person be admitted to bail, or that the bail required by a police officer or Magistrate be reduced.

(2) ... ...".

(6) It is clear from sub-section (1) of section 498, (reproduced above) that the power of the High Court was restricted to the amount of bond executed under Chapter XXXIX of old Criminal Procedure Code which contained this section. The position stands altered under section 440, Criminal Procedure Code, 1973. The splitting of sub-section (1) of section 498, Criminal Procedure Code (old) into two independent sub-sections in section 440, Criminal Procedure Code, 1973, and the construction thereof is suggestive that the Legislature did not intend to restrict the power of the High Court or the Court of Session under sub-section (2) to the bonds executed under Chapter XXXIII of the Code. Sub-section (2) of section 440 being independent of sub-section (1) will thus have application to security proceedings under Chapter VIII of the Criminal Procedure Code, 1973, as well. The learned Sessions Judge, therefore, rightly entertained the application of Amritsaria Ram for reducing the amount of bail demanded from him by the Executive Magistrate.

(7) The learned Advocate General has not challenged the correctness or the propriety of the impugned order reducing the amount of the bail bond.

(8) In the result, the revision fails and is dismissed.

H.S.B.

FULL BENCH

Before S. S. Sandhawalia, C.J., M. R. Sharma and S. S. Sidhu, JJ.

STERLING STEELS & WIRES LTD.,—*Petitioner.*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ Petition No. 304 *of* 1979

October 30, 1979.

East Punjab General Sales Tax Act (46 *of* 1948)—*Sections* 4, 4*A*, 4*B and* 5—*Central Sales Tax Act* (*LXXIV of* 1956)—*Section* 15—*Constitution of India* 1950—*Article* 286—*Declared goods consumed for the manufacture of finished articles—Such goods—Whether*

Sterling Steels & Wires Ltd. *v.* State of Punjab and others
(M. R. Sharma, J.)

---

liable to sales tax—Section 4-B—Whether applicable to declared goods—Section 5(3)—Whether excludes the applicability of section 4(b) in the case of these goods—Section 4-B—Whether contravenes section 15 of the Central Act—Proviso—Interpretation of.

Held, that section 4-B of the East Punjab General Sales Tax Act 1948 in a way clarified the law and laid down that where raw materials are consumed for manufacture of tax-free goods, or where such goods were sent out of the State of Punjab in any manner other than by way of sale in the course of inter-State trade or where such goods were used for a purpose other than that of sale within the State, or in the course of inter-State trade or commerce etc., the goods would be exigible to tax. In order to bring this section in line with the principle contained in section 15 of the Central Sales Tax 1956 it was expressly provided that the sales tax would be payable only if these goods are not exigible to purchase tax under the other provisions of the Act. It is open to a Court to take into consideration the existing provisions of law and the circumstances which prompted the Legislature to amend it in order to properly appreciate the intention. When seen in this light, section 4-B of the Act appears to be an amendatory provision designed to clarify the position of law. The sections which create and quantify the liability of tax and the one which fixes the stage for its levy on declared goods, have to be read together because they can live side by side and there is a settled policy behind these provisions. Sections 4-A and 4-B of the Act, therefore, continue to be the charging sections, Section 5(1) of the Act quantifies the tax, Section 5(2) of the Act relates to the determination of taxable turnover on the basis of which assessment of tax has to be made and section 5(3) of the Act fixes the stage of the levy in respect of the declared goods. Thus, section 4-B of the Act is applicable to declared goods. (Paras 21 and 23).

Held, that the law recognises the imposition of sales tax even on those purchases of goods which are utilized or disposed of contrary to the conditions mentioned in the registration certificate on the strength of which they have been purchased. In that event it matters little whether the dealer disposing of goods in violation of the conditions of the registration certificate makes a purchase or a sale. The tax is imposed because the conditions prescribed in the registration certificate have been violated. Even otherwise, it does not stand to reason that a dealer who acts in accordance with the provisions of the statute and the rules framed thereunder should be made to suffer in preference to a dealer who obtains a registration certificate on some conditions and then tries to go back on those conditions. The only thing to be seen in such a case is whether the charging section makes an express provision for the levy of tax on the

purchasing dealer or not. Section 5(2) (a) (ii) of the Act expressly authorises such an action to be taken against the purchasing dealer and it is on this basis that provisions of section 4-B are invoked for calling upon the dealers to pay sales tax. Section 5(3) (b) of the Act contemplates the cases of those dealers who merely purchase and sell goods in the normal course of their trade instead of utilizing these goods in the process of manufacture. There is no conflict between these provisions and since they can stand side by side they have to be interpreted in a harmonious manner. All that section 5(3) of the Act requires is that the tax should be levied on the declared goods at one stage and no dealer should be called upon to pay the tax twice over. This safeguard also finds express mention towards the penultimate part of section 4-B of the Act. Section 5(3) of the Act, therefore, does not exclude the applicability of section 4-B or any other provision of the Act in the case of declared goods. (Paras 23 and 26).

Held, that section 4-B of the Act really carries into effect the mandate contained in section 15 of the Central Act instead of contravening any of its provisions. (Para 28).

