The Indian Law Reports

Before Hon'ble Ashok Bhan & N.K. Sodhi, JJ.

STATE OF HARYANA,--*Appellant.*

versus.

M/S NATIONAL SCIENTIFIC INDUSTRIES,
HISSAR,--*Respondent.*

G.S.T.R. No. 1 of 1986

7th February, 1996

Haryana General Sales Tax Act, 1973-S. 17, Schedule 'D', Entry No. 1--Central Sales Tax Act, 1956--Ss. 2 (c) & 14--Constitution of India, 1950--Art. 286 (3)--Declared goods--Cotton--Surgical cotton, whether different commodity from unmanufactured cotton and to be treated as a declared commodity under S. 14--Held, surgical cotton is not unmanufactured cotton and, thus, would not be covered by S. 14--Assessee being the last purchaser would be liable to pay tax on consumption of cotton.

Held that unmanufactured cotton undergoes certain process of manufacture which converts it into surgical cotton which is used in hospitals, dispensaries etc. for medical purposes. Surgical cotton is also called absorbent cotton or cotton wool as it absorbes fluids immediately. The main chemical properties desired in a surgical dressing are inertness and lack of irritation in use, which is provided by the surgical cotton if manufactured as per the standards specified. Raw cotton is purified by a series of processes and rendered hydrophilic in character and free from other external organic impurities for use in surgical dressings. Surgical cotton is, thus, completely different from ordinary cotton.

(Para 18)

Further held, that surgical cotton is not put to the same use to which the unmanufactured cotton is put and *vice versa,* unmanufactured cotton cannot be put to use in hospitals and dispensaries for use in surgery or to some such similar use being unhygenic.

(Para 19)

Further held, that unmanufactured cotton by undergoing certain manufacturing process is changed into surgical cotton which is a commercially different product capable of being put to a totally different use. Thus, when unmanufactured cotton undergoes a manufacturing process, a totally new product comes into existence which is known in the commercial market by a different name and is capable of being sold as such. Thus, it cannot be held that surgical cotton remains to be cotton even after undergoing manufacturing process. In other words, surgical cotton is not unmanufactured cotton and, thus, would not be covered by Section 14 of the Central Act. The assessee being the last purchaser and having consumed the unmanufactured cotton would, thus, be liable to pay the tax. Hence, question No. 1 answered against the assessee and in favour of the Department. It is held that surgical cotton is not the same thing as raw cotton in its unmanufactured state because surgical cotton, after undergoing the manufacturing process, loses its basic character of cotton and cannot be termed as unmanufactured in the ginned or unginned state.

(Paras 26 & 33)

Punjab General Sales Tax Act, 1948--Ss. 11-A & 21 (1)--Revision--Suo moto proceedings initiated against assessee--Tax levied on the sale of surgical cotton, treating it different from unmanufactured cotton and not covered by S. 14(2) of the Central Act--Assessee's plea of limitation provided under S. 11-A of the Punjab Act cannot be a bar to exercise of suo moto power under S. 21 of the Punjab

Act--Subsequent decision of the Tribunal on interpretation of an entry furnishes ground to the Revising Authority to re-open assessment.

Held that a perusal of Sections 11-A and 21 of the Punjab Act would show that these two sections operate in two different fields. Power to re-assess under Section 11-A of the Punjab Act has been given to the Assessing Authority and a limitation of 5 years has been prescribed within which reassessment can be made whereas under Section 21 of the Punjab Act, the power to revise the assessment has been given to the Commissioner who can, at his own motion, send for the record of any proceedings at any time, which are either pending or disposed of by any of the authorities subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings. There is no limitation provided under Section 21 of the Punjab Act. Under Section 21(1) of the Punjab Act, plenary powers of revision, without prescribing any period of limitation, have been given to the Commissioner. The limitation provided under Section 11-A of the Punjab Act, thus, cannot be introduced in the proceedings under Section 21(1) of the Punjab Act. The question as to whether the jurisdiction of the Commissioner under Section 21(1) of the Punjab Act is subject to the period of limitation prescribed under Section 11-A of the Punjab Act stands already rejected by two decisions of this Court in Narain Singh Mohinder Singh v. The State of Punjab and another (1963) 14 STC 610 and the National Rayon Corporation Limited v. The Additional Assistant Excise and Taxation Commissioner, Punjab (1964) 15 STC 746. Hence, the reference is answered against the assessee and in favour of the Department.

