aside and quashed. It is also directed that if any such amount has already been recovered from the petitioners, the same shall be refunded to them. The petitioners are not entitled to any other relief in these writ petitions. In the peculiar circumstances of these cases, there is no order as to costs.

R. N. M.

APPELLATE CIVIL

Before D. K. Mahajan and R. S. Narula, JJ.

DISTRICT BOARD, HOSHIARPUR,—*Appellant.*

versus

FIRM HIRA SINGH-JAGAT SINGH,—*Respondents*

Regular Second Appeal No. 149 of 1958

February 7, 1967

Punjab District Boards Act (XX of 1883)—S. 31—Tax on carrying of profession, trade or business—Shopkeeper having a shop outside district board area but having a godown within its limits wherein he stores goods and from which he gives delivery of goods to purchasers after they have already been sold and paid for at the shop—Whether liable to pay the tax.

Held, that a dealer or a shopkeeper is not liable to pay professional tax to a District Board for carrying on his profession of sale of goods if he does not do anything within the district board area except effecting delivery of goods already sold outside such limits, from a godown situated within such limits. It is the *situs* of the trade, business, calling or profession which has to be considered in the matter of determining liability to professional tax and mere delivery of the goods from the godown cannot be equated to the doing of business at that time.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan on 29th March, 1966 to a Division Bench for the decision of an important question of law involved in the case. The case was finally decided by the Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice R. S. Narula on 7th February, 1967.

District Board, Hoshiarpur *v.* Firm Hira Singh-Jagat Singh (Narula, J.)

Second Appeal from the decree of the Court of the Senior Sub-Judge, with enhanced appellate powers, Hoshiarpur, dated the 19th day of November, 1957, affirming that of the Sub-Judge, 1st Class, Hoshiarpur, dated the 15th July, 1957, granting the plaintiffs a declaratory decree and injunction as prayed for.

A. C. HOSHIARPURI, ADVOCATE, for the Appellant.

D. N. AGGARWAL AND MALUK SINGH, ADVOCATES, for the Respondents.

JUDGMENT OF THE DIVISION BENCH.

NARULA, J.—The only question which calls for decision in this Regular Second Appeal is whether a shopkeeper whose shop is outside a District Board area, is deemed to be carrying on business within such area, merely because he keeps a storage godown within that area, from which godown he merely gives delivery of goods which have already been sold and paid for at the shop. This question has arisen in the following circumstances:

Section 31 of the Punjab District Boards Act 20 of 1883 (as subsequently amended) (hereinafter called the District Boards Act), authorises a District Board to impose any tax under section 30 of that Act by passing a resolution proposing the imposition of the tax, subject to the carrying out of certain formalities and the sanction of the State Government. Section 30 empowers a District Board within the State of Punjab to impose any such tax within its own area with the previous sanction of the State Government, as the State Legislature has power to impose under the Constitution. The Punjab Legislature has admittedly the legislative competence to levy taxes on professions, trades, callings and employments under entry 60 of list II of the Seventh Schedule to the Constitution. In exercise of the said power, the Punjab Professions, Trades, Callings and Employments Taxation Act (7 of 1956) was passed on and with effect from the 3rd of May, 1956. By virtue of the authority vested in the District Board of Hoshiarpur, the appellant before us, to whom I will hereinafter refer as the District Board passed a resolution imposing on every person who carries on trade or business or who follows a profession, within the area administered by that Board what is known as 'the professional tax'. No copy of the resolution or of the sanction of the Government has been produced in this case, but the appeal has been argued on the agreed basis between the parties that such a tax has been validly imposed by the District Board and is recoverable only from such persons who carry on trade or business within the District Board area.

The findings of fact recorded in this case by the lower appellate Court, with which we are bound in this appeal and which have indeed not been contested by any of the parties, may first be enumerated:—

(i) Firm Hira Singh-Jagat Singh, plaintiff-respondent, whom I will call the dealer in this judgment, enters into contracts with its customers at its shop situated on the Bank Road within the municipal limits of Hoshiarpur and outside the area administered by the district board. The dealer carries on his commission agency business also at the said shop;

(ii) The dealer has a rented godown in the building of Raghunandan Lal, P.W. 7, in village Naloian, within the area administered by the District Board, in which godown the dealer stores his goods;

(iii) The dealer does not enter into any transaction with the customers at the godown in Naloian, does not receive any payments there, but merely delivers certain goods to his customers at the godown by sending his man to the godown after the customer has completed the transaction of purchase and paid for the goods at the shop; and

(iv) Except for the fact that a *palledar* (labourer) of the the dealer physically delivers the goods at the godown, no other work is done there.

