(9) Faced with this situation, there was a half-hearted attempt on the part of the counsel for the petitioner to contend that the court had acted with material irregularity in permitting review of its earlier order of May 17, 1985 by allowing the defendants to file a written statement after having earlier declined such a request. No exception can indeed be taken to the impugned order on this account. The scope of review under Order 47 Rule 1 of the Code is clearly wide enough to have permitted the trial court to correct its earlier error in disallowing the filing of the written statement.

(10) No interference is, therefore, warranted in the impugned order of the trial Court which is accordingly hereby up-held and affirmed. This revision petition is thus dismissed. There will, however, be no order as to costs.

H.S.B.

Before : D. S. Tewatia and J. V. Gupta, JJ.

FOOD CORPORATION OF INDIA and another,—*Petitioners.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 1573 *of* 1983

November 26, 1986

Haryana General Sales Tax Act (*XX of* 1973)—*Schedule 'D' Entry* 2(*c*)(*i*)—*Haryana Rice Procurement* (*Levy*) *Order*, 1979—*Clause* 3—*Rice procured by the State Government under Levy Order and handed over to the Food Corporation of India under bilateral agreement—Said rice transferred by the Corporation to deficit States—Procurement of rice as aforementioned—Whether amounts to 'sale'—Such transactions—Whether exigible to tax under Entry* 2(*c*)(*i*) *of Schedule 'D' of the Act.*

Held, that the compulsory acquisition of rice under Clause 3 of the Haryana Rice Procurement (Levy) Order, 1979, and the transactions made thereunder would not amount to sales. In the transactions between the State Government and the Food Corporation of India there is no profit motive at any stage nor do the goods vest in the State Government in the sense that it can bargain with

the Corporation and dictate its terms nor does the Corporation act as a dealer in the legal sense when it passes on these goods to the other States. As such the Food Corporation does not act as a dealer in these transactions and the said transaction would not be exigible to tax under the provisions of Entry 2(c)(i) of Schedule 'D' of the Haryana General Sales Tax, 1973.

(Para 19).

CASE REFERRED by Hon'ble Mr. Justice Sukhdev Singh Kang to the larger Bench for decision of an important question of law involved in this case on July 17, 1984. The Larger Bench consisting of the Hon'ble Mr. Justice D. S. Tewatia and the Hon'ble Mr. Justice J. V. Gupta, finally decided the case on November 26, 1986.

Writ petition under articles 226/227 of the Constitution of India, praying that :—

(a) *record of the case be sent for; and*

(b) *a writ in the nature of* Certiorari, *quashing the impugned notification, dated 30th November, 1982 by holding the same as unconstitutional, and also quashing the impugned notice issued by respondent No. 2, contained in Annexure* P.2.;

(c) *a writ in the nature of* mandamus *restraining the respondents from recovering the purchase tax under the said Act from the petitioners;*

(d) *to declare further that the rice delivered to the Corporation by the State Government under the Haryana Rice Procurement Levy Order, 1979 is not the purchase of the petitioners and is not liable to purchase tax;*

(f) *to declare that the State of Haryana has no competency to levy purchase tax on the acquisition of levy rice under the Haryana Procurement (Levy) Order, 1975.*

(g) *any other appropriate writ, order or direction which is just and proper in the circumstances of the case, including the costs of the petition be awarded;*

(h) *further praying that during the pendency of the writ petition, further proceedings before respondent No. 2 (including recovery) may kindly be stayed.*

Ashok Bhan, Senior Advocate (S/Shri R. P. Sawhney, and B. K. Jhingan, Advocates with him), *for the Petitioners.*

Gopi Chand, Advocate, *for the Respondents.*

JUDGMENT

J. V. Gupta, J.

(1) This judgment will dispose of Civil Writ Petition Nos. 1573 and 6099 of 1983 and 510, 4140 and 4505 of 1984 as it is a common case of the parties that in case it is held that the transactions in question are not sales then all the writ petitions are liable to be allowed.

