M/S. MODI SPINNING & WEAVING MILLS CO., LTD.

v.

COMMISSIONER OF INCOME-TAX, PUNJAB & ANR.

October 5, 1964

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, M. HIDAYATULLAH, RAGHUBAR DAYAL AND J. R. MUDHOLKAR JJ.)

Punjab General Sales Tax Act, 1948 (*XLVI of* 1948) *as amended by Punjab Act XIII of* 1959, *s.* 5(2)(*a*)(*ii*)—*Exemption clause amended without consequential amendment of form of registration—Effect of discrepanary —Charging section whether incomplete without amendment of said Form.*

Constitution of India, Art. 286(3)—*Rates of tax provided in State Act higher than maximum rates provided under ss.* 14 *and* 15 *of Central Sales Tax Act—Provision in State Act whether becomes inoperative.*

Section 7 of the Punjab General Sales Tax Act, 1948 (XLVI of 1948) required from all dealers liable to pay tax under the Act, as a condition of carrying on business in the State, that they should secure a registration certificate in the prescribed form *i.e.* Form III which would specify the class or classes of goods for the purposes of s. 5(2)(a)(ii). The said section provided for exemption from inclusion in the taxable turn-over of a dealer of goods which were sold to a registered dealer who purchased them with the intention of using them "in the manufacture in the State of Punjab of any goods for sale". The said section also provided that if the goods were not used for the purpose declared, the purchaser would have to pay sales tax on them. The form of the declaration was prescribed in r. 26 under the Act as Form S.T. XXII. The words 'in the State of Punjab' appearing in s. 5(2)(a)(ii) were introduced by an amendment in 1959. Consequential amendments were also made in rule 26 and in Form XXII but Form III remained unamended, till 1961. The appellants who were registered dealers under the Act had secured a certificate of registration in Form III in the year 1956. For the year 1959-60 they claimed exemption on account of unginned cotton purchased by them which they ginned in the Punjab and thereafter sent to Modinagar, U.P., for use in the manufacture of cloth there. Their claim was disallowed by the Sales Tax authorities and they filed a writ petition in the High Court. The same being dismissed, they came to the Supreme Court with a certificate of fitness.

It was contended on behalf of the appellants :

(1) According to the certificate in Form III granted to the appellant there was no condition that cotton purchased under that certificate should be subjected to manufacture in the Punjab.

(2) If the section required that the manufacture should be in the Punjab, then as the raw cotton was ginned in the Punjab, that condition was satisfied. Ginning of cotton was a manufacturing process.

(3) There could be no tax because the charge in s. 5 of the Act was not complete after its amendment in 1959 because the section and the amended rules required a modified certificate of registration which was not issued as the form was not prescribed.

(4) Sections 4 and 5 of the Act which provided for tax at 4% must be held to be inoperative as they were in conflict with the provisions of ss. 14

A and 15 of the Central Sales Tax Act, 1956 which created a maximum limit.

HELD : (i) The company was wrong in reading the certificate of Registration by itself. Sections 5 and 7 had to be read with rule 26 and Form S.T. XXII, and the declaration. So read 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 Form S.T. XXII operating together. The company had to comply with the Act and the B Rules, and could not take shelter behind the unamended certificate. [598 C-E].

(ii) Whether the process of ginning was a process of manufacturing or not was unnecessary to decide, because another requirement of the provision, namely, that the manufacture must result in goods for sale, was not satisfied by the appellants. They admittedly used the cotton for manufacturing cloth. [598 D-F].

C (iii) The contention that the charging section was incomplete without the prescription of the proper Form for the certificate of registration was without force. The old form must be deemed to be modified, and even otherwise the section and the rules were complete, and did not depend on the new Form. The registration certificate was only the evidence that the Company was a registered dealer for purposes of certain commodities to be used in manufacture, one of them being cotton. The omission to prescribe the new form or to issue it did not render s. 5 or the rules in- D effective. [599 A-C].

