CIVIL MISCELLANEOUS

Before D. Falshaw, C. J., and H. R. Khanna, J.

MESSRS MODI SPINNING AND WEAVING MILLS, COMPANY LIMITED, AND ANOTHER,—*Petitioners.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 909 of 1964.

1964

December, 22nd

Punjab General Sales Tax Act (XLVI of 1948)—Ss. 5(2)(a)(vi) and 10—Punjab General Sales Tax Rules (1949)—Rules 20 and 25—Whether conflict with provisions of the Act and are, therefore, invalid.

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Held that there is no such inherent conflict or inconsistency between Rules 20 and 25 of the Punjab General Sales Tax Rules, 1949, and the provisions of the Punjab General Sales Tax Act, 1948, as is not capable of being reconciled and harmonised and the impugned Rules are not liable to be struck down because of the supposed repugnancy. The various sub-sections of section 10 of the Act confer a power on the prescribed authority to fix the intervals of time at which the tax is to be paid and to call upon the dealer to file returns by such dates as may be fixed along with the treasury receipts about the deposit of tax due according to the returns and in case of his failure to impose a penalty in addition to the amount of tax assessed. Sub-section (1) of section 27 of the Act authorises the State Government

to make rules for carrying out the purposes of the Act. Clause (g) of section (2) expressly authorises, *inter alia,* the State Government to make rules with regard to the manner in which the tax under the Act shall be payable, while, according to clause (h), the rules may prescribe the returns to be furnished under sub-section (3) of section 10, and the dates by which, and the authority to which such returns should be furnished. A plain reading of Rules 20 and 25 makes it clear that they fall within the scope of section 10 of the Act and the rule-making power given to the Government by section 27.

Held, that there is no substance in the contention that if the returns are filed quarterly along with treasury receipts about the deposit of the tax due, it would have the effect of nullifying the benefit of sub-clause (vi) of clause (a) of sub-section (2) of section 5 of the Act. The above sub-clause makes provision for the deductions to be made in arriving at the final figure of taxable turnover for certain sales during the period of six months after the close of the year. Those sales can certainly be taken into account and consequential deductions made at the time of the assessment under section 11 of the Act, but it is not open to a dealer to evade the filing of the quarterly return for purchase tax on the ground that he would be entitled to some further deductions in respect of the sales made by him after that quarter. The figures of taxable turnover which the dealer has to mention in form S. T. VIII-A can, in the circumstances, be only a provisional figure, and if it is established that subsequent to the filing of that return during the period not later than six months after the close of the year, the goods, in respect of which purchase tax was paid, have been sold 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, the dealer would become entitled to the refund of the excess tax paid. There is also no force in the contention that a dealer should not be forced to deposit tax which may not become due from him because of subsequent sales contemplated by sub-clause (vi) of clause (a) of sub-section (2) of section 5 of the Act. There is no provision in the Act prohibiting the deposit of tax into a Government treasury which may ultimately have to be refunded. On the contrary section 12 clearly contemplates an eventuality wherein tax, which might not be found ultimately to be due, may be at first deposited and subsequently refunded. In the circumstances, if the working of the rules leads to deposit of some tax, which may ultimately have to be refunded, the rules cannot be struck down on that score.

Case referred by the Hon'ble Mr. Justice H. R. Khanna on 23rd October, 1964 to a larger Bench for decision of an important question of law involved in the case and the Division Bench consisting of Hon'ble the Chief Justice Mr. D. Falshaw and the Hon'ble Mr.

Justice H. R. Khanna after deciding the question of law returned the case to the Single Bench on 22nd December, 1964 for final decision of the case.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of mandamus, certiorari, or any other appropriate writ, order or direction be issued directing the respondents not to compel the petitioner Company to file the Return in form ST-VIII-(A) and deposit the tax for the year 1963-64 before the Statutory period expires, i.e., 30th October, 1964 and further praying that the respondents be further directed not to take any penal action against the petitioner Company under the order dated 7th May, 1964 till the final disposal of the Writ Petition.

