I.L.R., Punjab and Haryana (1967)1

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

DAYA KRISHAN,—*Petitioner.*

versus

THE ASSESSING AUTHORITY-CUM-EXCISE AND TAXATION OFFICER (ENFORCEMENT) AND OTHERS,—*Respondents.*

Civil Writ No. 2692 of 1964.

March 22, 1966.

Punjab General Sales Tax Act (XLVI of 1948)—Ss. 20, 21 and 27—Punjab General Sales Tax Rules (1949)—Rules 61-A and 62—Whether beyond the rule-making powers of State Government and whether repugnant to and ultra vires section 21—Appeal and revision—Difference between the two stated.

Held, that on the construction of section 27 of the Punjab General Sales Tax Act, Rules 61-A and 62 of the Punjab General Sales Tax Rules are not beyond the rule-making powers conferred on the State Government. The rules may not fall in clause (p) of sub-section (2) of section 27 but they are within the scope of sub-section (1) of that section. The purpose of the Act contained in section 21 thereof is the hearing of the revision petitions. It is within the scope of section 27(1) of the Act to make rules for carrying out that purpose and any rules for carrying out any of the purposes of the Act can be framed by the State Government under section 27(1) thereof so long as they are consistent with the Act itself and do not contravene any of its provisions.

Held, that it is for the Legislature to confer a right of appeal or revision or not to confer it. It is equally open to the Legislature to bestow a restricted right of appeal or revision. But if the Legislature has conferred an unrestricted right of this nature, the Executive Government can only regulate the right in procedural matters but cannot impose impediments and restrictions of an onerous and burdensome nature in its exercise which are clearly not intended by the Legislature. Whereas section 20 of the Punjab General Sales Tax Act has conferred a restricted right of appeal which can be exercised only on the fulfilment of the conditions contained therein, no such condition has been attached while enacting section 21. There seems to be good reason for making this departure in case of a revision petition. Whereas a party can insist on its rights in appeal which is a continuation of the original cause, it is always left to the discretion of the revising authority

to interfere in revision or not to interfere or to pass any order in relation to the matter under revision as the revising authority may think fit. It appears that the Legislature did not want to fetter the jurisdiction of the revising authority by a condition like that imposed by rule 61-A of the Sales Tax Rules. The rule of exclusion applies to these provisions and by excluding from section 21 the restriction in question contained in section 20, the Legislature has clearly expressed its intention not to fetter the powers of the revising authority by any such restriction. Hence rules 61-A and 62 of the said Rules are repugnant to and *ultra vires* section 21 of the Act.

Case referred by the Hon'ble Mr. Justice R. S. Narula, on 10th December, 1965, to a larger Bench for decision of the important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice R. S. Narula on 22nd March, 1966.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, or any other appropriate writ, order or direction be issued quashing the orders passed by the respondents.

BHAGIRATH DAS AND B. K. JHINGAN, ADVOCATES, for the Petitioner.

M. R. SHARMA AND M. R. AGNIHOTRI, ADVOCATES FOR THE ADVOCATE-GENERAL, for the Respondents.

ORDER OF THE DIVISION BENCH.

The judgment of the Court was delivered by—

NARULA, J.—This case was referred by me to a larger Bench on December 10, 1965, on account of the importance of the question relating to the validity of rule 61-A of the Punjab General Sales Tax Rules, 1949, canvassed before me by Shri Bhagirath Dass.

The petitioner is a registered dealer under the Punjab General Sales Tax Act, 46 of 1948, hereinafter called the Act. In respect of his annual turnover for the year 1959-60 a demand of Rs. 16,000 was created against the petitioner including a penalty of Rs. 7,720.43 by the order of the Assessing Authority, dated March 31, 1964 (Annexure E). Similarly in respect of 1960-61, a demand of Rs. 15,000 was created against the petitioner by the Assessing Authority by his order, dated 6th April, 1964 (Annexure F) which demand included a penalty of Rs. 5,549.23. The petitioner preferred two separate

appeals under section 20 of the Act against both the above-said orders of assessment. Along with the appeals he filed two separate applications under the second proviso to section 20 of the Act praying for his appeals being entertained without complying with the requirements of the first proviso about the payment of the amount of tax assessed against him. Petitioner's application for exemption in respect of the financial year 1959-60 was disposed of by the order of the appellate authority, dated June 2, 1964 (Annexure H) wherein it was held after taking all the relevant facts into consideration that the petitioner should pay a sum of Rs. 8,000 out of the total demand of Rs. 16,000 within the month of June, 1964 and that the recovery of the balance due from the petitioner would be stayed on his furnishing sufficient security to the satisfaction of the Assessing Authority. Similarly, petitioner's application in respect of the appeal arising out of the order for assessment for 1960-61 was disposed of by the order of the appellate authority, dated 9th June, 1964 (Annexure I) allowing the apeal to be entertained on payment of Rs. 5,000 and staying the recovery of the balance on furnishing sufficient security for payment of the same. Against the above-said orders of the appellate authority the petitioner filed two separate revision petitions to the Commissioner, under section 21 of the Act. No question of making any deposit as a condition precedent for the entertainment and the hearing of these revision petitions ever arose. Both these revision petitions were disposed of by Shri Rajinder Singh, Joint Excise and Taxation Commissioner, Punjab, on August 19, 1964 by an order of which Annexure J, to the writ petition is a copy. The revising authority maintained the order for deposit of Rs. 8,000 but reduced the amount to be deposited in the other case from Rs. 5,000 to Rs. 2,000 only. By the same order it was directed that the amounts in question may be deposited by the petitioner by 15th of September, 1964 and the appeals of the petitioner may then be decided by the 20th of September, 1964. It however, appears that the petitioner did not obtain any order from the revising authority for staying the hearing of the appeals. After the expiry of the period allowed by the appellate authority he proceeded to pass final orders in the appeals on 7th August, 1964 (copies Annexures L and M) which were communicated to the petitioner by letter, dated 7th September 1964 (Annexure K). The orders passed by the appellate authority on 7th August, 1964 in the absence of the petitioner culminate with the following sentences:—

> "In the circumstances, I order that the appellant having failed to fulfil the conditions on which the appeal was to be entertained, the appeal be filed.

