

**(1967) 04 P&H CK 0016**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ No. 2728 of 1964**

J.N. Sharma and Sons

APPELLANT

Vs

The Assessing Authority, Excise and Taxation Officer and  
Others

RESPONDENT

**Date of Decision :** 07-04-1967

**Acts Referred:**

Punjab General Sales Tax Rules, 1949 — Rule 61A, 62

**Citation :** (1967) 20 STC 22

**Hon'ble Judges :** R.S. Narula, J

**Bench :** Single Bench

**Advocate :** D.S. Kang, for the Appellant; Anand Swarup, Advocate-General (H.) and J.C. Verma, for the Respondent

**Final Decision :** Allowed

## Judgement

R.S. Narula, J.—By order dated 17th September, 1964 (annexure "A"), Assessing Authority, Gurgaon, created a demand for Rs. 13,360.96 P. against the petitioner-firm, under the Punjab General Sales Tax Act (hereinafter called the Act). The petitioner-firm went up in revision against the above-said order to the Excise and Taxation Commissioner, Punjab, Patiala, on 12th October, 1964 (copy annexure "B"). The revisional authority directed the petitioner-firm to deposit the amount of the impugned demand (the liability to meet no part of which was admitted by the petitioner-firm) as a precondition for entertaining the revision petition on merits. Since the amount was not deposited at the initial stage, order dated 27th October, 1964 (annexure "C"), was passed by the Additional Assistant Excise and Taxation Commissioner, Punjab, directing that if the amount was not deposited till 16th November, 1964, the revision petition would be rejected summarily. On 16th December, 1964, the petitioner came to this Court to quash the order of respondents Nos. 2 and 3, insisting on the deposit of the amount of the impugned demand before the revision petition could be heard.

2. It is conceded by Shri Anand Swarup, the learned Advocate-General for the

State of Haryana, that the impugned order was made by the revisional authority in exercise of his purported jurisdiction under rules 61-A and 62 of the Punjab General Sales Tax Rules, 1949. The said rules provided as follows :-

61-A. No application for revision of an order of assessment made u/s 11 of the Act or of any order of appellate authority finally disposing of an appeal u/s 20 of the Act shall be entertained by the Commissioner unless he is satisfied that the amount of tax assessed has been paid :

Provided that the Commissioner if he is satisfied that a dealer is unable to pay the tax assessed, may, for reasons to be recorded in writing, entertain such an application without the tax having been paid.

62. The provisions of rules 58, 59 and 60 shall apply mutatis mutandis to every application for revision provided that the provisions of Sub-clause (a) of Clause (3) of Rule 59 shall not apply to an application for revision of any order other than an order of assessment made u/s 11 of the Act or of any order of appellate authority finally disposing of an appeal u/s 20 of the Act.

3. Section 21 of the Act before its amendment by the Punjab General Sales Tax (Amendment) Act (28 of 1965), did not make any provision authorising a revisional authority to insist on deposit of the impugned demand before entertaining the revision petition. Section 20 of the Act which relates to appeals was in the following terms:-

20. (1) Any dealer aggrieved by any notice issued under Sub-section (7) of Section 11 or by any order passed by the Assessing Authority under this Act may, in the prescribed manner, appeal to the prescribed authority within sixty days from the date of receiving such notice or order :

Provided that no appeal shall be entertained by such authority unless he is satisfied that the amount of tax assessed on the dealer has been paid :

Provided further that such authority if he is satisfied that a dealer is unable to pay the tax assessed, may, for reasons to be recorded in writing, entertain an appeal without the tax having been paid.

(2) Subject to such rules of procedure as may be prescribed, the said authority may pass such orders in relation thereto as he may think fit.

4. In *Daya Krishan v. The Assessing Authority cum Excise and Taxation Officer (Enforcement) and Ors.* 68 P.L.R. 673, it has been held by a Division Bench of this Court (Dua, J., and myself), that rules 61-A and 62 quoted above are repugnant to Section 21 of the Act which confers unfettered power of revision on the Commissioner of Excise and Taxation. Both these rules have, therefore, been held to be ultra vires Section 21 of the Act and have been struck down in the aforesaid judgment of this Court. The learned Advocate-General, however, points out that by the addition of Sub-section (3A) to Section 21 of the principal Act, by the Amending Act of 1965, the lacuna has been removed and the

Commissioner has now been authorised to pass an order of the kind that was passed by him in the instant case on 27th October, 1964. Sub-section (3A) of Section 21 added by the Amending Act is in the following terms :

(3A) The Commissioner or the Officer on whom powers of the Commissioner under Sub-section (1) have been conferred by the State Government or the Financial Commissioner before deciding an application under Sub-section (1) or Sub-section (3), as the case may be, may direct the applicant to deposit, in whole or in part, the amount of tax assessed and the penalty, if any, imposed on him under this Act.

5. The learned Advocate-General concedes that no new rules have been framed by the State within the scope of Sub-section (3A) of Section 21. It is a moot point whether Rule 61-A which had been struck down by this Court would automatically get revived or not consequent on the amendment of Section 21 of the Act. It is not necessary to decide this question, because Rule 61-A quoted in an earlier part of this judgment is ultra vires even Section 21 (3A) of the Act as amended in 1965. The provision made in Rule 61-A is of the kind authorised by Section 20(1) of the Act which vests such power in the appellate authority. There is marked difference between the phraseology of the relevant proviso to Section 20(1) of the Act on the one hand, and Sub-section (3A) of Section 21 on the other. The appellate authority u/s 20 of the Act read with the relevant rules is bound to insist on the deposit of the amount of demand being made as a precondition to the hearing of the appeal, unless the appellate authority is satisfied that the dealer in question is unable to pay the tax assessed and dispenses with the making of the deposit in question by an order in writing duly supported by reasons. No such mandatory requirement of deposit is contained in Sub-section (3A) of Section 21. The last-mentioned section vests a discretion in the revisional authority to direct the deposit being made or not to direct it. In a case where the deposit is not insisted upon, the Commissioner may adopt that course without passing any specific order in that respect and without giving any reasons therefor. He may not insist on the deposit for any reason and not necessarily on the ground that the dealer is unable to pay the tax assessed. Rule 61-A is, therefore, ultra vires Sub-section (3A) of Section 21 of even the amended Act, as the rigour of this rule is far greater than the permitted restriction referred to in Section 21(3A) of the Act. The Advocate-General is right in suggesting that even if the rule is ignored for the aforesaid reasons, the revising authority had the jurisdiction on account of the newly added statutory provision itself to direct the impugned deposit being made. If the impugned order had been made after the Act was amended in 1965, no fault could probably be found in it. At the time when the order was made on 27th October, 1964, however, the Commissioner was obviously acting under Rule 61-A which did not vest in him any discretion of the kind now given to him by Section 21(3 A). In these circumstances, the impugned order has to be set aside. It will, of course, be for the revising authority to exercise its discretion u/s 21(3A) as amended in the matter of requiring or not requiring the amount of tax assessed to be

deposited before the revision petition is heard on merits.

6. For the foregoing reasons this writ petition is allowed and the impugned order of respondent No. 3, dated 27th October, 1964 (annexure "C"), is set aside. In the nature of things there is no order as to costs.