H. L. SIBAL, S. C. SIBAL AND N. N. GOSWAMY, ADVOCATES for the Petitioners.

M. R. SHARMA, ASSISTANT ADVOCATE-GENERAL AND R. L. SHARMA, ADVOCATE for the Respondents.

ORDER OF THE DIVISION BENCH.

KHANNA, J.—Question relating to the validity of Rules 20 and 25 of the Punjab General Sales Tax Rules, 1949 (hereinafter referred to as the Rules), arises for determination in this petition No. 909 of 1964 as well as in Civil Writs Nos. 613 and 1500 of 1964. In view of the importance of the question, the matter has been referred to the Division Bench in pursuance of my order dated October 23, 1964. **Khanna, J.**

Arguments have been addressed in Civil Writ No. 909 of 1964, and it is stated that the question of law decided in that case would also govern the other two cases, though, it is added, that in case the question is decided against the petitioners, Civil Writ No. 613 of 1964 would still have to be sent to the Single Judge for determining another matter which arises on the facts of the case.

According to the allegations of the petitioners in Civil Writ No. 909 of 1964, the petitioner-Company is carrying on the business of manufacturing cotton yarn, cotton cloth, artificial silk and yarn fabrics at Modinagar. The Company has got a cotton ginning and cotton seeds de-linting factory at Abohar in Ferozepore District of the

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Punjab, and another branch at Patiala, where it carries on business of cotton ginning and oil-seeds crushing. The Company is registered as a dealer under the Punjab General Sales Tax Act, 1948 (Punjab Act No. XLVI of 1948) (hereinafter referred to as the Act). The business of the Company at Abohar and Patiala includes purchase of unginned cotton and oil-seeds. The oil-seeds are crushed and the oil cake yields are sold in the market. The un-ginned cotton is ginned and after ginning, is sent to Modinagar for manufacturing cotton yarn and cloth. Some quantity of ginned cotton is also sold in the market either to registered dealers or in the course of inter-State trade or commerce. The cotton seeds got out of the ginned cotton are crushed in the mill and sometimes are sold in the market. The petitioner-Company was required under Rule 20 to submit returns in forms S.T. VIII and S.T. VIII-A, for the year 1963-64 for all the four quarters. The Company furnished returns in form S. T. VIII, but did not file returns in form S.T. VIII-A, which relates to purchase tax. Subsequently; when a Show-Cause Notice was issued by the Assessing Authority as to why action should not be taken for not filing the returns, the petitioner-Company deposited Rs. 48,000 on 21st December, 1963, for the first two quarters of 1963-64, and for the subsequent two quarters, under directions of the Assessing Authority, the petitioner-Company deposited Rs. 24,000 and Rs. 40,000, making in all a deposit of Rs. 1,12,000 as tax for returns in form S.T. VIII-A. According to the petitioner, Rules 20 and 25, according to which the returns in Form S. T. VIII-A have to be filed and tax deposited, are liable to be struck down.

It may be stated that according to the allegations made in the petition, a petition under Article 32 of the Constitution was filed by the petitioner-Company before the Supreme Court challenging the *vires* of the Act. The learned counsel for the petitioners has stated that what was challenged in that petition was the validity of the purchase tax, but the same has now been dismissed by the Supreme Court.

The petition has been resisted by the State of Punjab and the Assessing Authority, who have been impleaded as respondents, and they have averred that the impugned orders are valid and are not liable to be struck down

Purchase tax is levied on cotton, oil-seeds and resin which articles are mentioned in Schedule 'C' of the Act. According to section 2(ff), 'purchase' with all its grammatical or cognate expressions, means the acquisition of goods specified in Schedule C for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge. The word "turnover" has been defined in clause (i) of section 2 as to include—

> (i) the aggregate of the amounts of sales and purchases and parts of sales and purchases actually made by any dealer during the given period less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof."

