Criminal Procedure Code (1973). I do not agree with this argument of the learned counsel for the State because the bail allowed under section 167, Criminal Procedure Code, is deemed to be under Chapter XXXIII, Criminal Procedure Code (1973). The bail allowed by the Court of Session or High Court would be with the aid of section 439, Criminal Procedure Code. Section 437(5), Criminal Procedure Code, will then govern the powers of the Magistrate to cancel the bail in these circumstances. This sub-section is to be read within the restrictive portion of Clause (b) of section 209 of the Code of Criminal Procedure.

(8) In view of tne above dicussion the learned Magistrate was justified in not cancelling the bail to the respondent allowed by the High Court. The learned State counsel further urged that in this case two persons had been murdered. He urged for the cancellation of the bail in the face of the gruesome nature of the crime. Even the statutorily constituted agency investigating the case at one stage did not find a cause to prosecute the respondents for the offence for which they had been accused by the complainant party and this fact was taken into consideration by M. R. Sharma, J., while allowing the respondents bail on 24th February, 1975. There is no allegation if the respondents had in any way misused the concession of the bail allowed to them. Finding no circumstances to accept the application of the State for cancellation of bail the petition is dismissed.

*N. K. S.*

## CIVIL MISCELLANEOUS

*Before Bhopinder Singh Dhillon and Harbans Lal, JJ.*

M/S. BABU RAM, JAGDISH KUMAR AND COMPANY,—*Petitioner.*

*versus*

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 354 of 1975

*and*

Civil Miscellaneous No. 618 of 1975.

March 8, 1976.

*The Punjab General Sales Tax Act* (46 of 1948)—*Sections* 2(d) and (1), 4, 5(2) (*a*) (*ii*), 6 *and* 31—*Schedules 'B' and 'C'—The Punjab General Sales Tax Rules*, 1949—*Rules* 26 *and* 27-*A*—*Section* 31—*Whether* ultra vires—*Paddy purchased from agriculturists—Whether*

*exempted under section 5(2)(a)(ii)—Purchase dehusking the same into rice—Such rice acquired by Government at a fixed price—Purchaser—Whether a 'dealer'*

*Held*, that the obvious result of taking out of particular goods from Schedule 'B' to the Punjab General Sales Tax Act 1948 is that the same becomes liable to sales tax under section 4 of the Act. The State Government is within its powers and has jurisdiction to select persons for the purpose of levy of sales tax by bringing about change in Schedule 'B'. The same power can be exercised by it by amending, or changing Schedule 'C' under section 31 of the Act and select persons for the purpose of levy of purchase tax. The inclusion of any goods in Schedule 'B' exempts the same from taxation, but the State Government has the power to not only add to the list, but also to delete any goods which is already included in Schedule 'B' and such inclusion results in making those goods liable to sales tax. In substance, Schedules 'B' and 'C' are intended to achieve the same purpose whether for exempting any goods from tax or subjecting some other goods to tax. The only difference is: in one case, levy will be of purchase tax and in another that of the sales tax. The policy of law clearly laid down in section 4 of the Act is that all goods which are not exempt from tax under section 6 of the Act are to be subjected to either sales tax or purchase tax. This is a declaration of basic policy of law by the legislature. The question as to who should be made to pay the tax, that is, whether the purchaser or the seller, is a matter of detail relating to the working of the taxation laws and does not effect the basic policy. The legislature possibly cannot anticipate all problems and difficulties arising out of the working of the taxation laws and the nature of evasion of tax. It has to be left to the State Government who has been entrusted with the duty under the Constitution to execute all laws and achieve the purpose laid down therein. Thus section 31 of the Act conferring power on the State Government to add to or delete from Schedule 'C' is not *ultra vires*.

(Paras 4, 5 and 6).

*Held*, that from a perusal of section 5(2)(a) sub-clauses (i) to (vii) of the Act, it is clear that the deductions can be claimed if sales or purchases are to be made by the dealers to registered dealers who have to fill and sign a declaration in Form S.T. XXII, as provided under rules 26 and 27-A of the Punjab General Sales Tax Rules, 1949. If a selling dealer sells goods to a registered dealer which are required by the purchasing dealer for the purpose of manufacturing goods to be sold in the State of Punjab and a declaration as prescribed under rule 26 of the Rules is duly given by the purchasing dealer, the selling dealer is entitled to the deduction on sale amount of such goods from his turnover. The seller does not consume the goods which are sold for the purpose of manufacture and the clear policy

of the Act is not to make such a dealer liable to Sales Tax in such transactions. Rule 27-A of the Rules specifically deals with the deductions by the purchasing dealer in the circumstances provided under sub-clause (vi). Thus, paddy purchased from agriculturists is not exempted under section 5(2)(a)(ii) of the Act.

(Paras 10 and 11).

*Held,* that a person, who carries on the occupation of purchasing or selling the goods and the said business is of a commercial character and not on account of any welfare activity for the convenience of the employees, is a dealer for the purpose of assessment of tax on purchase or sale, as the case may be. In view of the comprehensive definition of "trade" given in the Act, 'profit motive' is also not necessary to bring a person within the ambit of a dealer under the Act; nor is it necessary that he should actually earn profits in his business activity. It is, however, essential that a person must sell or purchase goods in the State of Punjab "in the normal course of trade". The activity of a person in the matter of purchase of paddy and its manufacture into rice is in the course of his normal trade and the mere fact that the rice is sold to the Government at a fixed price is no justification to exclude him from the category of dealers. Thus, such a purchaser is a dealer within the meaning of the Act.

(Paras 12 and 14).

*Petition under Articles* 226 *and* 227 *of the Constitution of India praying that this Hon'ble Court may be pleased to issue* :—

(*a*) *a rule nisi;*

(*b*) *a writ of* mandamus *declaring that paddy being agricultural produce exempted under Schedule B is not liable to purchase tax;*

(*c*) *a writ of* mandamus *declaring the notification No. S.O. 6/P.A. 46/48/S. 5/67, dated 15th January,* 1968, *inserting paddy and rice to Schedule C is not in accordance with section* 31 *of the Act and is thus* ultra vires *and further declare that paddy and rice have not been validly added to the Schedule 'C';*

(*d*) *since no taxable quantum in Section* 4 *is provided for in case of a person for being a dealer liable to pay tax on the purchasers and hence the petitioner cannot be said to be a dealer qua;*

(*e*) *a writ of* mandamus *declaring Section* 31 *of the Act as* ultra vires *and unconstitutional;*

(*f*) *declare Section 4-B as inserted by Punjab Act No. 3 of 1973 to be* ultra vires *of Article 246 read with Entry 54 of list 2 of Schedule VII of the Constitution of India;*

(*g*) *stay the recovery of Sales/Purchase Tax on the purchase of Paddy by the petitioner;*

(*h*) *any other appropriate writ, direction or order as this Hon'ble Court may deem fit;*

(*i*) *declaring that no purchase tax is leviable under the Act;*

(*j*) *petitioner be allowed costs of the petition;*

(*k*) *production of certified copies of the documents be dispensed with;*

(*l*) *issue of notices of motion on the respondents be dispensed with.*

*Application under section* 151 *of the Code of Civil Procedure, praying that the petitioner be allowed to file amended petition in the interest of justice.*

M. C. Bhandare, Senior Advocate, Bhal Singh Malik, G. R. Sethi, Vinod Kataria, Arun Nehra, Advocates, with him, *for the petitioner.*