(2) For facility of reference, these cases can be classed in two categories, i.e.:—

(i) C.W.P. No. 1573 of 1983	which is by the Food Corporation of India against the State of Haryana, calling in question the sales tax imposed on it under the Haryana Central Sales Tax Act for the procurement of rice by it through State Agency under the Haryana Rice Procurement (Levy) Order, 1979;
(ii) C.W.P. No. 6099 of 1983: C.W.P. No. 510 of 1984: C.W.P. No. 4140 of 1984: C.W.P. No. 4505 of 1984:	which are also by the Food Corporation of India against the State of Punjab calling in question *inter alia* the sales tax imposed under section 4(B) of the Punjab General Sales Tax Act for the procurement of rice by it through the agencies of the State under the Punjab Rice Procurement (Levy) Order:

(3) Since as already stated, the fate of all these writ petitions depends upon the decision whether the transaction of supply of rice to the Food Corporation of India under the Levy Orders amounts to 'sale' or not, it would be partinent to notice in brief the facts as they emerge from C.W.P. No. 1573 of 1983 and are relevant, since that has come up before us on reference by the learned Single Judge.

(4) According to the writ petition, the petitioner is a corporation established under the Food Corporation of India Act, 1964

Act (No. 37 of 1964). It procures rice, paddy and other foodgrains in the surplus States through the aegis of the State Government and its officers, and distributes the foodgrains so procured to the deficit States in India, Though it is registered as a dealer under the Haryana General Sales Tax and the Central Sales Tax Act for other foodgrains, it is not a dealer *vis-a-vis* the transactions of the procurement of rice and the subsequent supply by it to the agencies or depots outside the State of Haryana. In pursuance of the instructions of the Central Government, the Government of Haryana promulgated the Haryana Rice Procurement Price Control Order, 1968, as also the Haryana Rice Procurement (Levy) Order, 1979 (hereinafter referred to as the Levy Order). The procurement price of the rice is fixed under these orders and the different officers of the State of Haryana procure rice on behalf of the petitioner-corporation with the funds made available by it to the Director of Food and Supplies Department, Haryana. The procured rice is delivered to the Central pool under the supervision and control of the Corporation. It procured rice from the State Government in the years 1970-71 and 1971-72 in the similar circumstances as are in vogue now and the sales-tax authorities then created a demand of tax to the tune of Rs. 1,63,87,225.46 against it on account of sales-tax and it filed Civil Writ Petition No. 4065 of 1973 in this Court which was allowed by the Division Bench on May 17, 1975 and the decision therein is reported as the *Food Corporation of India* v. *State of Punjab* (1). It was held therein,—

(a) that there was no relationship of principal and agent between the Corporation and the State and its officers;

(b) that the petitioner is recipient of the foodgrains from the State Government and that to that extent the Corporation was not a dealer;

(c) that the act of procuring rice under the Levy Order did not constitute sale, i.e., the transaction of sale of rice under the Levy Order by the Millers and the Dealers to the State of Punjab is not a taxable item; and

(d) that the case was covered by the decision of the Supreme Court in *Chittar Mal Narain Das* v. *Commissioner of Sales Tax* (2).

(1) (1976) 38 S.T.C. 144.
(2) (1970) 26 S.T.C. 344 (S.C.).

(5) Since no appeal was filed against the said Division Bench judgment of this Court, it has become final between the parties. Therein, the Division Bench had placed reliance on the decision of the Supreme Court in *Chittar Mal Narrain Das* v. *Commissioner of Sales Tax* (3). This decision was considered by the Supreme Court in a later case, *Vishnu Agencies (Pvt.) Ltd.* v. *Commercial Tax Officer* (4). Taking cue from the aforementioned decision of the final Court, the Assessing Authority levied tax on the petitioner-corporation. The appeals against that levy are pending. The Haryana General Sales Tax Act was amended in 1976 and paddy was brought on Schedule 'D' and sales tax on the sale of paddy was payable by the last purchaser in the State. Similarly, the rice was also made the subject-matter of Schedule 'D' and tax was made leviable on it in the hands of the petitioner-corporation at the stage of purcahse by it in the State and in other cases at the stage of first sale in the State by the dealer liable to pay tax. The Governor of Haryana made amendment to Schedule 'D' by notification No. 50-124/HA-20/73/S. 63/82, dated November 30, 1982, the relevant part of which reads as under:—

"In the Haryana General Sales Tax Act, 1973, in Schedule D, after entry at Serial No. 2-B, the following entry shall be inserted, namely:—

2C.	Rice (i) if purchased by Food Corporation of India from within the State or through any other dealer liable to pay tax under this Act.	In the hands of Food Corporation of India at the stage of purchase by it in the State.
	(ii) In all other cases except (i) above	First sale in State by a dealer liable to pay tax under this Act.

