

been increasing year by year and it is a source of large revenue to the State. Effort is, therefore, made to enable the distilleries to meet the requirements of the licensees by making available to them the maximum quantity of empty bottles required by them for the sale of intoxicating liquors. There is thus no question of creating a monopoly in favour of the distilleries and these rules cannot be held to be unconstitutional on that ground.

(7) For the reasons given above, we find no merit in this appeal which is dismissed but the parties are left to bear their own costs.

B.S.G.

CIVIL MISCELLANEOUS

Before M. R. Sharma, J.

M/S. BHIM COTTON COMPANY, DHURI,—*Petitioner.*  
*versus*

ASSESSING AUTHORITY (EXCISE AND TAXATION OFFICER),  
SANGRUR, DISTRICT SANGRUR, ETC.,—*Respondents.*

Civil Writ No. 3663 of 1971

OCTOBER 6, 1972.

*Punjab General Sales Tax Act (XLVI of 1948)—Section 5(2) (a) (ii), second proviso—Goods purchased in Punjab on the undertaking that the same will either be re-sold in Punjab or used for manufacture of non-tax free goods—Purchasing firm contravening the undertaking—Whether liable to pay sale-tax equivalent to purchase tax—Selling firm—Whether entitled to claim deduction regarding the transaction on its gross turnover.*

*Held*, that where a purchasing firm purchases goods on the positive undertaking that the same will either be re-sold in Punjab, or used for manufacture of goods which are not tax-free in the State of Punjab and contravenes the undertaking given by it in its declaration form, under the second proviso to section 5(2) (a) (ii) of the Punjab General Sales Tax Act, 1948 it is liable to pay tax equivalent to the purchase tax on such goods obtaining in the State of Punjab. So far as the selling dealer is concerned, it can claim deductions in respect of such sales from its gross turnover on proof of two conditions, namely, the person to whom the goods are sold should possess a valid registration certificate and

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the goods should be sold to such a purchaser after it had furnished a declaration in Form S.T. XXII. Where the selling dealer satisfies both these conditions, it is not open to the Assessing Authority to re-open the case of the selling dealer on the ground of any violation of the conditions mentioned in the declaration form by the purchasing dealer. The purchasing dealer guilty of violating conditions mentioned in the declaration form given by it can be proceeded against under the second proviso to section 5(2) (a) (ii) and in accordance with the other provisions of the Act.

(Paras 5 and 6)

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamum or any other appropriate writ, order or direction be issued quashing the re-assessment order contained in Annexure 'A', dated 29th March, 1971, passed by respondent No. 1 and further praying that pending the final decision of the writ petition by this Hon'ble Court, the proceedings for recovery of the enhanced tax from the petitioner be stayed.*

R. C. Dogra, Advocate for the petitioner.

R. K. Chhibbar, Advocate for Advocate-General, for the respondents.

#### JUDGMENT.

SHARMA, J.—This judgment will dispose of C.Ws. Nos. 3663 and 3717 of 1971.

(2) For facility of reference, the facts given in C.W. No. 3663 of 1971 may briefly be stated as under. The petitioner is a partnership firm (hereinafter called the petitioner-Firm) carrying on the business of sale and purchase of cotton. The petitioner-Firm is registered as a Sales Tax dealer. It filed the returns under the Punjab General Sales Tax Act, 1948 (hereinafter called the Act) for the year 1966-67. These returns were accepted by the Assessing Authority and the tax assessed was deposited by the petitioner-Firm. The Assessing Authority, Sangrur, served a notice upon the petitioner-firm in Form S.T. XIX in which it was mentioned that the petitioner-Firm had sold goods to a person who was not a dealer within the meaning of the Act. So, the sales made to this dealer could not be deducted from the gross turn-over. In response to this notice the petitioner-Firm appeared before the Assessing Authority,

who vide its order dated March 29, 1971, came to the conclusion that the petitioner-Firm sold cotton worth Rs. 99,720.75 to Messrs Basant Lal Banarsi Lal, a Registered dealer of Dhuri (hereinafter called the Purchasing-Firm), who transferred these goods to their office at Kanpur. A Single Bench of this Court in *Usha Cotton Ginning and Pressing Factory, Bhuchho, district Bhatinda v. The State of Punjab* etc., (1) has held that a purchasing dealer, who exports the goods out of Punjab, did not come within the definition of a 'dealer' qua the translations in respect of the exported goods. On this reasoning, the Assessing Authority held that the goods had not been sold to a dealer within the meaning of the Act and so, the petitioner-Firm as a selling dealer could not claim deductions in respect of these sales from its gross turn-over on the ground that these sales had been made to a registered dealer. Consequently, the Assessing Authority created an additional demand of Rs. 3060 against the petitioner-Firm.