R. K. Chhibbar, Advocate, *for the respondents.*

JUDGMENT

*Harbans Lal,* J.—(1) This judgment will dispose of Civil Writ Petitions Nos. 354, 416, 418, 432, 462, 463, 473, 474, 495, 496, 497, 501, 504, 517, 518, 519, 524, 555, 556, 557, 564, 571, 576, 579, 582, 586, 614, 632, 644, 648, 669, 693, 694, 734, 736, 805, 855, 864, 870 and 904 of 1975, which have been filed under Articles 226 and 227 of the Constitution of India for the issuance of :

(1) a writ of mandamus that the paddy being agricultural produce is exempt under Schedule 'B' to the Punjab General Sales Tax Act, 1948 (hereinafter to be called the Act) and is, thus, exempt from purchase tax ;

(2) a writ of mandamus that the notification dated January 15, 1968, including paddy in Schedule 'C' to the Act is not in accordance with section 31 of the Act and that the said notification is not valid ;

(3) a writ of mandamus declaring section 31 of the Act as *ultra vires* and unconstitutional ;

(4) that the petitioners are not dealers as defined under the Act and, therefore, not liable to pay any purchase tax; and

(5) that section 4-B as inserted by Punjab Act No. 3 of 1973 is *ultra vires* Article 246 read with Entry 54, List II, Schedule VII of the Constitution.

The questions of fact and law arising out of these writ petitions are the same. For the purpose of proper appreciation of the matter in controversy, the facts of Civil Writ Petition No. 354 of 1975 (*M/s. Babu Ram Jagdish Kumar and Company* v. *The State of Punjab and others*), are summarised below.

(2) M/s. Babu Ram Jagdish Kumar and Company (hereinafter to be called the petitioner) are licensed rice millers and are running a rice sheller in Kapurthala, and have been issued a licence under the Punjab Rice Dealers Licensing Order, 1964. The petitioner purchases paddy and after manufacturing the same into rice at his factory, that is, the sheller, disposes of rice under the provisions of the Punjab Rice Procurement (Levy) Order, 1958, according to which 95 per cent of the total quantity of Bold Group Rice and 90 per cent of the total quantity of Slender Group Rice (as mentioned in Schedule I of the said Order) are acquired by the Punjab Government for a price as fixed by the Government. Thus, the acquisition of this rice by the Government at a fixed price does not satisfy any ingredient of a contract and cannot be treated as a sale. The petitioner is a registered dealer under the provisions of the Act. It is further averred in paragraph 7 of the writ petition that rice and paddy were added to Schedule 'C' by the Punjab Government by means of a notification dated January 15, 1968, a copy of which is Annexure P. 3 to the writ petition and thus, rice and paddy were made liable to purchase tax. This notification was issued in exercise of the powers conferred by section 31 of the Act. It is averred in paragraph 23 of the writ petition that the respondents are compelling the petitioner to furnish the quarterly return for the quarter ending December 31, 1974, and to deposit the amount of purchase tax before January 30, 1975. A number of pleas were taken in the writ petition on some of which no arguments were addressed by the learned counsel for the petitioner. Broadly, the

impugned notification (Annexure P. 3), making the purchasers liable to purchase tax on the purchases of paddy has been challenged by the learned counsel for the petitioner Mr. M. C. Bhandare, on the following grounds :

(1) that section 31 of the Act which has conferred power on the State Government to add any goods in Schedule 'C' for the purpose of levying purchase tax suffers from excessive delegation of legislative power and is, thus, *ultra vires the Constitution* ;

(2) that the inclusion of paddy in Schedule 'C' by the impugned notification (Annexure P. 3) has resulted in withdrawing the exemption conferred on the purchasers of goods to be used for the purpose of manufacture under section 5(2)(a)(ii) of the Act, which cannot be done by the delegated authority because the exemption was given by the legislature in the Act itself ;

(3) the petitioner is not a dealer as defined in section 2(d) of the Act because the paddy purchased by the petitioner is not sold as such. The same is only used for the purpose of manufacturing rice which is not allowed to be sold by the Government in open market and 95 per cent of the rice is acquired by the Government under the Procurement Order at a fixed price. Under the circumstances, the petitioner does not carry on the business of purchasing paddy and selling rice (in the normal course of business).

All these contentions have been refuted by Mr. R. K. Chhibbar, the learned counsel for the State. The various pleas raised in the petition have also been controverted in the written statement filed by the Excise and Taxation Officer, Kapurthala.

(3) In order to properly appreciate the contentions raised by the learned counsel for the petitioner, it is necessary to peruse the purpose and scheme of the Act and the legislative policy laid down therein. The Act as it stands today has undergone a number of procedural and material changes. According to the scheme of Act No. 46 of 1948 (hereinafter to be called the Principal Act), tax was intended to be levied only on sales of various goods except those which were exempt from this tax. In section 2, definition of only

"sale" was given. In Section 4, it was provided that sale of goods will be levied to tax by the Government according to the rates prescribed from time to time. In section 5, it was provided that tax on sales of goods will be levied on the gross turnover of a dealer if it exceeds the taxable turnover. In section 5(2), exemptions were provided and details of deductions were prescribed to which the dealer was entitled for the purpose of his turnover to be determined by the assessing authority after deducting the sale of goods which were given exemption. In section 6, it was provided that Schedule 'B' annexed to the Act will contain the list of goods on the sale of which no tax will be levied. Section 7 prohibited the dealers from carrying on the business unless they had got themselves registered under the Act and were in possession of the registration certificate. The machinery was also provided to submit applications on a prescribed form and to get the registration certificate issued from the authority concerned. In sections 9, 10 and 11 machinery was provided for the determination and assessment of the tax. Section 12 laid down as to how the refund of tax could be claimed by the dealers in certain cases where the tax had been got deposited in excess or in violation of any law. It was by means of Act 7 of 1958 that the legislature materially changed its policy in the matter of taxation regarding transactions of goods for the first time. Through this Amending Act, tax was imposed on the purchase of goods along with sales. For this purpose, necessary amendments were introduced in the Objects and Reasons of this Act. It was provided as under :

> "The amendments in the matter of increasing the general rate of sale tax from two old pice of four naya paise, the deletion of certain items from the Schedule of Exemptions appended to the Act and the levy of tax on raw materials purchased by manufacturers, are intended to bridge the gap between the budgeted income and expenditure."

To implement this purpose, amendments were introduced in various provisions of the Principal Act. The title of the Act was changed from the East Punjab General Sales Tax Act to the East Punjab General Sale and Purchase Act. Previously the definition of the dealer as contained in section 2(d) of the Act was restricted to the sale of goods only, but by this Amending Act "dealer" was defined as under :

> "Any person including a department of Government who, in the normal course of trade, sells or purchases goods....."