(iv) The impugned provisions in the Punjab General Sales Tax Act cannot be said to be improperly enacted because of the discrepancy in rates between that Act and the maximum rates provided in s. 15 of the Central Sales Tax Act. The meaning or intention of Art. 286(3) is not to destroy all charging sections in the Sales Tax Acts of the States which are discrepant with s. 15(a) of the Central Sales Tax Act, but to modify E them in accordance therewith. The law of the State is declared to be subject to the restrictions and conditions contained in the law made by Parliament and the rate in the State Act would *protanto* stand modified. So the effect of the provisions of the Central Act was only to modify the provision in the State Act without destroying it. [600 D-E].

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 534 of 1964.

F Appeal from the judgment and order dated February 18, 1963, of the Punjab High Court in Civil Writ No. 1527 of 1962.

G. S. Pathak and *K. K. Jain*, for the appellant.

S. V. Gupte, Solicitor-General, S. Gopal Singh and *R. N.* G *Sachthey*, for the respondents.

The Judgment of the Court was delivered by

Hidayatullah J. This appeal by certificate against the judgment of the High Court of Punjab at Chandigarh dated February 18, 1963 questions the inclusion of certain items in the H turn-over of Messrs. Modi Spinning & Weaving Mills Co. Ltd., Modinagar in the assessment of sales-tax for the year 1959-60. In that year the Company filed a return of its sales showing a

gross turn-over of Rs. 40,89,954·24 nP and a taxable turn-over of Rs. 1,30,296·81nP. In computing the taxable turn-over the Company deducted Rs. 10,85,842·74nP on account of unginned cotton purchased by it on a certificate of registration granted to it on January 3, 1956. This deduction was not permitted by the Assessing Authority, Patiala District, also described as the District Taxation Officer, Patiala District. Exemption from tax was also claimed in respect of purchases of oil seeds amounting to Rs. 4,47,437·33nP which the Company claimed to exclude from the taxable turn-over under s. 5(2)(a)(ii) of the Punjab General Sales Tax Act, 1948. This claim was also disallowed by the Taxing Authority. The Company then filed a petition under Articles 226 and 227 of the Constitution in the High Court but by the order under appeal the petition was dismissed. In the course of the hearing Mr. G. S. Pathak abandoned the claim about oil seeds and no reference need, therefore, be made to that part of the case.

The tax is being levied under the Punjab General Sales Tax Act, 1948 (XLVI of 1948). This Act was amended from time to time and the amendments with which we are concerned were last made by Punjab Act XIII of 1959. Section 2(i) defines the "turn-over" as including the aggregate of the 'amounts of the sales and purchases and parts of sales and purchases actually made by any dealer' during a given period less any sums allowable as trade discount. Section 4 lays down the incidence of tax and makes every dealer whose turn-over exceeds the taxable quantum liable to tax. In view of the fact that the turn-over of the Company exceeds the taxable quantum there is no need to discuss the section in detail. The section lays down the definition of taxable quantum and the Company is within that definition. Section 5 then provides as follows :—

"5. Rate of tax.

(1) Subject to the provisions of this Act, there shall be levied on the taxable turn-over every year of a dealer a tax at such rates not exceeding four naye paise in a rupee as the State Government may by notification direct :

Provided.....

.....

Provided further that the rate of tax shall not exceed two naye paise in a rupee in respect of any declared goods as defined in clause (c) of section 2 of

A the Central Sales Tax Act, 1956, and such tax shall not be levied on the purchase or sale of such goods at more than one stage: (This was inserted with effect from 1st April, 1960 by Act No. 18 of 1960).

Provided.....

B .....

(2) In this Act the expression "taxable turn-over" means that part of a dealer's gross turn-over during any period which remains after deducting therefrom —

(a) his turn-over during that period on—

C (i) .....

(ii) sales to a registered dealer of goods declared by him in a prescribed form as being intended for re-sale 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 the use by him in the manufacture in the State of Punjab of any goods for sale and on sales to a registered dealer of containers or other materials for the packing of such goods :

D

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

Provided further that when such goods are used by F 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 the rate of tax leviable on the sale of such goods, notwithstanding that such purchase is not covered by clause (ff) of section 2;

G .....

....."

The registration of dealers is provided by s. 7 which provides *inter alia* :

H "7. Registration of dealers.