Held, that a proviso to a section is not independent of it and is in a sense subsidiary to the main section. It does not recessarily repeal the main section and merely carves out from the main provision a class or a category to which the application of the main provision is restricted to the extent of the matters contained in the proviso. The proviso and the main section have to be read together. (Para 20).

Petition under Article 226 of the Constitution of India praying that the following reliefs be granted:—

(a) *a suitable writ, direction or order be issued declaring—*

(i) *That Section 4-B of the Punjab General Sales Tax Act, 1948, as amended upto date, is* ultra vires *Section 15 of the Central Sales Tax Act, 1956 and irreconciable with Section 5(3) (a) (i) of the Punjab General Sales Tax Act, 1948, and as such is void and illegal and unenforceable ;*

(ii) *That respondents are not entitled to levy any purchase tax on the petitioner under this Section on the purchases of Iron and Steel made by the petitioner from dealers in Punjab ; and*

(iii) *That the petitioner is not liable under Section 10(4) of the Punjab General Sales Tax Act, 1948, to pay into a Government Treasury any amount of purchase tax*

on the purchase of iron and steel by the petitioner from the dealers in Punjab, along with its quarterly return;

(*b*) *any other suitable writ, direction or order that this Court may deem fit in the circumstances of this case be issued;*

(*c*) *an ad-interim order be issued directing the respondents not to insist on the deposit by the petitioner of tax under Section 4-B of the Punjab General Sales Tax Act, 1948 on purchase of iron and steel from dealers in Punjab along with his quarterly returns and not to subject the petitioner to penalty under Section 10(6) of the Punjab Act for such non-deposit.*

(*d*) *the petitioner may be exempted from serving notices of motion on the respondents under Clause 4 of Article 226 of the Constitution of India; and,*

(*e*) *casts of the petition be allowed to the petitioner.*

Bhagirath Das Advocate with S. K. Hirajee, Advocate and B. K. Gupta, Advocate, *for the Petitioner.*

D. S. Boparai, D.A.G. (Pb.), *for the Respondents.*

JUDGMENT

M. R. Sharma, J.

(1) The ever-green contest between the Revenue and the assessees under the East Punjab General Sales Tax Act, 1948 (hereinafter called the Act), has lent an aura of complexity to the issues involved therein. But this aura soon fades away if we approach the problem in the background of the historical development of this branch of law.

(2) There are in all ten writ petitions and two General Sales Tax References which have been placed for decision before this Full Bench pursuant to an order of reference passed by the Division Bench on January 11, 1979 in C.W. 297/78.

(3) In Civil Writ petitions Nos. 5944, 6465 and 6760 of 1976 the petitioners purchase raw cotton, gin it and crush the oil seeds into oil

which in turn is sent for sale out of the State of Punjab on consignment basis. The petitioners in C.W. No. 169 of 1977 is a partnership concern which is engaged in the business of crushing oil from oil seeds and the manufacture of oil cakes. The finished products are sold in the State of Punjab and also sent out of this State for sale on consignment basis. The petitioners in C.Ws. Nos. 1941 and 3297 of 1978, and CWs. Nos. 304, 1374 and 1376 of 1976 purchase pig iron, manufacture agricultural implements and other steel articles out of it which are in turn partly sent for sale out of the State of Punjab on consignment basis. The petitioners in General Sales Tax References Nos. 14 and 15 of 1977 also purchase pig iron and use it for the manufacture of articles of steel which in turn are partly sent for sale outside the State of Punjab on consignment basis. The following question of law has been referred to us for opinion:—

> "Whether section 4-B of the Punjab General Sales Tax Act, 1948, is *ultra vires* section 15 of the Central Sales Tax Act, 1966, and of section 5(3) of the Punjab General Sales Tax Act, 1948?"

For the sake of clarity, this general question has been split into the following three questions:—

1. Whether section 4-B of the Act is applicable to declared goods?

2. Whether section 5(3) of the Act excludes the applicability of section 4(b) or any other provision of the Act (in case of declared goods) as section 5(3) starts with *non-obstante* clause starting with 'notwithstanding?.

3. Whether section 4-B is *ultra vires* Article 286 of the Constitution of India and contravenes section 15 of the Central Sales Tax Act, 1956?.

(4) Cotton, ginned or unginned, oil seeds and pig iron are declared goods. The substance of the arguments raised in all these petitions is that section 5(3) of the Act is the charging section in respect of these items and since this section begins with a *non-obstante* clause, the Revenue cannot impose sales tax on the declared goods consumed for the manufacture of finished articles by treating

section 4 of the Act as the charging section. The further argument raised is that since the case does not squarely fall within the letter and spirit of section 5(3) of the Act, it is not open to the Revenue to impose any sales tax on the raw materials consumed for the manufacture of finished articles.

(5) In order to come to grips with the issues involved, it becomes necessary to make a brief survey of the statutory provisions.