A new clause (ff) after clause (f) in section 2 of the Principal Act was added so as to provide the definition of purchase along with the definition of sale which was already existing in clause (h). Similarly, in the charging section 4, it was provided that every dealer shall be liable to pay tax on his gross turnover if it exceeded taxable quantum both on the sales and purchases. Section 5 of the Act, besides other things, provided for some exemptions from tax in sub-section (2) of the said section. By this Amending Act, a proviso was added to clause (b) of sub-section (2) of section 5 that deduction will not be admissible in respect of purchases as defined in clause (ff) of section 2. Further amendments were brought about by subsequent Amending Acts, namely, Act No. 13 of 1959, Act No. 24 of 1959 and Act No. 18 of 1960. In section 6 of the Principal Act, it was provided that no tax shall be charged on the sales of goods which were entered in Schedule 'B'. By the Amending Act No. 13 of 1959, the scope of section 6 was modified and it was provided that no sales tax will be charged on the sales of goods specified in Schedule 'B' and no purchase tax will be charged on the purchase of goods specified in Schedule 'C'. Similarly, section 5(2) (a) was also amended so as to provide in clause (vi) that purchase of goods will be exempt from tax which were used by the dealers in the manufacture of any goods for sale. By the Amending Act No. 24 of 1959, the old Schedule 'C' which related to the purchase of goods which were exempt from tax was deleted and new Schedule 'C' was added which referred to goods which were excisable to purchase tax and the previous section 6 was amended with the result that exemptions in section 6 were confined to sale of goods only specified in Schedule 'B'. After the imposition of purchase tax by Act No. 7 of 1958, both the purchase and sale of goods were subjected to tax and this could result in multiplicity of taxation. By Act No. 18 of 1960, the intention of the legislature was made clear by adding a new sub-section, namely, sub-section (2-A) to section 4 of the Act in the following words :

> "Notwithstanding anything contained in sub-sections (1) and (2), no tax on the sale of any goods shall be levied if a tax on their purchase is payable under this Act."

Similarly, the legislative policy regarding the tax on purchase of goods which were used for the purpose of manufacture also underwent a change by enforcement of the Amending Act 18 of 1960, which came into force with effect from April 1, 1960. By this Amending Act, sub-clause (vi) of section 5(2)(a), which provided for exemption on

purchase of goods specified in the certificate of a registered dealer to be used by him in the manufacture of any goods and for sale, was deleted and was substituted by a new sub-clause (vi) which reads as follows :

> "The purchase of goods which are sold not later than six months after the close of the year, to a registered dealer, or in the course of inter-State trade or commerce, or in the course of export out of the territory of India :
>
> Provided that in the case of such a sale to a registered dealer, a declaration, in the prescribed form and duly filled and signed by the registered dealer to whom the goods are sold, is furnished by the dealer claiming deduction."

By the Amending Act No. 28 of 1965, another important amendment was introduced by adding a new section 31 which is reproduced below :

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

Previous to this amendment, the Government had the power to amend Schedule 'B' only under section 6 of the Act. Thus, by excluding any item from Schedule 'B' by following a prescribed procedure, as embodied in sub-section (2) of section 6, the State Government was competent to withdraw the exemption from sales tax pertaining to any particular goods and the result was that the same goods which were taken out of Schedule 'B' became liable to sales tax. The purchase tax was excisable only on those goods which were entered in Schedule 'C'. By enacting new section 31 in the Act by the Amending Act 28 of 1965, the State Government was conferred the power of selecting and choosing any goods for the purpose of levy of purchase tax by including any goods in Schedule 'C' and making any goods subject to sales tax by excluding any goods from the said Schedule. The scheme of the Act and the policy of the legislature with regard to levy of tax on purchase and sale of goods as has been indicated by the various amendments introduced from the year 1958 to the year 1965, can be briefly stated as under :

(1) The legislature could impose tax on sale of goods except those specifically exempted under any provision of the Act

by enforcing the East Punjab General Sales Tax Act, 1948, and the same is continuing ;

The legislature decided to impose tax on purchase of goods along with tax on sale of goods on April 18, 1958, but the tax on purchase of sugar-cane, foodgrains and pulses required for use in the manufacture of goods for sale was exempted. This exemption was also taken away with effect from April, 19, 1959, by the Amending Act No. 13 of 1959 ;

(3) With effect from April 19, 1959, along with Schedule 'B', which provided exemption on tax of sale of goods, Schedule 'C' provided for exemption of tax on purchase of goods. Power to amend both Schedule 'B' and Schedule 'C' was vested in the State Government under section 6 ;

(4) Old Schedule 'C' pertaining to exemption of tax on purchase of goods was deleted and taken out of section 6 with effect from July 14, 1959. By the enactment of Act No. 24 of 1959, a new Schedule 'C' provided for those goods on which purchase tax was to be levied. This power to amend Schedule 'C' conferred by the legislature on the State Government in 1965 by enacting section 31. With effect from April 1, 1960, it was provided that tax can be levied either at the point of sale or purchase and not on both ;

(5) In the previous sub-clause (vi) to section 5(2)(a) of the Act, exemption of tax had been granted on the purchase of goods which were required for the purpose of manufacture of goods for sale. This exemption was taken away by substituting a new sub-clause (vi).

Mr. M. C. Bhandare, learned counsel for the petitioner, has challenged the *vires* of section 31 of the Act, on the following grounds :

(1) under section 31 of the Act, the State Government has been empowered as a parallel legislature who could, by formulating its own legislative policy, repeal or nullify the provisions of the Act ;

(2) the ltgislature has delegated its primary essential legislative functions to the executive ;

(3) no guidelines have been provided in any provision of the Act within the ambit of which the Government may exercise its powers to add to or to delete from Schedule 'C'.

(4) while exercising powers under section 31 of the Act, the executive can completely alter the policy of law. Government can even annul and repeal the provisions of the Act; and ...

(5) under the established principles of the doctrine of delegated legislation, the delegated authority can act only in a restricted field inasmuch as it can exercise its power of delegation only to implement the policy of law in the subsidiary and ancillary field only.

In support of his submissions, the learned counsel has taken us through the various judgments of the Supreme Court in which the scope and ambit of delegaed legislation has been propounded. Reliance in this behalf has been placed on *In re. Article* 143 *Constitution of India and Delhi Laws Act* 1912, (1) *Rajnarain Singh* v. *Chairman, Patna Administration Committee and another,* (2) *Harishankar Bagla and another* v. *The State of Madhya Pradesh,* (3), *Edward Mills Company Limited, Beawar and others* v. *State of Ajmer and another,* (4) and *Messrs. Bhatnagar and Company Limited and others* v. The *Union of India and others,* (5), *In re. Article* 143 *Constitution of India and Delhi Laws Act,* 1912 (*supra*) reference had been made by the President of India under Article 143 of the Constitution of India for the opinion of the Supreme Court on three questions which related to the matter regarding the limits and scope of the executive to extend the laws passed by the legislature. The various views expressed by their Lordships of the Supreme Court in their separate judgments came up for consideration in *Rajnarain Singh's case* (supra). The learned counsel has relied upon the following observations of their Lordships as contained in paragraph 31 of the judgment :

"In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future

(1) A.I.R. 1951 S.C. 332.
(2) A:I:R: 1954 S:C: 569.
(3) A.I.R. 1954 S:C: 465.
(4) A.I.R. 1955 S:C: 25:
(5) A.I.R. 1957 S:C: 478.

> laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above : it cannot include a change of policy."

According to the learned counsel, the law has been firmly laid down in this judgment that essential features of law cannot be delegated and any delegation of power can in no circumstances include the power to effect a change of policy. Reliance has also been placed on the following observations in *Harishankar Bagla's case* (supra) :

> "The legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination of choice of the legislative policy and of formally enacting that policy into binding rule of conduct."

In the said case, the validity of section 3 of the Essential Supplies (Temporary Powers) Act, 1946, had been challenged on the ground that the same amounted to delegation of legislative powers outside the permissible limits, but it was held as under :

> "The preamble and the body of the sections in the Essential Supplies (Temporary Powers) Act sufficiently formulate the legislative policy and the ambit and character of the Act is such that the details of that policy can only be worked out by delegating them to a subordinate authority within the framework of that policy. Section 3 of the Act, therefore, does not amount to delegation of legislative power outside the permissible limits."

