

## CIVIL MISCELLANEOUS

Before G. D. Khosla, C.J., and D. K. Mahajan, J.

THE STANDARD DRUGS Co.,—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent

Civil Reference No. 17 of 1955A

1960  
July, 11th

*East Punjab General Sales Tax (XLVI of 1948)—Schedule B,—Item 37—Sales tax on spirituous preparations—Whether can be levied when excise duty under the Punjab Excise Act is also being levied on them.*

*Held*, that under Item 37 of Schedule B to the East Punjab General Sales Tax Act, 1948, no sales tax is leviable on the spirituous preparations on which excise duty under the Punjab Excise Act is also being levied. It does not matter that the excise duty is being levied only on the alcoholic content of the preparation. That is only a method of computation of the duty and the fact remains that what is subjected to duty is the finished article itself and not a portion of it. If the article had not been prepared, no excise duty would have been charged.

*Case referred by Shri A. L. Fletcher, Financial Commissioner, Punjab,—vide his order, dated 27th July, 1955, for decision of the following legal question involved :—*

*“Whether sales tax can be levied on spirituous preparations when excise duty is also being levied on them under the Punjab Excise Act ?”*

BHAGIRATH DASS, ADVOCATE, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondent.

## ORDER

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G. D. KHOSLA, C.J.—These are two references (Civil References Nos. 17 and 20 of 1955) made by the Financial Commissioner, under section 22 of the East Punjab General Sales Tax Act of 1948.

The assessee in each case is Messrs Standard Drugs Company, Amritsar. Civil Reference No. 17 relates to the assessment for the years 1949-50 and 1950-51, whereas Civil Reference No. 20 relates to the assessment for the year 1951-52.

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The facts briefly are that the assessee-company manufacture drugs and toilet preparations which have an alcoholic content. For the years 1949-50 and 1950-51, the assessing authority allowed an exemption in respect of these drugs from the sales tax, holding that they fell under item 37 of the Schedule. For the year 1951-52, the assessing authority refused to grant any exemption. The matter was taken up in appeal by the assessee with regard to the third assessment in respect of the year 1951-52, and the Excise Department filed two revision petitions against the orders in respect of the first two years in respect of which exemption had been allowed by the assessing authority. The appeal of the assessee was dismissed and a revision petition was also filed by them. The matter ultimately came up before the Excise and Taxation Commissioner, and he took the view that the assessee was not entitled to any exemption as item 37 did not cover their case. On a representation made by the assessee, the Financial Commissioner has referred the matter for the opinion of this Court, and in the referring order two questions are stated. The first of these is no longer before us. It related to the question of limitation with regard to the filing of revision petitions, and the learned counsel for the assessee has chosen not to press it. The second question, which is the only matter now before us, is stated

as follows :—

“Whether sales tax can be levied on spirituous preparations when excise duty is

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also being levied on them under the Punjab Excise Act ?”

The question is not perhaps happily worded inasmuch as excise duty can no longer be levied on medicinal or toilet preparations containing alcohol under the Punjab Excise Act as such after the coming into force of the Constitution, but the point which requires our consideration is quite clear as I shall presently show.

The assessee-company acquire rectified spirit for the preparation of their finished articles. No duty of any kind is paid at the time rectified spirit is purchased by them. It is, however, admitted now that excise duty is being paid on the finished articles, but the method of computation is that the duty is chargeable only on the alcoholic content of each article. It is, therefore, contended that the finished article is not subject to excise duty but only that part of it which contains alcohol.

Before the coming into force of the Constitution any article containing alcohol was liable to excise duty under the Punjab Excise Act. Section 3(6)(c) read—

“any medicinal or toilet preparation containing alcohol.”

Therefore, before the 26th of January, 1950, the goods prepared by the assessee-company were subject to excise duty under the Punjab Excise Act. With the passing of the Constitution, medicinal or toilet preparations containing alcohol could only be taxed by the Centre, as this item was transferred to the Union List. Nevertheless, the Punjab State continued to collect this

duty by virtue of the powers conferred by Article 277 of the Constitution which reads as follows :—

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“Any taxes, duties, cesses or fees, which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by parliament by law.”

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It may be mentioned here that the provision referred to in the concluding portion of this Article was, in fact, made in 1957, by a special Act by the Central Government, but the provisions of this Act have no bearing on the matter before us, because we are concerned with the years 1949—1952, and during these years the Punjab State continued to collect the excise duty on the finished articles prepared by the assessee by virtue of the provisions of Article 277.

The contention of Mr. Doabia, who appears on behalf of the State, is that the Punjab State was not collecting excise duty on the finished articles but on the alcoholic content of those articles, but, as I have already stated above, the method of computation was to take the alcoholic content and to assess the duty on it. It was the finished article itself and not a portion of it which was being subjected to excise duty ; if the article had

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not been prepared, no excise duty would have been charged. This excise duty was being charged, because originally (before the 26th of January 1950), it could be charged under the Punjab Excise Act. Item 37 of the Schedule attached to the East Punjab General Sales Tax Act is—

“All goods on which duty is or may be levied under the Punjab Excise Act, 1914, or the Opium Act, 1878.”

Such goods are exempted from sales tax. The excise duty, which is being charged by the Punjab State by virtue of Article 277, is clearly a duty which is being levied under the Punjab Excise Act of 1914, even though item (c) of sub-section (6) of section 3 was omitted by the Adaptation of Laws Order, 1950. Article 277 was intended to provide continuity in the fiscal law of the State, and the power given by it was the power derived under the Punjab Excise Act. Therefore, it is clear that the duty, which is being levied on the finished goods prepared by the assessee, is being levied under the Punjab Excise Act. That being so, the articles prepared by the assessee are exempt from the sales tax. We answer the reference accordingly. There will be no order as to costs.

D. K. MAHAJAN, J.—I agree.

R. S.

#### SUPREME COURT

Before P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, K. C. Das Gupta and J. C. Shah, JJ.

BHAGAT SINGH,—Appellant.

versus

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Civil Appeal No. 349 of 1957

Government of India Act (1935)—Sections 240(3) and 243—Applicability of to members of the subordinate ranks