(6) The Act was originally brought on the statute book on November 15, 1948. It contained the usual provisions of a taxing statute namely, the charging section, the procedure for determining the liability and the realisation of the tax dues. Section 2 of the Act was the definition-clause defining Assessing Authority, dealer, sale and turn-over etc., etc. Section 4 was the charging section contemplating a levy of sales-tax at the rate of 2 per cent to begin with. Section 5 lays down the procedure for computation of tax. Sub-section (2) of this section defined the expression "taxable turn-over" on the basis of which the liability of a dealer to pay tax was determined. Section 6 dealt with the tax free goods mentioned in Schedule 'B'. Section 7 of the Act contemplated registration of the dealers so that the incident of taxation may not fall on the intermediary dealers who happen to come in possession of the goods for sale in the course of their business. Section 11 provided the procedure for the assessment of tax. Sections 20 and 21 of the Act made provisions for an appeal and a revision respectively in appropriate cases. Section 22 provided for the statement of case to the High Court for its decision on a point of law. Certain other ancillary matters were also provided for in various sections of the Act to which it is not necessary to make any reference. In substance the Act provided that a 'dealer' is under an obligation to collect and to pay to the Government tax on all the transactions of sale made by him. This tax is determinable by the Assessing Authority on the basis of the taxable turn-over submitted by the dealer. The sales made to the registered dealers are not to be added to this turn-over because the burden of tax was intended to fall on the consumer and not on the intermediary dealers who handled these goods in the course of trade.

(7) The imposition of this tax was, however, subject to the restrictions laid down in Article 286 of the Constitution of

India. That Article reads—

"288. *Restrictions as to imposition of tax on the sale or purchase of goods.*—(1) No law of a State shall impose, or authorise the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place—

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may be law specify."

(8) It appears that the Constitution-makers intended that there should be free flow of trade in India and certain goods which were of special importance in inter-State trade or commerce should not be taxed over and over again. In order to achieve this object, it was left open to the Parliament to make a law on the subject. Pursuant to this power, the Parliament enacted the Central Sales-tax Act, 1956 (hereinafter referred to as the Central Act). Section 14 of this Act declares certain goods mentioned therein to be of special importance in inter-State trade or commerce. Ginned or unginned cotton in its manufactured state, pig iron and iron scrap are also mentioned in that section. Such goods commonly known as declared goods. Section 15 of this reads as under:—

"Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of tax on the sale or purchase of declared goods be subject to the following restrictions and conditions, namely:—

(a) tax payable under that law in respect of any sale, or purchase of such goods inside the State shall not

exceed four per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage ;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in the State:

(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in sub-clause (i) of clause (i) of section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy ;

(d) each of the pulses referred to in clause vi(a) of section 14, whether whole or separated and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law".

In other words, the Central Act, firstly specified the declared goods and secondly imposed conditions and restrictions subject to which the State Governments could impose tax on the internal trade in these goods. The main condition was that no State Government would have a system of levy other than a single point levy on the last sale or purchase of such goods. The tax might either be on sale or a purchase, but it was recoverable only at the stage of the last sale or purchase by the registered dealer.

(9) The concept of purchase tax was introduced in the State of Punjab for the first time in 1958. The East Punjab General Sales Tax Amendment Act, 1958, received the assent of the Governor on

April 18, 1958. Section 2 of the Act was amended to enlarge the scope of the term 'dealer' to include therein a purchase of goods also. Section 2(ff) was introduced for the first time to define the expression 'purchase'. Section 4 of the Act was amended to make even the purchases made after the coming into force of the amendment Act exigible to purchase tax by suitably altering the definition of the term 'taxable turn-over'. But apart from sugarcane, foodgrains and pulses, goods used for manufacture of goods could be purchased without payment of purchase tax. . Some of the dealers crushed oil-seeds and produced oil and oil-cakes. They were called upon to pay purchase tax on the ground that the process of crushing oil-seeds did not involve a process of manufacture. The matter came up before this Court in *Raghbir Chand-Som Chand* v. *Excise and Taxation Officer, Bhatinda, and others,* (1), and the contention of the dealers was upheld.

(10) Another controversy of a similar type raised was settled by the Supreme Court in *Modi Spinning and Weaving Mills Co. Ltd.* v. *Commissioner of Sales Tax, Punjab, and another,* (2). In that case the assessee company purchased raw cotton in Punjab, ginned it in its ginning mills in Punjab and sent the bales to the spinning and weaving mills in the State of Uttar Pradesh for the manufacture of cloth. In computing its taxable turnover the assessee claimed to deduct a certain sum on account of raw cotton purchased by it on a certificate of registration granted to it, in which there was no express condition that the goods were for use by the assessee in the manufacture in the State of Punjab of goods for sale. The contention put forth by the assessees was repelled and it was held that the registration certificate only showed that the assessee was a registered dealer for the purpose of certain commodities to be used in manufacture and one of these commodities was cotton. The old registration certificate even though did not contain the words 'in the State of Punjab' would stand impliedly modified by the charging sections and the form contained in the rules operating together. In other words, the assessee had to comply with the Act and could not take shelter under the unamended certificate. The Court also held that under section 5(2) (a) (ii) of the Act the manufactured goods must be for sale and not for use by the manufacturer in some

(1) (1960) 11 S.T.C. 149.

(2) (1965) 16 S.T.C. 310.

process of manufacture outside the State resulting in different goods. The assessee was consequently burdened with the liability because the requirements of the section had not been complied with.

