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Shah, J.

By the Constitution, an opportunity of showing cause against the action proposed to be taken against a public servant is guaranteed and that opportunity must be a reasonable opportunity. Whether opportunity afforded to a public servant in a particular case is reasonable must depend upon the circumstances of that case. The enquiry in this case was held by the Enquiry Commissioner who occupied the high office of Chief Justice of the East Punjab High Court. The appellant himself examined 82 witnesses and produced a large body of documentary evidence and submitted an argumentative defence which covers 321 printed pages. An opportunity of making an oral representation not being in our view a necessary postulate of an opportunity of showing cause within the meaning of Article 311 of the Constitution, the plea that the appellant was deprived of the constitutional protection of that Article because he was not given an oral hearing by the President cannot be sustained.

The appeal, therefore, fails and is dismissed with costs.

B. R. T.

CIVIL MISCELLANEOUS

Before G. D. Khosla, C.J., and Tek Chand, J.

M/S RAGHBIR CHAND-SOM CHAND,—*Petitioners.*

versus

EXCISE AND TAXATION OFFICER, BHATINDA AND OTHERS,—*Respondents*

Civil Writ No. 359 of 1959

1959

Dec., 15th

East Punjab General Sales Tax Act (XLVI of 1948) as amended by East Punjab General Sales Tax (Amendment) Act (VII of 1958)—Section 5—Levy of purchase tax and

Sales Tax on cotton ginning factories on purchases of unginned cotton and sale of ginned cotton—Whether valid—Purchase tax on purchases of oil-seeds and sales tax on sales of oil extracted therefrom—Whether valid—Purchase tax on purchases of iron scrap and sales tax on finished articles manufactured therefrom—Whether valid—Central Sales Tax Act (LXXIV of 1956)—Section 15—Effect of—Manufacture—meaning of.

Held, that ginned and unginned cotton are the same commodity and that a person, who buys unginned cotton gins it and then sells ginned cotton, is dealing only in one commodity. This commodity has been declared to be one of the goods of special importance in inter-state trade and, therefore, the person dealing in it is entitled to the benefits of section 15 of the Central Sales Tax Act. (LXXIV of 1956); inasmuch as under the East Punjab General Sales Tax Act, 1948, as amended by the Punjab Act No. 7 of 1958, he has to pay additional tax, the law imposing that tax is invalid. The dealers in cotton are only liable to pay tax not exceeding two per cent on sales effected inside the State. They are not liable to pay tax at all when they export their goods and effect sales outside the State. The same is, however, not true of dealers in oil-seeds. They buy oil-seeds, extract oil and sell oil. Here the character of the original commodity is entirely changed. The oil is ready for instant use and it cannot be said that oil-seeds and oil are the same commodity. Similarly the dealers in non-ferrous metals buy metals, subject them to the process of manufacture and sell finished articles which are ready for instant use. The dealers in iron-scrap, though it is declared to be of special importance in inter-State trade, cannot be said to come within the purview of section 15 of the Central Sales Tax Act, 1956, except to the extent that the transaction of buying and the transaction of selling are individually subject to the restriction imposed by section 15.

Held, (per Tek Chand, J.), that etymologically "manufacture" is a compound word from Latin *manu,* meaning "hand" and "factus", which means "made". In its primary sense, "manufacture" is the action or process of making by hand. In the modern sense, "manufacture" is fashioning of a raw or wrought material by manual or mechanical manipulation, resluting in its transformation. The

primary meaning of the word "manufacture" in the sense of "made by hand" as distinguished from "nature growth" underwent a change with the supplanting of primitive methods of making, by machinery. Ordinarily a manufactured article takes a different form and subserves a different purpose from the original materials and is usually given a different name. The meaning of the term "manufacture" has acquired broader meaning so as to include products of human industry, not only as a result of the direct action of human hand but also by employment of machinery. The definitions given by lexicographers are couched in general terms and do not help in drawing a sharp line of demarcation between mere *processing* short of *manufacture*, and making finished articles after manufacturing them. It is well understood, that manufacture implies a change, but every change is not manufacture, inspite of the fact that every change in an article may be the result of treatment, labour and manipulation. For purposes of manufacture something more is necessary and there must be a transformation; a new and different article must emerge having a distinctive name, character or use, Thus mere bestowal of labour on an article, even if it is applied through machinery, will not make an article a manufactured good, unless the treatment has progressed so far, that a transformation ensues, and the article becomes commercially known as another and a different article from the original raw product.

Petition under Article 226 of the Constitution of India praying that a Writ, direction or order be issued declaring the provisions of the East Punjab Tax (Amendment) Act VII of 1958 as ultra vires, *illegal and void.*

F. C. MITAL, AND D. S. NEHRA, for Appellants.

S. M. SIKRI, ADVOCATE-GENERAL, for Respondents.

ORDER

G. D. Khosla, C. J.

G. D. KHOSLA, C.J.—In these 49 petitions the *vires* of Punjab Act No. 7 of 1958 has been challenged before us. This Act amended the East Punjab General Sales Tax Act, 1948, and the amendment had the effect of imposing either new or additional liability in the form of sales or

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purshase tax upon the petitioners in respect of the goods in which they deal. Most of the petitioners are firms dealing in raw cotton. They purchase raw cotton, gin it in their factories and then sell ginned cotton and the cotton-seed obtained in the process of ginning. Of the remaining petitions, the petitioners in Civil Writ No. 898 of 1959 deal in non-ferrous metals, the petitioners in Civil Writs Nos. 822 to 827 of 1959 deal in oil-seeds and the petitioners in Civil Writ No. 1271 of 1959 deal in iron-scrap. The petitioners in Civil Writ No. 861 of 1959 deal in hosiery goods. The point arising with a small variation is, however, identical in all the 49 petitions, and it will be convenient to deal with all of them together.