After the issuance of this notification, the Assessing Authority directed the petitioner-corporation to furnish the figures of the rice procured by it during December, 1982, and January, 1983. It submitted a statement of levy rice procured during the two months. On the receipt of the statement, the Assessing Authority issued the letter, Annexure P. 2, asking it to pay tax on the purchase of rice made

(3) (1970) 26 S.T.C. 344 (S.C.)
(4) (1978) 42 S.T.C. 31

from within the State of Haryana for the period November 20, 1982 to January 31, 1983, and required it to show cause as to why penalty under section 47 of the Haryana General Sales Tax Act should not be imposed for failure to pay tax and also directed the petitioner-corporation to deposit an amount of Rs. 50,01,857.10. The Assessing Authority is treating the procurement of rice under the Haryana Procurement Rice (Levy) Order, 1979, as purchase by the petitioner-corporation and thereby making it liable to pay tax. According to the petitioner, this stand of the Assessing Authority is against law as it goes contrary to the decision of this Court in *Food Corporation of India's case* (supra).

(6) The notification dated 30th November, 1982, has also been attacked by the petitioner on various grounds but those need not be noticed as the same has been withdrawn by notification dated 31st October, 1984.

(7) In the written statement filed on behalf of the Assessing Authority, it has been averred that the rice is procured under the provisions of Levy Order by the District Food and Supplies Controllers and is then supplied to the petitioner-corporation in pursuance of a bilateral agreement. The rice is not supplied by the District Food and Supplies Controller to the petitioner-corporation under the provisions of the Levy Order. The advance payment of price of the foodgrains to be presumed by the District Food and Supplies Controller does not in any way change the nature of the transaction of sale. So that sales made by the District Food and Supplies Controllers of rice procured by them from the Millers to the petitioner-corporation is a sale and is exigible to the sales-tax under the provisions of the Haryana General Sales Tax Act. The petitioner-corporation is a registered dealer and is doing business in real sense in which the term is used. It has been earning profits out of its business like other trading companies. Even the supply of rice to the District Food and Supplies Controller made under the Levy Order is a sale. It has been held to be so by the Supreme Court in *Vishnu Agencies (Pvt.) Ltd.* v. *Commercial Tax Officer and others* (supra), in the context of the Andhra Pradesh Levy Order, wherein it was held that such a transaction amounted to a sale. The petitioner-corporation is a dealer. The transaction in which the rice procured by the officers of the State of Haryana under the provisions of the Haryana Rice Procurement (Levy) Order is

delivered to the petitioner-corporation is a sale, exigible to tax. The authority under the Levy Control Order to sell compulsory procured rice is vested in the State Government. The petitioner-corporation has no such authority to procure rice from various licenced dealers under the Levy Order. After the rice has been procured under the Levy Order, the same is sold to the petitioner-Corporation which transaction is a result of mutual business dealings. Such transactions are not made between the petitioner-corporation and the Director of Food and Supplies Department, Haryana, under the Levy Order. Even the procurement of levied rice, by the authorities in pursuance of Levy Order has been held by final Court to be sale in *Vishnu Agencies case* (supra). It was also submitted that the decision by the Supreme Court in *Chittar Mal Narain Das* v. *Commissioner of Sales Tax* (5), on which reliance was placed by the Division Bench of this Court in *Food Corporation of India's case* (supra), stands overruled by a subsequent judgment of the Supreme Court in *Vishnu Agencies' case* (supra). It was further submitted that after the decision of *Vishnu Agencies case* (supra) the Division Bench judgment of this Court in *Food Corporation of India's case* (supra) dose not lay down the correct law and requires re-consideration.