(11) The effect of the then existing provisions was that apart from sugarcane, food-grains and pulses purchased and used for the manufacture of goods, the other goods similarly utilised for the same process were not exigible to purchase-tax. When Act No. 7 of 1958 was brought on the statute book, the State perhaps intended to give impetus to manufacture of goods in its territories. Later on, it appears to have realised that vast quantities of raw materials purchased in the State of Punjab and put through the process of manufacture could become a great source of revenue to the State. Consequently, the Act was once again amended and Punjab Act No. 18 of 1960, was brought on the statute book with effect from April 1, 1960. Section 2(ff) of the Act was amended and it was provided that all the goods mentioned in Schedule 'C' when purchased shall be exigible to purchase-tax. Thus, the concession given to the manufacturers was straightaway withdrawn. In Schedule 'C' cotton of all kinds, scrap iron and oil seeds, etc. were mentioned which implied that whenever such goods were purchased the purchaser had to pay purchase-tax subject to the other provisions of the Act. One such provision was that if the goods were sold within six months of the close of the year by a dealer to a registered dealer or sold in the course of inter-State trade or commerce or sold in the course of export within the territory of India, he would be entitled to exclude them from the gross turnover. But in case such goods were not sold within six months after the close of the year, the purchasing-dealer had to pay purchase-tax on the transaction of purchase, subject to the implications of provisions of second proviso of section 5(1) of the Act.

(12) Some writ petitions were filed by the Bhiwani Cotton Mills Ltd. in this Court and the levy of purchase-tax was challenged on the ground that the existing law allowed purchase-tax on the declared goods at more than one stage, which was in contravention of section 15 of the Central Act. These petitions came up for hearing before Grover, J. (as the learned Judge of the Supreme Court then was) and Jindra Lal, J. and it was held that second proviso to section 5(1) of the Act when properly interpreted provided that

the selling dealer who sold goods six months after the close of the assessment year could claim refund of purchase-tax from the Revenue. On this basis, it was laid down by the Division Bench that the levy under the State law did not contravene the provisions of the Central Act.

(13) The petitioners took appeals to the Supreme Court of India. The view taken by the Division Bench was reversed by the Supreme Court in *Bhiwani Cotton Mills Ltd.* v. *The State of Punjab and another,* (3). The Court held:—

> "There is a broad distinction between the provisions contained in the statute in regard to the exemptions of tax or refund or rebate of tax on the one hand and in regard to the non-liability to tax or non-imposition of tax on the other. In the former case, but for the provisons as regards the exemptions or refund or rebate of tax, the sales or purchases would have to be included in the gross turnover of the dealer because they are *prima facie* liable to tax and the only thing which the dealer is entitled to in respect thereof is the deduction from the gross turnover in order to arrive at the net turnover on which the tax can be imposed. In the latter case, the sales or purchases are exempted from taxation altogether. The Legislature cannot enact a law imposing or authorising the imposition of a tax thereupon as they are not liable to any such imposition of tax. If they are thus not liable to tax, no tax can be levied or imposed on them and they do not come within the purview of the Act at all. The very fact of their non-liability to tax is sufficient to exclude them from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed.
>
> The above observations clearly lay down that the provisions contained in a statute, with respect to exemptions of tax or refund or rebate, on the one hand. must be distinguished from the total non-liability or non-imposition of tax, on the other. These observations also, in our opinion, effectively provide an answer to the

(3) (1967) 20 S.T.C. 290.

stand taken by the State, in this case, that section 12 of the Act provides an adequate relief, by way of refund, even if tax is collected at an earlier stage. Having due regard to the various matters mentioned above, we are satisfied that the decision of the High Court, upholding the orders of assessment passed by the officer in question cannot be sustained."

(14) In order to bring the statute in line with the observations made by the Supreme Court of India, the law was once again amended. Section 5(3) was added to the Act by Punjab Act No. 7 of 1967 and given restrospective effect from October 1, 1958. This section provided that the tax shall be levied at one stage, i.e., in case of goods liable to sales tax at the stage of the last sale and in case of goods liable to purchase tax at the stage of purchase by the last dealer liable to pay purchase tax. Detailed reference to this section shall be made at a later stage. It suffices to mention that the validity of this amendment was challenged directly in the Supreme Court of India and upheld by it in *Rattan Lal and Co. and another* v. *The Assessing Authority and another*, (4).

(15) In the meantime, another controversy was raised before this Court in *Punjab Khandsari Udyog* v. *State*, (5). The petitioner in that case was entitled to purchase *gur* on the strength of its registration certificate for the manufacture of *khandsari* which was a tax-free item. Section 5(2) of the Act, relevant for the decision of that case, read as under:—

"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—

(a) his turnover during that period on—

(i) the sale of goods declared tax-free under section 6;

(4) (1970) 25 S.T.C. 136.
(5) (1972) 30 S.T.C. 414.

(ii) sales to a registered dealer of goods other than sales of goods liable to tax at the first stage under sub-section (1-A) declared by him in a prescribed form as being intended for 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 under section 6, for sale in Punjab and on sales to a registered dealer of containers or other materials for the packing of goods:

Provided that in case of such sales, a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing prescribed particulars on a prescribed form, obtained from the prescribed authority, is furnished by the dealer who sells the goods:

Provided further that when such goods are used by the dealer to whom these are sold for purposes other than those for which these were sold to him, he shall be liable to pay tax on the purchase thereof at such rate, not exceeding the rate of tax leviable on the sale of such goods, as the State Government may by notification direct in respect of a class of dealers specified in such notification, notwithstanding that such purchase is not covered by clause (ff) of section 2."