Before the passing of the amending Act the position was that certain types of goods were exempt from sales tax imposed by the East Punjab General Sales Tax Act, 1948. The Schedule appearing at the end of the Act sets out the various goods which were so exempt. Item 29 was "cotton (ginned or unginned)". The tax was payable in respect of what was called taxable turnover. "Turnover" included "the aggregate of the sales and parts of sales actually made" by the person concerned. The amending Act deleted item 29 from the list of exempted goods and also increased the rate of tax from two pice per rupee to four naya paise per rupee. It also altered the definition of "turnover" by adding to the transaction of sale the transaction of purchase. The result, therefore, was that the person who dealt in exempted goods and had been paying no sales tax at all under the old Act was now made liable to pay tax at two stages—(1) when he bought the commodity in which he dealt and (2) when he sold it. The dealers in other goods also became liable to pay tax at two stages instead of at one stage. A modification was, however, found necessary in view of

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the general provisions of the Central Sales Tax Act of 1956 which implemented the provisions of Article 286(3) of the Constitution.

Article 286(3) is in the following terms:—

> "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."

Parilament specified certain articles in the Central Sales Tax Act of 1956 to be goods of special importance in inter-State trade or commerce. Such goods have been specified in section 14 of the Act, and item (ii) of this section is—

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

'Iron-scrap' is another specified commodity and so is 'oil-seeds'. Section 15 of the Central Act sets out the restrictions with regard to tax contemplated by clause (3) of Article 286. This section is in the following terms:—

> "15. Every sales tax law of a State shall, in so far as 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 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) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State."

When the discrepancy between the Punjab Act No. 7 of 1958 and the Central Sales Tax Act of 1956 with regard to the declared goods was noticed, Punjab Act No. 13 of 1959 and Punjab Act No. 24 of 1959 were passed. The final position, therefore, is that on cotton (ginned or unginned) sales tax is levied at the time of purchase. Sales Tax is also levied in respect of sales made by the petitioners, when these sales are inside the Punjab State, but when the goods are sold outside the Punjab State, there is no liability to pay any tax in respect of those sales and the appropriate refund is made under section 15(b) of the Central Act. With regard to the non-declared goods, tax being levied on turnover, the petitioners have to pay tax in respect of both transactions of purchase and sale.

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The claim of the petitioners dealing in cotton is that they are not liable to pay any tax whatsoever when they sell their goods outside the State; they are liable to pay tax at 2 per cent only when they sell their goods inside the State. The contention of those petitioners who deal in non-declared goods is that they are liable to pay tax at one stage only. They have, therefore, asked for a declaration from this Court that Punjab Act No. 7 of 1958 is *ultra vires* the Constitution inasmuch as it offends the provisions of the Central Sales Tax Act promulgated in order to give effect to the provisions of Article 286(3) of the Constitution.

It may be stated at the outset that the deletion of item 29 from the original East Punjab Sales Tax Act, 1948, is, in no way, unconstitutional or *ultra vires*, and it was never urged before us that dealers in cotton, even if they sell their goods inside the State, are not liable to pay any sales tax. Therefore, that part at least of the impugned Act is, in no way, unconstitutional.

The main argument advanced before us may be summarised as follows: Unginned cotton and ginned cotton are essentially the same commodity. The process of ginning, in no way, alters the character or identity of the raw cotton. Cotton, whether ginned or unginned, is one of the declared goods of special importance in inter-State trade. Therefore, the Act passed by the Punjab State must conform to the restrictions and conditions set out in section 15 of the Central Sales Tax Act, and inasmuch as Punjab Act No. 7 of 1958 has the effect of transgressing these restrictions and conditions, the Act is bad in law.

As against this, it has been urged before us that ginned cotton is not the same thing as unginned cotton; they are really two separate commodities, though both of them are declared goods.

If a person buys unginned cotton and sells it in the form in which he buys it, then the tax which he is liable to pay must be subject to the restrictions and conditions of section 15. In the same way, if a man buys ginned cotton and sells it in the same state, he would be entitled to the benefits of section 15. But, if a person buys unginned cotton, subjects it to the process of ginning and obtains thereby ginned cotton and cotton-seed, the sale of these commodities is an entirely new transaction in respect of entirely new goods. This separate sale may also enjoy the benefits of section 15, but it has no relation to the transaction of buying unginned cotton. Such a person, therefore, is liable to pay tax at two stages, because the definition of "turnover" includes the transactions of purchase as well as of sale.

The argument, therefore, really narrows down to—whether the process of ginning alters the character of the goods, and whether ginned cotton is to be treated as something wholly different to unginned cotton?

The learned counsel for the petitioners has drawn our attention to the fact that ginned and unginned cotton are both considered as raw cotton and are referred to in the Constitution and in a number of statutes as one commodity. Item 33 in List III of the Seventh Schedule of the Constitution speaks of—

> "(d) raw cotton, whether ginned or unginned," thus making no distinction whatsoever between ginned cotton and unginned cotton. The Cotton Ginning and Pressing Factories Act, 1925, section 2(b) says—
>
> " 'cotton', means ginned or unginned cotton, or cotton waste;"

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In the East Punjab Sales Tax Act of 1948 item 29 of the Schedule is "cotton (ginned or unginned)". Similarly, in the Central Sales Tax Act of 1956 section 14, item (ii), says—

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

Therefore, the declared goods under one head are stated to be 'cotton in its unmanufactured state'; one type of manufactured cotton, namely, cotton waste, has been specifically excluded, but ginned and unginned cotton have been spoken of as one commodity. The Punjab Act No. 24 of 1959 in Schedule 'C', clause (1), repeats the phraseology of the Central Sales Tax Act given above.

