

## CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

M/S. MULAKH RAJ NAND LAL,—Petitioner.

versus

THE EXCISE & TAXATION COMMISSIONER, PUNJAB,  
PATIALA, ETC.—Respondents.

Civil Writ No. 557 of 1971.

July 27, 1971.

*Punjab General Sales Tax Act (XLVI of 1948)—Sections 5(1-A) and 21(1)—Punjab General Sales Tax Rules (1949)—Rule 29(xi) and Forms S.T. XXII-A—Notification issued by State Government levying tax on vegetable ghee at the first stage of sale—Assessee selling the ghee after purchase from an unregistered dealer—Certificate in form ST XXII-A produced—Sale by the assessee—Whether exempt from payment of sale-tax—Such sale—Whether constitutes the first stage of sale within the meaning of section 5(1-A).*

*Held*, that the proviso to section 5(1-A) of the Punjab General Sales Tax Act, 1948, clearly states that the sale of the goods which have suffered sales-tax at the stage of first sale will also be liable to sales-tax at a subsequent stage unless the selling dealer purchases the goods from a registered dealer and produces his certificate in form STXXII-A to the Assessing Authority. The requirement, therefore, is that the selling dealer must have purchased the goods from a registered dealer and not from an unregistered dealer. It is only the registered dealer who can issue the certificate as prescribed in the first part of form ST XXII-A. The alternative certificate prescribed in the second part of the said form is to be furnished by the selling dealer, that is, the assessee to the effect that he has purchased the goods in question from a registered dealer. The language of form ST XXII-A also makes it quite clear that the selling dealer, that is, the assessee must have purchased the goods from a registered dealer and not from anybody else in order to earn the exemption. After reading section 5(1-A) of the Act along with the notification issued thereunder and form ST XXII-A it is clear that the sale of vegetable ghee by the assessee purchased by it from an unregistered firm is not exempt from payment of sales-tax under the proviso to section 5(1-A) of the Act. The sale constitutes the first stage of sale within the meaning of section 5(1-A) read with notification issued under it. (Para 4)

*Petition under Articles 226/227 of the Constitution of India, praying that a writ in nature of Certiorari, Prohibition or any other appropriate writ, order or direction be issued quashing the order of Assistant Excise and Taxation Commissioner, Punjab, Patiala, dated 4th December, 1970 and restraining the said respondent from recovering the amount assessed and further praying that the recovery of amount of Rs. 21,659.34 be stayed during the pendency of the writ petition.*

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**BHAGIRATH DASS, SENIOR ADVOCATE, WITH S. K. HIRAJEE & B. K. JHENGAN, ADVOCATES, for the petitioner.**

**M. S. SANDHU, DEPUTY ADVOCATE-GENERAL, (PUNJAB), for the respondents.**

JUDGMENT

TULI, J.—The petitioner-firm is registered as a dealer under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act), and had submitted its quarterly returns for the year 1966-67 as required under section 10 of the Act. The assessment for that year was made by the Assessing Authority, Amritsar, on June 4, 1968. The said Authority accepted the returns of the petitioner-firm and created no liability on it. On September 28, 1970, the Commissioner issued a notice under section 21(1) of the Act to the petitioner-firm to show cause why the reductions, which had been allowed by the Assessing Authority under section 5(1-A) of the Act, be not disallowed. The reason for this notice was that the petitioner-firm had purchased vegetable ghee manufactured by the Amritsar Sugar Mills Company Limited from Messrs Rallia Ram-Gurbux Rai—a firm of Tarn Taran—and Messrs Krishan Lal-Brij Mohan—a firm of Amritsar—both of whom were unregistered dealers. These two firms had furnished certificates in form ST XXII-A to the Assessing Authority to the effect that the vegetable ghee sold by them had suffered tax at the hands of Amritsar Sugar Mills Company Limited who are registered dealers in the State. The Assessing Authority was satisfied with these certificates. The Commissioner was, however, of the opinion that the certificates, having been issued by the unregistered dealers, were not to be taken into consideration. Before the Commissioner, the petitioner-firm produced certificates in form ST XXII-A issued by the Amritsar Sugar Mills Company Limited wherein the tins of vegetable ghee sold by the Company to the said two firms were mentioned along with their value, voucher numbers and dates of sales. It was also stated in the certificates that the said Company was liable to tax on those sales under the Act and it would pay the same. The Commissioner refused to entertain those certificates on the ground that they should have been produced before the Assessing Authority. The Assessing Authority was satisfied with the certificates issued to the petitioner-firm by the two firms of unregistered dealers who had sold the ghee to the petitioner-firm and, therefore, the petitioner-firm was not called upon to further prove that those tins of vegetable ghee had borne sales tax at the stage of first sale by the manufacturers. Sub-section (1-A) of section 5 of the Act authorises