(16) Now, sub-clause (ii) of clause (a) of this section clearly provided that only those purchases of goods could be excluded from the gross turnover as were used for the manufacture of tax yielding goods as against those which were declared tax-free under section 6 of the Act. The policy underlying this provision appeared to be that the State Government granted exemption from tax in respect of only those goods which when put through the process of manufacture gave rise to the production of costlier finished goods on which the State Government stood to gain by imposing tax on their sale or purchase. But where raw material had been consumed

for the production of tax-free goods the State Government insisted upon the levy of tax upon the raw material.

(17) However, the contention raised by the assessee-firm that since it was entitled to purchase goods without payment of tax on the basis of the registration certificate granted to it, it should not be burdened with the liability even though it utilised the goods purchased for the manufacture of a tax-free item like *khandsari* was allowed. The Full Bench observed—

> "The second proviso to section 5(2)(ii) has, therefore, no application and no other provision of the Act has been brought to our notice under which the State can assess the petitioner to tax on the purchase price of *gur* which was purchased by it for the manufacture of *khandsari* on the basis of its certificate of registration and declarations in Form S.T. XXII. It is quite manifest that under section 5(2)(a)(ii), as amended and in force in 1963—66, the selling dealer was not entitled to claim deduction for the sale turnover of *gur* sold to the petitioner tax-free for the manufacture of *khandsari* from his gross turnover and, if claimed, the assessing authority should have disallowed it. If the selling dealer has been allowed that deduction, it can be only on the basis that *khandsari* is not tax-free goods. If that be so, then a different interpretation cannot be placed on *khandsari* in the hands of the petitioner. On that basis, the petitioner is not liable to pay any tax on the purchase of *gur*. Looked at from any point of view, the petitioner cannot be made liable for the payment of tax to the State Government on the purchase price of the gur because to the Government the selling dealer is liable to pay tax on his sale turnover of *gur* and if he defaulted in collecting the tax from the petitioner, he may have a cause of action against the petitioner, but not the State Government. The State Government cannot act on behalf of the selling dealer, who is himself an assessee, but the assessing authority could disallow any deduction from his sale turnover, if claimed under section 5(2)(a)(ii) with regard to the sale of *gur* to the petitioner."

The *Modi Spinning and Weaving Mills'* case (supra) was commented upon like this—

> "The learned counsel for the respondents has placed great reliance on a judgment of their Lordships of the Supreme Court in *Modi Spinning and Weaving Mills Co. Ltd.* v. *Commissioner of Sales Tax, Punjab* (supra 8), which is quite distinguishable on facts. In that case, Modi Spinning and Weaving Mills Co. Ltd. was a registered dealer and on the basis of its registration certificate purchased raw cotton and after ginning it in its ginning mills in Punjab sent the bales to its weaving mills in Uttar Pradesh for the manufacture of cloth. In computing its taxable turnover, the assessee claimed that the purchases of cotton were free of tax under section 5(2)(a)(ii) of the Act as there was no condition in the certificate of registration granted to it that the cotton purchased under the certificate should be subjected to manufacture in the State of Punjab. After the grant of the certificate, section 5(2)(a)(ii) of the Act and rule 26 of the Punjab General Sales Tax Rules, 1949, had been amended to provide for that condition. On those facts, it was held that the registration certificate was only evidence that the assessee was a registered dealer for purposes of certain commodities to be used in manufacture, one of them being cotton. The old registration certificate, even though it did not contain the words 'in the State of Punjab', would stand impliedly modified by the sections, the rule and the form operating together. The assessee had to comply with the Act and the Rules could not take shelter behind the unamended certificate."

Thereafter, the Full Bench observed—

> "In the present case, the petitioner is not claiming any deductions under section 5(2)(a)(ii) of the Act, but is resisting its liability to pay tax which has been levied under the second proviso to clause (ii) of section 5(2)(a) of the Act. On the basis of the Supreme Court judgment, all that can be said is that by virtue of the amendment made in

section 5(2)(a)(ii) of the Act by Act 2 of 1963, the petitioner could not purchase free of tax *gur* for the manufacture of *khandsari* on the basis of its certificate which had been wrongly issued to it by the assessing authority. In that view of the matter, the selling dealer/dealers should not have sold *gur* to the petitioner free of tax as he/they were also presumed to know the law as much as the petitioner. The facts of the *Fancy Nets and Fabrics v. The State of Punjab* (6) were similar to the facts of *Modi Spinning and Weaving Mills* case (supra), and while deciding that case the Bench approved of my decision as already stated."