In *Edward Mills case* (supra), the *vires* of section 27 of the Minimum Wages Act, 1948, had been challenged. Under this provision, the Government had been given power to add to the Schedule, after giving three months' notice of its intention to do so, any other employment in respect of which the authority concerned was of the

opinion that minimum wages should be fixed under the Act. This provision was held to be *intra vires* and the powers conferred on the executive under this provision were held to be valid. In the said case, it was held as under :

> "The legislative policy is apparent on the face of the Minimum Wages Act, 1948. What it aims at, is the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour. The Legislature undoubtedly intended to apply this Act not to all industries but to those industries only where by reason of unorganised labour or want of proper arrangements for effective regulation of wages or for other causes the wages of labourers in a particular industry were very low. It is with an eye to these facts that the list of trades has been drawn up in the schedule attached to the Act, but the list is not an exhaustive one and it is the policy of the Legislature not to lay down at once and for all time, to which industries the Act should be applied.
>
> Conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the Schedule depends upon a variety of facts which are by no means uniform and which can best be ascertained by the person who is placed in charge of the administration of a particular State. It is to carry out effectively the purpose of this enactment that power has been given to the 'appropriate Government' to decide, with reference to local conditions, whether it is desirable that minimum wages should be fixed in regard to a particular trade or industry which is not already included in the list.
>
> Hence, in enacting section 27, the Legislature has not in any way stripped itself of its essential powers or assigned to the administrative authority anything but an accessory or subordinate power which was deemed necessary to carry out the purpose and the policy of the Act. Section 27, therefore, is neither illegal nor *'ultra vires'*."

Their Lordships of the Supreme Court in the said Case, relied upon the following observations of O'Connor, J., of the High Court of

Australia in the case of *Baxter* v. *Ah. Way'*, (1909) 8CLR 626 at page 637(Aus.) (A) :

> The aim of all legislatures is to project their minds as far as possible into the future, and to provide in terms as general as possible for small contingencies likely to arise in the application of the law. But it is not possible to provide specifically for all cases and therefore, legislation from the very earliest time, and particularly in modern times, has taken the form of conditional legislation, leaving it to some specified authority to determine the circumstances in which the law shall be applied, or to what its operation shall be extended, or the particular class of persons or goods to which it shall be applied."

Mr. Bhandare, the learned counsel for the petitioner, has been fair enough to bring to our notice also the decision of the Supreme Court *in Pandit Banarsi Das Bhanot and others* v. *The State of Madhya Pradesh*, (6). In the aforesaid case, Pandit Banarsi Das Bhanot, appellant, was a contractor for the construction of buildings and roads for the military and public works department in the State of Madhya Pradesh. He challenged the validity of the assessment on a number of grounds which are not relevant for the purpose of the present case, but one of the contentions was that the notification of the Government dated September 18, 1950, withdrawing the exemption for the purpose of imposition of sales tax was unconstitutional and void. Under the Madhya Pradesh Sales Tax Act, section 6 provided for the exemption of tax on the sale of goods specified in Schedule II. The said provision is in *pari materia* with section 6 of the Act. The Schedule had been amended by the said notification. It was in these circumstances that the notification conferring power on the Government to amend the Schedule was held valid and it was held as under :

> "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 at which it is to be charged in respect of different classes of goods, and the like.

(6) A.I.R. 1958 S.C. 909.

> The power conferred on the State Government by section 6(2) to amend the Schedule relating to exemption is in consonance with the accepted legislative practice relating to the topic, and is not unconstitutional."

It is significant to note that the above principle of law was laid down after considering the decisions in *re. Article* 143 *Constitution of India and Delhi Laws Act,* 1912 *and Rajnarain Singh's case* (*supra*), which have been strongly relied upon by the petitioner challenging the delegation of powers to the executive. Their Lordships of the Supreme Court in laying down this law, relied upon a judgment in *Powell* v. *Apollo Candle Company* (7), in which the constitutional validity of section 133 of the Customs Regulation Act of 1879 of New South Wales which conferred a power on the Governor to impose tax on certain articles of import had been challenged. In that case it had been held that the said provision was constitutional, and it was observed as follows :

> "It is argued that the tax in question has been imposed by the Governor and not by the legislature who alone had the power to impose it. But the duties levied under the Order-in-Council are really levied by the authority of the Act under which the Order is issued. The Legislature has not parted with its perfect control over the Governor, and has the power of course, at any moment, of withdrawing or altering the power which they have entrusted to him. In these circumstance, their Lordships are of opinion that the judgment of the Supreme Court was wrong in declaring section 133 of the Customs Regulation Act of 1879 to be beyond the power of the Legislature."

In our considered opinion, the facts of the present case in hand are similar to the facts in the case above referred to and the principle of law enunciated therein is fully applicable to the present case. To confer power on the executive to work out details relating to the working of taxation laws such as the selection of persons on whom the tax is to be levied is clearly within the ambit of permissible delegation of power and the same does not amount to alteration in the policy of law. The policy of law was clearly laid down by the legislature, by enacting amendment Acts from the year 1958 onwards that the legislature clearly and expressly decided to impose tax on the

(7) (1885) 10 Appeals Cases 282.

purchase of goods specified in Schedule 'C' according to the rates prescribed under section 5 of the Act. This is clear from the definition of "purchase" given in section 2(ff) and section 4(1) of the Act. In section 4(2) (a) of the Act, it has also been laid down that the tax will be only at one point, that is, there will be no sales tax if tax on the purchase of any goods has been provided. These provisions are reproduced below :

> "2(ff) 'purchase' with all its grammatical or cognate expressions, means the acquisition of goods specified in Schedule C or of goods on the purchase whereof tax is payable under any provision of this Act for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation charge or pledge;".
>
> "4(1). Subject to the provisions of sections 5 and 6, every dealer except one dealing exclusively in goods declared tax-free under section 6 whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the coming into force of this Act and purchases made after the commencement of the East Punjab General Sales Tax (Amendment) Act, 1958."
>
> "4(2-A). Notwithstanding anything contained in sub-sections (1) and (2), no tax on the sale of any goods shall be levied if a tax on their purchase is payable under this Act."

(4) According to the learned counsel for the petitioner, the decision of their Lordships of the Supreme Court in *Pandit Banarsi Das Bhanot's case* (supra) lays down the correct position so far as the power of the executive to bring about any change in Schedule B of section 6 of the present Act is concerned, that is to say, it is quite valid and constitutional for the State Government as a delegated authority, under section 6 of the Act, to decide and declare that a particular goods should no more be exempt from tax on sales and, therefore, the same may be taken out of Schedule 'B'. Obvious result of taking out of particular goods from Schedule 'B' is that the same becomes liable to sales tax under section 4 of the Act. If the State Government is within its powers and has jurisdiction to select

persons for the purpose of levy of sales tax by bringing about change in Schedule 'B', it is not comprehensible as to why the same power cannot to exercised by amending or changing Schedule 'C', under section 31 of the Act and select persons for the purpose of levy of purchase tax. The policy of law clearly laid down in section 4 of the Act is that all goods which are not exempt from tax under section 6 of the Act are to be subjected to either sales tax or purchase tax. This is a declaration of basic policy of law by the legislature. The question is as to who should be made to pay the tax, that is, whether the purchaser or the seller, is a matter of detail relating to the working of the taxation laws and does not effect the basic policy. The legislature possibly cannot anticipate all problems and difficulties arising out of the working of the taxation laws and the nature of evasion of tax. It has to be left to the State Government who has been entrusted with the duty under the Constitution to execute all laws and achieve the purpose laid down therein.