(8) As observed in the earlier part of this judgement, before this Bench, it is a common case of the parties that in case it is held by this Court that the decision rendered by the Division Bench of this Court in *Food Corporation of India's* case (supra) was correct and Supreme Court's decision in *Vishnu Agencies* case (supra) does not over rule the same so far as the requisite ratio of that case is relevant, impliedly or otherwise, then the transactions will not amount to be sales and the writ petitions will be liable to succeed.

(9) The correctness of the Division Bench judgement of this Court in *Food Corporation of India's* (supra), was doubted earlier also in C.W.P. No. 1863 of 1979 by the Division Bench of this Court. As a result the said case was referred to Full Bench but the decision of the Full Bench has been rendered nugatory as the State of Haryana filed appeal by special leave against the full Bench decision of this Court, in the Supreme Court and the judgment of the Supreme

(5) A.I.R. 1970 S.C. 2000.

Court therein is reported as *State of Haryana* v. *Krishna Rice Mills* (6). Therein the Supreme Court held,—

> "After hearing the learned counsel for the parties, it seems to us that the High Court should not have proceeded beyond recording the assurance that the State Government would withdraw the instructions and holding that therefore, the writ petition had become infructuous. In our opinion, no further question arose for consideration by the High Court, The High Court erred in pronouncing on the merits of the question whether the transaction constituted a sale under the aforesaid sales tax enactments. We think that its observations and findings on the question should be vacated. It will be for the Assessing Authorities to deal with the question on the merits in accordance with law. The Assessing Authorities should proceed on the basis that no opinion has been expressed either by the High Court or by us. They should also examine the cases before them without reference to the instructions issued by the Government. We order accordingly."

(10) In view of the above observations, it has become necessary for us to go through the whole matter again to find out if the ratio of *Chittar Mal Narain Das's* case (supra), so far as it has remained intact, after the decision of Supreme Court in *Vishnu Agencies case* (supra), has been rightly made applicable by the Division Bench of this Court in *Food Corporation of India's case* (supra), and if not, the counsel agreed that this case will have to be referred to the Full Bench. But the stress of the learned counsel for the petitioner is that the *Food Corporation of India's case* (supra), still holds the field as good law and for that reason we have decided to go through the exercise again for ourselves.

(11) For that purpose, we may notice *Chittar Mal Narain Das's case* (supra). Therein U.P. Wheat Procurement (Levy) Order, 1959 was being examined by the Supreme Court to come to the conclusion whether the transactions entered into under that Order amount

(6) (1983) 52 S.T.C. 1.

to sale or not. For facility of the reference, claues 3 of the said Order, which is material, is reproduced hereunder:—

Clause 3 *provides*:

"(1) Every licensed dealer shall sell to the State Government at the controlled prices;

(a) Fifty (50) per cent of wheat held in stock by him at the commencement of this Order; and

(b) Fifty (50) per cent of wheat procured or purchased by him every day beginning with the date of commencement of this Order and until such time as the State Government otherwise directs.

(2) The wheat required to be sold to the State Government under sub-clause (1) shall be delivered by the licensed dealer to the Controller or to such other person as may be authorised by the Controller to take delivery on his behalf."

It was held that "the Order ignored the volition of the dealer, and the source of the obligation to deliver the specified quantities of wheat and to pay for them was not in any contract but in the statutory Order" and after holding so the Supreme Court further said that assuming that the Controller might designate the place of delivery and place of payment of price at the controlled rate, and the licensed dealer acquiesced in them, the transaction of supply of the wheat pursuant to clause 3 of the Order and acceptance thereof did not result in a contract of sale.

(12) Then came the decision of Supreme Court in *Vishnu Agencies case* (supra), wherein it was stated regarding *Chittar Mal Narain Das's case* (supra), as under:

"The ultimate decision in *Chittar Mal's case* can be justified only on the view that clause 3 of the Wheat Procurement Order envisages compulsory acquisition of wheat by the State Government from the licensed dealer. * * * * * * * * * * * *

Looking at the scheme of the U. P. Wheat Procurement Order, particularly clause 3 thereof, this court in *Chittar*

Mal's case seems to have concluded that the transaction was, in truth and substance, in the nature of compulsory acquisition, *with no real freedom to bargain* in any area." (emphasis supplied).