It is on the basis of the above-quoted concurrent findings of fact recorded by the two Courts below that the first appeal of the District Board against the decree of the trial Court, dated July 15, 1957, declaring the order of the district board assessing the plaintiff to professional tax of Rs. 200 for the year 1956-57, and the notice, dated December 17, 1956, requiring the dealer to pay the said tax, to be illegal and *ultra vires* the powers of the District Board and restraining the said district board from realising the aforesaid tax from the dealer, was dismissed on November 19, 1957. This second appeal has been referred to a Division Bench by the order of my learned brother D. K. Mahajan, J., dated March 29, 1966, on account of the importance of the question involved in the case.

Mr. Amar Chand Hoshiarpuri, the learned counsel for the appellant, has contended that a part of the business of a shopkeeper is to keep and store goods and since this part of the dealer's business is being carried on at Naloian, the dealer is deemed to be at least partially carrying on business there. Learned counsel has argued (i) that no sale is complete till delivery of the goods sold is effected, and (ii) that property in the goods does not pass to the purchaser till the goods are delivered. I regret I cannot agree with any of the two propositions suggested by Mr. Hoshiarpuri. A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. Where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred (Section 4 of the Sale of Goods Act, 1930). Section 5 of the Sale of Goods Act provides that a contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such an offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed. It is, therefore, apparent that a sale can be complete without affecting immediate delivery and even without immediate payment. Counsel appears to be mixing up the physical delivery of the goods sold with the passing of property in them. Where there is a contract for sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Intention of the parties depends on the facts of each case. According to Mr. Hoshiarpuri, the sales conducted by the dealer fall within the purview of section 22 of the Sale of Goods Act. On the other hand it is suggested by Mr. D. N. Aggarwal, the learned counsel for the dealer, that there is no evidence on the record of this case to support the proposition canvassed by Mr. Hoshiarpuri and that sales by the dealer would be covered by section 20 of the said Act. Sections 20 to 22 of the Sale of Goods Act are reproduced below:—

> "20. Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made,

and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

21. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

22. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof."

Section 22 appears to relate to a case where for the purpose of ascertaining the price, the seller has to weigh, measure, test or do some other act or thing to the goods. It has not only been found as a fact that the price is paid out at the shop before the dealer's man goes to the godown to give delivery, but it has also been found that the goods are not weighed, measured, tested, etc., at the godown. Section 22 of the Sale of Goods Act has, therefore, no application to this case. From the evidence on record, it appears that the purchasers enter into unconditional contracts for the sale of specific goods in a deliverable state, they pay for the same at the shop and then obtain delivery of the same from the godown. In such a case, the business of the dealer which is of selling goods or of a commission agent, is wholly performed at the shop. Mr. Hoshiarpuri has referred to the judgment in *The State of Bombay and another* v. *The United Motors (India), Ltd., and others* (1) and has argued that the expression "sale of goods" consists of a number of ingredients which can be said to be essential in the sense that in the absence of any one of them, there would be no sale and that the passing of the title in the goods is one of those essential ingredients. There can be no possible quarrel with the proposition of law raised by the learned counsel, but if I may say so, he is again confusing "the passing of the title in the goods" with the physical delivery of the goods

(1) A.I.R. 1953 S.C. 252.

Whereas the passing of the title in the goods is an essential ingredient of a sale, the physical delivery is indeed not so.

Counsel then referred to the Full Bench judgment in *Haji P. K. Moidoo Bros.* v. *State of Madras* (2). In that case also it was only held that there is no sale within the meaning of section 2(h) of the Madras General Sales Tax Act (9 of 1939) till the ownership in the goods passes to the purchaser. Again the ownership in the goods shifts to the purchaser when property in the goods passes from the seller to the buyer in accordance with the intention of the parties or the rules contained in sections 20 to 24 of the Sale of Goods Act. This has nothing to do with the physical delivery of the articles sold. For the same reason the judgments of the Supreme Court in *Sales Tax Officer, Pillibhit* v. *Messrs Budh Prakash Jai Prakash* (3) and in *The State of Madras* v. *M/s Gannon Dunkerley & Co. (Madras) Ltd.* (4) are of no avail to the petitioner.