The process of ginning, it was argued before us, is certainly not manufacture. Parliament looked upon both ginned and unginned cotton as cotton in its unmanufatured state. Ginning merely separates the cotton-seed from the raw cotton in order to make it fit for use by the manufacturer.

The statue does not say whether ginning is to be considered the type of manufacture which alters the character of the raw material, and there are very few auhorities which can provide any real guidance in the matter. The question has, therefore, to be considered from first principles. The fact that ginned and unginned cotton are consistently treated under the same head in he Constitution as well as in all the statutes dealing with the matter, seems to indicate that the legislature looked upon ginned and unginned cotton as one and the same thing. It seems to have been felt that ginning does not alter the character of raw cotton. When cotton is turned into yarn or cloth, it no longer remains raw cotton and the change

of identity is easily discernible, and there can be no dispute that a person, who buys raw cotton and turns it into yarn or cloth, is liable to pay tax first in respect of the transactions relating to cotton and then in respect of the transactions relating to yarn or cloth. In the same way a man, who buys yarn and weaves it into cloth which he sells, is not selling the commodity which he bought; he is dealing in two different types of commodities one of which he buys and the other of which he sells, but the man, who buys, say, wheat, cleans it, puts it into bags and then sells it, is dealing really in one commodity, it cannot be said that he bought raw wheat and sold something else. If he were to grind the wheat into flour and sell the flour, he would be dealing in different commodities, because quite clearly flour is not the same thing as wheat. In the same way, if a man were to buy iron-scrap and turn it into steel-plates, he would be handling two different commodities. He will have to pay tax on the purchases of scrap and then again on sales of steel-plates. The case of the person who conducts the process of ginning is, however, vastly different. He does the same type of thing as the man who cleans wheat and puts it into bags. No doubt, he does obtain cotton-seed which is a separate commodity, but the ginned cotton is only the same thing as unginned cotton except that it is more ready for use by the manufacturer. To put a commodity in such a state that it can be more readily used for manufacture, is almost the same thing as making a commodity marketable; the commodity remains the same and does not alter its character in any respect. I am, therefore, of the view that unginned and ginned, cotton are essentially the same thing, and buying unginned cotton and selling ginned cotton are two transactions dealing with the same commodity.

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Some little support for this view may be derived from one or two American cases. Our attention was drawn to *Georgia Warehouse Company* v. Jolley (1). In this case elections in Georgea were fought on the question of taxing manufacturers. One party promised to exempt manufacturers from a certain type of tax. This party came into office and the question arose whether a person who had a ginning factory was liable to pay tax or not, in other words, if he could be treated as a manufacturer. The Court held that ginning was not manufacture and, therefore, the factory-owner was liable to pay tax. The Justices in that case held that cotton did not lose its essential identity by undergoing the process of ginning; it remained the same commodity and in the same state as before; therefore, ginning was not manufacture. The Corpus Juris Secundum defines 'manufacture' as 'the production of articles for use from raw or prepared materials by giving these materials new forms, qualities, properties, or combinations, whether by hand, labour or by machinery; also anything made for use from raw or prepared materials'. This definition is neither very exact nor exhaustive, but in the very nature of things it is not easy to define 'manufacture' and it has been pointed out that 'manufacture' is susceptible of many applications and many meanings, but the generally understood meaning of the process of manufacture is to alter the nature of the raw material and turn it into something new. Ginned cotton still remains raw material. It certainly has not been turned into anything new in the process of ginning and it continues to remain a raw material from which other articles are to be manufactured. Indeed, ginned cotton is not a finished product which can be used as such for any purpose. The learned Advocate-General

(1) 157 South-East Reporter 276

relied upon a case from Australia, *Federal Commissioner of Taxation* v. *Jack Zinader Proprietary Limited* (1). In this case a furrier company converted worn and damaged fur garments into new garments of different shapes and styles. In doing this the defective parts of the furs were removed and some material was also added in the form of linings. It was held that this process constituted manufacture. There is, however, no analogy between the conversion of old garments into new ones which are finished products fit for instant use and the ginning of cotton which makes the cotton merely more suitable for manufacture into other articles. The question of fresh and frozen meats and fresh and frozen dressed poultry was considered in another American case, *East Texas Motor Freight Lines* v. *Frozen Food Express* (2).

The Court observed—

> "A chicken that has been killed and dressed is still a chicken. Removal of its feathers and entrails has made it ready for markt. But we cannot conclude that this processing which merely makes the chicken marketable turns it into a 'manufactured' commodity.
>
> At some point processing and manufacturing will merge. But where the commodity retains a continuing substantial identity through the processing stage we cannot say that it has been 'manufactured' within the meaning of section 203(b)(6)."

It seems to me that the process of ginning is somewhat analogous to the process of killing and dressing, and removing the feathers and entrails of, a chicken.