(Para 40)

Mr. R.C. Setia, Additional A.G., Haryana for the Appellant.

Mr. D.S. Nehra, Senior Advocate with Mr. Munish Bhardwaj, Advocate for the Respondent.

JUDGEMENT

Ashok Bhan, J

(1) This judgement shall dispose of G.S.T.R. Nos. 1 and 46 of 1986 under the Haryana General Sales Tax Act, 1973 (hereinafter referred to as the Haryana Act') and G.S.T.R. Nos. 16 and 17, of 1982 under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as 'the Punjab Act').

(2) In G.S.T.R. Nos. 1 and 46, of 1986, under the Haryana Act, only one question of law, at the instance of the department has been referred to this Court for its opinion, which is to the following effect :--

> "Whether in the facts and Circumstances of the case surgical cotton is a different commercial commodity from cotton, within the meaning of Entry No. 1 of Schedule D to the Haryana General Sales Tax Act, 1973 and as such is liable to Tax ?"

In G.S.T.R. Nos. 16 and 17, of 1982, under the Punjab Act, following two questions of law, at the instance of the assessee, have been referred to this Court for its opinion :--

> "(i) Whether surgical cotton after manufacture loses its basic character of cotton and can be termed as such being not cotton and as to whether cotton includes raw cotton, i.e. cotton in its natural or nearly natural form in the ginned or unginned state ?
>
> (ii) Whether the order of the Tribunal rendered in 1976 forms a fresh material which debars the revising authority to exercise power under Section 21(1) of the Act after the period of limitation under Section 11-A of the Act ?"

(3) Counsel for the parties are agreed that all these references on question No. 1 be disposed of together as the only question to be decided is as to whether surgical cotton is a commercially different commodity than the unmanufactured cotton.

(4) Question No. 2 in G.S.T.R. Nos. 16 and 17, of 1982 would be dealt with separately in this very judgment.

(5) We are referring to the facts from G.S.T.R. 1 of 1986 as the counsel for the parties have referred to the facts from this reference petition.

(6) M/s National Scientific Industries, Hisar (hereinafter referred to as 'the assessee') is engaged in the manufacture of surgical cotton. It is registered both under the Haryana Act as well as under the Central Sales Tax Act, 1956 (hereinafter referred to as 'the Central Act'). Assessee purchases raw cotton and manufactures surgical cotton from the same. Cotton is liable to be taxed at the last stage of purchase. Assessee contested its liability to pay tax on surgical cotton on the ground that cotton is one of the declared goods under Section 14 of the Central Act and the tax is leviable at one stage only. It was further pleaded that raw cotton and the surgical cotton are the same thing and, therefore, a dealer is not liable to pay the tax on the surgical cotton manufactured by it. This plea of the assessee was rejected by the Assessing Authority by holding that the assessee was the last purchaser of the unmanufactured cotton which it processes by way of manufacture into surgical cotton thereby consuming the cotton. Since, cotton is liable to tax at the last stage of purchase, assessee was liable to pay the tax as it had consumed the cotton; that the unmanufactured cotton (whether ginned or unginned) and surgical cotton are two commercially different commodities and have got different uses. Unmanufactured cotton and surgical cotton are not the same and, therefore,

the assessee was liable to pay tax on surgical cotton which was not a declared good.

(7) Aggrieved against the decision of the Assessing Authority, assessee filed an apeal before the Deputy Excise and Taxation Commissioner (Appeals), Rohtak Circle. The Deputy Excise and Taxation Commissioner upheld the order of the Assessing Authority and dismissed the appeal by holding that the surgical cotton is completely different from ordinary cotton as ordinary cotton is subjected to manufacturing process with certain chemicals from which surgical cotton is produced which is used in hospitals and is more or less equal in importance to the various medicines employed for the treatment of the patients.

