CIVIL MISCELLANEOUS

Before Mehar Singh and Inder Dev Dua, JJ.

MESSRS NABHA RICE AND *OIL MILLS,—Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 1741 of 1962.

1963

Feb., 18th.

East Punjab General Sales Tax Act (XLVI of 1948)—S. 5—Whether ultra vires*—Excise duty and purchase tax—Distinction between—S. 4—Whether the charging section—S. 5 declared invalid on the ground of excessive delegation of legislative power—Whether can be made valid by suitable amendment or must be re-enacted afresh—Unconstitutional enactment—Effect of—Manufacture—Extraction of oil from oil-seeds—Whether amounts to manufacture.*

Held, that section 5 of the East Punjab General Sales Tax Act, 1948, does not impose excise duty under the cloak or device of purchase tax and for this reason it cannot be said to be a colourable piece of legislation and, therefore, *ultra vires.* Nor does this section contravene section 15 of the Central Sales Tax Act, 1956 for the tax levied is not more than two per cent on the goods taxed nor has the sale or purchase tax been levied at more than one stage.

Held, that an excise duty, according to Indian law, is attracted only when goods are manufactured or produced, for, it is the manufacture or production of goods alone which forms the basis of excise duty. The taxable event being the manufacture or production, till that event happens there is hardly any occasion for excise duty being imposed for, the right to levy this duty accrues only by virtue of the manufacturer or production of the goods on which it is imposed. The base of the excise duty is the commodity produced and it must, therefore, actually exist for the duty to be attracted. The base on which the tax operates is not the manufacture but the commercial transaction of sale and purchase of the commodity which has to be used in future in a manufacturing process, with the

result that by no stretch can the impugned tax be considered to be an excise duty. Not only is it not possible to describe the tax in question to be "unrelated to and not dependent on any commercial transaction" of the goods taxed, but, on the contrary, the tax is essentially and in pith and substance imposed on the case of the commercial transaction itself, though the purchased goods are intended to be used later for manufacturing some other goods. Without the sale and purchase of the goods taxed the impugned tax is not intended to operate, and the event of manufacture or production which alone attracts excise duty has not yet occurred with the result that the manufactured goods have not yet even come into existence. In these circumstances it cannot be said that the tax in question is a duty of excise on goods manufactured or produced and the impugned legislative measure is, therefore, a colourable piece of legislation.

Held, that section 4 of the Act is the core or the real foundation of the charging provision which provides legislative sanction or the authority of law for levying tax within the contemplation of Article 265 of the Constitution. The real liability to pay tax arises by reason of section 4 and sections 5 and 6 provide for rate of tax and goods on which tax may not be payable under the Act.

Held, that since section 5 is not the charging section, by suitably amending it so as to remove the vice of excessive delegation, the tax as contemplated by the East Punjab General Sales Tax Act can lawfully be levied and collected. It is not necessary to re-enact the whole of the section or the Act afresh for by reason of mere excessive delegation contained in section 5, the East Punjab General Sales Tax Act, in its entirely, cannot be held never to have been enacted.

Held, that an unconstitutional Act is not a law, it confers no right, it imposes no duties, it affords no protection, it creates no offence in any legal contemplation, and it is inoperative. When a Court finds a statute in conflict with the Constitution it simply refuses to recognise it and determines the rights of the parties before it just as if the statute in question had no application. The Court does not annul or repeal the statute which conflicts with the Constitution. The Court may, and perhaps does,

give reasons for ignoring and disregarding such a statute but its decision affects only the parties and the judgment cannot be considered to be against the statute. The reasons of the Court or the judgment or the opinion given by it operates as a precedent to be considered in other similar cases and that is about all.

Held, that the word "manufacture" has various shades of meaning and the process of extraction of oil from the oil seeds does amount to manufacture.