(1) 78 C.L.R. 336
(2) 100 Law Ed. 917

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I am, therefore, clearly of the opinion that ginned and unginned cotton are the same commodity and that a person, who buys unginned cotton, gins it and then sells ginned cotton, is dealing only in one commodity. This commodity has been declared to be one of the goods of special importance in inter-State trade and, therefore, the person dealing in it is entitled to the benefits of section 15 of the Central Sales Tax Act; inasmuch as under the East Punjab General Sales Tax Act, 1948, as amended by the Punjab Act No. 7 of 1958, he has to pay additional tax, the law imposing that tax is invalid. The dealers in cotton are only liable to pay tax not exceeding two per cent on sales effected inside the State. They are not liable to pay any tax at all when they export their goods and effect sales outside the State. With regard to the other commodities, the petitioners in Civil Writs Nos. 822 to 827 of 1959 buy oil-seeds, extract oil and sell oil. Here the character of the original commodity is entirely changed. The oil is ready for instant use and it cannot be said that oil-seeds and oil are the same commodity. Similarly, the petitioners in Civil Writ No. 898 of 1959 deal in non-ferrous metals. They buy metals subject to the process of manufacture and sell finished articles. The petitioners in Civil Writ No. 1271 of 1959 (in addition to dealing in cotton) buy iron-scrap, turn it into something quite different and sell articles which are ready for instant use. These petitioners, in so far as they deal in iron-scrap which, though it is declared to be of special importance in inter-State trade, cannot be said to come within the purview of section 15 except to the extent that the transaction of buying and the transaction of selling are individually subject to the restrictions imposed by section 15. The contention of the petitioners in Civil Writ No. 1271 of 1959 will, therefore, succeed only in so far

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as they deal in cotton, but there will be no order as to costs.

In the circumstances, I would allow the writs of cotton dealers and declare that the Punjab State cannot, in law, impose a tax on sales and purchases in contravention of the restrictions and conditions set out in section 15 of the Central Sales Tax Act of 1956. In consequence, the respondents are enjoined not to impose or authorise the imposition of tax on sales and purchases on all kinds of cotton (indigenous or imported) whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste being in its unmanufactured state. These petitioners will be entitled to their costs which we assess at Rs. 500 in the aggregate. No costs will be allowed to the remaining petitioners because no relief will be available to these petitioners on the interpretation we have placed upon the various provisions of law, except to the extent to which any of them deals in cotton.

Tek Chand, J.

TEK CHAND, J.—This petition along with several others have been filed by persons dealing in raw cotton and who are engaged in converting cotton in the seed (*kapas*) into what is commonly known as "lint cotton" after passing it through a ginning process whereby cotton seeds are separated from cotton fibre. Besides, there are other petitions on behalf of dealers engaged in the business of crushing oil-seeds and in making articles from non-ferrous metals and from iron-scrap. The main arguments have been addressed on behalf of dealers in cotton doing ginning work. The other petitioners have merely adopted their arguments.

The petitioners are questioning the *vires* of the East Punjab General Sales Tax (Amendment) Act, No. 7 of 1958, which has amended the East Punjab General Sales Tax, Act No. 46 of 1948.

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The original Punjab Act, before its amendment, provided levy of tax on sales only. Section 5 of Act No. 46 of 1948, before its amendment, provided that there shall be levied on the taxable turnover every year of a dealer a tax at such rates not exceeding two pice in a rupee as the State Government may by notification direct. The expression "dealer" was defined to mean "any seller including a Department of Government who in the normal course of trade sells any goods that are actually delivered for the purpose of consumption in the State of Punjab. * *".

The expression "turnover" included "the aggregate of the amounts of sales and parts of sales actually made by any dealer during the given period * *".

Section 6 provides that no tax shall be payable under the Act on the sale of goods specified in Schedule B which included at item 29 "cotton (ginned or unginned)" and at item 42 "cotton-seed".

The petitioners have no grievance against the levy of sales tax on goods under the East Punjab Act No. 46 of 1948 before its amendment by Punjab Act No. 7 of 1958. But important changes in the law were introduced by the amending Act. As stated in the long title, it was "an Act to provide for the levy of a general tax on the sale (or purchase) of goods in (Punjab) and for the repeal of the Punjab General Sales Tax Act, 1941". As tax was thus levied on purchase of goods, the definitions of "dealer" and "turnover" were suitably amended so as to include any person who in the course of trade sells or purchases any goods. The "turnover" was amended so as to include the aggregate of the amounts of "sales and purchases and parts of sales and purchases" made by a dealer. By section 2(ff)

the term "purchase" was defined for the first time as—

> "the acquisition of goods other than sugarcane, foodgrains, and pulses for use in the manufacture of goods for sale for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge ; "Provided that nothing in this definition shall apply in relation to a dealer who exercises his option under sub-clause (i) of clause (j) or to section 14 or to clause (d) of sub-section (1) of section 23."

Section 5 of the Act was amended by revising the rate of tax from such rate not exceeding two pice in a rupee to such rate not exceeding four naye paise in a rupee as the State Government might by notification direct. There was an important amendment also made in Schedule B by omitting items 29 and 42 relating to "cotton (ginned or unginned)" and "cotton seed". The Punjab Amendment Act No. 7 of 1958, which became law on 19th of April, 1958, affected dealers in cotton and cotton seeds by taking away their exemption and by making them liable to pay tax both on sales and purchases of their goods. On the same day, on which the Amending Act became law, a notification was published (No. 1864-E and T-58/1012, dated 19th of April, 1958), which notified that the general rate of tax on the sale of commodities would be four naye paise in a rupee, with a proviso, that the rate of tax on the purchase of goods by a dealer for use in the manufacture of goods for sale would be two naye paise in a rupee. This notification was published under the provisions of section 5(1). The effect of this notification was that a dealer had to pay general rate of tax on the sale of commodities at four naye paise in

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a rupee and on the purchase of goods at two naye paise in a rupee.