(8) Assessee, thereafter, filed a second appeal before the Sales Tax Tribunal, Haryana (hereinafter referred to as 'the Tribunal'). Tribunal reversed the orders of the authorities below and held that the surgical cotton is a cotton which had undergone a process only of cleaning and packing but it remains cotton and even if called surgical cotton after having been cleaned and packed, it can still be used as cotton for all purposes for which the cotton is used; that surgical cotton is a variety of cotton and is not a manufactured product of cotton because it had not at all changed its basic character of cotton and can be put to use for all purposes for which cotton is used.

(9) Department, being aggrieved against the order of the Tribunal, filed an application under Section 42(1) of the Haryana Act for referring the aforesaid question of law to this Court for its opinion. Tribunal accepted the application filed by the Department and referred the aforesaid question of law for the opinion of this Court.

(10) Before adverting to the cotentions raised by the respective counsel for the parties,

it would be useful to refer to the provisions of the Statute.

(11) 'Declared goods' are defined in Section 2(c) of the Central Act to mean "goods declared under Section 14 to be of special importance in inter-State trade or commerce". Section 14 of the Central Act contains the list of 'declared goods'. This Section finds its support from Article 286(3) of the Constitution of India. The said Article authorises the Parliament to declare certain goods to be of special importance in inter-State trade or commerce and further subject them to such restrictions and conditions in regard to the system of levy, rates and other incidents of tax as it deems proper. The State Law on the 'declared goods' shall also be subject to such restrictions and conditions. Under Section 15 of the Central Act, tax on 'declared goods' cannot be levied at more than one stage and the rate of tax cannot exceed more than 4%.

(12) Relevant portion of Section 14 of the Central Act is reproduced below :--

(i) 14. Certain goods to be of special importance in inter-State trade or commerce.--It is hereby declared that the following goods are of special importance in inter-State trade or commerce :--

XX XX XX XX XX XX

XX XX XX XX XX XX

(ii) cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste;

XX XX XX XX XX XX

XX XX XX XX XX XX

(13) Section 2(d) of the Haryana Act defines that 'declared goods' shall have the meaning assigned to that expression in clause (c) of Section 2 of the Central Act.

(14) Section 17 of the Haryana Act provides as under :--

> "17. Tax on declared goods.--Tax on declared goods shall be leviable and payable at the stage of sale or purchase as the case may be, and under the circumstances specified against such goods in Scheduled D :
>
> Provided that where the goods have not been subjected to tax at any of the stages of sale or purchase specified in Scheduled D, the tax shall be levied on and paid by a dealer liable to pay tax under this Act at the stage of last purchase of such goods by him.
>
> Provided further that the tax under this section shall be levied, charged and paid after providing deductions admissible under section 27 of this Act."

(15) The question to be determined is as to whether surgical cotton (known as absorbent cotton also) is cotton in its unmanufactured stage and, therefore, to be treated as a declared commodity in terms of Section 14 of the Central Act.

(16) Section 14 of the Central Act declares unmanufactured cotton, whether indigenious or imported, ginned or unginned, baled or pressed or otherwise but not including cotton waste to be the 'declared good'. The question as to the meaning and scope of the word 'unmanufactured' would, hence, arise. It is, therefore, necessary to ascertain the meaning of word 'manufacture' before it can be determined what exactly is meant by the word 'unmanufactured'.

