CIVIL MISCELLANEOUS

Before D. K. Mahajan and A. D. Koshal, JJ.

M/S. MAMAN CHAND KUNDAN LAL,—*Petitioners.*

versus

THE STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ No. 109 of 1969

December 17, 1969

Punjab General Sales Tax Act (XLVI of 1948)—Section 6 and Schedule 'B', items 15 and 54—'Gram chhilka'—Whether falls under items 15 and 54 and is exempt from sales tax—Constitution of India (1950)—Articles 226 and 227—Tax imposed without authority of law—Tax payer having alternative remedy of appeal and revision—Whether can invoke the extraordinary jurisdiction of the High Court.

Held, that 'gram *chhilka*' is nothing but the brown skin taken off the gram seed and comes within the popular as well as the dictionary meaning of the words 'gram husk'. The commodity known as gram husk is understood in the commercial world to mean the brown skin of the gram seed and not the gram chaff which is separated from the whole gram during the process of threshing. According to dictionary meaning gram husk would embrace not only the 'gram *chhilka*' but gram chaff as well as the gram pod. The dictionary meaning, therefore, is wider than the popular meaning attached to the commodity known as gram husk. If the dictionary meaning is adopted for the purposes of item 15 of Schedule 'B' of Punjab General Sales Tax Act, not only gram *chhilka* but also gram chaff would be covered by that item and hence gram *chhilka* in any case would be liable to exemption from sales tax. (Paras 10 and 12)

Held, that gram *chhilka* also falls within the ambit of item 54 of Schedule 'B' of the Act. The chief use to which gram *chhilka* is put is as food for cattle and, therefore, as fodder. It falls within the four corners of item 54 and is exempt from sales tax. (Para 13)

Held, that whenever a person engaged in trade is sought to be taxed without the authority of law, one of his fundamental rights is infringed and he is entitled to knock at the door of the Court and invoke its extraordinary jurisdiction under Articles 226 and 227 of the Constitution even if he has open to him the alternative remedies of appeal and revision which he has not availed of. (Para 8)

Case referred by Hon'ble Mr. Justice P. C. Pandit on 2nd May, 1969 to a Division Bench for decision of important question of law involved in this

Case. The Division Bench consisting of Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice A. D. Koshal finally decided the case on 17th December, 1969.

Petition under Articles 226 *and* 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 assessment order dated* 21*st November,* 1968 *(Annuexure "A") to the extent it has levied sales tax on the sales of Chhilka and directing the respondents to refund the amount of sales tax paid by the petitioner for the assessment year* 1967-68 *on the sales of gram chhilka.*

Siri Chand Goyal, and Satya Parkash Jain, Advocates, for the petitioner.

Balwant Singh Gupta, Advocate, for the respondents.

JUDGMENT

Koshal, J.—The petitioners before us are a partnership known as Messrs Maman Chand-Kundan Lal (hereinafter referred to as the firm) who carry on business as Commission Agents at Narwana in District Jind of Haryana State and as such are assessed to sales-tax under the provisions of the Punjab General Sales Tax Act, 1948, as amended by the Haryana Legislature (hereinafter called the Haryana Act). For the assessment year 1967-68, the Assessing Authority, who is impleaded as respondent No. 2 to the petition, rejected a plea taken on behalf of the firm that gram *chhilka* which was a commodity covered by transactions entered into by the firm during the year in question, was gram husk covered by item No. 15, or fodder covered by item No. 54, of Schedule B to the Haryana Act, which Schedule enumerates goods exempted from sales-tax. The Assessing Authority, therefore, included transactions of sales of gram *chhilka* made by the firm during the year in question in its gross turnover and subjected the same to sales-tax at the rate of 6 per cent. The order of the Assessing Authority is dated the 21st of November, 1968, which is challenged in this petition with the prayer that it be quashed to the extent to which it levies sales-tax on the sale of gram *chhilka* by a writ of *certiorari* and that the Assessing Authority and the State of Haryana (impleaded as respondent No. 1 to the petition) be directed to refund the amount of tax charged by them on the said sales in respect of the year above mentioned. In support of the petition the pleas raised before the Assessing Authority are reiterated and it is further averred that in any case the tax on the sale of gram *chhilka* could not be charged at any percentage higher than that prescribed in respect of gram itself.