By a subsequent notification No. 1759, dated 26th of June, 1958, published in *Punjab Government Gazette* (Extraordinary), dated 27th of June, 1958, it was ordered that sales tax on certain goods including "(ii) cotton that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste," would be levied at the rate of two per cent of sale price thereof, with effect from 1st of October, 1958. In other words, from 19th of April, 1958, up to 1st of October, 1958, the dealers were liable to pay tax on the sale at the rate of four naye paise in a rupee besides tax on purchase of goods at two naye paise in a rupee but from 1st of October, 1958, the sales tax was reduced from four to two per cent of the sale price. Thi s notification did not bring about any change in the tax on the purchase of goods. Thus the previous notification No. 1864-E & T-58/1012, dated 19th of April, 1958, was only partially modified by the subsequent notification No. 1759, dated 26th of June, 1958.

The Constitution (Sixth Amendment) Act, 1956, amended Article 286 of the Constitution and clause (3) provided that—

> "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."

Power was also given under clause (2) to Parliament to lay down the principles for determining when a sale would be deemed to have taken place within a State within the meaning of clause (1) (a). In pursuance of this power, Parliament has enacted the Central Sales Tax Act, No. 74 of 1956. According to the long title, it was "an Act to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce and specify the restrictions and conditions to which the State laws imposing taxes on the sale of purchase of such goods of special importance shall be subject."

Under section 14 of the Central Sales Tax Act, 1956, certain goods were declared to be of special importance in inter-State trade or commerce, and they included "(ii) cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton wate."

Section 15 of the Central Sales Tax Act has been amended from time to time. Originally section 15 ran as under :—

> "15. *Restrictions and conditions in regard to tax on sales or purchases of declared goods.*—Notwithstanding anything contained in the sales tax law of any State, the tax payable by any dealer under that law in respect of any sales or purchases of declared goods made by him inside the State shall not exceed two per

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cent of the sale price thereof, and such tax shall not be levied at more than one stage in a State."

This section was amended by the Central Sales Tax (Amendment) Act No. 16 of 1957 and this was again amended by Central Act No. 31 of 1958 and it now runs as under:—

"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 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 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) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State."

The petitioner in Civil Writ No. 359 of 1959 feels aggrieved and contends that no tax is leviable on the purchase of unginned cotton used for ginning as the process of ginning cotton in seed

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(*kapas*) is not "manufacturing" but is only "processing", and as such does not fall within the definition of "purchase" as given in section 2 (ff) of the Punjab Act. It was contended that the cotton being one of the goods declared to be of special importance under section 14 of the Central Act No. 74 of 1956, is subject to the conditions and restrictions imposed upon the State Government under section 15 of the Central Act as amended by Central Act No. 31 of 1958 with effect from 1st of October, 1958. It was, therefore, maintained that sections 3, 4 and 5 of the Punjab Act as amended by Act No. 7 of 1958, were *ultra vires* the Central Act in so far as they authorise the levy of the tax at more than one stage with respect to goods declared to be of special importance under section 14. It was also maintained that the provisions of the Punjab Act are repugnant to and contravene the provisions of section 15(a) of the Central Act inasmuch as the tax payable under the Punjab Act amounts to four per cent in the aggregate of purchase and sale while under section 15(a) of the Central Act, the levy of the tax could not exceed two per cent. It was also submitted, that in view of the provisions of Article 286 (3) of the Constitution of India, the State of Punjab cannot enact a law in contravention of the said provisions. It was also stated in the petition that a clarification was sought of the position from respondent No. 2, the Excise and Taxation Commissioner and he, by his letter, dated 17th of January, 1959, annexure A, in reply said that a dealer who purchased cotton for purposes of ginning would be liable to pay purchase tax at two per cent of the purchase price and on the sale of ginned cotton and cotton seeds he would again be liable to pay sales tax at two per cent with effect from 1st of October, 1958. Pursuant to the directions contained in annexure

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A above, respondent No. 1 served a notice on the petitioner under sections 11 and 14 of the Punjab Act for showing cause why in addition to the tax to be assessed, a penalty under section 11-A should not be imposed upon him. The petitioner in his petition *inter alia* prays that this Court should declare the provisions of the East Punjab General Sales Tax (Amendment) Act No. 7 of 1958 as *ultra vires*, illegal and void and should restrain the respondents from levying or collecting any tax on the purchase price of the unginned cotton.

After the filing of the petition on 15th of April, 1959, certain changes were again made in the law. The East Punjab General Sales Tax (Amendment) Act, 1959 (No. 13 of 1959) came into force on 19th of April, 1959. One of the objects of this Act was to bring the law in conformity with the Central Sales Tax Act, 1956, and by sections 6 and 9 of the amending Act, sections 5 and 12 of the principal Act No. 46 of 1948 were amended. It was contended before us that the new amendment affected inter-State but not intra-State transactions. The second Act, enacted after the filing of the petition, is the Punjab General Sales Tax (Second Amendment) Act No. 24 of 1959; its object being to remove certain administrative difficulties, besides inconvenience to the business community.

It is argued before us by the learned counsel appearing for the petitioner that even the two Acts passed by the Punjab State subsequent to the filing of the petition have not improved matters and the provisions of the Punjab Act nevertheless are liable to be struck down, being in contravention of the Central Sales Tax Act. Our attention was drawn by the learned counsel to a letter from Shri M. K. Vankatachlam, Deputy Secretary to the Government of India, addressed to a dealer on

the subject of levy of Central Sales Tax on declared goods, stating—

> "In continuation of this Department letter of even number, dated 4th August, 1959, on the above subject, I am directed to say that the matter has been reviewed by the Government of Punjab and instructions have been issued by them for treating ginned and unginned cotton as a single commodity under section 15 of the Central Sales Tax Act, 1956."

The Advocate-General was not in a position to state whether the Punjab Government had reviewed the matter and had issued any instructions for treating ginned and unginned cotton as a single commodity. He has, however, maintained that ginned and unginned cotton could not be treated as a single commodity.

