

(1971) 12 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 515 of 1970

The State of Punjab and Another

APPELLANT

Vs

Aryavarta Industries Pvt. Ltd.

RESPONDENT

Date of Decision : 08-12-1971

Acts Referred:

Central Sales Tax Act, 1956 — Section 5
Punjab General Sales Tax Act, 1948 — Section 5

Citation : (1973) 30 STC 200

Hon'ble Judges : Harbans Singh, C.J.;Gurdev Singh, J

Bench : Division Bench

Advocate : Mela Ram Sharma, Deputy A.G, for the Appellant; Anand Sarup and Harbans Lal, for the Respondent

Judgement

Gurdev Singh, J.

13. This order will dispose of L.P.As. Nos. 515 to 527, 669 to 680, 698 and 700 of 1970, L.P. As. Nos. 12, 13, 22, 48 and 325 of 1971 and Civil Writ No. 96 of 1971 as they raise a common question relating to the liability of cotton seed extracted in the process of ginning cotton to purchase tax. These L.P. As. have been preferred by the State of Punjab against the judgment of a learned single Judge, holding that the petitioner-company was not required to include in its turnover the purchase of unginned cotton when it was not the last purchaser thereof, irrespective of the fact that cotton seeds remained with it. In the writ petitions out of which these appeals have arisen as well as in Civil Writ No. 96 of 1971, the assessing authority under the Punjab Sales Tax Act had held that the cotton seed extracted in the process of ginning cotton is liable to purchase tax. In holding that it was not liable to sales tax in the hands of the person ginning the cotton, the learned single Judge has relied upon the Supreme Court decision in State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others, wherein it was observed as follows :

But it is by a manufacturing process that the cotton and the seeds 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 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 u/s 5(2)(a)(vi) of the Act. In our opinion, the assessing authority was right in holding that the respondent was not entitled to deduction in respect of cotton seeds sold by it to registered dealers.

14. In following this judgment, the learned single Judge observed:

In this judgment, their Lordships held that cotton ginned or un-ginned is a single commodity and is to be treated as a single species of declared goods and cannot be subject, u/s 5(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. Their Lordships further held that cotton seeds are not "cotton" and no deduction can be allowed on account of the sale proceeds of the cotton seeds extracted from unginned cotton and sold to the registered dealers u/s 5(2)(a)(vi) of the Act, but deduction was admissible in respect of the ginned cotton obtained from the unginned cotton by the process of manufacture if the same was sold to a registered dealer under the said provision.

It is quite apparent that in view of the addition of Section 5(3) to the Act, this method of assessment in respect of cotton is not permissible. Cotton being declared goods and only liable to purchase tax, the last dealer liable to pay this tax has to be found. This finding has not been given by the assessing authority although it was necessary to be given in view of the fact that the petitioner-company had denied that it was the last purchaser to pay the tax. The question, however, arises whether the petitioner-company can be said to be the last purchaser of cotton in the present case, in view of the admitted fact that the ginned cotton extracted out of the unginned cotton purchased by the petitioner-company was sold to registered dealers. Cotton ginned or unginned is to be considered as a single commodity, according to their Lordships of the Supreme Court in the case referred to above. It shall have to be presumed that the unginned cotton purchased by the petitioner-company was sold by it to registered dealers in the form of ginned cotton. If no part of the unginned cotton or ginned cotton obtained therefrom remained with the petitioner-company, it could not be said to be the last purchaser of cotton liable to pay tax under the Act, merely because cotton seeds, a by-product from the unginned cotton by process of manufacture, have remained with the petitioner-company, for cotton seeds cannot be said to be cotton...The fact that the cotton seeds have remained with the petitioner is not to be taken into consideration, for that purpose.

15. Under the Punjab Sales Tax Act as amended by Act 7 of 1967 both cotton and cotton seeds are "declared goods" on which admittedly the tax has to be paid by the last purchaser. Now, it is firmly settled that the word "cotton" includes both ginned and unginned cotton and even after ginning when ginned

cotton and cotton seeds are obtained, we have to find who is the last purchaser of cotton. If the entire ginned cotton is sold away after ginning, then obviously the purchaser who carried out the process of ginning is not the last purchaser of cotton. Thus, he is not liable to purchase tax. In that case, we have to find out who is the last purchaser.

16. So far as cotton seeds are concerned, it, according to the learned counsel for the State, is a by-product of ginning and thus entirely a new commodity. It, therefore, he argues, follows that before it is subjected to purchase tax, the assessing authority has to find out who the last purchaser is. Cotton seeds separated in the process of ginning cannot be said to have been purchased by the person carrying out the ginning process. If entire ginned cotton obtained out of the unginned cotton is sold away, it follows that no cotton is consumed by the person carrying out the process of ginning and, as such, the by-product in the form of cotton seeds obtained cannot be subjected to purchase tax. State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others, very recently came up for consideration before their Lordships of the Supreme Court in The State of Punjab and Others Vs. Shakti Cotton Company and Others, Civil Appeal No. 2319 of 1968, decided on 5th November, 1971 (along with some other decisions bearing on the point). Dealing with this case, Vaidialingam, J., speaking for the court observed as follows:

The decision in the State of Punjab and Ors. v. Chandu Lal Kishori Lal and, Ors., 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 Ors. v. Chandu Lal Kishori Lal and Ors. is, in our opinion, no bar to the assessee's 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 Ors. v. Chandu Lal Kishori Lal and Ors., 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 turnover 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 though 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 what deduction, if any, should or should not be allowed in calculating the turnover in respect of such goods, should not at all arise.