(2) The case of the respondents is that gram *chhilka* is neither gram husk as contemplated by item No. 15 (supra) nor fodder within the meaning of item No. 54 above mentioned and that its sales made by the firm were rightly taxed by the Assessing Authority.

(3) The case was originally placed for decision before P. C. Pandit, J., at whose instance, however, it has come before us for disposal in view of the importance of the following two questions of law involved, as framed by him :

> "1. Whether 'gram *chhilka*" is covered by item No. 15 or item No. 54 of Schedule 'B' to the Punjab General Sales Tax Act, 1948 (Punjab Act 46 of 1948), relating to tax-free goods ?
>
> 2. If not, whether 'gram *chhilka*' is taxable at the rate of 1½ per cent, which was the rate of sales tax on foodgrains at the relevant time, or 6 per cent, which was the rate of sales tax on commodities other than foodgrains?"

(4) A preliminary objection was raised on behalf of the respondents by the learned counsel for the State to the effect that the firm not having availed of the remedies of appeal and revision provided in the Haryana Act itself, the petition which seeks to invoke the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution should be thrown out as incompetent. Reliance in support of the objection is placed on *Webbing and Belting Factory Ltd., Delhi* v. *Sales Tax Officer,* (1) *Radhey Mohan Gupta* v. *Union of India and others,* (2), *Guru Nanak Flour & Oil Mills* v. *The State of Punjab and another,* (3), *and Sales Tax Officer, Jodhpur and another* v. *M/s. Shiv Rattan G. Mohatta,* (4). These authorities no doubt lay down that normally an assessee cannot have recourse to a petition under Article 226 of the Constitution unless he has exhausted the remedies available to him under the taxing statute. However, the rule is not universal in its application and admits of exceptions as was pointed out by their Lordships in *Sales Tax Officer, Jodhpur and another* v. *M/s. Shiv Ratan G. Mohatta* (4) (supra) with the following observations:

> "It was urged on behalf of the assessee that they would have had to deposit sales tax, while filing an appeal. Even

(1) A.I.R. 1955 Pb. 184.
(2) A.I.R. 1956 Pb. 167.
(3) 1966 P.L.R. 665.
(4) A.I.R. 1966 S.C. 142.

> if this is so, does this mean that in every case in which the assessee has to deposit sales tax, he can bypass the remedies provided by the Sales Tax Act? Surely not. There must be something more in a case to warrant the entertainment of a petition under Article 226, something going to the root of the jurisdiction of the Sales Tax Officer, something to show that it would be a case of palpable injustice to the assessee to force him to adopt the remedies provided by the Act. But as the High Court chose to entertain the petition, we are not inclined to dismiss the petition on this ground at this stage."

(5) That the general rule above enunciated is subject to exceptions was reiterated by their Lordships of the Supreme Court in unmistakable terms *in Himmatlal-Harilal Mehta* v. *The State of Madhya Pradesh and others,* (5), in which it was observed:

> "It is plain that the State evinced an intention that it could certainly proceed to apply the penal provisions of the Act against the appellant if it failed to make the return or to meet the demand and in order to escape from such serious consequences threatened without authority of law, and infringing fundamental rights, relief by way of a writ of mandamus was clearly the appropriate relief. In *Mohd. Yasin* v. *The Town Area Committee,* (6), it was held by this Court that a licence fee on a business not only takes away the property of the licensee but also operates as a restriction on his fundamental right to carry on his business and therefore, if the imposition of a licence fee is without authority of law it can be challenged by way of an application under Article 32, *a fortiori* also under Article 226. These observations have opposite application to the circumstances of the present case. Explanation II to section 2(g) of the Act having been declared *ultra vires,* any imposition of sales tax on the appellant in Madhya Pradesh is without the authority of law, and that being so a threat by the State by using the coercive machinery of the impugned Act to realize it from the appellant is a sufficient infringment of his fundamental right under Article 19(1)(g) and it was clearly entitled to relief under Article 226 of the

(5) (1954) 5 S.T.C. 115.
(6) (1952) 3 S.C.R. 572.