(1) No dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he

has been registered and possesses a registration certificate. A

(2) Every dealer required by sub-section (1) to be registered shall make application in this behalf in the prescribed manner to the prescribed authority.

(3) If the said authority is satisfied that an application for registration is in order, he shall, in accordance with such rules and on payment of such fees as may be prescribed, register the applicant and grant him a certificate of registration in the prescribed form which may specify the class or classes of goods for the purposes of sub-clause (ii) of clause (a) of sub-section (2) of section 5. B C

. . . . . .

. . . . . ."

Section 5(2)(a)(ii) was substituted by Act No. 13 of 1959. The words underlined in it were inserted with effect from April 20, 1959 by Punjab Act No. 18 of 1960. D

When s. 5(2)(a)(ii) was amended by the addition of the words "in the State of Punjab", which did not formerly exist, rule 26 of the Punjab General Sales Tax Rules, 1949 was also amended. Rule 26, amended by virtue of various notifications (last being on 29th September, 1961), reads as follows :— E

"26. A dealer, who wishes to deduct from his turnover the amount in respect of a sale on the ground that he is entitled to make such deduction under the provisions of sub-clause (ii) of clause (a) of sub-section (2) of section 5 of the Act, shall on demand, produce in respect of such a sale the copy of the relevant cash memo or bill, according as the sale is a cash sale or a sale on credit, and a declaration in writing in Form S.T. XXII by the purchasing dealer or by his agent, that the goods in question are intended for re-sale in the State of Punjab or such goods are specified in his certificate of registration for use by him in the manufacture in the State of Punjab of any goods for sale." F G

Though the words "in Form S.T. XXII" to the end were inserted as far back as June 28, 1955 the words "in the State of Punjab" were inserted on February 1, 1960 after the passing of Act 13 H

of 1959. Form S.T. XXII was altered on February 1, 1960. That Form is for declarations to be furnished by registered dealers purchasing goods from another registered dealer for exemption of tax under rule 26 read with s. 5 of the Act quoted above. Form S.T. XXII required the dealer to declare in respect of the goods that they were for the purpose of "manufacture in the State of Punjab for sale". Unfortunately, though the section and the rule contemplated the certificate of registration also to be amended in the same manner, the certificate in Form S.T. III was not amended till a Government Notification dated September 29, 1961 prescribed the new Form, that is to say, after the period of assessment in the present case. The Company, threfore, held a certificate of registration in which there was no condition that the goods were for use by the dealer "in the manufacture *in the State of Punjab* of goods for sale." The underlined words were not present in the old certificate which the Company held.

The contention of the Company is that according to the certificate granted to it there was no condition that cotton purchased under that certificate should be subjected to manufacture *in the Punjab*. The case of the Company was that it purchased raw cotton for manufacture and ginned it in its ginning mills in the Punjab and sent the bales to Modinagar in Uttar Pradesh for manufacture of cloth in the Company's mills situated there. It was thus claimed that the purchases of cotton were free of tax under s. 5(2)(a)(ii) of the Sales Tax Act. Alternatively, it was submitted that if the section required that the manufacture should be in the Punjab, then as the raw cotton was ginned in the Punjab that condition was satisfied. It was claimed that ginning of cotton was a manufacturing process which turned raw cotton into ginned cotton. It was thus contended that the requirements of the section were also fulfilled. A third argument was that there could be no tax because the charging section (s. 5) of the Sales Tax Act was not complete after its amendments in 1959 because the section and the amended rules required a modified certificate of registration which was not issued as the Form was not prescribed. Lastly, it was contended that ss. 4 and 5 of the Act provided for tax at 4% (4 paise per rupee) which was in conflict with the provisions of ss. 14 and 15 of the Central Sales Tax Act, 1956 which created a maximum limit and must, therefore, be held to be inoperative.