(5) The learned counsel for the petitioner has strenuously contended that so far as Schedule 'B' is concerned, it relates to those goods which are exempt from taxation and if the State decides to include more items in this Schedule so as to exempt them from taxation, it does not result in any basic change in the policy, but on the other hand, Schedule 'C' relates to goods which are the subject-matter of tax and the inclusion of any new goods in the Schedule brings into existence a new levy of purchase tax. If the legislature while specifying Schedule 'C' at the time of its enactment thought it fit to include more goods in the Schedule, it could have done so. If the legislature wants to include more goods in the Schedule, nothing stands in its way of taking this decision at any time. This contention cannot bear scrutiny. It is true that inclusion of any goods in Schedule 'B' exempts the same from taxation, but the State Government has the power to not only add to the list, but also to delete any goods which is already included in Schedule 'B' and such inclusion results in making those goods liable to sales tax. In substance, Schedules 'B' and 'C' are intended to achieve the same purpose whether for exempting any goods from tax or subjecting some other goods to tax. The only difference is : in one case, levy will be of purchase tax and in another that of the sales tax.

(6) The decision in *Pandit Banarsi Das Bhanot's case* (supra) was again considered in *The Corporation of Calcutta and another* v.

*Liberty Cinema* (8) and was affirmed. In the latter case it was held,—

> "Between the two we are unable to distinguish in principle, as to which is of the essence of legislation; if the power to decide who is to pay the tax is not an essential part of legislature, neither would the power to decide the rate of tax be so."

It was then contended by the learned counsel for the petitioner that the principle of law as laid down in *Pandit Banarsi Das Bhanot's case* (supra) was not followed by their Lordships of the Supreme Court in a subsequent case reported in *M/s. Devi Das and others* v. *The State of Punjab* (9), so far as the power of the State Government to fix any rate of sales tax was concerned. In the said case, section 5 of the Act, as originally framed before its amendment, conferred unfettered powers on the State Government to fix any rate of tax on the taxable turnover of a dealer. By amendment, the maximum rate of tax within which the rate of tax could be fixed was prescribed. It was, in these of circumstances, held that uncontrolled power had been conferred on the Government to impose a tax at such rates as the State Government, may direct and that in that situation, the legislature practically effaced itself in the matter of fixation of rates and it did not give any guidance either under that section or under any other provision of the Act. However, it was held that the Punjab General Sales Tax Act (Act No. 46 of 1948) as amended by the Punjab Act No. 19 of 1952, providing for fixation of rates at not exceeding two pice in a rupee did not exceed permissible limits. There is absolutely no discussion in that judgment on the matter as to whether the delegation of power to Government regarding incidence of taxation or the selection of persons on whom the same should be imposed is constitutional or not. Similarly, the decision in *The Municipal Corporation of Delhi* v. *Birla Cotton, Spinning and Weaving Mills, Delhi and another* (10), is not of any advantage to the petitioner so far as the present controversy is concerned. After considering *Pandit Banarsi Das Bhanot's case*

(8) A.I.R. 1965 S.C. 1107.

(9) A.I.R. 1967 S.C. 1895.

(10) A.I.R. 1968 S.C. 1232.

(supra), their Lordships of the Supreme Court observed as follows :—

> "In particular, it is urged on behalf of the respondents that the cases which have been referred to in support of this conclusion in *Banarsi Das's case* (11) do not support the proposition laid down there if it is to be read as giving unqualified power to fix the rate without any guidance, control or safeguard. With respect, it seems to us that if this observation means that it is open to the legislature to delegate the power to fix the rate of tax to another authority without any qualification, guidance, control or safeguard, it is too widely stated and does not appear to be supported by the authority on which it is based, though those authorities do indicate that in certain cases it is open to the legislature to give power to another authority to fix rates under proper guidance, control and safeguard."

In M/s. *Sitaram Bishambhar Dayal and others* v. *The State of U.P.* (12), the theory of delegation of legislative functions in the matter of taxation laws was affirmed and it was emphasised that in a Cabinet form of Government, the executive is expected to reflect the views of the legislature. In fact, in most matters, it gives the lead to the legislature and that it was necessary for the legislature to entrust more and more powers to the executive. It was also held that the legislatures have neither time nor the required detailed information nor even the mobility to deal in detail with the innumerable problems arising time and again. The law laid down in Pandit Banarsi Das Bhanot's case (supra) regarding the power of the executive to amend the Schedules in the taxation Acts was also considered and affirmed in *M/s. Hiralal Rattan Lal* v. *The Sales Tax Officer, Section III, Kanpur and another* (13). In the aforesaid case, the appellants were dealers in foodgrains including cereals and pulses, especially split or processed foodgrains and Dals. The dispute centred round the question whether the Government was competent to levy sales tax on the purchases made by the appellants of split or processed foodgrains and Dals under the provisions of the United Provinces Sales Tax Act, 1948. One of the seven questions

(11) 1959 S.C.R. 427=(A.I.R. 1958 S.C. 909).

(12) A.I.R. 1972 S.C. 1168.

(13) A.I.R. 1973 S.C. 1034.

involved was as to whether the power conferred on the Government under section 3-D amounted to excessive delegation of legislative policy and was consequently void. While holding that section 3-D did not suffer from any excessive delegation of legislative policy, it was held,—

> "The only remaining contention is that the delegation made to the executive under section 3-D is an excessive delegation. It is true that the legislature cannot delegate its legislative functions to any other body. But subject to that qualification, it is permissible for the legislature to delegate the power to select the persons on whom the tax is to be levied or the goods or the transactions on which the tax is to be levied. In the Act, under section 3 the legislature has sought to impose multi-point tax on all sales and purchases. After having done that it has given power to the executive, a high authority and which is presumed to command the majority support in the legislature, to select for special treatment dealing in certain class or goods. In the very nature of things, it is impossible for the legislature to enumerate goods, dealings in which sales tax or purchase tax should be imposed. It is also impossible for the legislature to select the goods which should be subjected to a single point sales or purchase tax. Before making such selection several aspects such as the impact of the levy on the society, economic consequences and the administrative convenience will have to be considered. These factors may change from time to time. Hence, in the very nature of things, these details have got to be left to the executive."

From a perusal of the various judgments of the Supreme Court as referred to above, the following propositions of law so far as the doctrine of delegated legislation is concerned, seem to be well established :

(1) The power to amend essential features of the law cannot be delegated to any authority outside the law ;

(2) While the law lays down the basic policy, the implementation of the same and working of the details by means of

rules or notifications can be validly and constitutionally left to the executive. Rather, it is a necessity of the modern democratic age when laws have increased in number and the socio-economic planning and development of the society make it imperative on the executive to be vigilant and prompt in taking steps from time to time in carrying out the basic objective of the law by meeting situations as they arise ;

(3) So far as the tax laws are concerned, the details are to be left to the executive and it is constitutionally valid to delegate power to the executive to determine the incidence of taxation, the goods which may be taxed and to select the persons on whom the tax may be imposed; and

(4) Power can be validly conferred on the executive to add to or to delete from the Schedule for the purpose of determining the goods to be taxed whether for the purpose of sales tax or purchase tax and to select the persons who will be liable to pay the tax.

In the light of the above principles of law regarding the delegated legislation, there can be no manner of doubt that the power conferred on the State Government under section 31 of the Act to add to or delete from Schedule 'C' is neither unconstitutional nor excessive. The power conferred on the State Government under section 6 of the Act is similar in character and substance. The same having been held valid by their Lordships of the Supreme Court in *Pandit Banarsi Das Bhanot's case* (supra), cannot be held to be excessive or unconstitutional, under section 31.