Constitution. The contention that because a remedy under the impugned Act was available to the appellant it was disentitled to relief under Article 226 stands negatived by the decision of this Court in *The State of Bombay* v. *The United Motors (India), Ltd.*, (7), above referred to. There it was held that the principle that a Court will not issue a prerogative writ when an adequate alternative remedy was available could not apply where a party came to the Court with an allegation that his fundamental right had been infringed and sought relief under Article 226. Moreover, the remedy provided by the Act is of an onerous and burdensome character. Before the appellant can avail of it he has to deposit the whole amount of the tax. Such a provision can hardly be described as an adequate alternative remedy."

(6) In *Kailash Nath and another* v. *The State of U.P., and others*, (8), the matter was dealt with thus—

"An objection has been taken on behalf of the State Government that the imposition of an illegal tax will not entitle the citizen to invoke Article 32; but he must resort to remedies available under the ordinary law or proceed under Article 226 of the Constitution, in view of the fact that the right to be exempted from the payment of tax cannot be said to be a fundamental right which comes within the purview of Article 32. This argument has no force in view of the decision of this Court in *Bengal Immunity Company Limited* v. *The State of Bihar & others*, (9), where a Full Bench dealing with the Bihar Sales Tax Act, 1947, observed as follows:—

"We are unable to agree with the above conclusion. In reaching that conclusion the High Court appears to have overlooked the fact that the main contention of the appellant company, as set forth in its petition, is that the Act, in so far as it purports to tax a non-resident dealer in respect of an inter-State sale or purchase of goods, is *ultra vires* the Constitution and wholly illegal. In the

(7) (1953) 4 S.C.R. 1069.
(8) (1957) 8 S.T.C. 358.
(9) (1955) 2 S.C.R. 603.

impugned Act there are various provisions laying down conditions which dealers must comply with or submit to, namely, to give only a few instances, compulsory registration of dealers (section 10), filing of returns (section 12), attendance and production of evidence in support of the return (section 13), production, inspection and seizure of books of account or documents and search of premises (section 17). Section 26 prescribes penalties for contravention of the provisions of the Act. These and other like provisions in the Act undoubtedly constitute restrictions on the fundamental right to carry on business which is guaranteed to every citizen of India by Article 19(1)(g) of the Constitution. If, as contended, the Act is *ultra vires* the Constitution and consequently void these onerous conditions can never be justified as reasonable restrictions within the meaning of clause (6) of that article as this Court held in the case of *Mohammad Yasin* v. *The Town Area Committee, Jalalabad*, (6). The same view was also expressed in *The State of Bombay* v. *The United Motors (India) Ltd.*, (7), and again only recently in *Himmatlal Harilal Mehta* v. *The State of Madhya Pradesh*, (5)."

In addition to the cases cited above, there is a more recent authority dealing with the subject, viz., *Bidi Supply Co.* v. *The Union of India and others*, (10). What we have, therefore, to ascertain is whether the interpretation put upon the exemption clause by the Sales Tax Authorities with regard to the quantity of cloth sold during the year 1953-54, to the indentors is sound in law."

(7) And again in *Tata Engineering and Locomotive Company, Ltd.* v. *The Assistant Commissioner of Commercial Taxes and another*, (11), their Lordships observed :

"The power and jurisdiction of the High Court under Article 226 of the Constitution has been the subject of exposition from this Court. That it is extraordinary and to be used sparingly goes without saving. In spite of the very wide terms in which this jurisdiction is conferred, the High

(10) (1956) S.C.R. 267.
(11) (1967) 19 S.T.C. 520.