Petition under Article 226/227 of the Constitution of India praying that a Writ of Certiorari, Mandamus *or any other appropriate Writ, Order or Direction be issued quashing the notice dated 12th October, 1962, issued by respondent No. 3 and further praying that the respondents be directed not to proceed against the petitioners under the Punjab General Sales Tax Act, 1948 in connection with the purchase tax on oil seeds acquired by them for their business.*

H. L. SIBAL, SIRI CHAND, S. C. SIBBAL AND R. SACHAR, ADVOCATES, for the Petitioners.

S. M. SIKRI ADVOCATE-GENERAL, M. R. SHARMA, ADVOCATE AND L. D. KAUSHAL, DEPUTY ADVOCATE-GENERAL, for the Respondents.

ORDER

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DUA, J.—These nine petitions (Civil Writs Nos. 1741, 1761, 1762, 206, 608, 1576, 1527, 1481 of 1962 and No. 17 of 1963) were heard together and may be disposed of by one judgment. Main arguments were addressed in Civil Writ No. 1741 of 1962. The only question which calls for determination by us relates to the vires of section 5 of the Punjab General Sales Tax Act (Punjab Act No. XLVI of 1948).

Here, I may briefly state the facts on which Civil Writ petition No. 1741 of 1962 is based. The petitioner-firm Messrs Nabha Rice and Oil Mills, Nabha, a registered dealer under the E. P. General

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Sales Tax Act, claims to be a partnership firm carrying on the business of extracting oil from sarson and other oil seeds, for which purpose they have installed an oil mill. It sells *sarson* oil and other oils thus extracted from sarson and other oil seeds, acquired by them from third parties, and is liable to pay sales tax on sales of oil. The oil seeds are also purchased through its commission agents, though the transaction between the dealers of oil seeds and the petitioners' commission agents has been stated to be independent sales and the supply by the commission agents to the petitioner in pursuance of the commission agency agreement has also been described not to amount to sale. The petition then proceeds to trace the history of the sales tax legislation and recites that the Punjab Legislature in exercise of its legislative power under entry No. 48· List II of Schedule VII read with section 100, Government of India Act, 1935, enacted the E. P. General Sales Tax Act in 1948 for the purpose of imposing sales tax on sales as defined by the said Act. In 1958, the State Legislature purported to impose a tax described as purchase tax on certain manufacturers alone by enacting the E. P. General Sales Tax (Amendment) Act 1958: Act No. VII of 1958. This amending Act amended section 4 of the principal Act and also introduced definition of "purchase" by inserting section 2(ff). The definitions of the term "turnover" in section 2(i) and "dealer" in section 2(d) of the principal Act were also suitably amended. In 1959, certain other amendments made by the Punjab Legislature in the definition of "purchase" by Punjab Act No. 13 of 1959 and Punjab Act No. 24 of 1959 are then noticed in the petition. Section 4, it is worth-noting here, has been described by the petitioner to be the charging section and is reproduced, so far as relevant, followed by the reproduction of the definition of the word "purchase"

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as amended; it is then pointed out that oil seeds or oil and *resin* are the only two items which have been listed in Schedule 'C' to the Act which, according to the petitioner-firm, would show that out of all the raw materials required for use in the manufacture of goods for sale, the Legislature arbitrarily singled out oil seeds for the imposition of purchase-tax. Stress is then laid on the plea that purchase tax imposed only on those persons who acquire specified goods for use in the manufacture of goods for sale is in substance imposition of excise duty on manufacture and, therefore, beyond the legislative competence of the State Legislature. This is one attack on the purchase tax contained in the petition. The petition further proceeds to state that extraction of oil from oil seeds by crushing the seeds by mechanical process does not amount to manufacture of oil though it may amount to production of oil because oil already exists in oil seeds and the process of extraction merely separates oil from the seeds and does not bring it into existence for the first time. It is by this process of reasoning that extraction of oil from oil seeds, according to the petitioner's plea is stated not to amount to manufacture of oil.

The petition then notices section 14 of the Central Sales Tax Act, 1956 (hereinafter called the Central Act), according to which certain goods have been declared to be of special importance to inter-State trade and commerce and oil seeds and volatile oils have been specified as belonging to category. Under the E. P. General Sales Tax Act (hereinafter called the Punjab Act), as amended by Act No. VII of 1958, producers of oil, according to the petition, are required to pay tax at two stages; first they are asked to pay purchase tax of 2 per cent on the purchase of oil seeds and next they are asked to pay sales tax at 4 per cent on the

