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therefore, liable to indemnify M/s Sardara Singh-Niranjan Singh, the net result being that the Government must be indemnified ultimately by M/s Mohinder Singh-Gurbachan Singh. However, if the Government cannot recover the money from M/s. Mohinder Singh-Gurbachan Singh, the primary liability of M/s Sardara Singh-Niranjan Singh to indemnify the Government will stand, though M/s Sardara Singh-Niranjan Singh, in trun, will be entitled to get themselves indemnified from M/s. Mohinder Singh-Gurbachan Singh. From the record it appears that the Government has already detained some amount from M/s Mohinder Singh-Gurbachan Singh and if that be the case, the Government's claim would stand satisfied without its first realising the money from M/s Sardara Singh-Niranjan Singh and then M/s Sardara Singh-Niranjan Singh realising the same from M/s Mohinder Singh-Gurbachan Singh. The appeal filed by M/s Sardara Singh-Niranjan Singh is, therefore, partly accepted to the extent of modification of learned Commissioner's order in the terms stated above. The appeal filed by M/s Mohinder Singh-Gurbachan Singh will stand dismissed. In view of the fact that the question was far from clear, the parties will bear their own costs in this Court.

K.S.K.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and Inder Dev Dua, J.

M/s PURAN CHAND-GOPAL CHAND,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ Application No. 1704 of 1960

1962

May 2nd.

East Punjab General Sales Tax Act (XLVI of 1948) as amended by Act VII of 1958—Section 2(ff)—Conversion of old ornaments into bullion—Whether involves manufacturing process—Purchase tax—Whether leviable on

purchase of old ornaments which are converted into bullion for sale—Constitution of India—Article 226—Existence of alternative remedy—How far a bar to the grant of relief in a writ petition.

Held, that the purchase of old ornaments for converting them into bullion does not *per se* take the case out of the definition of the word "purchase" as contained in section 2(ff) of the East Punjab General Sales Tax Act, 1948, as amended by Punjab Act VII of 1958. Old ornaments are goods and so is bullion ; both are goods of different categories and are saleable; conversion of the former category into the latter might well involve a manufacturing process, and if the conversion into bullion is intended for the purpose of selling it or making it marketable as such, then it is not easy to hold that the purchase of old ornaments is not liable to purchase tax. The word "manufacture" has various shades of meaning, but as used in section 2(ff) it appears to involve a process of manual labour by which one object is changed into another for selling it. Even removal of alloy from old ornaments so as to convert them into bullion might well involve a process of manufacture.

Held, that ordinarily in the presence of an alternative remedy High Court would feel disinclined in the exercise of its discretion to interfere on its writ side. But this is not a matter of jurisdiction and *per se* an alternative remedy would not stand in the way of High Court's power to interfere in a fit case. The writ Court must consider each case on its merits and determine whether or not the alternative remedy is adequate and effective, so as to induce the Court to stay its hands leaving the aggrieved applicant to exhaust the alternative remedy. In considering this matter, the nature of the right invaded, the grounds of challenge and the conduct of the petitioner are also relevant factors. The fact that the aggrieved applicant has by choosing to come to High Court allowed the alternative remedy to be barred by time may also by itself not be conclusive, though in certain circumstances it may not be wholly irrelevant.

Case referred by Hon'ble Mr. Justice D. K. Mahajan, on 16th November, 1961 to a larger Bench for decision owing to the importance of the questions of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble the Chief Justice Mr. D. Falshaw and Hon'ble Mr Justice Dua, on 2nd May, 1962

Petition under Article 226 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the orders of respondent No. 2 contained in letters, dated 11th June, 1960 and 20th September, 1960 and of the respondent No. 3, dated 9th August, 1959, imposing a tax at 2 per cent on the purchase of ornaments and declaring that the respondents are not entitled to impose or realize any tax from the petitioner on the purchase of old ornaments.

D. S. NEHRA, ADVOCATE, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondents.

ORDER

Dua, J.