(17) Counsel appearing for the Department referred to the project profiles prepared by the Development Commissioner, Small Scale Industries, Ministry of Industry, Government of India of chemical, food glass and ceramic industries to show what process of production undergoes for manufacturing the surgical cotton from the unmanufactured cotton. After opening the raw cotton in bale form, the same is loosened and dust and other particles are removed. The cotton is then sent to a kier where it is steam boiled for about 3-4 hours after adding chemicals such as caustic soda, soda ash, detergent etc. This treatment removes much of the natural waxes and oils and softens and disintegrates any foreign matter that may remain after the cleaning operation. After the cotton is boiled, it is removed from the kier and taken to the tanks for washing. The washed cotton though absorbent is not of good colour. It is, therefore, bleached with chemicals such as hydrogen peroxide or sodium hypochlorite. The bleaching not only whitens the cotton but also improves its wetting properties and assists in disintegration of any remaing foreign materials. The bleached cotton is thoroughly washed again to remove the chemicals A small amount of diluted sulphuric acid is also added to neutralise alkali excess. The cotton is then passed through hydroextractor to remove water. It is then sent to a wet cotton opening machine. The cotton so opened is then passed through dryer. After the cotton is dried, it is again sent to the blow room where it is thoroughly opened and made into laps. The laps are then fed into the carding machine where cotton comes into thin layers. Paper is inserted under the laps and the cotton is rolled and simultaneously compresed. The rolls are then weighed and cut according to the required sizes. The cut rolls are then further packed in a polythene roll after labelling and putting the weight mark and then sent for final packing. The item after undergoing these processes is known as surgical cotton and is covered under the drugs act and it can only be manufactured as per the specification.

(18) From the above enumerated process, it is evident that unmanufactured cotton undergoes certain process of manufacture which converts it into surgical cotton which is used in hospitals, dispensaries, etc. for medical purposes. Surgical cotton is also called absorbent cotton or cotton wool as it absorbes fluids immediately. The main chemical properties desired in a surgical dressing are inertness and lack of irritation in use, which is provided by the surgical cotton if manufactured as per standards specified. Raw cotton is purified by a series of processes and rendered hydrophilic in character and free from other external organic impurities for use in surgical dressings. Surgical cotton is, thus, completely different from ordinary cotton.

(19) After undergoing the manufacturing process, the unmanufactured cotton is converted and transferred into a new and different article having a distnet character or use. Surgical cotton is mainly used for medical purposes in hospitals and dispensaries. It is also extensively used for making sanitary pads or napkins and filters. Unmanufactured cotton is made aseptic, surgically sterile and fit for surgical use. Surgical cotton is not put to the same use to which the manufactured cotton is put and vice versa, unmanufactured cotton cannot be put to use in hospitals and dispensaries for use in surgery or to some such similar use, being unhygenic.

(20) There is no force in the contention of the counsel for the assessee that the surgical cotton is cotton which has undergone the process only of cleaning and packing and it can be called cotton after having been cleaned and packed and can be used as cotton for all purposes for which the cotton is used.

(21) In a number of decided cases, it has been held that 'manufacturing' implies the making of a different article having a distinctive name, character or use, commercially

different from the basic component, by physical labour or mechanical process.

(22) *In State of Punjab and others v. Chandu Lal Kishori Lal, State of Punjab and others v. Krishan Cotton, Dal and Oil Factory,* (1) Supreme Court held that ginning process is a manufacturing process and ginned cotton is different from the unginned cotton. In this case, unmanufactured cotton, ginned or unginned, both are declared goods as per Section 14 of the Central Act.

(23) *In Babu Ram Jagdish Kumar and Co.* V. *The State of Punjab and others* (and others cases), (2) it was held by their Lordships of the Supreme Court that rice and paddy are two different things and when paddy is dehusked and rice produced, there is a change in the identity of the goods. Although rice is produced out of paddy, it is not true to say that the paddy continued to be paddy even after dehusking.

(24) The word 'manufacture' has been interpretted by their Lordships of the Supreme Court in *Empire Industries Limited and others Vs. Union of India and others,* (3) 'Manufacture' would imply "bringing into existence a new substance' but would not merely mean "to produce some change in a substance". Where there is some alteration in the nature or character of the good by process of manufacture resulting in bringing into existence a different commercial commodity, capable of being sold or supplied, then it can be said that manufacturing process has taken place thereby transforming one matter into something else.

(25) Similar view has been expressed by their Lordships of the Supreme Court in *Collector of Central Excise, Jaipur V. Rajasthan State*

(1) (1970) 25 S.T.C. 52
(2) (1979) 44 S.T.C. 159
(3) 1985(3) S.C.C. 314

Chemical Works, Deedwana, Rajasthan, (4) and several other cases.