Learned counsel for the petitioner has argued that the Punjab Government could not impose a tax in respect of any sale or purchase on the declared goods inside the State exceeding two per cent of the sale or purchase price thereof, and such tax could not be levied at more than one stage in view of the provisions of section 15(a) of the Central Act. The second contention raised on behalf of the petitioner is that under section 2(ff) of the Punjab Act, purchase by the petitioner of cotton in seed (*kapas*) for ginning, does not amount to acquisition for use "in the manufacture of goods". In my view, both the above contentions deserve to prevail. Legislature has always treated cotton, other than cotton waste, as a single commodity whether it be ginned or unginned.

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Section 2(b) of the Cotton Ginning and Pressing Factories Act No. 12 of 1925, defined "cotton" as "ginned or unginned cotton, or cotton waste". Schedule B attached to the East Punjab General Sales Tax Act, 1948, contains a list of tax-free goods as mentioned in section 6, and against item No. 29 is mentioned "cotton (ginned or unginned)". Section 14(ii) of the Central Act declaring certain goods as of special importance in inter-State trade or commerce means "cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise but not including cotton waste."

Punjab Government notification No. 1759, dated 26th of June, 1958, published in *Punjab Government Gazette* (Extraordinary), dated 27th of June, 1958, refers to "cotton in its unmanufactured state, whether ginned or unginned." Schedule C attached to Punjab Act No. 24 of 1959 [the Punjab General Sales Tax (Second Amendment) Act] mentions against item No. 1 "cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste."

Article 369 of the Constitution of India conferred upon the Parliament temporary power during a period of five years from the commencement of the Constitution to make laws with respect to certain matters which included "raw cotton (including ginned cotton and unginned cotton or (*kapas*), cotton seed * *." In Concurrent List III of Schedule VII, item 33(d), which was added by the Constitution (Third Amendment) Act, 1955, referred to "raw cotton," whether ginned or unginned and cotton seed;

It will thus be seen that the law in this country has treated ginned and unginned cotton not only as a single commodity but also as "unmanufactured". I do not find any substance in the argument of the learned Advocate-General when he submits that "such goods" in section 15(a) of the Central Act refers to the very goods which have borne the tax. According to him tax levied on *kapas* does not exceed two per cent and it is at one stage. When tax is levied on cotton fibre after it has been ginned and cotton seeds have been separated, the cotton fibre becomes a different article and it is liable to taxation not exceeding two per cent at one stage. According to him, the words in section 15(a) "such tax shall not be levied at more than one stage" refer to goods retaining the same form. This interpretation strikes me as strained and unconvincing. The "declared goods" enumerated in section 14 are individually specifiefid under separate items. Each item deals with a single species of such goods which cannot further be split up for purposes of tax liability. Thus against item (ii) there is specified "cotton of all kinds, ginned or unginned, baled, pressed or otherwise, but not cotton waste". Similarly, item (iia) refers to "cotton fabrics", and item (iib) refers to "cotton yarn". Thus cotton, ginned or unginned, being a single species of declared goods, cannot be subjected under section 15(a) to a tax exceeding two per cent of the sale or purchase price thereof or at more than one stage.

The second argument has been advanced on behalf of the petitioner in the alternative. It has been contended that even if ginned and unginned cotton and cotton seeds were two different goods, purchase tax is not leviable as conversion of cotton in seed (*kapas*) into lint cotton after ginning,

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is not "for use in the manufacture of goods." In other words, ginning is not a manufacturing process. It is not absolutely necessary to refer to lexicographers for definition of the term "manufacture", for finding the meaning of the term, for purposes of this case, in view of the interpretation given in the relevant Acts and notifications.

Under Article 369 of the Constitution and item 33(d) of Schedule VII, List III, ginned or unginned cotton is deemed as "raw cotton". If ginning were a manufacturing process, ginned cotton would not be treated as "raw cotton". Section 14(ii) of the Central Sales Tax Act, 1956, refers to cotton "in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise". This description of ginned cotton being in its unmanufactured state leaves no room for any doubt and, therefore, excludes it from levy of purchase tax under section 2(ff) of the Punjab Act.

Schedule C attached to the Punjab General Sales Tax (Second Amendment) Act, No. 24 of 1959, and also notification No. 1759, dated 26th of June, 1958, made under the Punjab Act, refer to ginned or unginned cotton in its unmanufactured state. Even if ginning were *aliunde a* manufacturing process, the provisions referred to above, would apply and ginned cotton would only be an unmanufactured article.

The learned Advocate-General has drawn our attention to the meaning given to the word "manufacture" and other cognate expressions by the lexicographers. Etymologically "manufacture" is a compound word from Latin *manu* meaning "hand" and *factus*, which means "made". In its primary sense, "manufacture" is the action or process of making by hand. In the modern sense,

"manufacture" is fashioning of a raw or wrought material by manual or mechanical manipulation, resulting in its transformation. The primary meaning of the word "manufacture" in the sense of "made by hand" as distinguished from "nature growth" underwent a change with the supplanting of primitive methods of making, by machinery. Ordinarily a manufactured article takes a different form and observes a different purpose from the original materials and is usually given a different name. The meaning of the term "manufacture" has acquired broader meaning so as to include products of human industry, not only as a result of the direct action of human hand but also by employment of machinery.

According to the Century Dictionary, "manufacture" is defined as the production of articles for use from raw or unprepared materials by giving these materials new forms, qualities, properties or combinations whether by manual labour or machinery.