(7) The second contention of Mr. Bhandare, the learned counsel for the petitioner is that even if section 31 of the Act is held to be *intra vires* and that the power conferred on the State Government to add to or to delete from Schedule 'C' is constitutionally valid and is within the permissible limit of delegation of legislative powers, the same cannot be exercised in a manner which may result in nullifying or repealing any provision of the Act because the delegated authority cannot be used for the purpose of overriding any provision of an Act made by the Legislature which is the supreme and parent body. According to him, all dealers whether sellers or purchasers including the petitioner have been exempted under section 5(2) (a) in various circumstances mentioned therein. According to section

5(1), tax can be levied on the "taxable turnover" of a dealer at the prescribed rates. Under section 5(2), this taxable turnover is to be determined after deducting from the gross turnover of a dealer his turnover which has been exempted under section 5(2) (a) and (b) of the Act. The claim of the petitioner is that he was entitled to the deductions of his turnover in respect of the purchase of goods under section 5(2) (a) (i) and (ii) of the Act. They are reproduced below :

> "5(2) In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom ,—
>
> (a) his turnover during that period on—
>
> (i) the sale of goods declared tax free under section 6 ;
>
> (ii) sales to a registered dealer of goods other than sales of goods liable to tax at the first stage under sub-section (IA) ; declared by him in a prescribed form as being intended for resale in the State of Punjab or sale in the Course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India, or of goods specified in his certificate or registration for use by him in the manufacture in Punjab of any goods, other than goods declared tax-free under section 6, for sale in Punjab, and on sales to a registered dealer of containers or other materials for the packing of such goods ;"

According to the learned counsel, the expression "the sale of goods" in section 6 or sub-clause (i) of section 5(2) (a) or the expression "sales to a registered dealer of goods" in sub-clause (ii) of section 5(2) (a) has a reference both to the sales and purchase of goods because sale and purchase are only two facts of the same transaction. In any transaction of goods, there must be a sale of goods and a purchase of the same in order to complete the transaction. In fact, the argument is that the reference in this provision is to the transaction of goods regarding sale or purchase. In this connection, reliance has been placed on *V. M. Syed Mohamed and Company and another* v. *The State of Madras and another* (14) wherein it was

(14) 9(1952) 3 Sales Tax Cases 367.

held that the power to tax sale of goods is, in reality, a power to tax the transaction. In the said case, the *vires* of the Madras General Sales Tax Act, 1939, had been challenged on the ground that it imposed a tax on purchasers. The contention raised was that Entry No. 48, in the Provincial Legislative List in the Government of India Act, 1935, was to the following effect :

> "Taxes on the sale of goods and on advertisements ;"

and as such, the Madras Legislature had no competence to impose tax on purchases. It was in these circumstances that it was held that the power to tax sale of goods vested in the Madras Legislature included the power to tax the purchase of goods because that power, in fact, was wide enough to cover all transactions. The decision in *V. M. Syed Mohamed and Company's case* (supra) was approved by their Lordships of the Supreme Court in *V. M. Syed Mohammed and Company and another* v. *The State of Andhra and others* (15) and thus, both of these decisions cannot be of any advantage to the petitioner in support of his contention.

Then, reliance was placed on *M/s. Devi Das Gopal Krishan and others* v. *The State of Punjab* 9(*ibid*) wherein is was held,—

> "Whether it is sale or purchase, the transaction is the same,"

This finding by their Lordships of the Supreme Court has to be considered in the background of the facts of that particular case. In the said case, the *vires* of the purchase tax on oil seeds had been challenged. One of the arguments advanced was that the definition of purchase in the East Punjab General Sales Tax Act, 1948, is more comprehensive than the definition of sale under the Indian Sale of Goods Act and, therefore, the State Legislature was incompetent to make a law levying purchase tax under Entry 54 of List II of the Seventh Schedule to the Constitution. It was in answer to this contention that it was held,—

> "But the Sales Tax Act applies only to the sales as defined in the Act. Under Clause (ff) of section 2 of the Act, it is defined as transfer of property. As purchase is only a

(15) (1954) 5 Sales Tax Cases 108.

different aspect of sale, looked at from the standpoint of purchaser and as the Act imposes tax at different points in respect of sales, having regard to the purpose of the sale, it is unreasonable to assume that the Legislature contemplated different categories of transactions when taxable event is at the purchase point. Whether it is sale or purchase, the transaction is the same."

(8) The Principal Act and the Amending Acts have been passed by the Punjab Legislature under the powers conferred by the Constitution on the State Legislature under Entry 54 of List II of Seventh Schedule to the Constitution, which reads as under :

"Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92A of List I."

From this, it is clear that even under the Constitution, for the purpose of taxation and the selection of persons as to who should pay the tax, sale and purchase of goods have been treated as two different transactions. The Legislative history of the Act also shows that the Legislature, to begin with, imposed tax on the sale of goods and only seller of goods was made liable to pay the tax. It was only in the year 1958 that, for the first time, in some circumstances, and in connection with some transactions, the incidence of taxation was imposed on purchaser also and purchaser of goods was made liable. A combined reading of the definitions of "purchase", "sale", "dealer" and "turnover" shows clearly that the sale of goods has been treated by the Legislature as quite distinct and independent of the purchase of goods for the purpose of fastening liability to pay the tax on the seller or the purchaser. To begin with, section 6 provided exemption on sale of goods as specified in Schedule 'B'. After the introduction of purchase tax in the year 1958, section 6 was amended and provided exemption on purchase of goods as specified in Schedule 'C'. Subsequently, Schedule 'C', as mentioned in Section 6, was deleted and the position reverted back as it existed in the Principal Act in the year 1948. From this also, it is clear that whenever the Legislature wanted to refer to the sales tax payable by the seller, it used the expression "tax on a sale of goods" and when it wanted to realise tax from the purchaser, the expression used was "tax on the purchase of goods". The expressions "sale of goods" and the "purchase of goods", as used by the legislature in section 5(2) (a) of

the Act have also to be interpreted in this context. Adoption of any other interpretation will be doing violence to the language and also not interpreting the intention of the Legislature properly and correctly.

(9) In sub-clause (vi) of Section 5(2)(a) deduction has been allowed on the purchase of goods which are sold within six months from the close of the year to a registered dealer or in the course of inter-State trade or commerce or in the course of export out of India. In sub-clause (vii), deduction, in general, has been provided for in respect of "such other sales or purchases" as may be prescribed. From this also, the intention of the Legislature is clear that when Legislature wanted to give exemption on sale of goods or purchase of goods, different appropriate expressions were used. If it was intended to grant exemption on the purchase of goods also in a case where the same were purchased for the purpose of manufacture of goods, this exemption could have been expressly included in sub-clause (vi).