DUA, J.—This petition under Article 226 of the Constitution has been referred to a Division Bench by D. K. Mahajan, J., on the ground that the question raised is of importance and also arises in a number of other petitions.

The petitioner is a Hindu Undivided Family firm carrying on *sarafa* business at Ludhiana and is registered as a dealer under the East Punjab General Sales Tax Act No. 46 of 1948. The business of this firm, according to the writ petition, consists of, *inter alia*, the sale and purchase of silver, gold bullion, and gold and silver ornaments, etc. The ornaments purchased by the firm are either resold in the same form or converted into pure gold after removing the alloy. On 19th April, 1958, the Punjab General Sales Tax Amendment) Act No. 7 of 1958 was promulgated by means of which *inter alia* the terms "dealer" and "turnover" were amended and the definition of the word "purchase" was inserted for the first time. The Assessing Authority (Excise and Taxation Officer), respondent No. 3, proceeded to impose purchase tax on the petitioner in respect of the year 1958-59 on the purchase price of gold bullion, silver and ornaments converted into gold after separating alloy therefrom. This assessment was sought to be made under the Amendment Act No. 7 of 1958. On 1st August, 1959, the impugned assessment order

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was made and the petitioner assessed to a sum of Rs. 499.08 as purchase tax. The petitioner through the President of *Sarafa* Association, Ludhiana, moved the Excise and Taxation Commissioner, Patiala (respondent No. 2 in this Court) for clarification of the position as a result of which all the Assessment Authorities were directed to hold in abeyance till further orders the assessment cases of the *sarafs* who, as part of their business, purchased old ornaments and prepared bullion and new ornaments therefrom for sale. On 20th September, 1960, respondent No. 2 informed the *sarafa* Association that on consideration of the matter it had been decided that conversion of old ornaments into bullion and/or preparation of new ornaments therefrom constituted a manufacturing process with the result that such purchase of old ornaments would be subject to levy of purchase tax. The petitioner has further stated that an appeal preferred against the assessment order would stand virtually decided against the petitioner because the Appellate Authority being subordinate to the Excise and Taxation Commissioner, respondent No. 2, could not but decide the appeal in accordance with the decision of the said respondent.

In the return, almost all the facts are admitted and it is pleaded that conversion of old ornaments into bullion and new ornaments constitutes a process of manufacture and the acquisition of old ornaments for this purpose is a "purchase" within the meaning of section 2(ff) of the Sales Tax Act. By the time the return was filed, the petitioner's appeal had already been dismissed and it is averred in the return that the same has been rightly dismissed.

Before us a preliminary objection has been raised on behalf of Shri Doabia that the petitioner should have approached this Court through the proper channels by approaching the heirarchy of officers under the East Punjab General Sales Tax Act and this Court should not permit the petitioner to by pass the procedure prescribed in the Act. As against this, Shri Nehra has submitted

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that there being no dispute in regard to facts the only question which this Court is called upon to determine in this petition is a pure question of law whether or not purchase of old ornaments for the purpose of converting them into pure gold by removing the alloy falls within the purview of "purchase" as defined in section 2(ff). It is conceded that purchase of old ornaments for the purpose of making new ornaments would be covered by the definition of the word "purchase." The question being one of imposition of tax on a citizen it is emphasised that since the learned Single Judge has thought fit to refer the controversy raised by this writ petition to a larger Bench, it should be disposed of on the merits. The counsel has also brought to our notice a decision of the Deputy Excise and Taxation Commissioner, Jullundur Division, dated 30th November, 1960 and it is stressed that now perhaps the petitioner would be out of time for the purpose of approaching the higher authorities against the appellate order of November, 1960.

The legal position in regard to the competency of writ when an alternative remedy is available has by now been clearly laid down by high authority and is no longer in serious doubt. The Supreme Court has more than once considered this question. Very recently, Rajagopala Ayyangar, J., expressing the views of a Bench of five Judges in *A. V. Venkataswaran* v. *Ramchand Sobhraj Wadhwani and another* (1), stated the position thus:—

> "We see considerable force in the argument of the learned Solicitor-General. We must, however, point out that the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a rule which Courts have laid down for the exercise of their discretion.

