident with the matching provisions thereof in the Punjab General Sales Tax Act, 1948. When confronted with this plain similarity even Mr.

Bhagirath Dass was fair enough to concede that the provisions are in effect and virtually in pari materia. Once this is so, it is plain that if the third proviso could operate in the field of Section 27(1)(a)(ii), it could with equal facility have identical operative force with regard to the provisions of the predecessor statute of the Punjab General Sales Tax Act as contained in Section 5(2)(a)(ii) thereof. Consequently, on this score as well the challenge to the retrospectivity of the provision is to be repelled.

19. No other point has been raised. Both the basic contentions on behalf of the petitioners having been rejected, all the writ petitions are without merit and are hereby dismissed. The parties will, however, be left to bear their own costs.