sale of oil produced. The petition next seeks to elucidate the point by the plea that similarly the manufacturers of soap or other goods by using oil for the said manufacture are liable to pay purchase tax at 2 per cent on the oil purchase and also sales tax at 4 per cent on soap or other goods sold by them. Both these categories of taxation, according to the petition, are beyond the legislative competence of the State Legislature because entry No. 54 of List II of Schedule VII of the Constitution empowers the State Legislature only to impose a tax either on sale or on purchase and not on both. The Punjab Act as amended in 1958 is stated also to violate section 15 of the Central Act because it imposes on oil seeds and oils declared to be of special importance to inter-State trade and commerce a tax in excess of 2 per cent leviable at more than one stage. The definition of the word "purchase" also, according to the petitioner, creates arbitrary discrimination between manufacturers using oil seeds as a raw material and manufacturers so using other raw material, there being no rational basis for this distinction. The petitioner claims to have been submitting returns to the Assessing Authority regularly and paying the tax assessed. The petitioner paid the sales tax on its taxable turnover but did not deposit any amount in respect of purchase tax on oil seeds acquired for the purpose of its business because the petitioner had been advised that this provision was *ultra vires* the State Legislature. The Assessing Authority ignoring the representation made by the petitioner-firm issued a notice in form S. T XIV requiring the petitioner to appear before him on 24th October, 1962, for the assessment year 1961-62. Reference is then made to a petition filed by Messrs Guru Nanak Oil Mills, Khanna, in the Supreme Court, under Article 32 of the Constitution of India and admitted by the said Court. The Supreme

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Court, according to the averments in the petition, stayed the passing of the final assessment order pending the disposal of the writ petition in that case. Apprehending that the Assessing Authority might proceed with the petitioner's assessment, the petitioner-firm approached this Court in November, 1962, by the present writ petition on the allegations just enumerated.

In the return, apart from the fact that the contentions of the petitioner-firm have been controverted, it has been expressly stated that under the Punjab Act tax is leviable either on the sales or purchase of goods at one stage only and that both sales tax and purchase tax are not levied on the one and the same transaction, as alleged by the petitioners. Where the transaction is between two manufacturers both of whom are registered under the Act no sales tax is charged on the sale by one to the other and only purchase tax is chargeable on the purchase made by one of the manufacturers. The provisions of the impugned Act have, therefore, been described to be in accord with entry 54, List II, Schedule VII, appended to the Constitution. Section 14 of the Central Sales Tax Act, according to the return, does not classify oils as declared goods with the result that no question of levying tax in excess of two per cent on the sales of declared goods, that is, oil seeds, arises.

It may be mentioned that the writ petition was admitted for hearing before a Division Bench on 9th November, 1962. On 4th December, 1962, an application under Order 6, Rule 17 was filed in which reference was made to a Bench decision of this Court in *Messrs Ganga Ram Suraj Parkash* v. *The State of Punjab,* Sales Tax Reference No. 4/61, decided on 24th October, 1962, by a Divisional Bench consisting of my learned brother Mehar

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Singh, J., and Shamsher Bahadur, J. In this application, reference has also been made to the amending Act No. 17 of 1960, whereby the words "for use in the manufacture of goods for sale" were omitted from the definition of the word "purchase", an amendment which, according to the averment in this application, was not known to the petitioner at the time of filing the writ petition initially. Additional grounds were thus sought to be raised urging the East Punjab General Sales Tax Act: Act No. 46 of 1948 to be void *ab initio* being an incompetent piece of legislation view of the Bench decision just mentioned. The provisions of the Punjab General Sales Tax Act of 1948, according to the plea in the application for amendment, can have no legal force until re-enacted by competent legislature and neither the Legislature of the East Punjab nor its successor the State Legislature of the Punjab having re-enacted the invalid piece of legislation, the amending Acts subsequently passed are inoperative and of no consequence. This application for seeking permission repeats all the legal arguments in support of the contention that the East Punjab General Sales Tax Act is a void piece of legislation and, therefore, an absolute nullity. Notice of this application was also given by a Division Bench of this Court on 7th December, 1962, and it was ordered to come up along with Civil Writ No. 1741 of 1962.

At the time of arguments, on behalf of the petitioner the case, as laid in the application for amendment, has been pressed and to begin with, Shri Sibal has urged that the impugned tax is virtually and in substance an excise duty which is beyond the competence of the State Legislature. Reliance has been placed for this submission on various decisions of the Federal Court, the Privy Council and the Supreme Court. The counsel has

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started with a decision of the Federal Court *In Re The Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act,* 1938 (Central Provinces and Berar Act No. XIV of 1938).