Party to be informed."

Though the Deputy Excise and Taxation Commissioner (the appellate authority) did not specifically state that the appeals of the petitioner stood dismissed on account of non-compliance with the mandatory requirements of the first proviso to sub-section (1) of section 20 of the Act, the petitioner treated his orders, dated 7th August, 1964 as those of dismissal of his appeals. The petitioner has specifically stated in para 12 of his writ petition that his two appeals had been dismissed by the said orders, dated 7th August, 1964.

The petitioner then submitted two separate revision petitions, dated October 30, 1964, under section 21 of the Act wherein a prayer was made to set aside the original orders of assessment made on March 31, 1964, as also the appellate orders. Along with the petitions for revision applications were filed by the petitioner under rule 61-A of the Punjab General Sales Tax Rules, 1949 (hereinafter referred to as the Sales Tax Rules) for exempting the petitioner from depositing the amount of the tax assessed as a condition precedent to the entertainment of the revision petitions. Copy of one such application dated 9th November, 1964 is Annexure "O" attached to the writ petition. As the financial condition of the assessee at the time of the filing of the revision petition is relevant for purposes of grant of exemption from the said rule, the petitioner was directed to produce a certificate about the same. The petitioner claims to have filed a certificate from the Sub-Divisional Officer, Muktsar, dated 17th September, 1964 (Annexure P) along with his affidavit, dated 12th September, 1964, before the Commissioner. The petitioner followed up the said documents with his letter, dated November 14, 1964 (Annexure Q) addressed to the Joint Excise and Taxation Commissioner. With this letter he sent certain assessment orders in respect of the persons whom he described to be the real assessees. In this letter, the petitioner requested the revising authority to go through the assessment orders and then to decide if the petitioner was a victim of injustice or not. The prayer of the petitioner in the said communication is couched in the following language:—

"If your honour find some reality and genuineness in my case then grant me full stay or hear my Revision without payment otherwise do as you feel justifiable."

By order, dated November 28, 1964 (Annexure R), the Joint Excise and Taxation Commissioner, declined to entertain the revision petitions and to grant exemption to the petitioner from payment of the tax assessed. The last paragraph of the order, reads as follows:—

> "The latest report of the District Excise and Taxation Officer, Jullundur City, in regard to his financial position does not in any way materially affect the circumstances under which the petitioner is now working and the circumstances under the earlier revision petitions had come up. The fact that the firm had since been dissolved is yet another circumstance which goes to show that the petitioner was purposely avoiding the payment of the tax and had manipulated to get his property transferred in the name of others. I, therefore, see no reason to certify that the financial position of the petitioner was very weak and he was unable to carry out obligations as laid down in my order, dated 19th August, 1964. These applications for the entertainment of the revisions without the prior payment of the tax are accordingly rejected."

It is the above-mentioned order of the revising authority, dated November. 28, 1964, which has been called in question by the petitioner under Article 226 of the Constitution in this case. The Joint Excise and Taxation Commissioner has filed a written statement, dated nil, supported by an affidavit, dated nil sworn on the 27th of December (the year is not given) wherein it is stated that the order of the revisional authority is quite justified and is in accordance with law and that the allegation of rule 61-A being *ultra vires* the Act is denied on the analogy of the judgment of this Court in Civil Writ No. 1028 of 1963—*Mansa Roadways, etc.*, v. *The State of Punjab.* The other averments in the writ petition and the written statement are not relevant for deciding this case. In the writ petition three prayers were originally made, viz:—

(i) that the orders of the Assessing Authority (Annexure E and F), dated 31st March, 1964 and 6th April, 1964, respectively, creating the impugned demands may be quashed;

(ii) that the orders of respondent No. 2, the appellate authority, dated 7th August, 1964, dismissing the appeals of the petitioner may be set aside; and

(iii) that the orders of respondent No. 3, the revising authority, dated 28th November, 1964 (Annexure R) refusing to entertain the revision petitions of the petitioner may be annulled and quashed.

At the hearing of the writ petition before us, Shri Bhagirath Dass fairly and frankly stated that now he was neither impugning in any manner the original orders of the Assessing Authority nor those of the appellate authority, dated 7th August, 1964, dismissing his appeals, The learned counsel confined his arguments only to the third prayer in the writ petition, referred to above. The writ petition was admitted by my learned brother Dua, J., and Pandit, J., on 14th December; 1964. After the admission of the writ petition, the petitioner was arrested in the course of the recovery proceedings. By C.M. No. 388 of 1965, dated 5th February, 1965 the petitioner applied for his release during the pendency of the case. After issuing notice to the respondents Sharma, J., ordered the petitioner's release on 9th February, 1965. Only one more fact need be mentioned to complete the history of this case. This relates to the filing by the Joint Excise and Taxation Commissioner of his second written statement, dated 28th February, 1966, after I made the order of reference to a larger Bench under proviso (b) of rule 1 of Chapter 3-B of Volume V of the Rules and Orders of this Court. Admittedly the permission of this Court has not been obtained for filing the second written statement by the same respondent. We told the learned counsel for the respondents that we would, therefore, be ignoring the second written statement in this case unless permission for filing the same was obtained. No prayer for getting any such permission has since been made.