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the State Government to issue a notification specifying the goods which will suffer sales-tax at the first stage of sale and in pursuance of that power the Governor of Punjab issued notification No. S.O. 76/P.A. 46/48/S. 5/66, dated March 30, 1966, reading as under:—

“In exercise of the powers conferred by sub-section (1-A) of section 5 of the Punjab General Sales Tax Act, 1948, the Governor of Punjab is pleased to direct that, with effect from the 1st April, 1966, the tax under sub-section (1) of the said section shall be levied at the first stage of the sale of goods, namely, vegetable ghee, cement, bricks, molasses, arms and ammunition and motor vehicles including their chassis, motor cycle and motor cycle combinations, motor scooters and motorettes, which stage shall—

- (a) In the case of a dealer who brings into the State of Punjab any such goods from any place outside that State, be the stage of sale when such dealer sells such goods for the first time within the State of Punjab ;
- (b) In the case of a dealer who manufactures such goods within the State of Punjab, be the stage of sale when such dealer sells such goods for the first time within the State of Punjab ; and
- (c) In the case of any other dealer who has not purchased such goods from a dealer referred to in the preceding clauses, be the stage at which such dealer sells such goods for the first time in the State of Punjab.”

(2) In order to decide the controversy in this petition, it is also appropriate to set out section 5(1-A) of the Act and form ST XXII-A. Section 5(1-A) reads as under:—

“The State Government may by notification direct that in respect of such goods other than declared goods and with effect from such date as may be specified in the notification tax under sub-section (1) shall be levied at the first stage of sale thereof; and on the issue of such notification the tax on such goods shall be levied accordingly:

Provided that no sale of such goods at a subsequent stage shall be exempt from tax under this Act unless the dealer effecting the sale at such subsequent stage furnishes to the assessing authority in the prescribed form and manner

a certificate duly filled in and signed by the registered dealer from whom the goods were purchased—

*Explanation.*—For the purposes of this sub-section, the first stage of sale in respect of any goods and in relation to any class of dealers shall be such as may be specified by the State Government in the notification.”

(3) The form prescribed for furnishing the certificate is form ST XXII-A, which is as under:—

“FORM ST. XXII-A

[See rule 29(xi) of the Punjab General Sales Tax Rules, 1949].

Certificate to be furnished by a dealer in respect of goods notified under section 5(1-A).

1. I/We

(full address) holder of Registration Certificate No. \_\_\_\_\_  
 dealer in \_\_\_\_\_ (specify the nature of goods) have  
 sold \_\_\_\_\_ (goods)  
 (quantity) for Rs. \_\_\_\_\_ (value) to M/s.  
 in my/our sale delivery order No. \_\_\_\_\_ dated \_\_\_\_\_

2. I am/We are \_\_\_\_\_ in the State and shall be liable to the tax under the Punjab General Sales Tax Act, 1948, and I/We shall pay tax on the above sale.

OR

The above goods have already suffered tax at the hands of M/s. \_\_\_\_\_ (full address) who are registered dealers in the State holding Registration Certificate No. \_\_\_\_\_ and from whom I purchased them,—*vide* the sale delivery order No. \_\_\_\_\_, dated \_\_\_\_\_, for Rs. \_\_\_\_\_

Signature of the selling dealer or his authorised agent.”