In Re A Special Reference Under section 213 *of the Government of India Act,* 1935 (1). We have been taken through the entire judgment and it has been sought to be deduced therefrom that whenever a tax has been imposed on a person *qua* manufacturer then the tax must be considered to be an excise duty. The counsel has next taken us through the entire judgment of the Federal Court in *The Province of Madras* v. *Messrs Boddu Paidana and Sons* (2). From this judgment also, an attempt has has been made to support the proposition enunciated by the counsel that the goods taxed have been subjected to tax *qua* manufacturer and, therefore, the tax must be described to be an excise duty. Particular reference has been made by the counsel to page 35 of the report and emphasis is laid on the following observations:—

> "The duties of excise which the Constitution Act assigns exclusively to the Central Legislature are, according to *In Re A Special Reference under section* 213 *of the Government of India Act,* 1935, (1), duties levied upon the manufacturer or producer in respect of the manufacture or production of the commodity taxed. The tax on the sale of goods, which the Act assigns exclusively to the Provincial Legislatures, is a tax levied on the occasion of the sale of the goods. Plainly a tax levied on the first sale must in the nature of things be a

(1) 1939 F.C.R. 18.
(2) A.I.R. 1942 F.C. 33.

> tax on the sale by the manufacturer or producer; but it is levied upon him *qua* seller and not qua manufacturer or producer. It may well be that a manufacturer or producer is sometimes doubly hit; but so is the taxpayer in Canada who has to pay income-tax levied by the Province for Provincial purposes and also income-tax levied by the Dominion for Dominion purposes: see *Caron* v. *The King* (3); *Forbes* v. *Attorney-General for Manitoba* (4).

The counsel deduces from this passage that in the present case the tax must be considered to have have been imposed *qua* a manufacturer or producer and, therefore, the tax is, in essence or pith and substance, an excise duty and the Punjab State Legislature has under the cloak of purchase tax usurped the power of the Central Legislature and imposed an excise duty. The counsel as a matter of fact took us through the whole of the judgment of the Federal Court in order to seek support for this contention. The other cases through which we were taken by the counsel are *Governor-General in Council* v. *Province of Madras,* (5). *Tata Iron and Steel Co., Ltd.,* v. *State of Bihar* (6). I have, however, considered it unnecessary to deal with these decisions because the matter has very recently been discussed by the Supreme Court in *M/s. Chhotabhai Jethabhai Patel and Co.* v. *Union of India* (7), where the entire case-law, included the decisions cited by the petitioner's counsel, has been reviewed. According to the view taken in this

(3) 1924 A.C. 999.
(4) 1937 A.C. 260.
(5) A.I.R. 1945 P.C. 98.
(6) A.I.R. 1958 S.C. 452.
(7) A.I.R. 1962 S.C. 1006.

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case, a duty of excise is a tax-levy on home produced goods of a specified class or description, the duty being calculated according to the quantity or value of the goods, which is levied because of the mere fact of the goods having been produced or manufactured, and is unrelated to and not dependent on any commercial transaction in them. In this decision the Supreme Court also pointed out that American, Australian or Canadian decisions were not of any real assistance. In my opinion, an excise duty, according to Indian law, is attracted only when goods are manufactured or produced, for, it is the manufacture or production of goods alone which forms the basis of excise duty. The taxable event being the manufacture or production, till that event happens there is hardly any occasion for excise duty being imposed for, the right to levy this duty accrues only by virtue of the manufacture or production of the goods on which it is imposed. The base of the excise duty is the commodity produced and it must, therefore, actually exist for the duty to be attracted. Isolated sentences from the various judgments relied upon by Shri Sibal, similar to the sentences from the passage reproduced above from the case of *M/s Boddu Paidanna and Sons* emphasing distinction between tax levied on a person *qua* seller on the one hand and *qua* manufacturer or purducer on the other, lend little or no useful assistance to support the counsel's contention, for, such literal and more or less mechanical way of reading solitary sentences torn from their context may, and often do, tend to mislead as to the true ratio of the decided cases. For one thing in all those cases it was the manufactured commodity itself which was being taxed after the taxable even of manufacture and it was perhaps this feature which enabled the parties to build the argument of the tax being an excise duty. Is the position before us identical?

