(16) For the reasons given above I accept this writ petition, and the order dated June 15, 1968 (copy annexure 'B' to the writ petition) is quashed, and respondent 1 is directed to re-decide the representation of respondent 2 after notice to the petitioner and any other Taxation Inspector who might be affected thereby. In the circumstances, I leave the parties to bear their own costs.

N.K.S.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

M/S SHAMBU RAM NATHA RAM,—*Petitioner*

versus.

THE EXCISE & TAXATION OFFICER,—*Respondent.*

Civil Writ No. 408 of 1970

August 4, 1970.

Central Sales Tax Act (LXXIV of 1956)—section 14 (vi)—Punjab General Sales Tax Act (XLVI of 1948)—Entry (3) in Schedule 'C'—"Cotton seeds"—Whether "oil seeds" as defined in the two Acts.

Held, that "Cotton-seeds" are "oil seeds" as defined in entry (3) of Schedule 'C' to the Punjab General Sales Tax Act, 1948, as well as in section 14(vi) of the Central Sales Tax Act, 1956, because oil produced from the cotton-seeds is used in industry for the manufacture of Vanaspati ghee which is meant for human consumption. (Para 5)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the assessment order, dated 14th January, 1970 passed by the respondent and restraining the respondent from demanding or recovering the tax of Rs. 1,055.83 Paise from the petitioner or from taking any step or proceeding in enforcement of the said order and further praying that during the pendency of the writ petition, recovery of the tax under the impugned order be stayed and the cost of this petition be awarded to the petitioner.

HARBANS LAL, ADVOCATE, for the petitioner.

D. N. RAMPAL, ASSISTANT ADVOCATE-GENERAL (PB.), for the respondent.

JUDGMENT

B. R. TULI, J.—(1) This order will dispose of Civil Writ 407 of 1970—Messrs Suraj Bhan Jagdish Chand *v.* The Excise and Taxation Officer, Sangrur, and Civil Writ 408 of 1970—Messrs Shambhu Ram Natha Ram *v.* The Excise & Taxation Officer, Sangrur, as a common question of law is involved in both these writ petitions, that question being, whether cotton seeds are oil-seeds as defined in section 14(vi) of the Central Sales Tax Act, 1956 (hereinafter called the Central Act) and in entry (3) in Schedule 'C' to the Punjab General Sales Tax Act, 1948 (hereinafter called the Punjab Act). There is a slight difference between the description of oil-seeds in the Central Sales Tax Act and in Schedule 'C' to the Punjab General Sales Tax Act and, therefore, both the Clauses are set out below :—

"Section 14(vi) of the Central Sales Tax Act reads as under—

"14. It is hereby declared that the following goods are of special importance in inter-State trade or commerce :—

* * * * * *
* * * * * *

(vi) oil-seeds, that is to say, seeds yielding non-volatile oils used for human consumption, or in the manufacture of varnishes, soaps and the like, or in lubrication, and volatile oils used chiefly in medicines, perfumes, cosmetics and the like.

* * * * * *".
* * * * * *".

Entry (3) in Schedule 'C' to the Punjab General Sales Tax Act, 1948, reads as under—

"Oil-seeds, (including groundnut) that is to say, seeds yielding non-volatile oils used for human consumption, or in industry, or in the manufacture of varnishes, soaps and the like, or in lubrication, and volatile oils used chiefly in medicines, perfumes, cosmetics and the like."

Schedule 'C' to the Punjab Act ennumerates the goods on which purchase tax and not the sales tax is leviable, so that, if cottonseeds

are held to be oil-seeds, they will be subject to the levy of purchase tax on their purchase price and not sales tax on the sale price.

(2) On behalf of the petitioners, it has been vehemently argued that cottonseeds are oil-seeds as oil is extracted from cottonseeds on a commercial scale which is used in the manufacture of Vanaspati meant for human consumption. Reliance is placed on the following paragraph in Encyclopaedia Britannica, Vol. 6, 1969 Edition, page 629 :—

