

(13) It has been further argued on behalf of the petitioners that the arbitrator assumes jurisdiction only after he has issued notices to the opposite party and there is no power with the arbitrator to pass even interim orders without hearing the party. In support of this contention reliance has been placed on a Full Bench decision of this Court in *Ran Singh v. The Gandhar Agricultural Cooperative Service Society, Gandhar* (3), and *The Mandi Adampur Marketing Society Ltd. v. Ram Sarup* (4). In *Ran Singh's* case (supra), the question before the Full Bench was regarding validity of an award made by the arbitrator in contravention of 1953 Rules. Since no notice of hearing was served upon the opposite party, the award was held to be a nullity and incapable of being executed as a decree of civil court. This case was followed in *The Mandi Adampur Marketing Society Ltd.* (supra). In the present case, the arbitrator had no power to stay the election of the election members. The petitioners were elected as members according to the procedure laid down and their election could be set aside only in the manner provided in the Act. Unless and until their election was set aside, they continued to hold office. The stay orders granted by the arbitrator could not be taken into consideration in the matter of appointment of the administrator. In the premises noticed above, the order appointing the administrator u/s 26(1) (D) of the Act was without jurisdiction.

(14) For the reasons stated above, CWP 483/1988 is also allowed. The different stay orders as mentioned above and order annexure P16 appointing the administrator of the committee are quashed. There will, however, be no order as to costs in these cases.

P.C.G.

Before S. S. Kang and J. S. Sekhon, JJ.

STATE OF HARYANA,—Appellant.

versus

M/S JIWAN GENERAL MILLS, KAITHAL,—Respondent.

General Sales Tax Reference No. 18 of 1982.

May 31, 1989.

*Haryana General Sales Tax Act, 1973—Ss. 27(1)(a)(ii)—Registered dealer—Making sales to another registered dealer—Purchasing dealer furnishing S.T. Form 22—Challenge to the genuineness of the said sale—Power of Sales Tax authorities to tax selling dealer on such sales.*

(3) A.I.R. 1976 Punjab and Haryana 94.

(4) 1978 P.L.J. 251.

State of Haryana v. M/s Jiwan General Mills, Kaithal  
(S. S. Kang, J.)

*Held*, that the assessing authority was satisfied with the genuineness of the transactions of sale. He has accepted the factum of sales. He has also not come to the conclusion that the declaration in Form ST. XXII furnished by the purchasing dealers were not genuine documents. Under the proviso, the assessing authority has been invested with the powers to go into the genuineness or otherwise of any sale to a registered dealers on furnishing declarations in Form ST XXII for the purposes of allowing deductions. While investigating the genuineness of sale, it may, among other things, go into the financial position, capacity to make purchases, nature and extent of business and subsequent disposal of goods made by the registered dealers to whom the sale is shown to have been made against that declaration. It is manifest that the investigation or enquiry shall be resorted to only if there is any doubt regarding genuineness of sale in question. We emphasise that there is not even a whisper in any of the orders that the sale by dealer to the purchasing dealers enumerated in the orders of the assessing authority was not genuine or that there was any collusion between the selling dealer and the purchasing dealers to evade tax. Hence the dealer was entitled to deduct the sales to registered dealers on their furnishing declaration in Form S.T. XXII articulating that the goods were being purchased for resale from its taxable turnover. The question was answered in their favour. (Paras 4, 5)

*Reference Under Section 42(1) of the Haryana General Sales Tax Act, 1973 by the Sales Tax Tribunal, Haryana to the Hon'ble High Court of Punjab and Haryana for opinion of the following questions of law arising out of the Tribunal's order dated 26th September, 1975 in S.T.A. No. 266 of 1974-75—*

*“Whether on facts and circumstances of the case, in the light of schedule ‘D’ read with clause (iii) of IInd proviso to section 5(1) of the Punjab General Sales Tax Act, 1948, specifying the levy of tax in the case of cotton seeds at the stage of last sale, the respondent firm is entitled to deduct sales of such cotton seeds to crushing units on their furnishing declarations.”*

S. C. Mohunta, A.G., (Haryana), [S. K. Sood, DA (Haryana) with him], for the petitioners.

S. K. Mittal and Birinder Singh, Advocate, for the respondents.

ORDER

*Sukhdev Singh Kang, J.*

(1) M/s. Jiwan General Mills, Kaithal a registered dealer filed four quarterly returns for the year 1972-73 showing the gross turnover of Rs. 52,72,790.02 paise. In response to notice issued for

assessment, a partner of the firm produced account books. It was found that the entries correctly reflected the sales and no discrepancy was found in the account books. All sales were vouched. The learned assessing authority observed that "I have no reason to discard the account books of the dealer and as such the gross turn over as returned by the dealer was taken for the purposes of assessment."