(26) In the present case, unmanufactured cotton by undergoing certain manufacturing process is changed into surgical cotton which is a commercially different product capable of being put to a totally different use. Thus, when unmanufactured cotton undergoes a manufacturing process, a totally new product comes into existence which is known in the commercial market by a different name and is capable of being sold as such. Thus, it cannot be held that surgical cotton remains to be cotton even after undergoing manufacturing process. In other words, surgical cotton is not unmanufactured cotton and, thus, would not be covered by Section 14 of the Central Act. The assessee being the last purchaser and having consumed the unmanufactured cotton would, thus, be liable to pay the tax.

(27) We draw support for the view we have taken from a judgment of the Bombay High Court reported in *Commissioner of Sales Tax, Maharashtra State, Bombay V. Fairdeal Corporation Ltd.,* (5) where their Lordships, while interpretting a similar clause, held that surgical cotton and cotton are two different and distinct commodities and they are put to different uses. It was held as under :--

> "Absorbent cotton wool prepared by cleaning, boiling, bleaching, drying and carding the ginned cotton, and sold as surgical cotton is not "raw cotton (whether ginned or unginned)" within the meaning of item I of Scheduled B to the Bombay Sales Tax Act, 195 as amended by Act 10 of 1954, and it is therefore liable to tax under the residuary entry covered by item 80 of Schedule B.

(4) A.I.R. 1991 S.C. 2222
(5) 1962 (13) S.T.C. 750

Item I of Schedule B would only include raw cotton, that is, cotton in its natural or nearly natural form in the ginned or unginned state, and not cotton which has been converted into specific different products after being subjected to various processes."

(28) Similar view has been taken by the Madras High Court in *Sri Ram Products v. The State of Tamil Nadu,* (6)

(29) Now we deal with the various judgments cited before us by the counsel for the assessee, which in our view are not relevant or applicable to the facts and circumstances of the case.

(30) Reliance was placed by the counsel for the assessee on *Tungabhadra Industries Limited, Kurnool v. Commercial Tax Officer, Kurnool,* (7) where their Lordships of the Supreme Court had held that hydrogenated groundnut oil, after process of refinement, remains groundnut oil within the meaning of the Rule. The interpretation given by their Lordships was in the context of the Madras General Sales Tax Act, 1939, where the entry was 'groundnut oil' and not 'raw goundnut oil'. It was held that hydrogenated oil was prepared by process of refinement of the groundnut oil and the same remains to be the groundnut oil for the purposes of the relevant entry in the Madras General Sales Tax Act.

(31) Relying upon another judgment of the Supreme Court in *Commissioner of Sales Tax, U.P., Lucknow V. Harbilas Rai and Sons,* (8) counsel for the assessee contended that the word 'manufacture' has various shades of meaning in the context of sales tax legislation and if the goods to which some labour is applied remain

(6) 1983 (52) STC 187
(7) (1960) 11 STC 827
(8) (1968) 21 STC 17

essentially the same commercial article, it cannot be said that the final product is the result of manufacture. In the aforesaid case, their Lordships concluded on facts that 'Kanjars', after picking the pig bristles from pigs, boil and wash them with soap and other chemicals, sort them out according to their sizes and colours and despatch them to foreign countires for sale. It was held that sales made in the foreign countries were not taxable as the bristles were not manufactured goods within Explanation II(ii) to Section 2(h) of the U.P. Sales Tax Act, 1948. It was held on the facts of the said case that no manufacturing process had taken place and the no new articles were produced by the assessees and the articles which they produced are known as bristles both in the form in which these were bought from 'Kanjars' and the form in which these were sold in London.

(32) The other two judgments; *Sterling Foods V. The State of Karnataka and another,* (9) and Deputy Commissioner of Sales Tax (law), Board of Revenue (Taxes), Ernakulam V. Shiphy International, (10), also do not apply to the facts of the present case. The question in these two cases was as to whether shrimps, prawns, lobsters or fresh frog legs, after suffering the processing, retain their original character or identity or become a new commodity. It was hald by their Lordships that processed shrimps, prawns, lobsters or frog legs are commercially regarded the same commodity as raw shrimps, prawns and lobsters. In the present case, cotton after processing is converted into a new and distinct commercially known article which is put to a different use then the unmanufactured cotton.

