(13) The view expressed in the *Jasbir Singh's case* and *Rajesh Kumar's case* (supra) that it was necessary to give personal hearing to the concerned examinees before ordering re-examination on the ground of mass copying, without taking any action against any such individual examinee (like disqualification), with utmost respect to the learned Judges who decided these two cases, cannot be followed, as the view expressed therein runs counter to the view expressed by their Lordships of the Supreme Court in *Bihar School Examination Board's case* (supra), which authority was not considered in the aforesaid two authorities. Moreover, the menance of mass copying in the examinations conducted by the Universities or the School Boards, is on increase and is likely to assume alarming proportions in future, if the same is not curbed in time by the competent authorities, who are duty bound to maintain academic standards in the country.

(14) For the foregoing reasons, we do not find any merit in either of the appeals and the same are hereby dismissed. As substantial point of law was involved both the parties shall bear their own costs.

J.S.T.

Before : G. C. Mittal, A.C.J. & H. S. Bedi, J.

STATE OF PUNJAB AND OTHERS,—*Appellants.*

versus

M/S PARDEEP AGGARBATTI, SHIVALA ROAD, LUDHIANA, —*Respondent.*

Letters Patent Appeal No. 644 of 1984.

27th March, 1991.

General Sales Tax Act, 1948—S. 5(1)—Tax on Dhoop & Aggarbaties—Entry 16-A of Schedule of Act specifically mentions perfumery as including Dhoop & Aggarbatti—According to proviso to S. 5(1), tax on goods mentioned in Schedule 'A' to be 10 per cent—Tax to be paid for sale of Dhoop & Aggarbatti is at rate of 10 per cent.

Held, that the judgment in Amir Chand's case was, therefore, based on the word 'luxury' which occured in the proviso to sub-section (1) of S. 5 of the Act. As already stated above, the word 'luxury' was deleted from the proviso to sub-section (1) of S. 5 with retrospective effect and, as such the judgment of the Division Bench is no longer applicable to the facts of the case. As a matter of fact the first of the two qualifications which were required to be fulfilled

(as mentioned by the Division Bench) having become redundant, the only requirement subsisting now is that the item should be mentioned in the Schedule. As mentioned above, Entry No. 16-A specifically mentions 'perfumery' as including Dhoop and Aggarbatties. It is, therefore, clear that Dhoop and Aggarbattis would now qualify to be assessed to tax at the enhanced rate of 10 per cent.

(Paras 4 & 5)

ASSESSING AUTHORITY, AMRITSAR AND ANOTHER *V.* AMIR CHAND OM PARKASH (1974) 33 S.T.C. 120.

(DISTINGUISHED)

Letters Patent Appeal under Clause X of the Letters Patent against the Judgment dated 2nd May, 1984, passed by Hon'ble Mr. Justice J. M. Tandon in the above-noted Civil Writ Petition.

Sh. O. P. Goyal, Addl. A.G. Punjab, *for the appellant.*

JUDGMENT

H. S. Bedi, J.

(1) This judgment will also dispose of Letters Patent Appeal Nos. 644 to 653 of 1984, 450 of 1988 and Civil Writ Petition No. 1388 of 1984, as the common questions of law are involved in these cases. The facts of the case are being taken from L.P.A. No. 644 of 1984.

(2) The respondent-firm is a registered dealer under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the 'Act') for the sale of Dhoop and Aggarbatti. In the quarterly return filed by the respondent for the assessment year 1973-74, the respondent firm claimed that the sale of Dhoop and Aggarbatti be assessed to tax at the rate of 6 per cent. The assessing authority did not agree and levied sales tax at the rate of 10 per cent. The appeal filed by the respondent firm against the order of assessment was allowed and the Assessing Authority was directed to calculate the sales-tax on the sales of Dhoop and Aggarbatti at the rate of 6 per cent instead of 10 per cent. The Joint Excise and Taxation Commissioner initiated *suo moto* revisional proceedings to examine the legality and propriety of the aforesaid order, and,—*vide* order dated 22nd May, 1979, he set aside the same and restored that of the Assessing Authority, thereby holding that Dhoop and Aggarbatti were liable to be assessed to sales-tax at the rate of 10 per cent. The revision petition filed by the respondent-firm against the order of the Joint Excise and Taxation Commissioner dated 22nd May, 1979, was also admissed. The claims of the dealer before the learned Single Judge was that it was liable to be assessed sales-tax at the rate of 6 per cent and not

at 10 per cent. This claim of the dealer was upheld. The state of Punjab has now come up in appeal against the order of the learned Single Judge.

(3) The relevant portion of Section 5(1) of the Act as it exists today on the statute, is reproduced below :

> "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.
>
> (*Explanation* :—The amount of tax shall be calculated to the nearest rupee by ignoring fifty paise or less and counting more than fifty paise as one rupee) Provided that a tax at such rate, not exceeding (ten paise) in a rupee, as may be, so notified may be levied on the sale of goods as specified in Schedule 'A' appended to this Act from such date as the Government may by notification direct. The State Government after giving by notification not less than (twenty days) notice of its intention so to do may by like notification add to or delete from this schedule, and thereupon this Schedule shall be deemed to have been amended accordingly."