Courts have rightly recognised certain limitations on this power. The jurisdiction is not appellate and it is obvious that it cannot be a substitute for the ordinary remedies at law. Nor is its exercise desirable if facts have to be found on evidence. The High Court, therefore, leaves the party aggrieved to take recourse to the remedies available under the ordinary law if they are equally efficacious and declines to assume jurisdiction to enable such remedies to be by-passed. To these there are certain exceptions. One such exception is where action is being taken under an invalid law or arbitrarily without the sanction of law. In such a case, the High Court may interfere to avoid hardship to a party which will be unavoidable if the quick and more efficacious remedy envisaged by Article 226 were not allowed to be invoked. In our judgment the present is an example of the exceptional situation above contemplated just as *Himmatlal* v. *State of M.P.*, (5), was another instance which came before this Court."

(8) It is thus clear that whenever a person engaged in trade is sought to be taxed without the authority of law, one of his fundamental rights is infringed and he is entitled to knock at the door of this Court and invoke its extraordinary jurisdiction under Article 226 and 227 of the Constitution. The three Punjab authorities cited, all of which cover Single Bench decisions, cannot be said to lay down the law correctly in so far as it goes against the dicta of their Lordships of the Supreme Court in view of which the objection must be held to be without substance and is, therefore, repelled.

(9) Section 6 of the Haryana Act runs as follows:

"No tax shall be payable on the sale of goods specified in the first column of Schedule B subject to the condition and exceptions, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge sales tax on the sale of goods which are declared tax-free from time to time under this section.

The State Government after giving by notification not less than thirty days' notice of its intention so to do may, by like notification add or delete from Schedule B and thereupon Schedule B shall be deemed to be amended accordingly."

(10) As already stated, Schedule B to the Haryana Act enumerates goods which are exempted under section 6 thereof and on the sales of which no sales tax is chargeable. Items Nos. 15 and 54 of the Schedule may be reproduced here for facility of reference :

"15. Husk of all food-grains."

54. Fodder of every type (dry or green)".

The words "husk" and "fodder" are not defined in the Haryana Act and no special meaning, therefore, attaches to them. The Supreme Court has emphasised in *Ramavtar* v. *Assistant Sales Tax Officer*, (12) that the terms and expressions used in tax statutes must be construed not in any technical sense but as understood in common parlance and that if a word or term is of everyday use. it must be construed in its popular meaning, that is, "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." It has thus to be determined whether gram *chhilka* which is nothing but the brown skin taken off the gram seed is husk within the popular meaning. Reference in this connection may be usefully made to two portions of Chapter VI appearing in a Government of India publication entitled "Agricultural Marketing in India: Report on the Marketing of Gram in India." Those portions are reproduced below :

"Chapter VI. Processing and Distribution of Gram Products.

A.—Processing.

As has already been mentioned in a previous chapter, gram is consumed in the form of *dal, baisin,* gram *ata,* crushed or as whole gram boiled or parched. In the manufacture of *dal, gram* is passed through *chakkis* for splitting the grain and separating the husk and the kernel, while *baisin,* and gram *ata* are prepared by milling *dal* and gram respectively."

" B.—Supply of gram products.

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(d) By-products.—*Chooni* and husk are the by-products of *dal* manufacture. The yield of *chooni* and husk per 100 maunds

(12) A.I.R. 1961 S.C. 1325.

of gram differs from place to place as is shown on page 45. *Chooni* is a mixture of smaller grains of *dal* and "husk".

These extracts leave no room for doubt that in so far the commodity known as gram husk is concerned, it is understood in the commercial world to mean the brown skin of the gram seed and not the gram chaff which is separated from the whole gram during the process of threshing. The contention by the learned counsel for the State to the contrary is, therefore, unacceptable.

(11) The dictionary meaning of the word "husk" leads to the same conclusion, though in a different way. The Webster's Third New International Dictionary meaning of the word "husk":

"the outer covering of a kernel or seed especially when dry and membranous: the chaff of grain Hull, POD:

* * * * *

one of the leaves enveloping an ear of corn : * *."

(12) According to Webster, therefore, gram "husk" would embrace not only gram *chhilka* but also gram chaff as well as the gram pod. The dictionary meaning of the word, therefore, is wider than the popular meaning attached to the commodity known as gram husk. And if the former were to be adopted for the purposes of item No. 15, all that can be said is that not only gram *chhilka* but also gram chaff would be covered by that item so that gram *chhilka* would in that case be liable to exemption from sales tax.