(10) The learned counsel for the petitioner has laid great emphasis in support of his contention on *Modi Spinning and Weaving Mills Company Limited* v. *The Commissioner of Sales Tax, Punjab and another* (16). In the said case, M/s Modi Spinning and Weaving Mills Company, Modi Nagar, the assessee, filed a return of its sales regarding its gross turnover and the taxable turnover in which deduction of about Rs. 10,000,00 on account of unginned cotton purchased by it on a certificate of registration granted to it on January 3, 1956, was claimed. This deduction was not permitted by the assessing authority. That order was challenged by the assessee in a writ petition under Articles 226 and 227 of the Constitution, but the same was dismissed by the High Court. Then the assessee went in appeal before the Supreme Court. It was in these circumstances held by their Lordships of the Supreme Court as under :

> "There are three conditions involved :
>
> the first is that they must be for the use of the dealer; the second is they must be for manufacture in the State of Punjab; and the third is that the manufacture must result in goods for sale. It is not necessary to decide whether the sale should also be in the Punjab for the reason that no sale as required took

(15) A.I.R. 1965 S.C. 957.

place. The exemption could only be claimed if the Company satisfied all the three conditions. The last condition does not appear to be fulfilled in this case. The words "for sale" show the quality of goods and it is clear the goods that are manufactured in the Punjab must be for sale. According to the section the goods which are the result of manufacture must be for sale and not for use by the manufacturer in some manufacture outside the State resulting in different goods. The goods which the Company manufactured in the State of Punjab were bales of ginned cotton and they were admittedly not for sale because they were sent to its spinning and weaving mills in Uttar Pradesh. The exemption, therefore, could not be claimed in view of the fact that all the requirements of the section were not complied with."

It is, thus, clear that the question specifically under consideration, in the present case, was not before their Lordships of the Supreme Court in the aforesaid case. In the above case it was also held that form S.T. XXII is "for declaration" to be furnished by the registered dealer purchasing goods from another registered dealer, for exemption of tax under rule 26 read with section 5 of the Act. From a perusal of section 5(2)(a) sub-clauses (i) to (vii), it is clear that the deductions can be claimed if sales or purchases are to be made by the dealers to registered dealers who have to fill and sign a declaration in Form S.T. XXII, as provided under rules 26 and 27-A of the Punjab General Sales Tax Rules, 1949 (hereinafter to be called the Rules). In the present case, admittedly, paddy was purchased by the petitioner not from the dealers, but from the agriculturists who do not come under the category of dealers as defined under the Act. Considered from this angle also, the petitioner is not entitled to claim deductions under any of the clauses of section 5(2)(a).

(11) The learned counsel for the petitioner has also relied upon *The State of Assam* v. *Ramesh Chandra Dev and others* (17), but the facts of the said case were entirely different. In that case, the petitioner, a registered dealer in Assam whose business consisted mainly of buying tea in Assam and selling it either in Assam or in Calcutta, challenged the legality of the amendment on the ground that the result of the amendment was that tax could be levied on inter-State

(17) (1962)1 S.C. Reports 986.

sales and that, therefore, it contravened Article 286(2) of the Constitution of India. The *ratio* of the said case has no bearing on the question involved in the present case. A combined reading of section 5(2) (a) (ii) rules 26 and 27-A of the Rules shows that if a selling dealer sells goods to a registered dealer which are required by the purchasing dealer for the purpose of manufacturing goods to be sold in the State of Punjab and a declaration as prescribed under rule 26 of the Rules is duly given by the purchasing dealer, the selling dealer is entitled to the deduction on sale amount of such goods from his turnover. The policy underlying this deduction is quite clear inasmuch as the seller does not consume the goods which are sold for the purpose of manufacture and the clear policy of the Act is not to make such a dealer liable to Sales Tax in such transactions. Rule 27-A of the Rules specifically deals with the deductions by the purchasing dealer in the circumstances provided under sub-clause (vi). Thus, the petitioner is not entitled to any deduction under section 5(2) (ii) of the Act on the paddy purchased by him.

(12) Lastly, Mr. Bhandare, contended that the petitioner cannot be subjected to purchase tax as he is not a dealer as defined under section 2(d) of the Act. "Dealer" has been defined under section 2(d) of the Act and the relevant part thereof, necessary for the determination of this case is reproduced below :

> " 'Dealer' means any person including a Department of Government who, in the normal course of trade, sells or purchases goods in the State of Punjab irrespective of the fact that the main place of business of such person is outside the said State and where the main place of business of any such person is not in the said State, dealer includes,—
>
> the local manager or agent of such person in Punjab in respect of such business.
>
> *Explanation*—(1) * * * * *
>
> (2) * * * * * *
> * * * * * *
>
> (3) * * * * * *
> * * * * * *"

It is an essential ingredient that a person must sell or purchase goods in the State of Punjab "in the normal course of trade". According to the learned counsel, the petitioner purchases paddy for the purpose of dehusking the same into rice in his factory which is not allowed to be sold in the open market and is acquired to the extent of 95 per cent. by the Government at a fixed price. As the acquisition of the rice from the petitioner is admittedly not a sale, the petitioner cannot be held to be carrying on the business of selling and purchasing rice "in the normal course of trade." It is argued that the mere fact, that the petitioner does the act of purchasing paddy which is not sold, is not sufficient to bring him within the ambit of "dealer" under the Act. The term "trade" has been defined in sub-clause (1) of section 2 of the Act as under :

> "(i) Any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with the motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and
>
> (ii) any transaction in connection with, or ancillary or incidental to, such trade, commerce, manufacture, adventure or concern."

From its perusal, it is clear that in order to be included in the category of dealer under the Act, it is not necessary for a person to carry on his business activity including manufacture with the "motive to make profit", nor is it necessary that any profit should actually accrue to him. The activity of the petitioner, in the matter of purchase of paddy and its manufacture into rice, is in the course of normal trade. The mere fact that a large part of the rice is to be sold to the Government at a fixed price, will provide no justification to the petitioner to exclude himself from the category of dealers. The Division Bench judgment of this Court in *The Food Corporation of India and another* v. *The State of Punjab and others* (18), wherein the Food Corporation of India was held not to be a dealer is of no help to the case of the petitioner. In the said case, the Food Corporation of India was procuring rice from the surplus States

(18) CW 4066/73 decided on May, 17, 1975.

through the agency of the State Governments for distribution in the deficit States to overcome the acute shortage of rice in those States. It was in these circumstances that this Court held,—

> "The Corporation has no voice in the matter at all and is only a recipient of the foodgrains from the surplus States. The entire policy is determined at the highest level between the Central Government and the State Governments .... The Corporation after receiving the foodgrains, passes it on to the deficit States at the same price at which it was procured plus some other sundry charges.....If a dealer has no say of any kind in the matter, I fail to understand how such a transaction can have any profit motive. It will be a travesty of facts to call it a business so far as the distribution of foodgrains to deficit States by the Corporation is concerned."

The learned counsel for the petitioner, has relied upon a number of other decisions of various High Courts, which however, do not lend any support to the proposition canvassed by him. In *The State of Andhra Pradesh* v. *H. Abdul Bakshi and brothers,* (19), it was held by their Lordships of the Supreme Court,—

> "Mere buying for personal consumption, i.e., without a profit motive will not make a person dealer within the meaning of the Act, but a person who consumes a commodity bought by him in the course of his trade, or use in manufacturing another commodity for sale, would be regarded as a dealer."

In *C. P. Timber Works* v. *The Commissioner of Sales Tax and others,* (20), it was clearly held by the Supreme Court that by the use of expression "profit motive" it is not intended that profit must, in fact, be earned. It was further held that a person who sells goods which are unserviceable or unsuitable for his business does not on that account become a dealer in those goods unless he has an intention to carry on the business of selling those goods. In *The Director of Supplies and Disposal, Calcutta* v. *Member, Board of Revenue, West*

(19) (1964) 15 Sales Tax Cases 644.

(20) (1967) 19 Sales Tax Cases 1.

*Bengal, Calcutta* (21), the Directorate of Disposals was an organisation of the Government of India responsible for the disposal of surplus American war equipment which had been taken over by the Government of India.