(13) The matter has become easier for us as the Supreme Court iteself in *State of Punjab and others* v. *Dewan's Modern Breweries Ltd.* (6A), has commented on *Chittar Mal Narain Das's case* (*supra*), in the light of *Vishnu Agencies case* (supra), and has narrated the extent to which *Chittar Mal Narain Das's case* (supra), has been held to be not good law. It was observed thus:

"*Chittar Mal's case* was also considered in paragraphs 44-45 at page 467 and it was distinguished on the ground that the said decision "can be justified only on the view that clause 3 of the Wheat Procurement Order envisaged compulsory acquisition of wheat by the State Government from the licensed dealer. But then the criticism in that case of the Full Bench decision of the Allahabad High Court in *Commissioner of Sales Tax, U. P.* v. *Ram Bilas Ram Gopal*, "which held while construing clause 3 that so long as there was freedom to bargain in some areas the transaction could amount to a sale though effected under compulsion of a statute" was not endorsed. It is, therefore, plain that to that extent Chittar Mal's case is also not good law."

It would, thus, be seen that in case of compulsory acquisition of commodities when there is some freedom to bargain in some areas, the transaction would amount to a sale and to that extent only the ratio of *Chittar Mal's case* (supra), has been held to be not good law though the ultimate decision has been justified as being one of compulsory acquisition by the State in the strict sense of the term. In other words, *Vishnu Agencies case* (supra), has split up compulsory acquisition of commodities into two categories for the purpose of determining whether the transaction involved therein amounts to 'sale' or not. In one category falls the case of the nature of *Chittar Mal Narain Das's case* (supra), and in the other, the case of the nature of *Vishnu Agencies case* (supra), *Dewan's Modern Breweries Ltd.'s case* (supra) and *Union Territory of Chandigarh* v. *Amrit Roller Flour Mills* (7) case, etc.

(6A) (1979) 43 S.T.C. 454 (S.C.).

(7) (1985) 60 S.T.C. 56 (S.C.).

(14) Now we revert to the decision of this Court in *Food Corporation of India's case* (supra). Therein the question arose whether the transaction under the Punjab Rice Procurement (Levy) Order, 1958 amounted to sale or not and for the purpose of comparison with the Levy Order involved in *Chittra Mal Narain Das's case* (supra), it would be pertinent to notice similar clause occurring in Rice Levy Order. Clause 3 of this Order reads:

"Clause 3:—

(1) Ever licensed miller shall sell to the State Government at the controlled prices,—

(a) 75 per cent of the quantity of rice held in stock by him at the commencement of this Order; and

(b) 95 per cent of the total quantity of Bold Group Rice and 90 per cent of the total quantity of Slender Group Rice (as mentioned in Schedule 1) produced or manufactured by him in his rice mill, every day beginning with the date of commencement of the Punjab Rice Procurement (Levy) (First Amendment) Order, 1972, until such time as the State Government otherwise directs.

(2) Every licensed dealer shall sell to the State Government at the controlled prices:—

(a) 75 per cent of the quantity of rice held in stock by him at the commencement of this order; and

(b) 95 per cent of the total quantity of Bold Group Rice and 90 per cent of the total quantity of Slender Group Rice (as mentioned in Schedule 1) got milled by him every day out of his stock of paddy beginning with the date of commencement of the Punjab Rice Procurement (Levy) (First Amendment) Order, 1972, until such time as the State Government otherwise directs:

Provided that nothing contained in this sub-clause shall apply to the units and institutions certified by the

Punjab Khadi and Village Industries Board to be engaged in the production of hand-pounded rice.

(3) The rice required to be sold to the State Government under sub-clauses (1) and (2) shall be delivered by the licensed miller or the licensed dealer to the Director or to such other person as may be authorised by the Director to take delivery on his behalf.

(4) The State Government may, by general orders notified in the official Gazette, vary the percentage of rice required to be sold to the State Government under this order.

(5) Notwithstanding anything contained in the foregoing sub-clauses the State Government may, by notification, specify the varieties of rice which are required to be sold to the State Government under this clause and may likewise specify the varieties of rice which are not required to be so sold."