> "*Utilization of Cottonseed Products.*—Although cottonseed products have been used variously for centuries, their greatest commercial utilization has been in the United States. The commercial processing of cottonseed has been increased in other countries, principally Mexico, Brazil, India and Egypt. The yield of products is influenced by the variety of cotton, the environment under which the cotton crop is grown and the efficiency of the processing methods used for recovery of the oil. Typical average yields per short ton of seed crushed are : 314 lb. of crude oil ; 901 lb. of cake or meal ; 466 lb. of hulls ; 184 lb. of linters ; and 135 lb. of processing waste and loss.
>
> *Oil.*—Thoroughly refined and processed cottonseed oil is one of the principal high-grade edible oils of commerce. The average factory consumption in the United States of refined cotton seed oil is approximately 30 per cent of the total of all edible and inedible vegetables oils used annually. About 29 per cent of the refined cottonseed oil consumed annually goes into the manufacture of margarine ; 35 per cent into shortenings ; 30 per cent into salad oil, salad dressing, mayonnaise, cooking oils and other products ; and 2 per cent into inedible products. "Winterized" cottonseed is a superior salad and cooking oil because of its good keeping quality. About 75 per cent of the "winterized" vegetable oils are obtained from cottonseed oil. Owing to studies of the relation of fats to health there has been a trend toward increased use of salad and cooking oils and decreased use of shortening.

The use of cottonseed oil in inedible products is limited largely to off-grade oils and soap stocks. The oil and fatty acids obtained from them and acidulated soap stocks are used in the manufacture of soaps, lubricants, protective coatings and chemical products. The fatty acid pitch is used chiefly in the production of floor coverings, composition roofing and insulating materials."

It is argued that oil is extracted from cottonseed for commercial purposes and that is one of the principal uses to which the cottonseeds are put these days. Previously, the cottonseeds were only used as cattle feed but now oil is extracted out of them chiefly for human consumption. The learned counsel seeks to derive assistance from a judgment of their Lordships of the Supreme Court in *Union of India and another* v. *Delhi Cloth and General Mills Co., Ltd.,* (1), wherein it is stated in para 5 of the report as under :—

"The experts who have filed affidavits in support of the petitioners' case agree with Mr. Krishnan that common oils like groundnut, sesame, mustard, cottonseed, etc., in their raw stage always contain varying amounts of impurities and these impurities have to be removed by different processes before hydrogenation for the purpose of producing Vanaspati can be applied."

The learned counsel argues that cottonseed oil has been mentioned in this paragraph as one of the common oils used for the purpose of producing Vanaspati. In para 10 of the report, an extract is given from Bailey's book on "Cottonseed and Cottonseed Products" reading as under :—

"In a discussion of the composition and characteristics of cottonseed oil, three kinds of oil are to be distinguished. They are : (a) crude oil, which is the oil as it is expressed from the seed, and the commodity shipped from the oil mills; (b) refined oil, or oil which has been freed of most of its non-glyceride constituents by treatment with alkali, or without subsequent bleaching or deodorisation ; and (c) hydrogenated oil."

(1) A.I.R. 1963 S.C. 791.

The reference to cottonseed oil as common oil and the method of its extraction fully supports the submission of the learned counsel for the petitioners that cottonseeds are oil-seeds. The learned counsel has relied on a judgment of their Lordships of the Supreme Court in *State of Madras* v. *R. M. Krishnaswami Naidu and others*, (2), wherein cottonseed oil is mentioned as one of the ingredients of Vanaspati, its percentage ranging from 0 to 10. *In State of Orissa* v. *Dinabandhu Sahu & Sons* (3), a reference is made to a communication of the Government of India No. 4(8)-ST/57, dated 31st January, 1958, addressed to all State Governments stating that the items appearing in the list annexed thereto came within the purview of the definition of oil-seeds as given in section 14 of the Central Act and requesting that the list might be circulated amongst the Sales Tax authorities for their guidance. On the basis of this communication, some State Governments like Punjab and Bombay issued instructions to the Sales Tax authorities. The Collector of Sales Tax of Bombay State issued Circular No. CST-48-58 (495/14), dated March 15, 1958, giving a list of 54 items, No. 10 of which is cottonseed (Gessympium Harbaccum). The Excise and Taxation Commissioner, Punjab issued instructions,—*vide* Circular No. 2554/STI, dated May 18, 1959, in which the same list of 54 items is mentioned. Thereafter, the following statement appears—

> "Seeds not to be regarded as falling within the definition of oil-seeds under section 14—
>
> Seeds not crushed in commercial quantities but, if crushed yield vegetable oils which may be used in medicines. They are not to be regarded as 'oilseeds' for the purposes of Section 14 of Central Sales Tax Act, 1956—
>
> (a) Almond seed, (b) Pista seed, (c) Kharbooza seed, (d) Tarbooz seed, (e) Kakdi seed and (f) Kaddu seed."