According to Explanation (1) to the above clause, the proceeds of any sale made outside the Punjab by a dealer, who carried on business both inside and outside the Punjab shall not be included in the turnover. The impugned Rules 20 and 25, read as under:—

> "20. Every registered dealer, other than those referred to in rules 17, 18 and 19, shall furnish returns in Form S.T. VIII or S.T. VIII-A or S.T. XXIII, as the case may be, quarterly within thirty days from the expiry of each quarter.
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> 25. All returns in Form S. T. VIII or S.T. VIII-A or S. T. XXIII, as the case may be, which are required to be furnished under these rules, shall be signed by the registered dealer or his agent, and shall be sent to the appropriate Assessing Authority or the Taxation Sub-Inspectors posted for sales-tax work at places other than the district headquarters, together with the treasury or bank receipt in proof of payment of the tax due."

Mr. Sibal, who has argued the case on behalf of the petitioners, contends that the above Rules cannot be complied with and have become impracticable in the matter

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of purchase tax; because according to sub-clause (vi) of clause (a) of sub-section (2) of section (2) of section 5 of the Act in arriving at the figure of taxable turnover for any period, the following deductions have to be made from a dealer's gross turnover.

> "(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.
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> Provided that in the case of such a sale to a registere 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."

It is argued that as the above deductions cover the period of six months after the close of the year, it would not be possible for the dealer to file the return and deposit the tax in accordance with the impugned Rules quarterly before the expiry of the above period of six months. Reference has also been made to form S. T. VIII-A of the return of purchase tax which has to be filed by a dealer and according to which 'taxable turnover' means purchase price period for the goods minus deductions which are permitted by the law. Whatever might be the position before the amendment made by Punjab Act No. 18 of 1960 by which sub-clause (vi) in its present form was inserted, the strict compliance with the Rules, Mr. Sibal contends, would have the effect of nullifying for the time being the benefit of deductions allowed by the above sub-clause (vi). The impugned Rules, it is stated, are liable to be struck down because they are in conflict with the above provisions of the Act.

After giving the matter my consideration, I am of the view that there is no such inherent conflict or inconsistency between the Rules and the provisions of the Act. as is not capable of being reconciled and harmonised. and the impugned Rules are not liable to be struck down because of the supposed repugnancy. Sub-section (1) of

section 10 provides that the tax payable under the Act shall be paid in the manner provided at such intervals as may be prescribed. According to sub-section (3) of that section every registered dealer shall furnish returns under the Act by such dates and to such authority as may be prescribed. There follows a proviso but we are not concerned with that. Sub-section (4) of that section makes it obligatory for a dealer to furnish along with the return a receipt about the deposit of tax due according to return in Government Treasury or Reserve Bank of India. Sub-section (6) of section 10 empowers the Commissioner or any other officer duly authorised for the purpose to impose a penalty in addition to the amount of tax assessed in case a dealer fails without sufficient cause to comply with the requirements of the provisions of sub-section (3) or sub-section (4). Reading the different sub-sections together it would follow that a power is given to the prescribed authority to fix the intervals of time at which the tax is to be paid and to call upon the dealer to file returns by such dates as may be fixed along with the treasury receipts about the deposit of tax due according to the returns and in case of his failure to impose a penalty in addition to the amount of tax assessed. Sub-section (1) of section 27 of the Act authorises the State Government to make rules for carrying out the purposes of the Act. Clause (g) of sub-section (2) expressly authorises, *inter alia*, the State Government to make rules with regard to the manner in which the tax under the Act shall be payable, while, according to clause (h), the rules may prescribe the returns to be furnished under sub-section (3) of section 10, and the dates by which, and the authority to which such returns should be furnished. A plain reading of Rules 20 and 25 makes it clear that they fall within the scope of section 10 of the Act and the rule making power given to the Government by section 27.