(4) According to the notification, set out above, the case of the petitioner-firm falls under clause (c) thereof because the petitioner-firm purchased the vegetable ghee in question not from a dealer mentioned in clauses (a) and (b) but from unregistered dealers. The

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first stage of sale in the case of the petitioner-firm was the sale made by it. The petitioner-firm was, therefore, liable to pay sales-tax on the sales of the vegetable ghee made by it after purchasing the same from the two unregistered firms. The petitioner-firm could escape the payment of the sales-tax on its sales only if it had purchased the vegetable ghee from a registered dealer and not from an unregistered dealer. According to the proviso to section 5(1-A), it has been made absolutely clear that the selling dealer must purchase the goods from a registered dealer and furnish the certificate in form ST XXII-A. The learned counsel for the petitioner-firm, however, submits that it was enough for the petitioner-firm to produce the certificate in form ST XXII-A from the Amritsar Sugar Mills Company Limited, which had originally sold the vegetable ghee to the two unregistered dealers, because all that the proviso requires is a certificate of a registered dealer from whom the goods were purchased. According to the learned counsel, these words mean that a certificate from any registered dealer from whom the goods were once purchased is sufficient provided the same goods are sold by the purchaser thereof from the registered dealer to another dealer. The proviso, in my opinion, does not bear that interpretation. It clearly states that the sale of the goods which have suffered sales-tax at the stage of first sale will also be liable to sales-tax at a subsequent stage unless the selling dealer purchases the goods from a registered dealer and produces his certificate in form ST XXII-A to the Assessing Authority. The requirement, therefore, is that the selling dealer must have purchased the goods from a registered dealer and not from an unregistered dealer. It is only the registered dealer, who can issue the certificate as prescribed in the first part of form ST XXII-A. The alternative certificate prescribed in the second part of the said form is to be furnished by the selling dealer, that is, the assessee, to the effect that he has purchased the goods in question from a registered dealer. The language of form ST XXII-A also makes it quite clear. The first two paragraphs of this form relate to the certificate to be issued by the registered dealer who has sold the goods and the second portion after the word "Or" is to be issued by the selling dealer. It is specifically mentioned therein—

“.....and from whom I purchased them.....”

which words clearly mean that the selling dealer, that is, the assessee must have purchased the goods from a registered dealer and not from anybody else in order to earn the exemption. After reading section

5(1-A) of the Act along with the notification and form ST XXII-A mentioned above, I hold that the petitioner-firm has been rightly assessed for sales-tax on the sale of the vegetable ghee purchased by it from the unregistered firms mentioned above. Those sales were not exempt from payment of tax under the proviso to section 5(1-A) and the sales made by the petitioner-firm constituted the first stage of sale within the meaning of section 5(1-A) read with notification issued under it.

(5) I find no substance in the submission of the learned counsel for the petitioner-firm that the intention of the legislature is that the goods mentioned in the notification should bear sales-tax at one stage only and once it is proved that the sales-tax had been paid by the original seller of the goods, the subsequent dealers, who have acquired those goods, will not be liable to pay sales-tax under any circumstances because if that is permitted, those goods will be subjected to sales-tax at more than one stage. There is no basis for this submission. Section 5 of the Act imposes the liability to pay sales-tax on every dealer and he is entitled to certain deductions which have been mentioned in sub-section (2) of section 5. The provisions of the Act do not lead to the conclusion that the goods have to be subjected to sales-tax only at one stage. I have pointed out above that even the proviso to section 5(1-A) indicates that the subsequent sales will be exempt from tax only if the conditions laid down in the proviso are satisfied. If those conditions are not satisfied, the subsequent sales will be liable to tax. It is not possible to treat an unregistered dealer at par with a registered dealer for the purposes of the proviso, as it specifically mentions "registered dealer." The case of the petitioner-firm, as I have pointed out above, is not covered by the proviso and, therefore, the order of the Assistant Excise and Taxation Commissioner dated December 4, 1970, which has been impugned in this petition, is in accordance with law and is not liable to be quashed.

(6) For the reasons given above, I find no merit in this petition, which is dismissed but without any order as to costs in view of the fact that the petition involved the interpretation of section 5(1-A) of the Act for the first time by this Court. No previous judgment of any High Court or the Supreme Court has been cited by any counsel.