(2) The dealer claimed deduction to the tune of Rs. 49,36,670.38 paise under Section 5(2)(a)(ii) of the Punjab General Sales Tax Act on account of sales having been made to registered dealer. This claim was accepted except in relation to four transaction of sales, of cotton seeds worth Rs. 1,03,042.50 paise to M/s Malikpuria Oil Mills, Kaithal, Rs. 8,01,676.46 paise to M/s. Puran Chand Sarwan Kumar, Kaithal, Rs. 87,436.88 paise to M/s. Bal Raj Rameshwar Dass Kaithal, and Rs. 9479.10 paise to M/s. New Jagadhari Oil Mill. Regarding this, it was observed that the purchasers are registered dealers but they are manufacturers of oil. The cotton seeds sold to these dealers were of inferior quality which are mostly used for crushing purposes. Thus, the claim of the respondents of Rs. 3,76,608.31 was disallowed and these were included in the taxable turnover of the dealer on the plea that it was last seller of cotton seeds which were used for crushing purposes and the factory owner was liable to tax. Aggrieved, the dealer filed the appeals. The Deputy Excise and Taxation Commissioner (Appeals) came to a conclusion that proper opportunity has not been afforded to the appellant to establish that the cotton seeds were sold to above mentioned dealers for resale and the assessing authority failed to confront the purchasing dealers with the material available for determining whether cotton seeds purchased by them were for sale or for use in manufacture of edible oils. It was further observed that as a matter of fact the assessing authority should have confronted the purchasing dealers to verify the correct position but it has not been done so. In case the purchasing dealers purchase cotton seeds for use and manufacture and not for resale, the appellant-firm will be liable to pay tax being the last seller. In this view of the matter, he set aside the abovesaid order and remanded the case to the assessing authority to make further enquiry from the purchasing dealers about the purchase of cotton seeds, whether it was for re-sale or for use in the manufacture and that the appellant should also be confronted after making enquiry from the purchasing dealers before levying tax. Still dissatisfied, the dealer took an appeal before the Sale Tax Commissioner Haryana. This appeal was allowed. It was contended by

State of Haryana v. M/s Jiwan General Mills, Kaithal  
(S. S. Kang, J.)

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the appellant before the learned Tribunal that the appellant while selling cotton seeds was enjoined by law only to satisfy himself that the sales were being made to registered dealer and that the purchasing dealer had furnished valid and genuine declaration in Form ST-XXII incorporating thereunder that the goods purchased were for re-sale. It was not for the selling dealer to question the correctness of the statement made in the declaration. If the purchasing dealer makes a wrong statement in his declaration under Form-XXII while purchasing goods which are exciseable to sale-tax then the authorities can proceed against such a dealer. There were ample provisions for that in the Act. In support of this contention, the decision of this Court in *M/s. Bhim Cotton Company v. Assessing Authority, Sangrur and another* (1), was cited, wherein it was held as under :—

“The selling dealer could claim deductions from its gross turnover on proof of two conditions, namely, the person to whom the goods are sold should possess a valid registration certificate and the goods should be sold to such a purchaser after it had furnished a statement in Form S.T. XXII. The petitioner-firm has satisfied both these conditions. Under these circumstances, it was not open to the Assessing Authority to re-open the case of the petitioner-firm and to create an additional demand against it.”

It was also held,

“If the purchasing-firm is guilty of violating any of the conditions mentioned in the declaration forms given by it, the Assessing Authority can proceed against it under the second proviso to Section 5(2)(a)(ii) of the Punjab General Sales Tax Act, 1948 and in accordance with other provisions of the Act.”

This argument found favour with the learned Tribunal. He held that on the sales of cotton seeds made against valid registration certificates and where Form S.T. XXII supplied by the purchasing dealer does not indicate that the goods are required for the purpose other than re-sale, the selling dealer was not liable to pay tax. It was, however, observed that the departmental authorities may take such action as they deem fit against the purchasing dealers for the recovery of the tax.

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(1) 1973 R.L.R. 208.

(3) On an application moved by the State through Excise and Taxation Commissioner, Haryana, Chandigarh, under Section 42 of the Haryana General Sales Tax, 1973, ('the Act' for short) the Tribunal framed the following question and submitted it for our opinion :

“Whether on facts and circumstances of the case, in light of Schedule 'D' read with clause (iii) of IIrd proviso to Section 5(1) of the Punjab General Sales Tax Act, 1948, specifying the levy of tax in the case of cotton seeds at the stage of last sale, the respondent firm is entitled to deduct sales of such cotton seeds to crushing units on their furnishing declarations.”