(1) A.I.R. 1961 S.C. 1506.

The law on this matter has been enunciated in several decisions of this Court but it is sufficient to refer to two cases: In *Union of India* v. *T. R. Varma* (2). Venkatarama Ayyar speaking for the Court said:

'It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in *Rashid Ahmed* v. *Municipal Board, Kairana* (3), the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs. Vide also *K. S. Rashid and Son* v. *The Income Tax Investigation Commission* (4). And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor.'

There is no difference between the above and the formulation by Das, C.J., in *State of Uttar Pradesh* v. *Mohammad Nooh* (5), where he observed:

'.....It must be borne in mind that there is no rule, with regard to *certiorari* as there is with *mandamus*, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, *certiorari* will lie although a right of

(2) 1958 S.C.R. 499 at pp. 503-504: A.I.R. 1957 S.C. 882 at p. 884.
(3) A.I.R. 1950 S.C. 163.
(4) A.I.R. 1954 S.C. 207.
(5) 1958 S.C.R. 595 at pp. 605—607: A.I.R. 1958 S.C. 86 at p. 93.

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appeal has been conferred by statute. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of *certiorari* to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of *certiorari* has been issued in spite of the fact that the aggrieved party had other adequate legal remedies'.

After referring to a few cases in which the existence of an alternative remedy had been held not to bar the issue of a prerogative writ the learned Chief Justice added:

'It has also been held that a litigant who has lost his right of appeal or has failed to perfect an appeal by no fault of his own may in a proper case obtain a review by *certiorari*.'

In the result this court held that the existence of other legal remedies was not *per se* a bar to the issue of a writ of *certiorari* and that the Court was not bound to relegate the petitioner to the other legal remedies available to him.

The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor-General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy

were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

In *Himmat Lal* v. *State of Madhya Pradesh* (6), Mahajan, C. J., also speaking for a Bench of five Judges after approvingly referring to the *State of Bombay* v. *United Motors (India) Ltd.* (7), expressed similar views. Indeed, this Court also took the same view in the *Punjab Woollen Textile Mills* v. *Assessing Authority Sales Tax* (8). The correct legal position which seems to emerge from the authorities mentioned above is that ordinarily in the presence of an alternative remedy this Court would feel disinclined in the exercise of its discretion to interfere on its writ side. But this is not a matter of jurisdiction and *per se* an alternative remedy would not stand in the way of this Court's power to interfere in a fit case. The writ Court must consider each case on its merits and determine whether or not the alternative remedy is adequate and effective, so as to induce the Court to stay its hands leaving the aggrieved applicant to exhaust the alternative remedy. In

(6) A.I.R. 1954 S.C. 403.
(7) A.I.R. 1953 S.C. 252.
(8) I.L.R. 1960 Punj. 763.

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considering this matter, the nature of the right invaded, the grounds of challenge and the conduct of the petitioner are also relevant factors. The fact that the aggrieved applicant has by choosing to come to this Court allowed the alternative remedy to be barred by time may also by itself not be conclusive, though in certain circumstances it may not be wholly irrelevant.

Now in the case in hand a learned Single Judge has in view of the importance of the question raised considered it fit to refer the case to a larger Bench for authoritative decision and the petitioner has submitted that his arguments would be confined to the abstract question of law arising on admitted facts and it has further been stated that the petitioner is now out of time for approaching the higher departmental authorities. In view of these circumstances I think it would be desirable that the present case be considered on the merits. I must, however, not be understood as laying down that in every notice case where only abstract questions of law are raised this Court must go into the merits; nor do I intend the present case to serve as a precedent in future for interference merely because abstract questions of law are proposed to be canvassed.

Coming to the merits it is conceded by the petitioner's counsel that converting old ornaments into new ones would amount to manufacture and, therefore, would be covered by the definition of the word "purchase" as contained in section 2(ff). The only question argued by Shri Nehra which survives determination is whether purchase of old ornaments for converting them into bullion for sale does not involve any manufacturing process, and, therefore, is not taxable.