It may be convenient at this stage to notice the relevant provisions of the Act and the Sales Tax Rules. Assessment of tax under the Act is made under section 11. Sections 20 and 21 of the Act provide for appeals and revision petitions and it is necessary to quote both these provisions verbatim in order to decide this case.

[His Lordship read sections 20 and 21 and continued:]

The relevant part of section 27 of the Act is in the following terms:—

"27. (1) The State Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may prescribe—

(a) (deleted).

(b) to (o).....

(p) the procedure for and other matters (including fees) incidental to the disposal of appeals and applications for revisions under sections 20 and 21;

(q) to (s).....

(3) ....."

No other provision of the Act is relevant for deciding this case. In exercise of the powers conferred by section 27 of the Act, the State Government has framed the Sales Tax Rules. Rules 57, 59, 60, 61, 61-A and 62 are the only relevant rules and the same are quoted below:—

[His Lordship read the said rules and continued:]

The argument of Shri Bhagirath Dass is that rule 61-A is *ultra vires* sections 21 and 27 of the Act inasmuch as the rule is beyond the scope of clause (p) of sub-section (2) of section 27 and is clearly contrary to the legislative intent contained in the conscious departure made by the Legislature in not providing in section 21 any requirement of deposit of the amount of the tax due as a condition precedent to the entertainment of the revision petition under that section in contradistinction to such a provision which has been made in section 20 of the Act in respect of appeals. Mr. Bhagirath Dass has no quarrel with the Legislature providing for such a hurdle in the way of entertainment of an appeal or even a revision petition. He states that the right of appeal or the right of preferring a petition for revision are both creatures of statute and that it is open to a Legislature to confer such rights in a restricted manner or subject to any terms and conditions or otherwise without any restrictions. He, however, points out that whereas section 20 of the Act provides that an appeal under that provision may be made "in the prescribed manner" and further in its body states that no appeal shall be entertained by the appellate authority unless he is satisfied that the amount of tax assessed on the dealer has been paid, the Legislature has deliberately changed the phraseology in section 21 while providing for petitions for revision. Mr. Bhagirath Dass concedes that the scope of a petition for revision under section 21 of the Act is fairly wide and the revising authority can go into the merits of the orders of assessment while deciding about their legality or propriety. He also admits that if rule 61-A is struck down, no assessee need

ever bother to file an appeal and be faced with the problem of depositing the amount of tax assessed against him and that every assessee would have a right to invoke the revisional jurisdiction of the Commissioner under section 21 of the Act, without making any such deposit. This consequence, howsoever startling, has been intended by the Legislature according to Mr. Bhagirath Dass. On analysis of rules 61 and 62 of the Sales Tax Rules, it appears that there can be various kinds of revision petitions under the Act and the requirement of depositing the amount of the tax assessed does not apply to all the revision petitions. I may, therefore, set out at this stage the nature and scope of the various petitions which can be filed under section 21 of the Act and show against each item whether the condition precedent of depositing the tax assessed, save in certain exceptional cases, applies to each category or not.

S. No.	*Kind of revision petition*	*Whether necessary to deposit the tax assessed under rule 61-A or not*
1.	A petition for revision against an order of assessment of tax under section 11	.. Necessary
2.	A petition for revision of an order passed by the Assessing Authority other than under section 11 of the Act	.. Not necessary
3.	A petition against an order of the appellate authority under the second proviso to sub-section (1) of section 20 of the Act declining to exempt an appellant from the requirement of making the deposit under the first proviso to that sub-section or not exempting him to the full extent	.. Not necessary
4.	A petition against an order of the appellate authority passed in the course of or in relation to an appeal under section 20 of the Act by which order the appeal is not finally disposed of	.. Not necessary
5.	A petition for revision of an order of the appellate authority under section 20 of the Act finally disposing of an appeal	.. Necessary
6.	Any petition for revision for which it is necessary to make the deposit but in which the Commissioner holds that he is satisfied that the dealer is unable to pay the tax assessed	.. Not necessary.