(15) After elaborately dealing with the aforesaid clause 3, the Division Bench of this Court came to the conclusion:

"So far as the foodgrains under the Levy Order are concerned, the corporation does not act independently. If a dealer has no say of any kind in the matter, I fail to understand how such a transaction can have any profit-motive. It will be a travesty of facts to call it a business so far as the distribution of foodgrains to deficit States by the corporation is concerned.

Further, I find that the act of procuring rice under the Levy Order does not constitute "sale" or, in other words, the transaction of sale of price under the Levy Order by the millers and the dealers to the State of Punjab is not a taxable event" and further held that ——— "from the bare perusal of these clauses (i.e., of the U. P. Wheat Procurement (Levy) Order, it would be clear that the same are in *pari materia* with the clauses of the Levy Order with which we are concerned."

(16) It would, thus, be clear that the decision in *Food Corporation of India's case* (supra), is, based on the ratio of *Chittar Mal*

Narain Das's case (supra), to the extent that the Levy Order envisages compulsory acquisition of rice by the State Government from the licensed dealers and not on the later part of the ratio which was raised by the Supreme Court on certain assumptions which assumptions according to our humble opinion were not germane for deciding the *Chittar Mal Narain Das's case* (supra), as has been made clear in *Vishnu Agencies case* (supra), by the Constitution Bench of the Supreme Court itself.

(17) Further strength to our approach is sought from the decision of Supreme Court in *Amrit Roller Flour Mills case* (supra), wherein *Food Corporation of India's case* (supra), was also cited and the Supreme Court therein observed as under:—

> "Now the High Court considered the matter and found itself obliged to follow its decision in Food Corporation of India (1976) 38 STC 144. That was a case under the Punjab Rice Procurement (Levy) Order, 1958, where rice was procured by the State Government and its officers from licensed dealers and licensed millers and then supplied to the Food Corporation of India, which in turn made supplies to various State Governments. The Food Corporation of India was assessed to sales tax under the Punjab General Sales Tax Act. The High Court held that the chain of transactions between the miller and the dealer on the one hand and the State Government and thereafter between the Corporation and the other States was a single composite process originating in an arrangement between the Central Government and the State Government under which the State Government were required to contribute to a Central pool a certain percentage of food grains intended for supply to deficit States through the agency of the Corporation, but there was no profit-motive at any stage and the Corporation did not act as a dealer in the legal sense when it passed on the goods to other States. Accordingly, the Food Corporation of India, the High Court concluded, could not be said to sell the rice and was therefore, not liable to pay sales tax, there being no freedom of contract within the meaning of the law laid down in *Salar Jung Sugar Mills Ltd.* v. *State of Mysore* (8), and

(8) (1972) 29 S.T.C. 246 (S.C.).

the element of mutual assent, implicit or explicit, being non-existent. The High Court observed that the facts of the case brought it within the law explained by this Court in *Chittar Mal Narain Das* v. *Commissioner of Sales Tax* (supra). We think that the case before us is distinguishable from *Food Corporation of India* (1976) 38 STC 144. It is a case which falls more appropriately within the rule laid down by this Court in *Vishnu Agencies (Pvt.) Ltd.* v. *Commercial Tax Officer* (supra). Where the majority judgement discussed the entire case law on the subject, including the earlier decision in *Salar Jung Sugar Mills Ltd.*, (supra), as well as *Chittar Mal Narain Das* (supra)."

(18) After giving our thoughtful consideration to the entire matter we find that the Central Orders which are the subject matter of the decision in *Vishnu Agencies case* (supra), were different from the Levy Order under which the State Government sets up the machinery for compulsory acquisition of the essential commodities. The Supreme Court's decision in *Chittra Mal Narain Das's case* (supra), which was relied upon for decision by the Division Bench of this Court in *Food Corporation of India's case* (supra), holds the field and does not stand impliedly over-ruled *in toto*.

(19) From the aforesaid observations, it is clear that the Control Orders under which the compulsory acquisition of rice is made stand on different footing and the transactions made thereunder would not amount to sales. It is correct that their Lordship in *Vishnu Agencies case* did not agree with the observations made in *Chittar Mal Narain Das'* case (supra) to the effect that even if in respect of place of delivery and the place of payment of the price there could be consensual arrangement, the transaction will not amount to a sale, but in spite of these observations, so far as the cases of compulsory acquisition with no real freedom to bargain in any area under the relevant procurement orders are concerned, in view in *Chittar Mal Narain Das's case* (supra), was held as justified.