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The answer to this vital question in appraising the plausibility of the petitioners' argument must, as will presently appear, be in the negative. Taxing statutes, it may here be pointed out, involve no equity and in common with other statutes the controlling factor is the legislative intent.

In the case before us the base on which the tax operates is not the manufacture but the commercial transaction of sale and purchase of the commodity which has to be used in future in a manufacturing process, with the result that by no stretch can the impugned tax be considered to be an excise duty. Not only is it not possible to describe the tax in question to be "unrelated to and not dependent on any commercial transaction" of the goods taxed, on the contrary, the tax is essentially and in pith and substance imposed on the base of the commercial transaction itself, though the purchased goods are intended to be used later for manufacturing some other goods. Without the sale and purchase of the goods taxed the impugned tax is not intended to operate, and event of manufacture or production which alone attracts excise duty has not yet occurred with the result that the manufactured goods have not yet even come into existence. In these circumstances, can it be said that the tax in question is a duty of excise on goods manufactured or produced and the impugned legislative measure is, therefore, a colourable piece of legislation? In my opinion, the only possible answer can be in the negative. The petitioner's argument that the tax been *qua* a manufacturer must be considered to be excise duty suffers from the obvious fallacy that he assumes that excise duty can take the form of tax on purchase of goods which are to be used later in manufacturing some other goods— an assumption for which, in my opinion, there is

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absolutely no justification. I therefore, unhesitatingly repel as unsound the contention that the impugned tax is in pith and substance an excise duty which is being levied by the State Legislature under the cloak or device of purchase tax and that for this reason the law in question amounts to colourable piece of legislation and, therefore, *ultra vires.*

The next challenge is to the constitutionality of the entire Act, though the real basis of this whole-sale attack is that section 5 of the Act has been held by a Bench of this Court to be *ultra vires,* and, that being the real charging section the whole of the statute must be held to be *ultra vires* and outside the competence of the Punjab State Legislature, with the result that unless whole of the statute is re-enacted mere amendment of section 5 which has admittedly been effected cannot cure the defect and put life into the statute as a whole. The argument is based on the Bench decision of this Court in the of Messrs Ganga Ram Suraj Parkash. In that decision, section 5 of the Punjab Act, as originally enacted, gave unlimited power to the executive to levy sales tax at the rate it though fit. Section 5 was also held to be a charging section and, therefore, the kernel of the entire enactment without which the remaining provisions were considered to be inchoate and ineffective. On this reasoning, the remaining sections of the enactment were held not to survive the invalidity of the main provision with the result that according to that decision no notification could issue even under section 6 of the Act. In the concluding portion of the judgment, however, the following observations also occur:—

> "In truth and substance the Act did not become valid till the amendment of 1952 which gave life and limbs to it."

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The argument raised on behalf of the petitioner-firm is, that a statute which the enacting body could not enact is still-born and mere amendment of the defective provision in it cannot serve the purpose of putting life into it; the entire statute must, so says the counsel, be enacted as if it is a fresh legislation. A statute which has been declared void in its entirety, so proceeds the contention, must be considered never to have come into existence and, therefore, any amendment of a section in a non-existent statute is meaningless because it would be required to operate in vacuum and, therefore, would be wholly ineffectual; it cannot have the effect of enacting a non-existent statute. The sole basis of this argument is that in the Bench decision of this Court already cited the entire Act was held to be void. In that judgment, an argument was raised on behalf of the State that even before the amending Act (Punjab Act No. XIX of 1952) which amended section 5 of the Punjab Act and removed the infirmity of excessive delegation the impugned notification in that case could be issued under section 6 of the Punjab Act which section was capable of enforcement. This argument was repelled by the Bench on the ground that section 5 was not severable from the other provisions of the statute and this section being the charging section, if it was void, then the other provisions of the Act which were merely ancillary to it could not stand. The main taxing provision, namely, section 5 of the Act having been held to be invalid no notification could issue under section 6. In my opinion, the observations made in the Bench decision do not show that the entire Punjab Act was held to be void independently of the constitutional infirmity contained in section 5, in the sense of the whole Act being non-est having never been competently enacted, for, the only question which came up directly before the Bench was the

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constitutionality of section 5 and the sustainability of the contention that the impuged notification there could effectively be issued under section 6 even if section 5 were to be considered invalid.