(33) For the reasons stated above, question No. 1 in G.S.T.R. Nos. 1 and 46, of 1986, under the Haryana Act, is answered in favour of the

(9) (1986) 63 STC 239
(10) (1988) 69 STC 325

Department and against the Assessee. In G.S.T.R Nos. 16 and 17, of 1982 under the Punjab Act, the Tribunal had decided against the assessee, and therefore, the references are at the instance of the assessee. Question No. 1 in these two references is also answered against the assessee and in favour of the Department. It is held that surgical cotton is not the same thing as raw cotton in its unmanufactured state because surgical cotton, after undergoing the manufacturing process, looses its basic character of cotton and cannot be termed as unmanufactured in the ginned or unginned state.

(34) Now, we take up question No. 2 in G.S.T.R. Nos. 16 and 17, of 1982.

(35) Relevant facts pertaining to this question are that the Assessing Authority had treated the surgical cotton as unmanufactured cotton and levied the tax taking it to be a declared good. Sales Tax Tribunal, Punjab, in another appeal No. 91 of 1975-76 (State V. Kiran Surgical Sales Corporation, Ludhiana) (not pertaining to the assessee) decided on 20th April, 1976 held that surgical cotton is produced by manufacturing process and as such cannot be termed as cotton in its unmanufactured state, which alone is covered by Section 14(ii) of the Central Act. After the aforesaid judgment of the Tribunal, Commissioner of Sales Tax exercising its suo moto powers under Section 21(1) of the Act, initiated proceedings for revising the assessment already framed in the case of the assessee. It was maintained by the assessee before the Revising Authority that surgical cotton used to be taxed at the rate of tax applicable in the case of ordinary cotton on the basis of the judgment delivered by Shri B.S. Grewal, the then Financial Commissioner (Taxation), Punjab. Further contention of the assessee was that suo moto proceedings could not be initiated under Section 21(1) of the Act as the case did not fall under that section and if there was an escaped assessment or under assessment, then resort

could be had to the provisions contained in section 11-A of the Punjab Act; that the limitation provided under Section 11-A of the Punjab Act would be applicable and the Revising Authority cannot exercise power under Section 21 of the Punjab Act at any time without any period of limitation. Revising Authority did not agree with any of the contentions raised by the assessee and levied tax on the sales of surgical cotton, treating it to be different from the unmanufactured cotton and not covered by section 14(2) of the Central Act as a declared good. Assessee, being aggrieved against the order of the Revising Authority, filed a further revision under Section 21(3) of the Punjab Act before the Tribunal. Tribunal rejected the same and maintained the order of the Revising Authority. Assessee being aggrieved, filed a petition for making a reference on the two questions of law, referred to in the earlier part of the judgment. Question No. 1 has been dealt along with G.S.T.R. Nos. 1 and 46 of 1986, under the Haryana Act.

(36) We proceed now to answer question No. 2 in this back-ground of the facts.

(37) Counsel appearing for the assessee relying upon *Maharaj Kumar Kamal Singh v. The Commissioner or Income-tax, Bihar and Orissa,* (11) read with the decision of the Full Bench of this Court in *Hari Chand Rattan Chand and Co. v. The Deputy Excise and Taxation Commissioner (Additional), Punjab,* (12) contended that the decision rendered by the Tribunal would amount to a definite information and on information the authorities can act only under Section 11-A of the Punjab Act, therefore, the 5 years' period of limitation as provided under Section 11-A of the Punjab Act, would be applicable.

(38) This question is squarely covered against the assessee by a Single Judge judge-

(11) A.I.R. 1959 SC 257
(12) (1969) 24 STC 258

ment of this Court in *The Asian Rubber and Plastic Industries v. The State of Punjab and another*, (13) and a Division Bench judgment of this Court in *Luthra Rubber Industries v. State of Punjab and another*, (14).