The definitions given by lexicographers are couched in general terms and do not help in drawing a sharp line of demarcation between mere *processing* short of *manufacture,* and making finished articles after manufacturing them. It is well understood, that manufacture implies a change, but every change is not manufacture, inspite of the fact that every change in an article may be the result of treatment, labour and manipulation. For purposes of manufacture something more is necessary and there must be a transformation; a new and different article must emerge having a distinctive name, character or use, *vide Anheuser-Busch Brewing Association* v. United *State* (1); *and Charles Marchand Co.* v. *Higgins* (2).

(1) 207 U.S. 556(562)=52 L. Ed. 336
(2) 36 Fed. Supp. 792(795)

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Thus mere bestowal of labour on an article, even if it is applied through machinery, will not make an article a manufactured good, unless the treatment has progressed so far, that a transformation ensues, and the article becomes commercially known as another and a different article from the original raw product.

The extent of change which has been effected in the original material is the usual test applied in determining whether an article is or is not a manufacture. As stated in 55 C.J.S. pages 685, 686—

> "In determining whether an article is or is not a manufacture, or whether a process or operation is or is not manufacturing, one of the important factors is the extent of the change that has been effected in the original material, since, while every change in an article is the result of treatment, labour, and manipulation, every change is not manufacture; something more is necessary, and the application of labor must be carried out to such an extent that the article suffers a species of transformation and a new and different article emerges. This characteristic has been the subject of considerable discussion, and the courts have experienced some difficulty in determining what constitutes a new and different article."

The question whether ginning of cotton is a manufacturing process, came up for decision in the Supreme Court of Georgia in *Georgia Warehouse Company* v. *Jolley* (1). The words used there were

(1) 175 S.E.R. 276

"manufacture or processing of cotton". Russell, C.J., at page 277 said—

> "Considering the meaning of the word 'manufacturing' in connection with our consideration of the meaning of processing, it must be plain that the word 'processing' has reference only to some stage or process of manufacturing. The generic meaning of the word 'cotton', as related to manufacturing, has relation only to cotton as a marketable product in the marts of commerce. The term 'cotton' is universally recognised as referring to something which can be manufactured so as to be of use to a civilised man. So we are of the opinion the word 'processing' means a process in manufacturing cotton after it has been put in a marketable form by ginning, which is merely the separation of the cotton from its seed, and seed cotton is not referred to in the constitutional amendment."

This matter also came up before the Supreme Court of the United States in *East Taxas Motor Freight Lines* v. *Frozen Food Express* (1), where the question was whether fresh or frozen dressed poultry, after the feathers had been plucked and entrails removed, was an agricultural commodity or was deemed to be 'manufacturing'. The following extracts from the opinion of the Court are helpful:—

> "Killing, dressing, and freezing a chicken is certainly a change in the commodity. But it is no more drastic a change than the change which takes place in milk

(1) 351 U.S. 49

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from pasteurizing, homogenizing, adding vitamin concentrates, standardizing, and bottling. Yet the Commission agrees that milk so processed is not a 'manufactured' product, but falls within the meaning of the 'agricultural' exemption. The Commission also agrees that ginned cotton and cotton seed are exempt. But there is hardly less difference between cotton in the field and cotton at the gin or in the bale or between cotton seed in the field and cotton seed at the gin, than between a chicken in the pen and one that is dressed. The ginned and baled cotton and the cotton seed, as well as the dressed chicken, have gone through a processing stage. But neither has been 'manufactured' in the normal sense of the word. * * A chicken that has been killed and dressed is still a chicken. Removal of its feathers and entrails has made it ready for market. But we cannot conclude that this processing which merely makes the chicken marketable turns it into a 'manufactured' commodity.

At some point processing and manufacturing will merge. But where the commodity retains a continuing substantial identity through the processing stage we cannot say that it has been 'manufactured' within the meaning of Article 203(b) (6)."

The substantial identity test laid down by the Supreme Court in the *East Taxas Lines* decision has been accepted by American Courts in subsequent decisions. It has been held that the removal

of the peanuts from the shell did not render them a manufactured commodity despite the employment of machinery in shelling and cleaning the raw peanuts,—vide *Consolidated Truck Service etc.* v. *United States* (1). Applying the substantial identity test to the facts of this case, cotton in the seed "*kapas*" and "lint cotton" retains its character and identity after the cotton seeds are removed by ginning and, therefore, the ginning process despite the employment of machinery for separating the seed cannot be deemed "Manufacture" within the promisions of section 2(ff) of the Punjab Act. Cotton, after it has been passed through gin has not suffered a species of transformation whereby a new article can be said to have emerged with a distinctive character or use different from that originally possessed by *kapas*. The identity of the original material has not been lost in this case.

The provisions of section 6 of the East Punjab General Sales Tax (Amendment) Act 13 of 1959 whereby section 5, sub-section (2) of the principal Act was amended by giving limited relief, do not remove the defect, and fall short of bringing the Punjab Act into line with the provisions of the Central Act, which despite the amendment are contravened. The amending Act is prospective and no relief is granted to persons during the period of one year from April 18, 1958 to April 19, 1959. It does not remove the earlier defects and does not cover all cases. For instance, sale to an unregistered dealer is not excepted. Similarly if sale is to a registered dealer but for a purpose other than that mentioned in section 6. duty is leviable nevertheless. Similarly section 9 of the amending Act which substitutes section 12 of the principal Act provides partial relief by

(1) 144 Federal Supplement 814(817)

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giving effect to section 15(b) of the Central Act but leaves untouched the provisions of section 15(a). If no tax at all is payable as provided by section 15(a) of the Central Act in excess of two per cent of the sale or purchase price, there is a total ban on an imposition in excess and the defect cannot be removed by providing for refund. Under the provisions of Central Act no tax in excess of two per cent is leviable. In my view the passing of the amending Act (Punjab Act No. 13 of 1959) does not make the petition infructuous. The learned Advocate-General has drawn our attention to a number of cases which are not of material assistance as they deal with different types of articles which under different Acts have been held to be manufactured goods. In *North Bengal Stores Ltd.* v. *Member, Board of Revenue* (1), what was held was that a dispensing chemist mixing different drugs according to a physician's prescription might be producing an entirely new product. Das J. declining to be drawn into an academic discussion as to the abstract meaning of the term "manufacture" expressed the view that the meaning of the term as used in a particular Act has to be ascertained. This decision is of no help to the solution of the problem on the peculiar facts of the case before us.