At this stage it is desirable to mention that Shri S. K. Kapur who has appeared for the petitioner in Civil Writ No. 1527 of 1962 has not gone to this extreme length but has merely contended that section 5 having been declared to be void the constitutional defect in this section could only be removed by enacting the whole of section 5 and not by merely introducing some additions to the section as originally enacted in 1948.

On behalf of the respondents, it has been urged that the Punjab Act of 1948 as originally enacted and the original section 5 was not tainted with the vice of excessive legislative delegation. It was only an instance of conditional legislation and therefore a case of permissive delegation. In any case, it has been further contended that section 5 acquired validity by the amendment of 1952. On the first point it has been argued that the determination of rate of tax is not such an essential legislative power which cannot be delegated and that by delegating determination of rate the Legislature did not completely efface itself. Reliance has in support of this contention been placed on certain observations of the Supreme Court in Pt. Banarsi Das v. State of M. P. (8). It is observed that that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates on which it is to be charged in respect of different classes of goods, and the like. In my opinion.

(8) A.I.R. 1958 S.C. 909 at page 913.

these observations must be read in their own context and so read they do not seem to support the wide proposition canvassed. Be that as it may, a Bench of this Court having held the delegation in question to be excessive and section 5 of the Punjab Act to be void on this account, it is not open to us in the circumstances of this case to reopen that question . We are, therefore, only concerned with the question of the effect of the amendment of section 5 by Punjab Act No. XIV of 1952. It may also be observed that in view of our decision on the second point it seems to be unnecessary to deal with the first point.

According to the respondents' counsel it is not section 5 but section 4 which is the charging section. Section 5, according to Shri Kaushal, is only concerned with the rate of tax, section 4 being the provision dealing with the incidence of taxation. The petitioner's counsel has in support of the contention that section 5 alone is the charging section solely relied on the observations in the case of Messrs Ganga Ram Suraj Parkash.

Section 4 of the Punjab Act as originally enacted is headed as "Incidence of taxation" and it proceeds to lay down that subject to the provisions of sections 5 and 6 every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under the Act on all sales effected after the enforcement of the Act. According to sub-section (2) every dealer to whom sub-section (1), (the purport of which has just been described) does not apply is to be liable to pay tax under the Act with effect from three months after the commencement of the year immediately following that during which his gross turnover first exceeds the taxable quantum. Sub-section (3) provides that every dealer who becomes liable to pay tax under the Act shall continue

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to be so liable until the expiry of three consecutive years during each of which his gross turnover has failed to exceed the taxable quantum and such further period after such expiry as may be prescribed and on the expiry of this latter period his liability to pay tax shall cease. Sub-section (4) prescribes the circumstances in which dealer's liability revives and sub-section (5) defines the expression "taxable quantum". Section 5 merely deals with the rate of tax and section 6 provides for tax-free goods. It is obvious that section 4 is the core or the real foundation of the charging provisions, though the word "charge" as such has not been used as is the case with the Income-tax Act, (for example see inter alia sections 3 and 55 thereof); but failure to use the word "charge" is, in my opinion, immaterial for it is section 4 which provides legislative sanction or the authority of law for levying tax within the contemplation of section 265 of the Constitution. Our attention has also been drawn by Shri Kaushal to the observations of the Supreme Court in the judgment in *Tata Iron and Steel Company's case* where section 4(1) of the Bihar Sales Tax Act, 1947, which is in substance identical in its language with our section 4, was considered to be the charging section. It may be recalled that in the writ petition, as originally filed in this Court, also the petitioner's case was that section 4 of the Punjab Act is the charging section. The contention of section 5 alone being the charging section seems to have struck the petitioner's counsel only after reading the judgment in *Messrs Gnaga Ram Suraj Parkash case.* The counsel has, however, tried to develop this point by submitting that section 4 is subject to the provisions of sections 5 and 6 and, therefore, this section cannot be considered to be the charging section. The contention is unsustainable, for, the real liability to pay tax

arises by reason of section 4 and sections 5 and 6 provides for rate of tax and goods on which tax may not be payable under the Act.