17. Later, advertng to the same decision, his Lordship said :

...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 Vs. Chandu Lal Kishori Lal and Others, cannot operate to the prejudice of the assesseees. 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. Vs. State of Punjab and Another, 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 Ors. v. Chandu Lal Kishori Lal and Ors., 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." It is, thus, apparent that the decision in State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others, cannot form the basis of decision in this case and the matter will have to be decided on the rule laid down by their Lordships of the Supreme Court recently in the The State of Punjab and Others Vs. Shakti Cotton Company and Others, Civil Appeal No. 2319 of 1968, decided on 5th November, 1971. In this latest decision, by which seven appeals against the judgment and orders of the Punjab High Court were disposed of, the controversy related to the assessment of sales tax in respect of cotton, which is admittedly an item of declared goods under Schedule "C" to the Act. Advertng to the facts of the case of Shakti Cotton Company, one of the seven cases which their Lordships were considering, we find that the company claimed deduction u/s 5(2)(a)(vi) from its gross turnover, value of the entire quantity of cotton it had purchased. This deduction was, however, disallowed and the order of the assessing authority was challenged in the Supreme Court (sic) by means of Civil Writ No. 452 of 1964. The firm's claim before the assessing authority was that if 3 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 proceeding on this basis allowed deduction of 1/3rd of the total price paid for the unginned cotton, and held 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 turnover u/s 5(2)(a)(vi) of the Punjab Act, as the said material is not cotton but something different. The State, defending the validity of the assessment order, reiterated that cotton seeds are different from cotton and the price realised by the sale of the former did not qualify for deduction under the said provision of the Punjab Act as the cotton seeds are not, the same commodity as cotton that had been originally purchased. The learned single Judge of this court, who dealt with this matter, being of the opinion that full deduction permissible to a dealer u/s 5(2)(a)(vi) of the Act as laid down by the Division Bench in Patel Cotton Company Private Ltd. v. The State of Punjab and Ors. [1964] 15 S.T.C. 805 having not been granted to

the firm, allowed the petition and directed the Sales Tax Officer to redetermine the matter and make an assessment order in accordance with the rule laid down in Patel Cotton Company's case [1964] 15 S.T.C. 805 (SC) . It is against that order that Shakti Cotton Company approached the Supreme Court in The State of Punjab and Others Vs. Shakti Cotton Company and Others, .

18. Their Lordships after noticing in detail the history of the relevant provisions of the sales tax legislation and the amendments made consequent upon the decision of that court in Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, adverted to their own decision in State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others, in which it had been held that cotton seed obtained after ginning was not cotton but a different material. Their Lordships, however found that in deciding Chandu Lal's case, earlier decisions of the Supreme Court in Bhawani Cotton Mills' case and Patel Cotton Company's case, had not been considered. Accordingly, Vaidialingam, J., who delivered the judgment of the court observed that the decision in State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others, is not to form the basis of assessment and it could at the most be considered to have decided that the cotton seeds were not declared goods.

19. What emerges from the recent decision of the Supreme Court in State of Punjab v. Shakti Cotton Company, Civil Appeal No. 2319 of 1968, is that cotton seed is not cotton but a different commodity. In fact, it is admitted that now it is one of the items of declared goods under Schedule "C". Learned counsel for the State has urged that in this situation, no deduction in respect of these goods can be claimed. Even if that be so, the fact remains that as a result of ginning cotton seeds and ginned cotton are obtained. Ginned cotton admittedly is cotton and an item of declared goods. There is no controversy about it and there cannot be. Deduction on account of ginned cotton is permissible. The question that remains to be considered is, whether a dealer is liable to purchase tax in a case where he sells the entire ginned cotton that he had obtained after ginning, out of the unginned cotton purchased by him. It is obvious that if he had sold the entire cotton, though after the process of ginning, he has not consumed or retained any cotton as such and thus, the entire purchase price of the cotton so used for ginning can be claimed as deduction. So far as the cotton seed is concerned, there is no question of its being subjected to purchase tax in the hands of the person obtaining it by ginning of unginned cotton once he has sold away the entire ginned cotton that he obtained as a result of ginning. In this view of the matter, the tax on cotton will have to be levied on the person who is the last purchaser, thereof.

20. The learned single Judge, while disposing of Civil Writ No. 2494 of 1969, which is the subject-matter of L.P.A. No. ,515 of 1970, has, on consideration of the legal position, observed :

The petitioner-company was not required to include in its turnover the purchase of cotton when it was not the last purchaser thereof irrespective of the fact that

cotton seeds remained with it.

21. This is the basis on which the decisions in all these cases proceed. These observations, if I may say so with respect, are in accord with the dictum of their Lordships of the Supreme Court in the cases noticed above. I, thus, see no infirmity in the judgments under appeal before us to warrant interference. I would, accordingly, dismiss all the Letters Patent appeals (detailed in the opening part of this judgment) and allow Civil Writ No. 96 of 1971. The impugned orders in the latter case are quashed. The assessing authority will, however, be at liberty to make fresh assessments in accordance with the provisions of the Act and in the light of the observations made above. I would, however, leave the parties to bear their own costs in all these cases.

Harbans Singh, C.J.

22. I agree.