I may now deal with the individual arguments of the learned counsel for the petitioner. I do not think, there is any force in his first submission to the effect that rule 61-A is beyond the rule-making powers conferred on the State Government by section 27 of the Act. The whole argument of the learned counsel in this behalf is that clause (p) of sub-section (2) of section 27 merely allows the Government to frame rules prescribing the procedure for and other matters incidental to the disposal of appeals and applications for revision under sections 20 and 21 and that rules relating to disposal cannot embrace within their scope a prohibition to the entertainment of the revision petition itself. There may be substantial force in the last part of the argument of the learned counsel, but it does not advance the case of the petitioner as all the clauses enumerated in sub-section (2) of section 27 are merely illustrative and are expressly stated to be "without prejudice to the generality", of the power conferred by sub-section (1) of section 27. Sub-section (1) authorises the State Government to make rules for carrying out the "purposes of" the Act. It is difficult to entertain the argument that a provision of the kind contained in rules 61-A and 62 of the Sales Tax Rules has no relation to the purposes of the Act. The counsel sought to derive strength for his argument from the judgment of Shamsher Bahadur, J. in *Messrs Dhillon Transport Co., Bhatinda and another* v. *The Assessing Authority and others* (1). What happened in that case was this. An *ex parte* assessment had been made against the transport company under the Punjab Passengers and Goods Taxation Act, 16 of 1952. Against the order of *ex-parte* assessment an appeal was preferred which was decided against the transport company. The company then took up the matter in revision to the Commissioner which petition for revision was dismissed on the solitary ground that the amount of the assessed tax had not been paid by the petitioner. It was the order of the revising authority which was impugned before this Court under Article 226 of the Constitution. Section 15 of Punjab Act 16 of 1952 corresponds to section 20 of the Sales Tax Act. It contains both the provisions of the nature contained in section 20 of the Act. Section 16 of the 1952 Act provides for the revisional powers of the Commissioner without the existence in that section of any such proviso as is contained in section 15 of that Act. Section 22(1) of the 1952 Act and clause (g) of sub-section (2) of that section read as follows:—

"22(1) The State Government may make rules, consistent with this Act, for securing the payment of tax and generally

(1) I.L.R. (1965) 1 Punj. 44=1964 P.L.R. 1177.

for the purposes of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government may make rules:—

(a) to (f) .....

(g) prescribing the manner in which revision application may be preferred;

(h) and (i) .....".

Rules 25 and 26 framed under the 1952 Act correspond to rules 59 and 60 of the Sales Tax Rules. Rule 28 under the 1952 Act substantially corresponds to rule 62 of the Sales Tax Rules. In that context, the learned Single Judge observed in the above-mentioned case as below:—

"No doubt a petition under section 16 is a discretionary remedy but it cannot be inferred therefrom that the revisional authority has the power to impose conditions which are not warranted by a statute. Rule 25 and especially the condition with regard to the payment of tax can be justified under the first proviso to section 15 of the Act which says that no appeal shall be entertained by an authority unless satisfied that the amount of tax assessed has been paid. Rules 25 and 26 have to be applied in the case of revision "*mutatis mutandis*" which phrase is defined in Shorter Oxford Dictionary to mean "thing being changed that have to be changed, i.e., with necessary changes". Rules 25 and 26, in other words, have to be read with such changes as have to be introduced to bring it in accord with the provisions of the statute and the rules made thereunder. Though the condition of payment of tax is justified in the case of appeals, being provided in the Act itself, it cannot be read to be an essential corollary in the hearing of a revision petition. It is argued by Mr. Sharma, for

the respondents, on the analogy of a Division Bench authority of this Court in *Burma-Shell Oil Storage Co.* v. *The Punjab State* (2) that the condition with regard to payment of tax can be read in construing rule 28. In the Division Bench authority it was held that the words "at any time" in section 21 of the Punjab General Sales Tax Act can be construed to justify the Revising Authority placing restriction of 90 days in filing the petition for revision. In my opinion, this authority cannot be used as a support for the proposition contended for by the learned counsel for the respondent. The fetter which is now sought to be imposed on section 16 and rule 28 cannot be justified on the simple ground that the pre-requisite of payment of the assessed tax is not provided for in section 16 and the rule-making power cannot travel beyond the specific terms of this section in the Act."

I think the ratio of the above judgment is contained in the following sentence which occurs in the above-quoted passage:—

"Though the condition of payment of tax is justified in the case of appeals, being provided in the Act itself, it cannot be read to be an essential corollary in the hearing of a revision petition."

Mr. Bhagirath Dass has unnecessarily tried to read into the judgment of the learned Single Judge a finding to the effect that rule 28 was bad because it was beyond the rule-making power conferred on the State Government by section 22(2)(g) of the 1952 Act. No such thing has either been held by the learned Judge nor could possibly be held because of the provisions of sub-section (2) of section 22 of the 1952 Act being without prejudice to the generality of the powers conferred by sub-section (1) of that section. Sub-section (1) of section 22 of the 1952 Act authorises the State Government to make rules consistent with the Act, *inter alia*, generally for the purposes of carrying into effect the provisions of that Act.

The counsel then referred to an unreported judgment of a learned Single Judge of this Court (Bishan Narain, J.), dated 10th February, 1958 in C.W. No. 332 of 1957—*The Adarsh Textile Mills* v. *The*

(2) 1964 S.T.C. 624.

Collector of Central Excise, Delhi. Bishan Narain, J., was dealing in that case with the provisions of the Central Excise and Salt Act, I of 1944. Section 35 of the said Central Act (hereinafter referred to as the 1944 Act), provides for filing of appeals against the decision or order of any Central Excise Officer under that Act to the Central Board of Revenue. Every order passed in appeal under section 35 is made subject to the revisional powers conferred on the Central Government by section 36 of that Act. Section 12 of that Act authorises the Central Government to declare by notification in the official gazette that any of the provisions of the Sea Customs Act, 1878, relating among other things to procedure relating to appeals shall with such modifications and alterations as the Central Government may consider necessary, be applicable in regard to like matters in respect of the duties imposed by section 3 of the 1944 Act. Section 3 is the charging section in that Act. Section 37(1) of the 1944 Act authorises the Central Government to make rules to carry into effect the purposes of that Act. Clause (i) of sub-section (2) of section 37 is in the following terms:—