(18) The correctness of the aforementioned view has been vehemently challenged on behalf of the State. It has been argued that the distinction between the liability arising out of the charging section and the ability of a dealer to initially purchase goods without payment of tax on the strength of the registration certificate was perhaps not pointedly brought to the notice of the Full Bench. It was further submitted that the selling dealer could not ignore the direction of the Revenue contained in the registration certificate of the purchasing dealer that the latter was entitled to purchase goods without payment of tax and that the concession granted to the purchasing dealer to purchase goods without payment of tax was subjected to the important condition that the goods purchased would be used in the manufacture of tax-yielding products which implied that the purchasing dealer would be liable to pay tax if he did not act in accordance with the terms of the registration certificate. The learned counsel for the State also submitted that the charging section could be amended by the Legislature at any time creating a new liability so far as the holder of a registration certificate was concerned and the latter could not ignore that liability during the period when the amended law comes into operation and the date on which his registration certificate is amended. For, otherwise, it was argued, that if a contrary view was taken the working of the Act would become impossible. There is indeed something to be said in view of the submissions made on behalf of the State, but the view taken by the Full Bench has become final

(6) (1971) 28 S.T.C. 433.

and even otherwise it is not open to a Bench of co-ordinate jurisdiction to take a contrary view. The fact remains that the Full Bench absolved the purchasing dealer of the liability to pay tax even when he did not use the goods in accordance with the conditions laid down in his registration certificate on the ground that there was no express provision in the charging section to impose liability on him. In the resultant situation, the dealers who were entitled to purchase goods for the manufacture of finished materials under the provisions of their respective registration certificates started purchasing goods in the State of Punjab without payment of tax and then exporting them with impunity. The Revenue evidently suffered quite a substantial loss of tax. The Act was consequently once again amended by Act No. 3 of 1973 which came on the statute book with effect from November 15, 1972. The relevant provisions after amendment read as under:—

"4(1) Subject to the provisions of sections 5 and 6, every dealer except one dealing exclusively in goods declared tax-free under section 5 whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the coming into force of this Act and purchases made after the commencement of East Punjab General Sales Tax (Amendment) Act, 1958.

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the assessing authority to have been entered into before the commencement of this act.

....

....

4-B. Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule B from any source and—

(i) uses them within the State in the manufacture of goods specified in Schedule B, or

(ii) uses them within the State in the manufacture of any goods, other than those specified in Schedule B, and sends the goods so manufactured, outside the State in any manner other than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or

(iii) uses such goods for a purpose other than that of resale within the State or sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or

(iv) sends them outside the State other than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India,

and no tax is payable on the purchase of such goods under any other provision of this Act, there shall be levied a tax on the purchase of such goods at such rate not exceeding the rate specified under sub-section (1) of section 5 as the State Government may direct.

5(1) Subject to the provisions of this Act, there shall be levied on the taxable turnover of a dealer a tax at such rates not exceeding seven paise in a rupee as the State Government may by notification direct:

... ...

... ...

Provided further that with effect from the date of commencement of the Punjab General Sales Tax (Amendment and Validation) Ordinance, 1967, the rate of tax shall not exceed three paise in a rupee in respect of any declared goods.

... ...

... ...

(1-A) The State Government may by notification direct that in respect of such goods other than declared goods and

with effect from such date as may be specified in the notification, the tax under sub-section (1) shall be levied at the first stage of sale thereon and on the issue of such notification the tax on such goods shall be levied accordingly:

... ...

... ...

(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—

(a) ... ...

(i) ... ...

(ii) sales to a registered dealer of goods other than sales of goods liable to tax at the first stage under sub-section (1-A); declared by him in a prescribed form as being intended for 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 under section 6, for sale in Punjab and on sales to a registered dealer of containers or other materials for the packing of such *goods.*

... ...

... ...

(3) Notwithstanding anything contained in this Act,—

(a) in respect of declared goods, tax shall be levied at one stage and that stage shall be—

(i) in the case of goods liable to sales tax, the stage of sale of such goods by the last dealer liable to pay tax under this Act;

(ii) in the case of goods liable to purchase tax the stage of purchase of such goods by the last dealer liable to pay tax under this Act;

(b) the taxable turnover of any dealer for any period shall not include his turnover during that period on any sale or purchase of declared goods at any stage other than the stage referred to in sub-clause (i), or as the case may be sub-clause (ii) of clause (a)."

(19) A plain look at these provisions would show that section 4 of the Act is in the nature of a command issued by the Legislature that tax shall be payable on all sales and purchases. Section 4-B enumerates the incidents of the liability. Section 5(1) of the Act quantifies the tax. Section 5(2) of the Act lays down the procedure for determining the taxable turnover on the basis of which assessments are made and section 5(3) of the Act fixes the stage at which tax has to be levied on the declared goods.

(20) It has already been noticed that sections 4 and 5 of the Act were originally conceived as the charging sections and had been amended from time to time to meet the exigencies of the situations. Had the Legislature ever intended to change the nature of these sections it would have said so in clear terms. So far as section 5(3) of the Act is concerned, it was added to the statute after the decision of the Supreme Court in *Bhiwani Cotton Mills'* case (supra). At the cost of repetition, I might add that in that case the levy of tax on the declared goods had been struck down on the ground that the Act did not fix any stage of the levy which it was under an obligation to fix as laid down in section 15(a) of the Central Act. Originally sections 4 and 5 of the Act applied to goods of all types and the application of these sections to declared goods was made subject to the conditions mentioned in section 5(3) of the Act. hTe last mentioned section was in the nature of a proviso to the charging sections. It is settled law that a proviso to a section is not independent of it and is in a sense subsidiary to the main section. It does not necessarily repeal the main section and merely carves out from the main provision a class of a category to which the application of the main provision is restricted to the extent of the matters contained in the proviso. The proviso and the main section have to be read together.