The function of this Directorate was to dispose of surplus goods and to purchase goods on behalf of the Government of India. It was in these circumstances that it was held by the Supreme Court,—

> "The Directorate was not carrying on the business of buying or selling the goods within the meaning of section 2(c) of the Act. [The Bengal Finance (Sales Tax) Act, 1941]. It was not selling surplus goods for profit, but it was merely disposing of the surplus material by way of realisation and the transactions were, therefore, not taxable as sales under the Act."

In *Deputy Commercial Tax Officer, Saidapet, Madras and another* v. *Enfield India Limited Co-operative Canteen Limited*, (22), their Lordships of the Supreme Court held the Co-operative Society a dealer when it supplied, to its members, refreshments for a price in the canteen maintained by it. In *State of Tamil Nadu* v. *Burmah Shell Oil Storage and Distributing Company of India and another* (23) even the sale of scrap was held by the Supreme Court to be connected with the business of the Company and its turnover was held to be liable to tax. The delivery of calendars, wallets and key-chains by the dealers to its consumers for purposes of maintaining and increasing the sales of the products of the assessee was held to be connected with the business and the supply of such material was held liable to be included in the turnover of the assessee. In *The Indian Iron and Steel Company Limited* v. *Member, Board of Revenue, West Bengal* (24), the petitioner, who was an employer, sold certain commodities of daily use to his employees, to provide them with essential amenities without any profit motive. In these circumstances, it was held that the employer cannot be held to be carrying on the business with a commercial motive. It was further held that a person cannot be a dealer under the Bengal Finance

(21) (1967) 20 Sales Tax Cases 398.
(22) (1968) 21 Sales Tax Cases 317.
(23) (1973) 31 Sales Tax Cases 426.
(24) (1971) 27 Sales Tax Cases 373.

(Sales Tax) Act, 1941, unless he carries on the business of selling goods in a commercial sense. In the present case, the petitioner cannot be held, by any stretch of imagination that by purchasing paddy and converting them into rice by manufacturing and then by selling the same to the Government, though at a fixed price, was not carrying on any business in a commercial sense. In *Motor Industries Company Limited* v. *The State of Mysore and others* (25), the Mysore High Court held that the welfare activity of running a canteen by the petitioner, but not being a commercial activity, the sales effected in the canteen did not amount to carrying on the business of buying or selling goods. In *Deputy Commissioner of Commercial Taxes, Coimbatore Division, Coimbatore* v. *Sri Thirumagal Mills Limited* (26), the Madras High Court held that the assessee a limited company, manufacturing cotton yarn, by opening a fair-price shop and providing amenities to its workmen cannot be said to be carrying on the business of selling commodities in the fair-price shop in a trade or commercial sense.

(13) The decision in *Ganesh Prasad Dixit* v. *Commissioner of Sales Tax, Madhya Pradesh* (27), is more in point. In that case, the appellant, a firm of building contractors, registered as dealer under the Madhya Pradesh General Sales Tax Act, 1958, purchased building materials in the relevant accounting periods and used the materials in the course of his business. The question involved was : whether the appellant was a dealer within the meaning of the expression as defined in section 2(d) of the said Act and liable to purchase tax under section 7 of the said Act on the purchase price of the goods used in the course of his business as a building contractor. In these circumstances, their Lordships of the Supreme Court held as under :

> "A person to be a dealer within the meaning of the definition in section 2(d) of the Act need not both purchase and sell goods; a person who carries on a business of buying has, by the express definition of the term under section 2(d) is a dealer.

(14) From a close study of the aforementioned judgments, it is clear that a person who carries on the occupation of purchasing or

(25) (1971) 27 Sales Tax Cases.
(26) (1967) 20 Sales Tax Cases 287.
(27) (1969) 24 Sales Tax Cases 343.

selling the goods and the said business is of a commercial character and not on account of any welfare activity for the convenience of the employees, is a dealer for the purpose of assessment of tax on purchase or sale, as the case may be. In view of the comprehensive definition of "trade" given in the Act, 'profit motive' is also not necessary to bring a person within the ambit of a dealer under the Act; nor is it necessary that he should actually earn profit in his business activity. So far as the present case is concerned, the petitioner has been carrying on the business purchasing paddy and dehusking them into rice for the last many years and has even voluntarily obtained dealers' registration certificate from the Sales Tax authorities. If the price fixed by the Government for the purchase or acquisition of rice from the petitioner was not reasonable or profitable, normally, the presumption will be that he would have either challenged the levy price of rice or discontinued his business. In any case, for the purpose of the present proposition, the accrual of profit to the petitioner so far as the sale of rice is concerned, is not relevant. For the purpose of levy of tax on purchase of paddy, the petitioner has no justification to dispute his status as a dealer under the Act.

(15) Mr. Bhal Singh Malik, the learned counsel for the writ petitioner, submitted that the petitioners are exempt from the liability to pay purchase tax on paddy because agricultural produce is included in Entry 39, Schedule 'B' of the Act. Paddy being admittedly an agricultural produce, will be thus exempt from levy of tax of any kind. This contention has no substance. As I have already held, section 6 of the Act under which Schedule 'B' to the Act has been made, provides exemption of tax only on sale of goods regarding the goods entered in Schedule 'B' of the Act.

(16) Mr. Bhandare, the learned counsel for the petitioner, also addressed some arguments on the scope and ambit of section 4-B of the Act. However, Mr. Chhibbar, the learned counsel for the respondents, agreed that section 4B was not applicable to the case of the petitioner. In view of this, we do not think it necessary to give any decision on the scope and ambit of section 4B of the Act.

(17) For the reasons recorded above, it is held that the notification dated January 15, 1968 (Annexure P. 3) including paddy and rice in Schedule 'C' issued by the State Government in exercise of the powers conferred under section 31 of the Act is valid and does

not suffer from any illegality: that section 31 of the Act does not suffer from the vice of excessive delegation of legislative power and that the petitioner is a "dealer" as defined under the Act. The result is that all the aforementioned writ petitions fail and the same are dismissed with no order as to costs. Civil Miscellaneous Petitions Nos. 618, 2420, 882 and 889 in Civil Writ Petitions Nos. 354, 418, 463 and 555 of 1975, are allowed.

Bhopinder Singh Dhillon, J.—I respectfully agree and have nothing to add.

*N. K. S.*

FULL BENCH

CIVIL MISCELLANEOUS

*Before O. Chinnappa Reddy, Bhopinder Singh Dhillon and Rajendra Nath Mittal, JJ.*

R. A. BOGA,—*Petitioner.*

*versus*

APPELLATE ASSISTANT COMMISSIONER OF INCOME TAX, A-RANGE, AMRITSAR AND ANOTHER,—*Respondents.*

Civil Writ No. 546 of 1968.

November 18, 1976.

*Income Tax Act (XI of 1922)—Sections 23(2), 23-B, 31(3)(b), 34(3) and 35—Income Tax Act (43 of 1961)—Sections 143(3), 150, 154, 240, 246, 252(1)(a) and 297(1)—Original assessment completed under the 1961 Act when it ought to have been completed under the 1922 Act—Such assessment—Whether a nullity—Appellate Assistant Commissioner setting aside the assssment and directing the Income Tax Officer to make fresh assessment—Such direction—Whether could be issued—Fresh assessment—Whether can be made after the expiry of four years—Tax paid pursuant to provisional assessment—Whether liable to be refunded—Income-tax Officer ordering refund of such tax by mistake—Such mistake—Whether could be rectified.*

*Held*, that where the Income-tax Officer completed the original assessment under the provisions of the Income Tax Act 1961 when he ought to have completed it under the Income Tax Act 1922, the assessment was not void. It was not a nullity and at the worst there was a technical irregularity. Merely because the Income-tax Officer