Reliance, to begin with, has been placed on *Messrs Tungabhadra Industries Limited* v. *The Commercial Tax Officer* (9). According to this decision conversion of raw groundnut into refined

(9) A.I.R. 1961 S.C. 412.

oil merely consists of removing from the former that constituent part of the raw oil which is not really oil, with the result that the oil continues to be groundnut oil and nothing more. The process of conversion involved has been held to be intended merely for the purpose of rendering the oil more stable by improving its keeping qualities. On this ground the assessee was held entitled to the benefit of deduction of purchase price of the groundnut under Rule 18(2) of Madras General Sales Tax (Turnover and Assessment) Rules (1939). This authority is concerned with a provision of law which appears to be differently worded and with facts which are also materially dissimilar to the law and facts which concern us. *Moti Lal Ram Chander* v. *State of Bombay* (10), a decision of the Sales Tax Tribunal Bombay, which lays down that conversion of butter into ghee by boiling process does not amount to "process" within the meaning of section 5(i)(b), Bombay Sales Tax Act, 1946, is also of no assistance, for, there is little similarity between that case and the case in hand. *Messrs Raghbir Chand Som Chand* v. *Excise and Taxation Officer* (11), is equally unhelpful. Paragraph 15 of the judgment containing the observations of G. D. Khosla, C.J. on which reliance has been placed in substance says that ginned and unginned cotton have been looked upon by the Legislature as one and the same thing. This dictum has not been shown to be of any material assistance to the appellants. The point, as is clear from this paragraph, was considered from first principles. At pages 185 and 186 of the report, however, the etymological meanings of the word "manufacture" have been subjected by Tek Chand J., to a detailed discussion and the learned Judge has also noticed a number of American decisions as also other decisions, but the petitioners' counsel has not been able to illustrate or point out as to how the final conclusion in the reported case supports him in his contention before us.

(10) 3 S.T. Cases 140.
(11) 1960 P.L.R. 175.

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On behalf of the respondents it has been contended that if some metal is separated from or taken out of the old ornaments then the process is included in the word "manufacture" as contemplated in the definition of "purchase" in section 2(ff). Assistance has been sought for this submission from the ratio of two decided cases. *State of M.P.* v. *Wasudeo* (12), is a decision by Bhutt J., of the Madhya Pradesh High Court on criminal revision in which a person, who made or shaped the cut trees into logs or rafters and sold them as such was held to be a dealer who manufactured or produced goods within the meaning of section 2(i)(a) of the C. P. and Berar S.T. Act. *G. R. Kulkarni* v. *State* (13), is another decision of the same High Court by a Division Bench (Hidayatullah, C.J., and Chaturvedi, J.) on reference by the Board of Revenue under section 23(1) of the M.P. Sales Tax Act. There breaking of boulders into metal (gitti) was held to amount to manufacture within the meaning of section 2(i)(a). I may here mention that the word "manufacture" in the relevant statutes with which these two cases were concerned has been defined as including any process or manner of producing, preparing or making any goods; the Court there further observed that even without the statutory definition, the word "manufacture," in relation to the other parts of the Act concerned, bore the identical meaning, the statutory definition doing no more than clearing the ground to avoid future disputes.

Shri Nehra has in reply submitted that manufacture must necessarily be from raw material; converting old ornaments into bullion, therefore, according to him, could not in law amount to manufacture. This argument, however, seems to me to run counter to the concession made by the counsel at the outset that converting old ornaments into new ones would amount to manufacture within the contemplation of section 2(ff). And then the counsel too except for his bald suggestion in reply did not choose to develop the point.

(12) 6 S.T. Cases 30.
(13) 8 S.T. Cases 294.

Here it would be helpful to reproduce section 2(ff) because it is with reference to the language of this definition that the cogency and strength of the rival contentions has to be weighed.

"2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context:—

* * * * * *
* * * * * *

(ff) 'Purchase' with its grammatical and cognate expressions, means the acquisition of goods other than sugarcane, food-grains, and pulses for use in the manufacture of goods for sale for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge:

Provided that nothing in this definition shall apply in relation to a dealer who exercises his option under sub-clause (i) of clause (i) or to section 14 or to clause (d) of sub-section (1) of section 23."