In *State of Madhya Pradesh* v. *Wasudeo* (2), cutting of the trees and making them into logs or rafters and selling them as such amounted to manufacturing or producing goods within the meaning of C.P. and Berar Sales Tax Act, 1947, as the finished goods had a definite commercial value and had assumed a different shape or form.

In *G. R. Kulkarni* v. The *State* (3), the breaking of boulders into metal (*gitti*) was held to be a

(1) 1 Sales Tax Cases 157
(2) 6 Sales Tax Cases 30
(3) 8 Sales Tax Cases 294

"manufacture" within the meaning of section 2(i) (a) of the Madhya Pradesh Sales Tax Act, 1947. It was held that metal has to be within a particular size and the size determined the skill necessary to fashion the stone.

In *Hiralal Jitmal* v. *Commissioner of Sales Tax* (1), sales tax was held to be recoverable on the sale of cloth from a person engaged in the work of printing and dyeing textiles as such a process was held to be "manufacture" within the definition of Madhya Pradesh Sales Tax Act. In the opinion of the learned Judges the material had been changed into a new finished product.

In *Pithapuram Taluk Tobacco, Cigars and Soda Merchant's Union* v. *State of Andhra Pradesh* (2), conversion of raw tabacco viz., the leaf into cigars, cheroots etc., was deemed to be a "manufacturing process" as the form of the finished consumable articles was different and the manufacturing process was involved in the production of these articles. Reference was made to *Shaik Jafarji Hiptullah Bhoy Gin and Press Factory* v. *Shaik Ismail* (3), which was case under the Workmen's Compensation Act and the question which arose in that case was whether an employer was exempt from making compensation even if accident was due to workman's negligence in view of the provisions of section 3. In the course of the judgment it was observed that—

> "ginning and pressing cotton is a manufacturing process within the meaning of the Factories Act. Section 2(4) of that Act defines a manufacturing process as—
>
> 'any process for or incidental to the making or otherwise adapting for

(1) 8 Sales Tax Cases 325
(2) 9 Sales Tax Cases 723
(3) A.I.R. 1927 Nag. 311

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use, transport or sale, any article, or part of an article'.

When cotton is ginned, it is adapted for use in cotton mills. It is also adapted for sale as ginned cotton. When it is pressed into bales, it is adapted for transport, and also for sale in the shape of cotton bales. The matter clearly falls within the scope of the definition."

In view of the very wide definition of "manufacturing process" in section 2, sub-section (4) of the Factories Act, this decision cannot be applied to this case which deals with a different provision of law.

Certain other cases were also cited but they do not furnish dependable comparisons. For reasons stated above, the contention of the State cannot be accepted and petitioners in cotton ginning cases are entitled to judgment in their favour. The provisions of the East Punjab General Sales Tax (Amendment) Act No. 7 of 1958 are not in accord with section 15 read with section 14(ii) of the Central Act, and the levy of sales and purchase tax on the petitioners being in contravention of the provisions of the Central Act, is contrary to law. The respondents in these cases should be restrained from imposing or authorising the imposition of tax on sales and purchase on all kinds of cotton (indigenous or imported) whether ginned or unginned, baled, pressed, or otherwise, but not including cotton waste, being in its unmanufactured state.

In my view, Civil Writ petition No. 359 of 1959 and other writs in which the question involved is the same relating to ginned and unginned cotton deserve to succeed. The other petitions (Civil Writs Nos. 822 to 827 of 1959)

relate to the business of purchasing oil-seeds and extracting and selling oils. The finished product assumes a totally different form and becomes a new commodity and, in my view, is not exempted from liability to tax. For similar reasons, dealers in non-ferrous metals who buy semi-finished goods, cannot be exempted from liability to pay the tax as they turn the material into finished articles after subjecting them to a process of manufacture. Civil Writ No. 898 of 1959, which is on behalf of dealers in non-ferrous metals, cannot be allowed. In Civil Writ No. 1271 of 1959 the petitioners deal in cotton and also buy iron-scrap and convert it into a variety of finished goods. In so far as taxes levied on them on iron-scrap, they cannot be exempted from paying the same, though in regard to their dealings in cotton, they are on the same footing as petitioner in Civil Writ No. 359 of 1959.

For reasons stated above, I agree with the order proposed by the Hon'ble the Chief Justice.

B.R.T.

APPELLATE CIVIL.

Before G. D. Khosla, C.J., and Tek Chand, J.

ROSHAN LAL AND OTHERS,—*Appellants.*

versus

KAPUR CHAND AND OTHERS,—*Respondents.*

Regular First Appeal No. 264 of 1950.

1959

Dec., 15th

Code of Civil Procedure (Act V of 1908)—Order 22 Rule 10—Appellants trustees dying during the pendency of the appeal—Their successor trustees not brought on the record within ninty days—Appeal—Whether abates Application by successor trustees for permission to continue the appeal—Whether governed by any period of limitation—Words and Pharases—"Ugahi"—meaning of.