(20) Under the circumstances, we do not find any merit in the contention of the learned State counsel that the Division Bench judgement of this Court in *Food Corporation of India's case* (supra),

stands overruled and does not lay down correct law. In these transactions, there is no profit-motive at any stage nor do the goods vest in the State Government in the sense that it can bargain with the corporation and dictate its terms, nor does the Corporation act as a dealer in the legal sense when it passes on these goods to the other States. It was further held that the Corporation does not act as a dealer when it sends the goods to the other States and that no profit-motive is involved in the transactions entered into between the Corporation and the deficit State. The same being the position in the present writ petitions, the same are liable to be allowed in view of the Division Bench judgment of this Court in *Foor Corporation of India's case* (supra), as the transactions cannot be held to be sales which could be taxed.

(21) Though in some of the writ petitions, certain other points have also been raised like the vires of Section 4(B) of the Punjab General Sales Tax Act, yet the same have not been gone into in view of the findings given above.

(22) In Civil Writ Petition No. 4140 of 1984, the petitioner-corporation has also challenged the order of the Sales-tax Tribunal, Punjab, dated April 24, 1984, relating to the assessment years 1975-76, wherein sales-tax has been imposed on the *bardana*. According to the Corporation, the bardana was transferred along with the tax-free goods and, was, therefore, not exigible to tax. Moreover, as to whether there was an agreement to sell *bardana* or not, was a question of fact and it was for the revenue to prove the existence of such an agreement. It was further contended that *bardana* was a cheap mode of conveying the commodities; its value was insignificant, as compared to the commodity packed therein and that an implied contract to sell *bardana* independently could not be inferred. In support of the contention, relience was placed on *Commissioner of Taxes, Assam* vs. *Prabhat Marketing Co. Ltd.*, (9) and *M. A. Razack & Company* vs. *The State of Madras* (10). On the other hand, the learned counsel for the State, relied upon *A. Srinivasa Pai* vs. *State of Kerala* (11) and *Deputy Commissioner of Sales Tax, Ernakulam* vs. *Raja Oil Mills* (12), to contend that the bardana was taxable.

(9) (1967) 19 S.T.C. 84.
(10) (1967) 19 S.T.C. 135.
(11) (1975) 36 ST.C. 482.
(12) (1979) 43 S.T.C. 78.

(23) According to the Supreme Court in *Razack & Co.'s case,* as the value of the packing material as compared to the value of the contents of the packet was insignificant, an agreement to sell packing material independently of chewing tobacco could not, under the general law be implied. Thus, the order assessing the *bardana* in the said writ petition is quashed as no independent agreement has been shown to exist.

(24) Consequently, all the impugned orders are quashed and the writ petitions are allowed. No costs.

D. S. Tewatia, J.—I agree.

H.S.B.

Before : M. M. Punchhi, J.

ADARSH RATTAN and others,—*Appellants.*

versus

STATE BANK OF INDIA,—*Respondents.*

Regular Second Appeal No. 2046 *of* 1985

Cross Objection No. 12-*CI of* 1985

C.M. No. 862-*C of* 1986

November 27, 1986

Indian Succession Act (*XXXIX of* 1925)—*Sections* 211 *and* 212—*Hindu dying intestate—Heirs claiming to operate a box lying in safe deposit with a Bank—Bank declining claim till such time as letters of administration obtained by the heirs—Obtaining of letters of administration by the heirs—Whether essential.*

Held, that it is plain from the language of Sections 211 and 212 of the Indian Succession Act, 1925, that it is not compulsive for heirs to apply for letters of administration in the case of a Hindu and *qua* persons of other religious denominations as mentioned in sub-section (2) of Section 212. When the estate passes on the death of an intestate, then Section 212 throws open an enabling avenue to have the letters of administration from the Court of competent jurisdiction and to have the estate administered under the evidence and protection of the Court. By no means can it be said that the estate of an intestate Hindu cannot be allowed to vest or be claimed