(21) The same conclusion is arrived at if we consider the circumstances in which the necessity of the insertion of section 4-B of the Act was felt by the Legislature. As observed earlier, this section was inserted to overcome the situation created by the interpretation of law given in *Punjab Khandsari Udyog's* case (supra). This section in a way clarified the law and laid down that where raw materials are consumed for manufacture of tax-free goods, or where such goods were sent out of the State of Punjab in any manner other than by way of sale in the course of inter-State trade or where such goods were used for a purpose other than that of sale within the State, or in the course of inter-State trade or commerce, etc., etc., the goods would be exigible to tax. In order to bring this section in line with the principle contained in section 15 of the Central Act, it was expressly provided that the sales-tax would be payable only if these goods are not exigible to purchase tax under the other provisions of the Act. It cannot be disputed that it is open to a Court to take into consideration the existing provision of law and the circumstances which prompted the Legislature to amend it, in order to properly appreciate the intention of the Legislature. When seen in this light, section 4-B of the Act appears to be an amendatory provision designed to clarify the position of law. The sections which create and quantify the liability of tax and the one which fixes the stage for its levy on declared goods have to be read together because they can live side by side and there is a settled policy behind these provisions.

(22) For reasons aforementioned, I am of the firm view that section 4, 4-A and 4-B of the Act continue to be the charging sections, section 5(1) of the Act quantifies the tax, section 5(2) of the Act relates to the determination of taxable turnover on the basis of which assessment of tax has to be made, and section 5(3) of the Act fixes the stage of the levy in respect of the declared goods. The first question is, therefore, answered against the petitioners and in favour of the Revenue.

(23) The argument raised on the second point may be summarised thus: under section 5(3)(a), the goods in question are exigible to sales tax, this tax has to be paid by the last dealer liable to pay tax and since the dealers who consume such goods in the process of manufacture do not effect any sale they are not liable to pay any tax. This argument is based on a misconception. It presumes that

sales-tax is levied only on those transactions of sale which are required to be mentioned in the taxable turnover. As a matter of fact the law recognises the imposition of sales tax even on those purchases of goods which are utilised or disposed of contrary to the conditions mentioned in the registration certificate on the strength of which they have been purchased. In that event it matters little whether the dealer disposing of goods in violation of the conditions of the registration certificate makes a purchase or a sale. The tax is imposed because the conditions prescribed in the registration certificate have been violated. This proposition of law has been recognised in a string of authorities.

(24) In *The State of Madras* v. *Radio and Electricals Ltd. and another* (7), the following question of law was referred to the High Court for its decision:—

> "When a purchasing dealer in one State furnishes in Form 'C' prescribed under the Central Sales Tax (Registration and Turnover) Rules, 1957, to the selling dealer in another State a declaration, certifying that the goods ordered, purchased or supplied are covered by the certificate of registration obtained by the purchasing dealer in Form 'B' prescribed under rule 5(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957, and that the goods are intended for resale, or for use in manufacture of goods for sale, or for use in the execution of contracts, or for packing of goods for resale, and that declaration is produced by the selling dealer, is it open to the Sales Tax Authority under the Central Sales Tax Act to deny to the selling dealer the benefit of concessional rates under section 8(1) of the Central Sales Tax Act, 1956, on the view that the certificate in Form 'C' mentions more purposes than one for which the goods are intended to be used, or that the goods are incapable of being used for the purpose for which they are declared to be purchased, or that the goods are applied for some other purpose not mentioned in the certificate in Form 'C'?"

(7) (1966) 18 S.T.C. 222.

When the matter came up for decision before the Supreme Court of India, it observed—

> "The Act seeks to impose tax on transactions, amongst others, of sale and purchase in inter-State trade and commerce. Though the tax under the Act is levied primarily from the seller, the burden is ultimately passed on to the consumers of goods because it enters into the price paid by them. Parliament with a view to reduce the burden on the consumer arising out of multiple taxation has provided in respect of sales of declared goods which have special importance in inter-State trade or commerce, and other classes of goods which are purchased at an intermediate stage in the stream of trade or commerce, prescribed low rates of taxation, when transactions take place in the course of inter-State trade or commerce. Indisputably the seller can have in these transactions no control over the purchase. He has to rely upon the representations made to him. He must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificate; but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in Form 'C' the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplies the goods he incurs a penalty under section 10. That penalty is incurred by the purchasing dealer and cannot be visited upon the selling dealer. The selling dealer is under the Act authorised to collect from the purchasing dealer the amount payable by him as tax on the transaction, and he can collect that amount only in the light of the declaration mentioned in the certificate in Form 'C'. He cannot hold an enquiry whether the notified authority who issued the certificate of registration acted properly, or ascertain whether the purchaser, notwithstanding the declaration, was likely to use the goods for a purpose other than the purpose mentioned in the certificate in Form 'C'. There is nothing in the Act or the Rules that for infraction of the

law committed by the purchasing dealer by misapplication of the goods after he purchased them, or for any fraudulent misrepresentation by him, penalty may be visited upon the selling dealer."