> "(i) provide for the assessment and collection of duties of exercise, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid;"

Section 38 of the 1944 Act makes it compulsory for all rules and notifications issued under that Act to be published in the official gazette whereupon, the section states, that the rules and notifications shall have effect as if enacted in the 1944 Act itself. The proviso to section 38 requires that every rule framed under that Act should be laid as soon as may be after it is made before the Parliament while it is in session and the Parliament may make any modification in the rule or may direct that the rule should not be made and thereupon the rule shall have effect only in such modified form or have no effect as the Parliament may direct. The 1944 Act received the assent of the Governor-General on 24th February, 1944. By a notification, dated 26th February, 1944 under section 1(3) of that Act the 1944 Act was brought into force with effect from 28th of February, in that year. On the same day, i.e., on 28th February, 1944, the Central Government issued a notification under sections 6, 12 and 37 of that Act which was in the following terms:—

> "In exercise of the powers conferred by Sections 6, 12 and 37 of the Central Excise and Salt Act, 1944 the Central

Government is pleased to apply in the adapted form set out below certain provisions of the Sea Customs Act, 1878 and to make the following rules for the purpose of providing for the assessment and collection of the duties imposed by the first mentioned Act."

The rules framed by the Central Government which are referred to in the abovesaid notification of 28th February, 1944, were called the Central Excise Rules, 1944. These included rule 215 as subsequently amended which provided as under:—

"215. *Application of certain provisions of Sea Customs Act, 1878.*—The provisions of sections 168, 189 and 192 of the Sea Customs Act, 1878 shall *mutatis mutandis* be applicable to any decision or order relating to any duty, fine or penalty leviable in respect of any goods under the Act or under these rules."

The Adarsh Textile Mills preferred an appeal under section 35 of 1944 Act to the Collector of Central Excise against an order of the Superintendent of Central Excise, Amritsar, demanding a sum of Rs. 26,260-8-0 as excise duty payable by the said Mills on the manufacture of artificial silk fabrics. The Collector wrote back to the Mills to deposit the whole amount within 10 days as a condition precedent for the hearing of the appeal failing which the appeal would be liable to dismissal for non-compliance with the requirements of section 189 of the Sea Customs Act, read with rule 215 of the Central Excise Rules, 1944. The abovesaid order of the Collector was challenged before Bishan Narain, J., in C.W. No. 332 of 1957. In his aforesaid judgment, dated February 10, 1958, the learned Single Judge held that the restriction imposed by rule 215 was onerous and burdensome and could not have been lawfully imposed in exercise of the Government's rule-making power under section 37 of the Act in the absence of an indication to that effect having been expressed by the Legislature in section 35 itself. It was emphasised that section 37(2)(i) of the 1944 Act did not mention the matter of appeals and it would, therefore, be wholly improper to permit the executive Government to impose restrictions of this character on the ground that section 37 impliedly permitted the making of such a rule. The learned Judge observed that the Legislature had given absolute and unrestricted right of appeal in section 35

of that Act subject to the period of limitation and that the right of the Central Government to make rules, howsoever wide it may be, could not be held to include the right to impose fresh and onerous condition before the right of appeal was exercised. The obstacle of section 38 of the 1944 Act was also got over by the learned Judge by an elaborate reasoning with which we are not concerned in the instant case as admittedly there is no provision in the Act we are considering which may correspond to section 38 of the 1944 Act. In conclusion, Bishan Narain, J., held that rule 215 was repugnant to section 35 and went beyond the scope of the powers conferred by section 37 of the 1944 Act. Mr. Bhagirath Dass wants merely to adopt the reasoning contained in the judgment of Bishan Narain, J. as he is not able to rely on the same as a precedent in view of the fact that the above-said judgment of the learned Single Judge was reversed by the Division Bench (A. N. Bhandari, C. J. and D. Falshaw, J.) on 3rd September, 1959 in L.P.A. No. 70 of 1958. The appellate Bench made a note of the fact that it was unfortunate that the provisions of section 12 of the 1944 Act had not been brought to the notice of the learned Single Judge either by the petitioner or by the respondent. The argument of Mr. Bhagirath Dass is that there is no such provision as that contained in section 12 of the 1944 Act in the Punjab General Sales Tax Act and that, therefore, shorn of the distinctive feature contained in section 12 of the 1944 Act the judgment of the learned Single Judge in the case of the *Adarsh Textile Mills* still holds good. Once the judgment of the learned Single Judge has been reversed and set aside by the appellate Bench, it does not appear to be correct for the learned counsel for the petitioner to urge that the said judgment holds good for any other finding contained therein which it did not probably become necessary for the Letters Patent Bench to consider. With the greatest respect to the learned Single Judge, I am not able to see my way to hold on a construction of section 27 of the Act that the impugned rules 61-A and 62 are beyond the power conferred by sub-section (1) of that section. The rules may not fall in clause (p) of sub-section (2) of section 27 as already held by me but do appear to be within the scope of sub-section (1) of that section. The purpose of the Act contained in section 21 thereof, is for hearing revision petitions. It is within the scope of section 27(1) of the Act to make rules for carrying out that purpose, Of course, it is a different thing to contend that the impugned rules offend against section 21 of the Act and are, therefore, bad. Any rules for carrying out any of the

purposes of the Act can be framed by the State Government under section 27(1) thereof, so long as they are consistent with the Act itself and do not contravene any of its provisions. It is, therefore, held that rules 61-A and 62 of the Sales Tax Rules are within the rule-making power of the State Government under section 27(1) of the Act.