It cannot be disputed that tax laws are subject to strict construction. Even if there could be any doubt in the matter before us, I would have swerved to the view which is in favour of the subject. In my opinion, it is the *situs* of the trade, business, calling or profession which has to be considered in the matter of determining liability to professional tax. On the facts proved in the instant case, no business is carried on by the dealer at Naloian, and the mere delivery of the goods from the godown situated there, cannot be equated to the doing of business at that place. If the business of the dealer was only of storage of others' goods, something could possibly be argued in the matter on behalf of the district board. A Full Bench of this Court, to which my learned brother, D. K. Mahajan, J., was a party, held in *Ram Chander* v. *The State* (5), that only those premises can be said to be a commercial establishment, where two minds meet to strike a business deal for profit. My learned brother, with whom Dulat and Gurdev Singh, JJ., concurred, observed in the course of that judgment that if two or more individuals dealing with one another meet in a given premises where the business transaction is intended to take place, the said

(2) A.I.R. 1959 Kerala 219 (F.B.).

(3) A.I.R. 1954 S.C. 459.

(4) A.I.R. 1958 S.C. 560.

(5) I.L.R. (1963) 1 Punj. 259 (F.B.)

premises can be said to be commercial establishment, but not otherwise. The storing of the goods and writing of accounts by an individual, where nothing besides this is done, was held not to make the storage premises a commercial establishment within the meaning of the Punjab Shops and Commercial Establishments Act. The premises which were held to be not a commercial establishment in that case comprised of a godown where tea was stored, but at that place no sales were effected. Professional tax is leviable in such cases where the commercial business of the dealer is carried on. If the godown is not a commercial establishment, as held by the Full Bench, no commercial transaction is deemed to take place there, and no business is consequentially carried on at that place, merely because goods are stored there, or sold out goods delivered from that place.

The last case to which Mr. Hoshiarpuri has invited our attention is the judgment of a learned Single Judge of this Court, dated August 31, 1965, In *Firm Ram Chand Amar Nath* v. *District Board, Hoshiarpur,* R.S.A. No. 1257 of 1957. The facts of that case appear to be substantially similar to those of the parties before us. The appellant before us was the respondent in that appeal. Firm Ram Chand Amar Nath had its shop in Hoshiarpur town and maintained a godown in village Naloian. The District Board had assessed the firm to professional tax. In the suit of the firm to have the levy and assessment of professional tax declared illegal, the first appellate Court had held that the business of the firm was carried on at village Naloian within the jurisdiction of the District Board and consequently the firm was liable to pay the tax levied by the Board. The learned Single Judge affirmed that finding of fact and further held that the firm entered into transactions of sale at Hoshiarpur in order to deliver the goods from Naloian to those purchasers who resided outside the municipal limits. On the evidence on record in that particular litigation, the learned Single Judge held that the firm had to be taken to be carrying on its business both in Hoshiarpur town as well as in Naloian and that the finding of the lower appellate Court in that respect had, therefore, to be affirmed. Though each case depends on its own facts and it would depend on the evidence produced in a given case whether an inference of business or profession being carried on in the district board area can be raised or not, it does appear to us that if the judgment of the learned Single Judge can be so construed as to have laid down as a rule that mere fact of delivery from a godown of goods which have

already been sold and paid for at a different place, amounts to doing business at the godown, we must say with the greatest respect to the learned Judge that the proposition is too widely stated.

Shri D. N. Aggarwal, the learned counsel for the dealer, has relied upon a Division Bench judgment of two illustrious Judges of the Lahore High Court (Harries, C.J., and M. C. Mahajan, J.), in *Lala Jagat Parshad and others* v. *District Board, Ambala* (6), wherein it was held that in the case of a lawyer, it is the place where he can be engaged that matters for the purposes of professional tax levied under the District Boards Act and it is such a place which is the seat of the lawyers business. The learned Judges held that the place where the contract is entered into and where the *vakalatnama* is signed, is the place where the lawyer carries on his profession or trade and that if his office or chambers are not within the municipal limits, then it cannot be said that he carries on his profession within those limits. It was observed that though the lawyer might perform certain acts connected with his engagement within those limits but that does not amount to following his profession within that area. Not only are we bound by the law laid down by the Division Bench of the Lahore High Court in the pre-partition days, but I am also in respectful agreement with the view expressed in the aforesaid judgment.

For the foregoing reasons I would hold that a dealer or a shopkeeper is not liable to pay professional tax to a District Board for carrying on his profession of sale of goods if he does not do anything within the District Board area except effecting delivery of goods already sold outside such limits, from a godown situated within such limits. In this view of the matter, no fault can be found with the judgment and decree of the Court below which is accordingly affirmed. This regular second appeal, therefore, fails, and is dismissed with costs.

D. K. MAHAJAN, J.—I agree.

B.R.T.

(6) 218 I.C. 452.