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In my opinion, the judgment in *Messrs Ganga Ram Suraj Parkash case* does not lay down that section 5 is the only charging section, as indeed this question did not directly arise there. It appears to me that sections 4, 5 and 6 read together constitute the charging legislative provision and the argument that section 5 is the sole authority of law on the basis of which tax can be levied must be repelled. Now, if this be the correct legal position, the whole argument of the petitioner's counsel that the Punjab Act as originally passed must, in its entirety, be held to be void collapses and, in my opinion, it becomes wholly unnecessary to refer to the mass of decisions cited at the bar in support of this contention. It would, therefore, appear to me that by suitably amending section 5 so as to remove the vice of excessive delegation the tax as contemplated by the impugned Act can lawfully be levied and collected. In this view of the matter without exhaustively discussing the authorities cited on behalf of Shri Sibal and Shri Sachar, I would merely briefly notice them, *Deep Chand, etc.* v. *State of U. P. etc.* (9), was referred to by the petitioner and our attention was specifically drawn to the observations of Mukherjea, J., from the decision in *Saghir Ahmad etc.,* v. *State of U. P., etc.,* (10), where that learned Judge approvingly quotes from Prof. Cooley from his book on Constitutional Limitation that a statute void for unconstitutionality is dead and cannot be vitalised by a subsequent amendment of the Constitution removing the constitutional objection

(9) A.I.R. 1959 S.C. 648.
(10) A.I.R. 1954 S.C. 728.

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but must be re-enacted. I do not think this decision is of any assistance to us in deciding the precise point before us. The statute which concerns us is not void in its entirety for unconstitutionality but the only infirmity appears to us to be that in section 5 the broad principles relating to the rates of tax have not been laid down and the executive has been authorised to fix those rates without any guidance *R. M. D. Chamarbaugwalla, etc.* v. *Union of India, etc.,* (11); is equally unavailing and nothing cogent has been pointed out from this judgment as to how it advances the petitioner's contention. Similar is the case with *Indore Iron and Steel Registered Stock-holders's Association (P) Ltd.,* v. *State of M. P., etc.* (12) *S. Soma Singh etc.;* v. *State of Pepsu* (13), *Keshavan Madhaya Menon* v. *The State of Bombay* (14), and *R. M. D. Chamarbaugella's case.* Shri Sachar tried to make capital of the observations contained in para 247-B at page 416 of Corpus Juris Secundum, Volume 82. This para is headed as "Unconstitutional in toto" and it notices some conflict where a statute which is unconstitutional in toto may be amended. I do not think these observations in any way advance the petitioner's contention. The unexceptionable propositions which seem to emerge from the observations in Corpus Juris are that an unconstitutional Act is not a law, it confers no right, it imposes no duties, it afforts no protection, it creates no offence in any legal contemplation, and it is inoperative. When a Court finds a statute in conflict with the Constitution it simply refuses to recognise it and determines the rights of the parties before it just as if the statute in question had no application. The Court does not annul or

(11) A.I.R. 1957 S.C. 628.
(12) A.I.R. 1962 S.C. 191.
(13) 1954 S.C.R. 955.
(14) A.I.R. 1951 S.C. 128.

repeal the statute which conflicts with the Constitution. The Court may, and perhaps does, give reasons for ignoring and disregarding such a statute but its decision affects only the parties and the judgment cannot be considered to be against the statute. The reasons of the Court or the judgment or the opinion given by it operates as a precedent to be considered in other similar cases and that is about all. It is true that in some decisions an unconstitutional statute has been described as though it had never been enacted but this statement seems to me to have many qualifications and, as at present advised, I am unable to persuade myself to hold that by reason of mere excessive delegation contained in section 5 the impugned Punjab Act in its entirety should be held never to have been enacted. In this view of the matter, it is difficult to understand why by amending section 5 the Punjab Act should not be considered to have become operative and effective. On behalf of the petitioner *Punjab Province* v. *Daulat Singh, etc.*, (15), has been cited but here again I do not quite understand how the ratio of this case supports their submission.