(3) These facts have not been denied in the return filed on behalf of the respondents. The learned counsel for the petitioner-Firm has drawn my attention to second proviso to section 5(2) (a) (ii) of the Act, which runs as under:—

“Provided further that in the case of such sales, a declaration duly filled and signed by the registered dealer to whom the goods are sold, containing the prescribed particulars, and inscribed on the bill or cash memorandum referred to in sub-section (2) of section 13, is furnished by the dealer who sells the goods.”

(4) It is submitted that the Purchasing-Firm was a registered dealer under the Act and it had given the necessary declarations in Form S.T. XXII to the petitioner-Firm and so the latter firm was entitled to claim deductions under section 5(2)(a)(ii) of the Act. The relevant words of the certificate given by the Purchasing-Firm are reproduced below:—

“(1) Use in the manufacture in Punjab of any goods other than goods declared tax-free under section 6, for sale in Punjab;

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(1) C.W. No. 511 of 1969 decided on 11th March, 1970.

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or

(2) resale in the State of Punjab,

or

(3) sale in the course of inter-State trade or commerce,

or

(4) sale in the course of export out of the territory of India.”

(5) It is not disputed that the Purchasing—Firm is having an office in Punjab and it is registered as a dealer under the Act. This firm purchased the goods from the petitioner—Firm on the understanding that either these goods will be used in the manufacture in Punjab of goods other than the goods declared tax-free, or for resale of these goods in the State of Punjab. The Purchasing—Firm does not fall under clauses (3) and (4) reproduced above because a dealer by transferring its goods to its head-office or a sub-office outside the State of Punjab does not make the sale of such goods in the course of inter—State trade or commerce. Now, the Purchasing—Firm having purchased cotton on the positive undertaking that this cotton will either be re-sold in Punjab, or used for manufacture of goods which are not tax-free in the State of Punjab contravened the undertaking given by it in its declaration form. Second proviso to section 5(2)(a)(ii), quoted earlier, provides that if a dealer uses the goods for a purpose other than that for which these were sold to him, he will be liable to pay tax equivalent to the purchase-tax on such goods obtaining in the State of Punjab. So far the petitioner—Firm is concerned, it could claim deductions from its gross turn-over on proof of two conditions, namely, the person to whom the goods are sold should possess a valid registration certificate and the goods should be sold to such a purchaser after it had furnished a statement in Form S.T. XXII. The petitioner—Firm has satisfied both these conditions. Under these circumstances, it was not open to the Assessing Authority to re-open the case of the petitioner—Firm and to create an additional demand against it.

(6) I may also mention that the reasoning given in *Usha Cotton Ginning Factory's case* (1) (supra) no longer holds good in view of the fact that the ratio of the said judgment was reversed

in L.P.A. No. 267 of 1970, decided on October 5, 1971. The view that I have taken does not leave the Revenue without any remedy. If the Purchasing—Firm is guilty of violating any of the conditions mentioned in the declaration forms given by it, the Assessing Authority can, if it is so advised, proceed against it under the second proviso to section 5(2)(a)(ii) and in accordance with the other provisions of the Act.

(7) In view of what has been stated above, I allow this petition, set aside the order dated March 29, 1971, passed by the Assessing Authority, Sangrur, but in the circumstances of the case make no order as to costs. Similarly, C.W. No. 3717 of 1971 is also allowed and the order dated February 26, 1971, passed by the Assessing Authority, Sangrur, is set aside, but without any order as to costs.

B.S.G.

CIVIL MISCELLANEOUS

Before S. S. Sandhwalia, J.

SUKHDEV SINGH,—Petitioner.

versus..

THE DEPUTY COMMISSIONER, JULLUNDUR ETC.,—  
Respondents.

Civil Writ No. 2065 of 1972.

October 27, 1972.

*Gram Panchayat Election Rules (1960)—Rules 5 and 15—Returning Officer appointed under rule 5—Whether can be changed, removed or transferred by the Deputy Commissioner.*

*Held*, that even if there is no express provision in the Gram Panchayat Rules, 1960 for removing or transferring a Returning Officer yet under general principle of law the power of appointment when conferred upon an authority implies a power of removal or dismissal in the same authority and no express power is required to be given by a statutory provision because the same is deemed to be implicit in the power of appointment. The provisions of section 14 of the Punjab General Clauses Act, 1898 clearly gives recognition to this general principle and lays down that the power to appoint includes the power to suspend or dismiss any person appointed in the exercise of the powers conferred for such appointment. The second part of sub-rule (3) of Rule 15 of the Rules