(13) That gram *chhilka* would also fall within the ambit of item No. 54 admits of no doubt. Webster defines the word "fodder" thus :

" * * * *: something fed to domestic animals : coarse food (as hay, vegetables; corn fodder) for cattle, horses, and sheep* * * "

The learned counsel for the State does not contest the proposition that this definition would hold good for the purpose of interpreting item No. 54. He contends, however, and, in our opinion, wholly without justification, that gram *chhilka* "might also be used as food of human consumption". Whole gram is no doubt used as food meant for the consumption of human beings and in that

form gram *chhilka* is a part of it but we consider it a preposterous claim that gram *chhilka* as such is used in any part of the world as food for humans. The learned counsel for the State, when called upon to give an example of the use of the gram *chhilka* as such, was unable to do so. Even if it were otherwise, however, it could not be gain said that the chief use to which gram *chhilka* is put is as food for cattle and; therefore; as a fodder. Gram *chhilka* in that case also, therefore, falls within the four corners of item No. 54. Question No. 1 posed by Pandit, J., in the referring order must thus be answered in the affirmative.

(14) In view of the conclusion just arrived at the other question formulated by Pandit, J., does not arise for decision. It may be stated, however, that in our opinion gram *chhilka* would be liable to sales tax at the rate of 6 per cent and not a mere 1½ per cent (the rate governing sales covering foodgrains). Learned counsel for the firm, however, has made an argument to the contrary on the basis of proviso (12) to notification No. S.O. 175/P.A, 46/48/S-5/66 dated the 30th of June, 1966, issued by the Government of erstwhile Punjab in exercise of the powers conferred by section 5 of the Punjab General Sales Tax Act. The relevant part of the notification is set out below:

> "In supersession of all previous notifications on the subject and in exercise of the powers conferred by section 5 of the Punjab General Sales Tax Act, 1948, the Governor of Punjab is pleased to direct that, with effect from the 1st July, 1966, there shall be levied on the taxable turnover of a dealer a tax at the rate of six paise in a rupee:
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> Provided that—
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> (12) the rate of tax on wheat and its flour including Maida and Suji, maize and its flour, bajra and its flour, barley and its flour, gram, dal gram flour, *churi* (wand), mung and dal mung, mash and dal mash. moth and

dal moth, masoor, and dal masoor, malka masoor and dal malka masoor, arhar and dal arhar, jowar and its flour, gowara and its flour, dried pea, its dal and flour shall be one and a half paisa in a rupee."

(15) Emphasis is laid for the firm on the words "gram, dal gram, gram flour, churi (wand)" occurring in proviso (12) and it is urged that *churi* would include gram *chhilka*. Even though such *chhilka* may be a part of *churi*, it is not the same thing as *churi* and cannot, therefore, be said to be covered by the proviso. It is to be noted that dal gram and gram flour are specifically mentioned in the proviso even though they are derived from whole gram which is also mentioned therein as such. It is thus clear that the wihch means to cover commodities in the forms which their names signify and not lesser ingredients of those commodities. *Churi*, therefore, would mean *churi* as such and not only one ingredient of it, namely, gram *chhilka*.

(16) It is conceded on behalf of the firm that if gram *chhilka* does not fall within the ambit of items Nos. 15 and 54 and proviso (12) above mentioned, it would be liable to sales tax at the rate of 6 Paise in a rupee. We would, therefore answer question No. 2 posed by Pandit, J., by stating that if gram *chhilka* is not covered by either of the two items, it would be liable to sales tax at the rate of 6 per cent, i.e., at the rate applicable to commodities other than food-grains.

(17) In view of our answer to question No. 1 posed by P. C. Pandit J., the petition succeeds. The impugned order is quashed to the extent that it taxes gram *chhilka* and the respondents are directed to refund the amount of sales tax, if any, recovered by them from the firm on such sales for the assessment year 1967-68. The firm shall also have its costs of the petition.

D. K. MAHAJAN, *J.*—I agree.

K.S.K.