It is pertinent to mention that in the proviso to Sub-Section (1) of Section 5, quoted above, the word "Luxury" which was juxtaposed between the words 'of' and 'goods' was omitted with retrospective effect,—*vide* Punjab Act No. 11 of 1976 notified on 27th February, 1976 and was deemed to have always been omitted by the said amendment Act. Entry No. 16 in Schedule 'A' before it substitution,—*vide* notification dated September 28, 1979 read as under :

> "Cosmetics, perfumery and toilet goods, excluding tooth paste, tooth powder kum kum and soap."

On substitution, Entry No. 16 was bifurcated upto two entries numbered as 16 and 16-A and these are reproduced below

> "16. Cosmetics and toilet goods excluding tooth paste, tooth powder Kum Kum and soap.
>
> 16-A. Perfumery including Dhoop and Aggarbatti,"

A reading of the two subsequent entries substituted by way of amendment would indicate that the word "perfumery" was removed

from Entry No. 16 and introduced as Entry No. 16-A. In entry No. 16-A, as indicated above, it has been specifically provided that perfumery would include Dhoop and Aggarbatti. The learned single Judge relying on the interpretation of the word "perfumery" and also the judgment of this Court in *Assessing Authority, Amritsar and another* v. *Amir Chand Om Parkash* (1), and *Commissioner of Sales Tax Maharashtra State Bombay* v. *Gordhandas Tokersey* (2), allowed the writ petitions, as already mentioned above.

(4) Mr. O. P. Goyal, Learned Addl. Advocate-General, appearing for the appellant-State has contended that the judgment in Amir Chand's case (supra) proceeded on a basis that no longer exists. In the aforesaid judgment, it was held that before charging the enhanced tax, two requirements were necessary as laid down in the proviso to sub-section (1) of Section 5 of the Act; (1) that the item should be a Luxury good; (2) that it should be mentioned in the Schedule. The inference that was drawn by the Division Bench was that the Government was presumed to have entered only such goods in Schedule-A as were qualified to be called Luxury Items and as Dhoop and Aggarbatties were required for religious pujas or worship and were to be used by all whether rich or poor, they did not in any way qualify as Luxury Items. The judgment in Amir Chand's case (supra) was, therefore, based on the word 'luxury' which occured in the proviso to sub-section (1) of Section 5 of the Act. As already stated above, the word 'luxury' was deleted from the proviso to sub-section (1) of section 5 with retrospective effect and, as such, the judgment of the Division Bench is no longer applicable to the facts of the case. As a matter of fact the first of the two qualifications which were required to be fulfilled (as mentioned by the Division Bench) having become redundant, the only requirement subsisting now is that the item should be mentioned in the Schedule. As mentioned above, Entry No. 16-A specifically mentions 'perfumery' as including Dhoop and Aggarbatties. Having held as above that the judgment of the learned Division Bench in Amir Chand's case is distinguishable and no longer applicable.

(5) In this connection, we are further of the opinion that even without the inclusive part of the definition in Entry 16-A, the word 'perfumary' would include Dhoop and Aggarbatties. The ratio of the judgment in *Commissioner of Sales Tax, U.P.* v. *Indian Herbs Research and supply* Co. (3), is fully applicable to the facts of the

(1) (1974) 33 S.T.C. 120.
(2) (1983) 52 S.T.C. 381.
(3) (1970) 25 S.T.C. 151.

case. It has been held here that the word 'perfume' has now acquired an extended meaning so as to include anything sweet from smoking incense to fragrance of flowers. The Hon'ble Supreme Court held further as under :

> "We are accordingly of the opinion that the word "perfume" in Item No. 37 of the Government notification should be construed in its ordinary sense, i.e. any substance natural or prepared which emits or is capable of emitting an agreeable odour either when burned or by the application of some foreign matter to induce any chemical reaction which results in fragrant odours being released from that substance. If we are right in taking this view dhoop and dhoopbattis manufactured by the respondent fall within the category of "perfume" under item 37 of the Government notification and are liable to tax imposed therein

Entry No. 37 mentioned above was in the following terms "scents and perfums (in English) and Itra tatha sugandhian (in Hindi)". It is, therefore, clear that Dhoop and Aggarbattis would now qualify to be assessed to tax at the enhanced rate of 10 per cent.

(6) In view of the facts stated above, the letters patent appeals are allowed and the judgment of the learned Single Judge is set aside and it is held that the dealers would be liable to payment of sales-tax at the rate of 10 per cent. As a consequence of the letters patent appeal having been allowed, civil Writ Petition No. 821 of 1981 is dismissed, but with no order as to costs.

J.S.T.

Before G. C. Mital, A.C.J. & H. S. Bedi, J.

GURPREET SINGH (MINOR),—*Appellant.*

versus

CHATTERBHUJ GOEL,—*Respondent.*

Letters Patent Appeal No. 734 *of* 1983.

29th April, 1991.

Code of Civil Procedure, 1908—O. 32 rls. 3 & 4(3) (as amended in Punjab) & 3A—Suit for specific performance of agreement to sell against minor—Plaintiff did not make application under rl. 3 for appointment of guardian—Person acting on behalf of minor