There appears to be greater force in the second contention of the learned counsel. The scheme of the two provisions, i.e., sections 20 and 21 appears to be different. It is for the Legislature to confer a right of appeal or revision or not to confer it. It is equally open to the Legislature to bestow a restricted right of appeal or revision. But if the Legislature has conferred an unrestricted right of this nature the Executive Government can only regulate the right in procedural matters but cannot impose impediments and restrictions of an onerous and burdensome nature in its exercise which are clearly not intended by the Legislature. In the instant case it appears, that whereas section 20 has conferred a restricted right of appeal which can be exercised only on the fulfilment of the conditions contained therein no such condition has been attached while enacting section 21. There seems to be good reason for making this departure in case of a revision petition. Whereas a party can insist on his rights in appeal which is a continuation of the original cause, it is always left to the discretion of the revising authority to interfere in revision or not to interfere or to pass any order in relation to the matter under revision as the revising authority may think fit. It appears that the Legislature did not want to fetter the jurisdiction of the revising authority by a condition like that imposed by rule 61-A of the Sales Tax Rules. Power of revision can be exercised either *suo motu* or on the revising authority being moved by an application within a period of 180 days of the date on which the order sought to be revised was passed. The operation of the impugned rules may lead to a queer situation. The Commissioner may call for the record of any proceedings on his own motion to satisfy himself as to the legality and propriety of some order which looks to the Commissioner to be absolutely wrong. After the record is received the aggrieved party may happen to make an application to the Commissioner for setting aside the same order. But the party may not deposit the amount of the tax. The impugned rules will even in those circumstances compel the Commissioner to dismiss the revision petition because the amount of tax is not paid. I think, the rule of exclusion applies

to these provisions and by excluding from Section 21 the restriction in question contained in Section 20, the Legislature has clearly expressed its intention not to fetter the powers of the revising authority by any such restriction. In *The Queen* v. *Bird & others* (3) at page 346, it was held as below:—

> "I desire to deal only with the general question whether those are *ultra vires* as being in excess of the powers granted to quarter Sessions by statutory enactment. Now, to make an absolute rule which has the effect of debarring a man from the exercise of an absolute statutory right unless he complies with a number of requirements is, in my opinion, clearly *ultra vires*. * * * But that is not like the present case, where an absolute bar has been imposed upon the exercise of a statutory right in the form of a requirement, non-compliance with which will wholly prevent the objector from being heard."

There may be cases in which it becomes impossible for the aggrieved party to have the wrong redressed because he cannot afford to pay the amount of tax assessed. The Legislature did not want to stand in the way of such an aggrieved party reaching the Commissioner under section 21 of the Act. The State Government could not make a rule repugnant to that intention impliedly expressed by the Legislature. It appears that the necessity for making the impugned rules arose because of the possibility of abuse of section 21 as a substitute for an appeal under section 20. If the impugned rules are not there, no assessee may prefer an appeal under section 20 and may in order to avoid the rigour of the condition precedent for the entertainment of an appeal, file only a revision under section 21 and claim to be heard without making any such deposit. The answer to that kind of a difficult situation would be for the revising authority to decline to call for the record of the case in his discretion because the petitioner before him has not exhausted the alternative remedy by way of appeal. The adopting of such a course would be nothing unusual. Though section 435 of the Code of Criminal Procedure authorises an aggrieved party to invoke the revisional jurisdiction of this Court against the order of a Magistrate directly, this Court has on most of the occasions declined to entertain the revision

(3) (1898) 2 O.B.D. 340.

petition on the ground that the agrieved party must first move the District Magistrate or the Sessions Judge, as the case may be. Adopting of such a course by the revising authority in appropriate cases may be in consonance with the principles of natural justice. There is another way of looking at the matter. The revising authority may even say in a case of the type which is before us that it would be an abuse of the process of the tribunal to allow the revision petition to be heard on merits when the petitioner had failed to take advantage of the partial exemption granted to him in the matter of the requirement of making the requisite deposit at the appellate stage. This is precisely what appears to have been done by the Commissioner in this case though the language in which he has said so is not as succinct and clear in this behalf as it could be. As I read the impugned order of the Commissioner (Annexure R) he has declined to interfere in exercise of his revisional powers under section 21 of the Act on two grounds. The first ground is that even according to the latest report of the District Excise and Taxation Officer it appeared that the petitioner was in a financial position to deposit the requisite amount as ordered on the earlier occasion. The second ground was that it appeared to the Commissioner that the firm had since been dissolved which showed to the Commissioner that the petitioner was purposely avoiding the payment of the tax and had even manipulated to get his property transferred in the name of some other persons to avoid the payment. The Commissioner further added that the petitioner had failed to carry out the obligations laid down in the Commissioner's order, dated 19th August, 1964. On an overall consideration of all those circumstances the Commissioner, declined to entertain the revision petitions without prior payment of part of the amount of the tax assessed against the petitioner. No fault can be found with that order in equity. It was certainly open to the Commissioner to interfere or not to interfere in the revision petitions filed by the petitioner before him. He does not appear to have felt bound by the impugned rules and has indeed not even referred to them in his order.