This definition is apparently broadly worded and *prima facie* it does not seem, as a matter of law, necessarily to exclude the process of converting old ornaments into bullion. Even the ratio of the authorities cited by the petitioners does not seem to me to support the broad proposition canvassed. As As at present advised, therefore, I am of the view that even though there may conceivably be instances in which conversion of an old ornament into bullion may not involve any real manufacturing process (a question on which I need express no considered opinion on this occasion). I am wholly unable to subscribe to the general proposition that mere purchase of old ornaments for converting them into bullion would *per se* take the case out of the definition of the word "purchase" as contained in section 2(ff). Old ornaments are goods and so is bullion; both are goods of different categories and are saleable; conversion of the former category into the latter might well involve a manufacturing process,

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and if the conversion into bullion is intended for the purpose of selling it or making it marketable as such, then it is not easy to hold the assessment in question to be outside the statute merely because it is the case of purchase of old ornaments for converting them into bullion. The word "maufacture" seems to me to have various shades of meaning, but as used in section 2(ff) it appears to involve a process of manual labour by which one object is changed into another for selling it. It is unnecessary in this case to go into, or, consider, the etymological meaning of the word "manufacture" as the legislative intent in the statute which concerns us is even otherwise fairly obvious. The petitioner has, apart from making the general averment in the writ petition that conversion of old ornaments into silver, gold or bullion by removing alloy does not amount to manufacture, not shown as to what is the precise process, so that it may be determined whether or not it amounts in law to "manufacture" within section 2(ff). Even removal of alloy from old ornaments so as to convert them into bullion might well involve a process of manufacture and it is difficult to hold as a matter of law that it is not so in the instant case.

Before the Assessing Authority apparently no distinction was drawn between the conversion of old ornaments into new ones and into bullion. According to Annexure "A" ornaments worth Rs. 24,953.69 Naya Paisas were purchased by the dealer during the period 19th April, 1958 to 31st March, 1959 and converted into bullion for sale and for use in manufacturing new ornaments. These purchases were assessed to tax in the sum of Rs. 499.08 Naya Paisas which amount, according to the return, was paid on 30th November, 1960. It has been admitted at the bar that the appeal taken against this assessment order has since been dismissed. No attempt has been made to refer to the appellate order and indeed the petitioners' counsel did not even endeavour to challenge that order in the present proceedings. Adverting to Annexure "A", it may be pointed out that this order is not being assailed in its entirety and the assessment in

respect of the purchase of old ornaments for making new ones has been conceded to be liable to tax.

On the material on the existing record to which our attention has been drawn by the petitioners' counsel I do not think it is possible to hold the impugned order (Annexure "A") to be tainted with such a serious legal infirmity appearing on the face of it as would induce me to quash the assessment on the writ side.

The result is that this petition fails and is hereby dismissed with costs.

D. FALSHAW, C.J.—I agree. D. Falshaw, C.J.

B.R.T.

APPELLATE CRIMINAL

Before D. Falshaw, C.J., and Inder Dev Dua, J.

STATE,—*Appellant.*

versus

RAM CHAND,—*Respondent.*

Criminal Appeal No. 142 of 1961,

1962

May, 3rd.

Arms Act (XI of 1878)—Sections 19(f), 19(i) and 29—Proceedings initiated against an accused person under section 19(f) without sanction under section 29—Whether can form basis of conviction under section (19c) by having resort to section 237, Code of Criminal Procedure.

Held, that on account of the absence of previous sanction, as required by section 29, Indian Arms Act, the institution of proceedings under section 19(f) of the Act against an accused person are contrary to law and void. If the condition precedent for the initiation of the proceedings is absent, the entire subsequent proceedings would be illegal and without jurisdiction. These proceedings cannot be considered lawful and valid for convicting the accused under section 19(i) by having resort to section 237, Code of Criminal Procedure. Without being properly charged