This brings me to Shri S. K. Kapur's argument that merely adding some words to the original section 5 by amendment does not cure its infirmity and validate the section and that the entire section 5 should have been enacted because there was a vacuum in the original Act in place of this section. Except for the bald contention advanced by the learned counsel, he did not choose to refer us to any principle or precedent which would support his submission. If section 5 came into conflict with the constitution merely because it delegated an unconstitutionally wide legislative

(15) A.I.R. 1946 P.C. 66.

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power to the executive without laying down any guiding principle or formulating a policy for its guidance, I do not see any cogent or convincing reason why by providing the necessary missing requirement this section could not be revived. The subject-matter of the Punjab Act viz., sales tax and purchase tax as also that of the amending Act seem to me to be clearly within the scope of the legislative authority of the Punjab State Legislature, and indeed contra has not been seriously contended at the bar. The infirmity attaching to section 5 as originally enacted would thus seem to be legitimately removable by the Legislature by amendment without the formality of enacting the whole of the amended section. In the face of this legal position this Court would be most reluctant and disinclined to strike down the Punjab Act on the arguments advanced. At this stage, it would not be inapt to observe that the task of declaring a law unconstitutional is both delicate and solemn, for, it amounts to a judicial determination that persons entrusted by the Constitution with the sovereign function of making laws for the people have, whether consciously and deliberately or unconsciously due to ignorance, indifference or error of judgment, disregarded their own constitutional limitations. The Courts are thus, in my opinion, legitimately expected to enter upon this responsible task with a certain amount of reluctance and a statute which the Legislature is competent to enact must not be lightly struck down as unconstitutional on hyper-technical grounds. In my opinion, therefore, the amendment effected in 1952 removed effectively the vice of excessive delegation from which section 5 initially suffered.

I may now deal with the half-hearted challenge based on section 15 of the Central Act. This

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section prescribes, restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. According to this provision tax payable in respect of any sale or purchase of declared goods inside a State is not to exceed two per cent of the sale or purchase price and is not to be levied at more than one stage; where such a tax has been levied and the goods are sold in the course of inter-State trade or commerce the tax so levied must be refunded in such manner and subject to such conditions as may be provided by any law in force in the State concerned. On the facts and circumstances of the cases before us, the counsel for the various petitioners have not been able to point out how this section adversely affected the validity of section 5 in so far as they are concerned. Neither has the tax been shown to be more than two per cent on the goods taxed nor has it been shown that such sale or purchase tax has been levied at more than one stage. The fallacy that underlies the contention based on section 15 perhaps is that it is assumed that the purchase tax imposed on the goods purchased before their use in manufacture and the sales tax imposed on the manufactured goods later is covered by the phraseology of section 15. In my opinion, such is not the position and the counsel before us were unable by reference to the facts to establish that any declared goods have been subjected to a tax exceeding two per cent or that the sale or purchase tax has been levied at more than one stage. I have, therefore, no hesitation in repelling this contention as well. A passing reference has also been made by Shri Kapur to Article 14 of the Constitution and a suggestion has been thrown that section 2 (ff) Punjab Act (as amended in 1960) which defines the word "purchase" is violative of the above Article and our attention has been drawn to *V. M. Syed Mohammad and Company, etc.* v.

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The State of Andhra etc., (16), but when reminded that Legislature has a very wide discretion in making legislative classification and there is always a strong presumption in favour of its validity, the learned counsel did not press the point.

Shri Sachar has also contended that extraction of oil from oil seeds is not a manufacture, but apart from the bald assertion nothing more has been stated in developing this submission. In my opinion, whether or not a particular process is a manufacture has to be determined on the facts and the circumstances of each case, for, the word "manufacture" appears to have various shades of meaning and the petitioners' counsel has not succeeded in showing that the process of extracting oil employed by his clients is not manufacture. Certain other points relating to the merits of the assessment were also sought to be argued before us, but in our opinion those points should properly be agitated before the departmental authorities and not in writ proceedings, for, these proceedings are not meant to serve as a substitute for appeals. Recently, we have declined to entertain similar points in writ proceedings in a number of cases: some of them being Civil Writ No. 1542 of 1961 and Civil Writ No. 238 of 1962 decided, on 14th February, 1963.

No other point having been raised before us, in view of the foregoing discussion, all these petitions fail and are hereby dismissed with no order as to costs.

MEHAR SINGH, J.—I agree.

B.R.T.

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(16) (1954) 5 S.T.C. 108.