Mr. Bhagirath Dass, then argued that he could not avail of the partial relief which had been granted to him by the revising authority on August 19, 1964, as the appeals had been dismissed by the appellate tribunal on August 7, 1964 and it, therefore, became impossible for the petitioner to make the requisite deposits of the reduced amounts. There could be force in this submission if the petitioner had approached the appellate authority to revive the appeals on making the deposit as required by the order of the Commissioner, dated 19th

August, 1964. In any case we need not consider this argument at all because Mr. M. R. Sharma, the learned counsel for the respondents, has unequivocally offered at the bar that if the petitioner even now deposits the amount directed by the Commissioner in his order, dated 19th August, 1964, within 15 days of the final disposal of this writ petition, the appellate authority would revive both the appeals of the petitioner and would hear and dispose them of on merits.

Mr. M. R. Sharma, the learned counsel for the respondents, invited our attention to the judgment of Grover, J. and my Lord, *Dua, J.*, dated October 20, 1964 in C.W. No. 1028 of 1963—*M/s Mansa Roadways (P) Ltd., and another* v. *The Assessing Authority, Passengers and Goods Taxation, Patiala Division and another*, since reported in (4). The distinction between the general rule-making power contained in section 22(1) of the 1952 Act and the illustrative special provisions of sub-section (2) of that section was brought about in that case. It was held that the provisions of rule 29 of the rules framed under the 1952 Act were directly connected with the duties charged on the authorities under that Act under section 6(4) thereof, and, therefore, the rules could be validly promulgated under the general and wide powers conferred by section 22(1) of that Act and that any omission in sub-section (2) of that section of a particular head under which rule 29 could be brought would not render that rule void. I have already accepted the only contention which could be based on the ratio of the judgment of the Division Bench of this Court in the case of *M/s Mansa Roadways Private Ltd.* In the instant case, rules of the impugned type could be framed if there was no indication prohibiting the placing of such restrictions on the right of revision found by me in Section 21 of the Act. In the case of *M/s Mansa Roadways Private Ltd.* it has not been held by this Court that the State Government can frame any rules even if they would be contrary to the scheme and intention of the Act or be repugnant to any provisions of the Act itself.

Mr. Sharma then refrred to the judgment of the Supreme Court in *the State of Kerala* v. *K. M. Cheria Abdulla and Company* (5). By rule 14-A framed under the Madras General Sales Tax Act the revising authority was authorised to hold a further inquiry into the

(4) I.L.R. (1965) 1 Punj. 487.
(5) (1965) 16 S.T.C. 875.

matter in question before deciding the revision petition. The *vires* of that rule were questioned. The Supreme Court held that rule 14-A did not in any manner restrict the jurisdiction conferred on the revising authority and was within the scope of the rule-making powers of the executive authorities under that Act. In the course of the judgement of the majority in that case it was held that the words of sub-section (2) of Section 12 of the Madras Act to the effect that the Deputy Commissioner may pass such order with respect thereto as he thinks fit meant such order as may be regarded by the revising Authority to be just in the circumstances of the case for rectifying the defect. The judgement then proceeds as follows:—

> "Powers to pass such order as the revising authority thinks fit may in some cases include power to make or direct such further enquiry as the Deputy Commissioner may find necessary for rectifying the illegality or impropriety of the order, or irregularity in the proceeding. It is therefore not right to baldly propound that in passing an order in the exercise of his revisional jurisdiction, the Deputy Commissioner must in all cases be restricted to the record maintained by the officer subordinate to him and can never make enquiry outside that record.
>
> It must be noticed that the Act while conferring upon the prescribed authority power to entertain an appeal under section 11, and a petition in revision under section 12 does not prescribe the procedure to be followed by the authorities. It is left to the State Government by Rules framed under section 19 to prescribe the procedure of the appellate and the revising authorities and a provision authorising the making of a further enquiry for effectively exercising the appellate or revisional power, would in the case of a taxing statute fall within the scope of the Rules. Jurisdiction to revise the order or proceeding of a subordinate officer has to be exercised for the purpose of rectifying any illegality or impropriety of the order or irregularity in the proceeding. But in taking that course the procedure to be followed is prescribed by the Rules framed under section 19(1) to carry out the purposes of the Act and as further illustrated by the head (1), (k) and (j) of sub-section (2).

> In our view the amplitude of the power conferred by sub-section (1) and illustrated by sub-section (2) of Section 19 takes in the power to provide for making further enquiry enabling the revising authority to exercise his powers, and unless the power so conferred expressly or by clear implication nullifies or is inconsistent with any provision of the Act, it must be regarded as validly exercised. Conferment of power to make further enquiry in cases where after being satisfied about the illegality or impropriety of the order or irregularity in the proceeding, the revising authority thinks it just for rectifying the defect to do so does not amount to enlarging the jurisdiction conferred by Section 12(2)."

If anything, the ratio of the judgement of the Supreme Court appears to be in favour of the petitioner. Their Lordships of the Supreme Court have clearly stated in the above-mentioned passage that a rule would be valid unless it expressly or by clear implication nullifies or is inconsistent with any provision of the Act. I, however, find that the impugned rules substantially nullify the revisional powers conferred by Section 21 of the Act and are inconsistent therewith. In the Supreme Court case the rule in question was made only as an aid to the exercise of jurisdiction conferred by the Madras Act. In the instant case the impugned rules are not an aid to the revisional jurisdiction but cut at the roots of that jurisdiction conferred by the Legislature.