It is thus clear that cottonseed was considered to be an oil-seed by the Central Government as well as by the Bombay Government and the Punjab Government. But the assessing authorities in the State

(2) (1970) 26 S.T.C. 42.
(3) (1969) 24 S.T.C. 233.

of Punjab no more consider cottonseeds to be oil-seeds in view of the judgment of their Lordships of the Supreme Court in *State of Punjab and others* v. *Chandu Lal Kishore Lal* (4), wherein an observation is made that cottonseeds are not declared goods. In the judgment of their Lordships entries (1) and (3) from Schedule 'C' to the Punjab Act have been set out, but not clause (vi) of section 14 of the Central Act, nor was it brought to their Lordships' notice that oilseeds are declared goods under section 14(vi) of the Central Act. The point that was canvassed before their Lordships was that cotton-seeds were not different from cotton and the dealer was entitled to deduct the sale price of the cotton seeds from the purchase turnover under section 5(2)(a)(vi) of the Punjab Act. In that case the dealer purchased unginned cotton and by a process of manufacture separated the seeds from the cotton and sold ginned cotton to the customers. It was submitted on behalf of the manufacturer that he had paid tax on the purchase of unginned cotton which underwent a process of manufacture resulting into two products, that is, ginned cotton and cotton-seeds. He should, therefore, be deemed to have paid tax on the purchase of cotton-seed and when he sold cotton-seeds, he should have been allowed the deduction of that turnover from his purchase turnover. This submission was repelled by their Lordships with the following observations :—

> "In our opinion, the appellants are right in their contention that the ginning process is a manufacturing process. But the question presented for determination in the present case is somewhat different, viz., whether the respondent is entitled to the exemption under section 5 (2) (a) (vi) of the Act in the context and setting of the language of sections 14 and 15 of the Central Sales Tax Act, 1956. 'Declared goods' in section 14 of the Central Sales Tax Act, 1956, are individually specified under separate items. "Cotton ginned or unginned" is treated as a single commodity under one item of declared goods. It is evident that cotton ginned or unginned being treated as a single commodity and as a single species of declared goods cannot be subject under section 15(a) of the Central Sales Tax Act to a tax exceeding two per cent of the sale or purchase price thereof or at more than one stage. But so

(4) (1970) 25 S.T.C. 52.

far as cotton seeds are concerned, it is difficult to accept the contention that the sale of cotton seeds must be treated as a sale of declared goods for the purpose of section 15(a) or (b) of the Central Sales Tax Act, 1956. It is true that cotton in its unginned state contains cotton seeds. But it is by a manufacturing process that the cotton and the seed are separated and it is not correct to say that the seeds so separated is cotton itself or part of the cotton. They are two distinct commercial goods though before the manufacturing process the seeds might have been a part of the cotton itself. There is hence no warrant for the contention that cotton seed is not different from cotton. It follows that the respondent is not entitled to deduct the sale price of the cotton seeds from the purchase turnover under section 5(2)(a)(vi) of the Act. In our opinion, the assessing authority was right in holding that the respondent was not entitled to deduction in respect of cotton seeds sold by it to registered dealers. It is conceded that the assessing authority had already granted deduction under section 5(2)(a)(vi) so far as ginned cotton is concerned."

It is quite evident from their Lordships' observations that what was being held was that cotton-seeds were not cotton within the meaning of section 14(ii) of the Central Act, but their Lordships were not called upon to pronounce whether cotton-seeds are oilseeds, as defined in clause (vi) of section 14 of the Central Act. There is no doubt that entry (3) from Schedule 'C' to the Punjab Act was set out but no reference was made to it in the judgment nor was it considered relevant to decide whether cotton-seeds were declared goods. I may emphasise that their Lordships considered cotton-seed in relation to cotton and not in relation to oilseeds for observing that " it is difficult to accept the contention that the sale of cotton seeds must be treated as a sale of declared goods for the purposes of section 15(a) or (b) of the Central Sales Tax Act, 1956." Their Lordships further observed. "There is hence no warrant for the contention that cotton seed is not different from cotton. That judgment, therefore, in my opinion, does not lead to the conclusion that their Lordships decided that cotton-seeds were not oil-seeds, as defined in entry (3) in Schedule 'C' to the Punjab Act or clause (vi) of section 14 of the Central Act.