(4) Mr. S. K. Sood learned counsel appearing on behalf of the State of Haryana contended that though the assessment against a dealer had been framed in pursuance of the provisions of the Punjab General Sales Tax, but in view of repeal and saving provisions contained in Section 68 of the Act the appeal, revision etc. against such orders were to be decided in accordance with the provisions of the Act. He further contended that Section 27 defines taxable turnover and the IIIrd proviso to sub-Section (1)(a)(ii) lays down that for the purpose of allowing deduction the assessing authority may examine the genuineness or otherwise of any sale or declaration with reference, among other things, to the financial position, capacity to make purchases, nature and extent of business, and subsequent disposal of goods by the registered dealer to whom the sale is shown to have been made against declaration. He further urged that by virtue of the provisions of Section 1 of the Act, the provisions of IIIrd proviso to sub-clause (ii) of Clause (a) of sub-Section (1) of Section 27 shall be deemed to have come into force on 1st May, 1949. Resultantly, the Deputy Excise and Taxation Commissioner was fully competent to remand the case and direct the assessing authority to confront the purchasing dealers and make enquiries therefrom, as to whether the cotton seeds purchased by them from M/s. Jiwan General Mills Ltd. had been used for manufacture of oil and had not been re-sold. According to Mr. Sood, in the presence of proviso (iii) *ibid.*, the selling dealer in the present case was entitled to deduct the sales of cotton seeds to registered dealers on the strength of their declaration in Form S.T. XXII declaring that the oil seeds had been purchased for re-sale. Even if the purchasing dealers were registered dealers and they had purchased taxable goods by furnishing declarations in Form ST-XXII that the goods had been purchased for

State of Haryana v. M/s Jiwan General Mills, Kaithal  
(S. S. Kang, J.)

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re-sale, the assessing authority could go into the matter and investigate the financial position, capacity to make purchases, nature and extent of business and subsequent disposal of the goods by the registered dealers. We are afraid that this approach of Mr. Sood to the question posed for our opinion is not correct. The question has been framed and proposed on the facts and in the circumstances of this case. As noted in the earlier part of the judgment, the assessing authority was satisfied with the genuineness of the transactions of sale. He had accepted the factum of sales. He has also not come to the conclusion that the declaration in Form ST-XXII furnished by the purchasing dealers were not genuine documents. Under the proviso, the assessing authority has been invested with the powers to go into the genuineness or otherwise of any sale to a registered dealers on furnishing declarations in Form ST-XXII for the purposes of allowing deductions. While investigating the genuineness of sale, it may, among other things, go into the financial position, capacity to make purchases, nature and extent of business and subsequent disposal of goods made by the registered dealers to whom the sale is shown to have been made against that declaration. It is manifest that the investigation or enquiry shall be resorted to only if there is any doubt regarding genuineness of sale in question. We emphasise that there is not even a whisper in any of the orders that the sale by dealer to the purchasing dealers enumerated in the orders of the assessing authority was not genuine or that there was any collusion between the selling dealer and the purchasing dealers to evade tax. In somewhat similar circumstances, the final Court in *Chuni Lal Parshadi Lal vs. Commissioner of Sales, U.P., Lucknow* (2), observed :

“that when the appellant, a registered dealer, had been granted exemption in the original assessment in regard to sales to registered dealers who had furnished the requisite certificate in form III-A that the goods were intended for resale in the same condition, the assessing authority had no jurisdiction to reopen the assessment on the basis that he had received information that the purchasing dealer had consumed the goods, especially as the appellate authority had held that there was no collusion on the part of the appellant, the selling dealer.”

(5) We are of the considered view that on facts and in the circumstances of the case, the dealer was entitled to deduct the sales

of cotton seeds to registered dealers on their furnishing declaration in Form S.T. XXII articulating that the goods were being purchased for re-sale from its taxable turnover. We answer the question referred. in the affirmative.

S.C.K.

Before Ujagar Singh, J.

JOGINDER KAUR,—Petitioner.

versus

YASHODA DEVI AND ANOTHER,—Respondents.

Civil Revision No. 3392 of 1983

April 6, 1989.

*Code of Civil Procedure (V of 1908)—O. 21 Rl. 97—Decree holder seeking possession in execution of eviction order—Ballif reporting 3rd person in possession—Such person filing objection to execution—Competency of such objections.*

*Held*, that if the objector wanted to file objections claiming the disputed property to be her own, she could do so under rule 97 of O. 21 of the Civil Procedure Code, 1908 and that, too, only when an application is made by the decree-holder under sub-rule (1) of R. 97 of O. 21 of the Code and the Court proceeds to adjudicate upon the application in accordance with the provisions contained in the subsequent rules. Sub-rule (1) of R. 97 is attracted only when the holder of a decree for possession of immovable property or purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property and he makes an application to the Court, complaining of such resistance or obstruction. In this case, there is no report that the delivery of possession was resisted or obstructed. (Para 5)

*Petition under Section 115 CPC for revision of the order of the court of Shri J. K. Goel, P.C.S. Senior Sub Judge, Ferozepur, dated 23rd August, 1983 dismissing the execution application.*

**CLAIM:** Objection petition U/O 21, rule 58 C.P.C.

**CLAIM IN REVISION:** For reversal of the order of the lower court.

**Sudhir Aggarwal Advocate for Arun Jain, Advocate, for the petitioner.**

**Munishwar Puri, Advocate, for respondent No. 1.**

**A. K. Sood, Advocate, for respondent No. 2.**