It is needless to refer to various judgements of the Supreme Court which were cited by Mr. Sharma as those cases deal with the scope of delegated legislation. With respect to the learned counsel I have not been able to appreciate how that question arises in this case at all. The requirement of payment of the disputed demand as a condition precedent for being heard against the creation of that demand is not inherent in the jurisdiction to hear either an appeal or a revision. Such a hurdle can be created only by the competent Legislature and not by framing a rule which is inconsistent with the Section conferring the powers of appeal or revision. Here the impugned rules substantially take away the right conferred by Section 21 of the Act except in certain rare cases where the Commissioner may find that it is impossible for the aggrieved party to deposit the amount in question.

The learned counsel for the State also read out to us a passage from Allen on Law in the Making. That again is concerned with the

scope of delegated legislation with which we are not concerned in the instant case.

The last case to which Mr. Sharma referred is the judgement of the Supreme Court in *Izhar Ahmad Khan and others* v. *Union of India and others* (6). The rule with which their Lordships of the Supreme Court were concerned in that case related to a conclusive presumption as to the nationality of a person based on entries in his passport. That was held to be a rule of evidence and not a substantive law. I do not think, it can possibly be contended that rules 61-A and 62 are rules of evidence. These rules affect the substantive rights conferred by Section 21 of the Act. The judgement of the Supreme Court in *Izhar Ahmad Khan's case* is, therefore, of no assistance to us in deciding the point on which arguments have been addressed at the bar.

In the above circumstances though I hold that rules 61-A and 62 of the Sales Tax Rules are repugnant to section 21 of the Act and are, therefore, of no effect, I do not see any reason to interfere in exercise of the writ jurisdiction of this Court with the impugned order passed by the Joint Excise and Taxation Commissioner, Punjab, in this case for the reasons which I have already mentioned. In my conclusion about the impugned rules being *ultra vires* section 21 I am also strengthened by the relevant observations made by a Full Bench of this Court in its judgment, dated 31st January, 1966 in *M/s United India Timber Works, Yamuna Nagar* v. *Employees State Insurance Corporation* since reported in (7).

I do not think, we are called upon to decide in this case the last contention of Mr. Bhagirath Dass to the effect that even if the impugned rules are valid the maximum amount which a revision-petitioner can be called upon to deposit is "the amount of tax assessed" and not the amount of penalty because of two reasons. Firstly, it is not disputed that in the instant case the reduced amounts which the petitioner was required to deposit were not beyond the amount of tax assessed and did not include the amount of penalties imposed by the Assessing Authority. The second reason why it is needless to go into this academic question is that it has already been held above that the impugned rules are repugnant

(6) A.I.R. 1962 S.C. 1052.
(7) I.L.R. (1966) 2 Punj. 291.

to and, therefore, *ultra vires* section 21 of the Act and no revision-petitioner can be called upon to make any deposit simply because of the requirement of the impugned rules.

Mr. Bhagirath Dass also referred to the judgment of the Supreme Court in the case of *the State of Kerala* (5) though for a different reason. He pointed out the distinction between an appeal and a petition for revision as brought by their Lordships of the Supreme Court in that case in the following passage:—

> "There is an essential distinction between an appeal and a revision. The distinction is based on differences implicit in the said two expressions. An appeal is a continuation of the proceedings; in effect the entire proceedings are before the appellate authority and it has power to review the evidence subject to the statutory limitations prescribed. But in the case of a revision, whatever powers the revisional authority may or may not have, it has not the power to review the evidence unless the statute expressly confers on it that power. That limitation is implicit in the concept of revision. Section 12(2) is no doubt wider in scope than section 115 of the Code of Civil Procedure. Even so the revisional authority's jurisdiction is confined to the question of legality or propriety of the order or the regularity of the proceedings. The further limitation on that jurisdiction is that it can only exercise the same on the examination of the record of any order passed or proceedings taken by any authority. The section, therefore, not only limits the scope of its jurisdiction but also defines the material on the basis of which the said jurisdiction is exercised. The general expression that the authority "may pass such order as he thinks fit" must necessarily be confined to the scope of the jurisdiction. The revisional authority, therefore, cannot travel beyond the order passed or proceedings recorded by the inferior authority and make fresh enquiry and pass orders on merits on the basis of the said enquiry. If it is not construed in this manner, the distinction between appeal and revision would be effaced."

In the circumstances of this case it does not appear to be necessary to dilate upon the distinction between an appeal and a

petition for revision as brought out in the authoritative pronouncement of the Supreme Court referred to above. Suffice it to say that the sanctity of the right of revision conferred by the Legislature within the scope of that right cannot be impaired by rules of the type that have been impugned in the instant case.

On account of the peculiar facts of this case no interference with the impugned orders of the revisional authority is called for in this petition. The writ petition, therefore, fails and is dismissed, but without any order as to costs.

K. S. K.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

NIRBHAI SINGH AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 2124 of 1863.

March 23, 1966.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Object of —S. 14—Draft Scheme—Land held by a person as owner and as tenant-at-will—Whether can be considered as one unit for consolidation purposes—Agricultural holding—Whether includes land occupied by tenant—Consolidation authorities—Whether competent to determine questions of title.

Held, that the Act, as its Preamble shows, was brought on the statute book in order to provide for the compulsory consolidation of agricultural holdings and for preventing their fragmentations and also for the assignment or reservation of land for common purposes of the village.

Held, that only the land-owners' holdings can be consolidated under the Act and not the land in possession of tenants which does not fall within the definition of holding. The land held by a person as an owner cannot be considered as one unit with the land held by him as tenant-at-will for purposes of consolidation.