All the arguments (except the last) that are raised in this case are based on the unfortunate omission to prescribe a new

certificate of registration in line with the amended section and the amended rule and to issue it. The Company admitted that though it purchased the goods (raw cotton) in the Punjab, ginned the cotton in its ginning mills in the Punjab, it sent the bales to its spinning and weaving mills situated at Modinagar in the State of Uttar Pradesh for purposes of manufacture of cloth. It was admitted before us in the arguments (as indeed it was narrated in the facts in two writ petitions which were filed under Art. 32 but were withdrawn at the hearing of this appeal) that the ginned cotton bales were not sold but were used for manufacture of cloth outside the State of Punjab.

The Company is wrong in reading the certificate of registration by itself. Sections 5 and 7 have to be read with rule 26 and Form S.T. XXII, the declaration. So read 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 Form S.T. XXII operating together. The Company had to comply with the Act and the Rules and could not shelter behind the unamended certificate. We have to consider whether the Company complied with the Act and the Rules in the present case. Many rulings were cited to us as to the meaning of the word 'manufacture' to establish that ginning of raw cotton may in a sense be called a manufacturing process. We are not required in this case to decide this because s. 5(2)(a)(ii) provides that the goods specified in the certificate of registration must be for the use of the dealer "in the manufacture in the State of Punjab of any goods for sale". There are three conditions involved : the first is that they must be for the use of the dealer; the second is they must be for manufacture in the State of Punjab; and the third is that the manufacture must result in goods for sale. It is not necessary to decide whether the sale should also be in the Punjab for the reason that no sale as required took place. The exemption could only be claimed if the Company satisfied all the three conditions. The last condition does not appear to be fulfilled in this case. The words "for sale" show the quality of goods and it is clear the goods that are manufactured in the Punjab must be for sale. According to the section the goods which are the result of manufacture must be for sale and not for use by the manufacturer in some manufacture outside the State resulting in different goods. The goods which the Company manufactured in the State of Punjab were bales of ginned cotton and they were admittedly not for sale because they were sent to its spinning & weaving mills

A in Uttar Pradesh. The exemption, therefore, could not be claimed in view of the fact that all the requirements of the section were not complied with.

The contention that the charging section is incomplete without the prescription of the proper Form for the certificate of
B registration need not detain us. We have already shown that the old Form must be deemed to be modified and even otherwise the section and the Rules did not depend on the new Form. They were complete and effective. The registration certificate was only the evidence that the Company was a registered dealer for purposes of certain commodities to be used in manufacture, one
C of them being cotton. The omission to prescribe the new Form or to issue it did not render s. 5 and the Rules ineffective.

Mr. G. S. Pathak then raised the contention that s. 5(1) which prescribes the maximum rate of 4 nP in the rupee as the tax must fail in view of ss. 14 and 15 of the Central Sales Tax
D Act. He pointed out that the second proviso to s. 5(1) was added with effect from April 1, 1960 only and before that date the section could not operate. Section 14 of the Central Sales Tax Act declares certain goods to be of special importance in inter-state trade or commerce and mentions cotton of all kinds in unmanufactured state, whether ginned or unginned. Section
E 15 then provides as follows :—

> "15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.
>
> Every sales tax law of a State shall, in so far as
F it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :—
>
> (a) the tax payable under that law in respect of any sale or purchase of such goods inside the State
G shall not exceed two per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;
>
> (b) ....."

It is contended that by reason of the declaration and s. 15(a)
H quoted above the rate of tax is discrepant with s. 15 of the Central Sales Tax Act and sub-section (1) of s. 5 of the Punjab General Sales Tax Act must fail as a law properly enacted This

argument cannot be accepted because Art. 286(3) under which the declaration is made provides as follows :— A

"286(1).....

(2).....

(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 by law specify." B C

The meaning or the intention of cl. (3) of Art. 286 is not to destroy all charging sections in the Sales Tax Acts of the States which are discrepant with s. 15(a) of the Central Sales Tax Act, but to modify them in accordance therewith. The law of the State is declared to be subject to the restrictions and conditions contained in the law made by Parliament and the rate in the State Act would *protanto* stand modified. The effect of Art. 286(3) is now brought out by the second proviso to s. 5(1). But this proviso is enacted out of abundant caution and even without it the result was the same. D

In our judgment none of the contentions urged by the Company can be accepted. The appeal, therefore, fails and will be dismissed with costs. E

Appeal dismissed.