(3) On behalf of the respondent, reliance has been placed on a judgment of Shamsher Bahadur, J., in *Hans Raj Choudhri* v. *J. S. Rajyana, Excise and Taxation Officer* (5), in which the learned Judge held that groundnuts could not be treated as oil-seeds to justify the imposition of purchase tax under the Punjab Act. The learned Judge relied on a Division Bench decision of the Madhya Pradesh High Court in *Commissioner of Sales Tax Madhya Pradesh, Indore* v. *Bakhat Rai and Co* (6), wherein it was stated that the test was not whether oil can be extracted from a fruit or seed, but it is whether in common parlance the article is known as 'oil-seed' used principally for the extraction of oil. Even from the point of view of that test, I am of the opinion that cotton-seeds are commonly known as oil-seeds and the cotton-seed oil is used for the manufacture of Vanaspati ghee which is meant for human consumption. The learned counsel for the respondent has then relied on a Division Bench judgment of Madras High Court in *S. Kannappa Mudaliar* v. *The State of Madras* (7), wherein it was held that coconuts are not oil-seeds within the meaning of item 6(a) of the Second Schedule to the Madras General Sales Tax Act, 1959. The learned Judges disagreed with the judgments of Mysore and Kerala High Courts holding coconuts as oil-seeds. That judgment is, thus, of no help.

(4) Let us now turn to entry (3) in Schedule 'C' to the Punjab Act. According to that entry, the seeds must yield non-volatile oils. There is no dispute that cotton-seed oil is a non-volatile oil. The second requirement is that the oil must be used for human consumption. There is no doubt on this point as well, as the Vanaspati, in which cotton-seed oil is used, is meant for human consumption. There is another use mentioned in this entry and that is, the oil may be used in industry. As I have pointed out above, cotton-seed is used in industry for the manufacture of Vanaspati. The words "or in industry" are not to be found in clause (vi) of section 14 of the Central Act. Thus, I am of the opinion that even according to the definition of oil-seeds in entry (3) of Schedule 'C' to the Punjab Act, cotton-seeds fall in the category of oil-seeds.

(5) For the reasons given above, I hold that cotton-seeds are oil-seeds as defined in entry (3) of Schedule 'C' to the Punjab Act

(5) (1967) 19 S.T.C. 489.
(6) (1966) 18 S.T.C. 285.
(7) (1968) 21 S.T.C. 41.

as the oil produced from the cotton-seeds is used in industry for the manufacture of Vanaspati ghee which is meant for human consumption. The writ petitions are, therefore, accepted and the assessing authority is directed to amend the impugned orders in so far as they relate to cotton-seeds, in the light of the observations made above, that is, considering cotton-seeds as oil-seeds. Since the point involved was not free from difficulty, I leave the parties to bear their own costs.

N.K.S.

REVISIONAL CIVIL

Before Harbans Singh, Acting Chief Justice and Prem Chand Jain, J.

TELU RAM,—*Petitioner*

versus

OM PARKASH GARG,—*Respondent.*

Civil Revision No. 222 of 1967.

August 7, 1970.

East Punjab Urban Rent Restriction Act (III of 1949)— Section 13(2) (ii) (b)—Application for ejectment under—legal proposition as to the interpretation of the section—Stated—Demised shop rented for sale of "general store"—Tenant installing printing press in substantial part of the premises—whether liable to be ejected.

Held, that where a landlord makes an application for ejectment under section 13(2) (ii) (b) of the East Punjab Urban Rent Restriction Act 1949, while interpreting the section, the following propositions of law emerge:—(a) that if only a small part of a building is used for a purpose other than the one for which it was originally let, that, by itself, may not render the tenant liable to be evicted under clause (b) of Section 13(2) (ii) of the Act. In any case, a tenant would not be so liable if the purpose complained of can be said to be 'part of the purpose' for which the premises were originally let; (b) that if the result of the use of even a small portion of a building is such that the category of the premises is changed from residential, non-residential and scheduled, and it becomes a category different from the one for which the same had been let, the clause would be attracted; (c) that if a substantial part of the demised premises is being utilized for a purpose other than the one for which the same had been leased, the tenant would render himself liable to eviction; whether, in a particular case, there has been a substantial conversion of the premises for a purpose different from the one for which the same were let, would be a question of fact to be determined in each particular case; (d) that in determining whether the change has been