(39) In *Luthra Rubber Industries'* case (supra), after approving the reasoning of the learned Single Judge in *The Asian Rubber and Plastic Industries'* case (supra) and after noticing the Full Bench judgement of this Court in *Hari Chand Rattan Chand's* case (supra), their Lordships repelled a similar contention raised by the counsel for the assessee and held that the decision of the Tribunal or the High Court cannot be termed or treated an information as envisaged under section 11-A of the Punjab Act, which may have come to the notice of the Reviewing Authority. It was held that the judgment of the Tribunal or the High Court would not provide any factual material, which was not on the file of the Assessing Authority. No new facts are put up before the authorities. It only brings true legal position to the notice of the revisional authority. Suo moto powers exercised by the revisional authority under Section 21(1) of the Act, under the circumstances, would be justified and it cannot be held that the power could only be exercised under Section 11-A of the Punjab Act taking the decision given by the Tribunal or the High Court to be an information, within a period of 5 years.

(40) Under Section 21(1) of the Punjab Act, the Assessing Authority can act at any time to examine the legality and propriety of an order and the limitation provided under Section 11-A of the Punjab Act would not apply for revising the assessment already framed. A perusal of Sections 11-A and 21 of the Punjab Act would show that these two sections operate in two different fields. Power to re-assess under Section 11-A of the Punjab Act has been given to the Assessing

(13) (1982) 50 STC 383
(14) (1985) 59 S.T.C. 198.

Authority and a limitation of 5 years has been prescribed within which reassessment can be made whereas under Section 21 of the Punjab Act, the power to revise the assessment has been given to the Commissioner who can, at his own motion, send for the record of any proceedings at any time, which are either pending or disposed of by any of the authorities subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings. There is no limitation provided under Section 21 of the Punjab Act. Under Section 21(1) of the Punjab Act, plenary powers of revision, without prescribing any period of limitation, have been given to the Commissioner. The limitation provided under Section 11-A of the Punjab Act, thus, cannot be introduced in the proceedings under Section 21(1) of the Punjab Act. The question as to whether the jurisdiction of the Commissioner under Section 21(1) of the Punjab Act is subject to the period of limitation prescribed under Section 11-A of the Punjab Act stands already rejected by two decision of this Court in *Narain Singh Mohinder Singh* v. *The State of Punjab and* another, (15) and the *National Rayon Corporation Limited* v. *The Additional Assistant Excise and Taxation Commissioner, Punjab* (16). In the *National Rayon Corporation Limited's case* (supra), it was held as under :--

> "It is obvious that if the Legislature intended to limit the power of the Commissoner under section 21 to a period of three years after the close of an assessment year or even after the disposal of the proceedings by an assessing authority, it could, and in the circumstances almost certainly would, have said so in section 21, for the Legislature was aware that a period of limitation had for purposes of reassessment by an assessing authority

(15) (1963) 14 S.T.C. 610.

(16) (1964) 15 S.T.C. 746.

been fixed in section 11-A. The conclusion, in my opinion, must be that the Legislature did not intend to fetter the power of the Commissioner under section 21 by any rule of limitation and therefore, left it to the Commissioner's discretion to exercise his power at any time. Mr. Bhagirath Dass says that it is improbable that such power unlimited in time could have been entrusted to the Commissioner, but I can find nothing improbable about it, and the argument that the Commissioner may decide to reopen a matter settled twenty or thirty years previously, does not lead anywhere. The power of revision mentioned in section 21 is altogether separate from and unconnected with the power of reassessment by an assessing authority under section 21-A of the East Punjab General Sales Tax Act. In my opinion, therefore, the Learned Single Judge was right in holding that the Additional Assistant Excise and Taxation Commissioner had authority to revise the previous orders made by the assessing authority in the present cases."

(41) The reasoning adopted by the Division Benches in *Narain Singh Mohinder Singh's* case (supra) and the *National Rayon Corporation Limited's case* stands approved by a Full Bench of this Court in *Hari Chand Rattan Chand's case* (supra).

(42) In view of the decision of this Court in *The Asian Rubber and Plastic Industries case* (supra) *and Luthra Rubber Industries* case (supra), question No. 2 is answered against the assessee and in favour of the Department.

No costs.

R.N.R.