So far as the contention is concerned that if the returns are filed quarterly along with treasury receipts about the deposit of the tax due, it would have the effect of nullifying the benefit of sub-clause (vi) of clause (a) of sub-section (2) of section 5 of the Act, I am of the view that this contention is devoid of force. The above sub-clause makes provision for the deductions to be made in arriving at the final figure of taxable turnover for certain

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sales during the period of six months after the close of the year. Those sales can certainly be taken into account and consequential deductions made at the time of the assessment under section 11 of the Act, but it is, in my opinion, not open to a dealer to evade the filing of the quarterly return for purchase tax on the ground that he would be entitled to some further deductions in respect of the sales made by him after that quarter. The figure of taxable turnover which the dealer has to mention in Form S.T. VIII-A, can, in the circumstances, be only a provisional figure, and if it is established that subsequent to the filing of that return during the period not later than six months after the close of the year, the goods, in respect of which purchase tax was paid, have been sold 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, the dealer would become entitled to the refund of the excess tax paid. Section 12 deals precisely with such like contingency and reads—

> "The Assessing Authority shall, in the prescribed manner, refund to a registered dealer applying in this behalf any amount of tax paid by such dealer under this Act—
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> (a) if the amount of tax so paid is in excess of the amount due from him under this Act: or
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> (b) if the amount of tax so paid is in respect of the sale or purchase of any declared goods and such goods are sold in the course of inter-State trade or commerce;
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> either by a refund voucher or, at the option of the dealer by deduction of the tax so paid from amount of tax due from him in respect of any other period:
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> Provided that the refund under clause (b) shall be subject to such conditions as may be prescribed."

There is also no force in the contention that a dealer should not be forced to deposit tax which may not become

due from him because of subsequent sales contemplated by sub-clause (vi) of clause (a) of sub-section (2) of section 5 of the Act. There is no provision in the Act prohibiting the deposit of tax into a Government treasury which may ultimately have to be refunded. On the contrary section 12 clearly contemplates an eventuality wherein tax, which might not be found ultimately to be due, may be at first deposited and subsequently refunded. In the circumstances, if the working of the rules leads to deposit of same tax, which may ultimately have to be refunded, the rules cannot be struck down on that score. It may be mentioned that in modern taxation laws, it is not unusual to find a provision the effect of which is to make imperative the initial deposit of tax which may in certain contingencies have ultimately to be refunded on the ground that it was not due. Reference in this connection may be made to section 18-A of the Indian Income-tax Act, 1922, and sections 208 and 209 of the Income-tax Act, 1961, which make provisions for the payment of advance income-tax.

It is an established principle of law that different provisions of an enactment should be so construed that they may operate in harmony with the other provisions of the Act. Applying this rule of construction, sub-clause (vi) of clause (a) of sub-section (2) of section 5 should be read in harmony with section 12 of the Act, and as section 12 makes provision for refund of tax in contingencies including those contemplated by sub-clause (vi) of clause (a) of sub-section (2) of section 5, it would follow that the above sub-clause (vi) does not prohibit the deposit of tax which may ultimately have to be refunded on account of deductions allowed by that sub-clause. I would, accordingly, hold that there is no repugnancy between the impugned rules 20 and 25, and the provisions of the Act.

Reference has been made on behalf of the petitioners to *The Vidarbha Co-operative Marketing Society Ltd.* v. *Sales Tax Officer III, II Division, Nagpur and others* (1), wherein it has been laid down that rules made under a statute cannot take away any part of the powers or affect any of the provisions of the parent Act under which the rules are made, unless the Act itself permits that to be

(1) 14, S.T.C., 430.

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done. The petitioners, in my opinion, can derive no assistance from the above authority because, as discussed above, the impugned rules in the present case are in consonance with the provisions of the Act and do not in any way detract from those provisions.

Civil Writ petitions Nos. 909 and 1500 of 1964 are consequently dismissed, but in the circumstances I leave the parties to bear their own costs.

Civil Writ petition No. 613 of 1964 may now be sent back to the Single Judge for determining the other question which is stated to arise on the facts of that case.

Falshaw, C.J.

D. FALSHAW, C.J.—I agree.

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