(25) In *M/s. Bhim Cotton Company* v. *Assessing Authority, Sangrur, and another* (8), the Revenue sought to impose sales-tax on a selling dealer, who had sold goods to a registered dealer on the strength of the registration certificate possessed by the latter after obtaining a declaration in Form ST-XXII on the ground that the purchasing dealer had violated the conditions of the registration certificate. Sitting in Single Bench, I negatived the claim of the Revenue on the ground that the selling dealer did all what the statute required him to do and if the purchasing-firm had violated any of the conditions of the registration certificate issued to it, the Revenue could impose sales-tax on it.

(26) Even otherwise, it does not stand to reason that a dealer who acts in accordance with the provisions of the statute and the rules framed thereunder should be made to suffer in preference to a dealer who obtains a registration certificate on some conditions and then tries to go back on those conditions. The only thing to be seen in such a case is whether the charging section makes an express provision for the levy of the tax on the purchasing dealer or not. In the instant case, section 5(2)(a)(ii) of the Act expressly authorises such an action to be taken against the purchasing dealer and it is on this basis that provisions of section 4-B are being invoked for calling upon the petitioners to pay sales tax. This principle is in line with the observations made by the Supreme Court in *Modi Spinning and Weaving Mills' case* (supra). In that case the firm was called upon to pay tax because the goods had not been utilised by it in accordance with the express or implied conditions of the registration certificate granted to it. To me it appears that section 5(3(b) of the Act contemplates the cases of those dealers who merely purchase and sell goods in the normal course of their trade instead of utilising these goods in the process of manufacture. In any event, as noticed earlier, there is no conflict between these provisions and since they can stand side by side they have to be interpreted in a harmonious

(8) 1973 Rev. Law Reporter 208.

manner. All that section 5(3) of the Act requires is that the tax should be levied on the declared goods at one stage and no dealer should be called upon to pay the tax twice over. This safeguard also finds an express mention towards the penultimate part of section 4-B of the Act. When questioned, the learned counsel for the petitioners frankly conceded that the cases in hand did not involve any double taxation. They only submitted that since section 5(3) of the Act started with a *non-obstante* clause and the cases did not fall within the letter of sub-clause (b) of that section, they were not entitled to pay any tax at all. This stand taken on behalf of the petitioners, as already observed, cannot be justified when all the provisions of the Act are read together in a harmonious manner. The second question is also answered against the petitioners and in favour of the Revenue.

(27) The third question need not detain me for long because the matter stands concluded against the petitioners by a judgment of their Lordships of the Supreme Court in *The State of Tamil Nadu* v. *M. K. Kandaswami and others* (9). Section 7-A of the Madras General Sales Tax Act, 1959, considered therein was in *pari materia* with section 4-B of the Act and its validity was upheld by the Supreme Court. The same view was taken by a Division Bench of this Court in *M/s. Gurdas Ram-Subhash Chander* v. *The State of Punjab, etc.* (10).

(28) As noticed earlier, section 4-B of the Act was enacted in order to bring the statute in line with the observations made by a Full Bench of this Court in *Punjab Khandsari Udyog's* case (supra). This section really carries into effect the mandate contained in section 15 of the Central Act instead of contravening any of its provisions. The third question is also answered in favour of the Revenue and against the petitioners.

(29) No other point was raised before us.

(30) General Sales Tax References Nos. 14 and 15 of 1977 shall now be placed before the learned Tribunal to be decided in the light of the answers given to the aforementioned questions.

(9) (1975) 36 S.T.C. 191.

(10) C.W. 7257 of 1975, decided on 12th May, 1978.

(31) Civil Writ Petitions Nos. 169, 1941, 5944, 6465 and 6760 of 1976; 1731 and 3297 of 1978; and 304, 1374 and 1376 of 1979 are consequently dismissed. The petitioners are allowed 15 days' time to comply with the orders passed by the authorities concerned. The parties are left to bear their own costs.

M. R. Sharma, J.—I agree.

S. S. Sandhawalia, C.J.—I agree.

S. S. Sidhu, J.—I also agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia C.J., S. C. Mital and Harbans Lal, JJ.

PUNJAB AGRICULTURAL UNIVERSITY and another—*Appellants.*

versus

ROOP SINGH and others —*Respondents.*

Letters Patent Appeal No. 255 of 1975.

November 6, 1979.

Punjab Agricultural University Act (32 *of* 1961)—*Section* 29(*a*)—*Punjab Agricultural University Rules*—*Rules* 12, 19(1) *and* 20(9)—*Employee of the University overstaying leave for more than a week*—*Rule* 20(9) *makes the post liable to be declared vacant*—*Post of such an employee actually declared vacant*—*Employee*—*Whether entitled to reasonable opportunity of being heard*—*Rules of natural justice*—*Whether attracted*—*Theory of post decisional opportunity*—*Whether applicable.*

Held, (per majority S. C. Mital and Harbans Lal, JJ., S. S. Sandhawalia, C. J. contra.) that rule 20 of the Punjab Agricultural University Rules consisting of 16 clauses specifically deals with leaves of various kinds. Clause (1) prescribes the authority competent to grant leave, clause (2) lays down how much earned leave is admissible to an employee and clause (3) refers to furlough admissible to an employee. Clause (11) categorically says that no