

## **The State Of Punjab And Ors. vs Subhash Trading Company And Ors. on 20 November, 1975**

**Equivalent citations:** AIR1976SC769, (1976)1SCC278, [1976]37STC530(SC), 1976(8)UJ39(SC), AIR 1976 SUPREME COURT 769, 1976 (1) SCC 278, 1976 TAX. L. R. 1517, 37 STC 530, 1976 UJ (SC) 39, 1976 7 STA 17, 1976 SCC (TAX) 38, 1976 UPTC 175

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**Bench:** K.K. Mathew, N.L. Untwalia, P.K. Goswami

### **JUDGMENT**

N.L. Untwalia, J.

1. All these four appeals by the State of Punjab and others against the different assessee respondents are covered by the decision of this Court in State of Punjab and Ors. v. Shakti Cotton Co. (1) and have got to be disposed of in accordance with the said decision. Since the learned Counsel for the appellants endeavoured to draw a distinction between the facts of the aforesaid cases and those in the instant appeals, we shall briefly state the facts of one of the appeals i.e. Civil Appeal No. 2,235 of 1970 and show that 'the distinction sought to be made is illusory.

2. Subash Trading Company the respondent in Civil Appeal No. 2235 of 1970 was carrying on business at Jagraon in the District of Ludhiana. It was a dealer registered under the Punjab General Sales Tax Act, 1948-hereinafter called the Act. The Company amongst others used to carry on the business of purchasing unginned cotton and after ginning the same used to sell the ginned cotton and the cotton seeds. Roughly speaking, the proportion of the two products was 1/3rd and 2/3rd that is to say, out of 3 mounds of unginned cotton and two maunds of cotton seeds. For the year 1961-62 the Company submitted a Return under the Act the Company submitted a Return under the Act showing the figure of gross purchase turn-over at Rs. 4 lakhs and odd. which included the purchase figure of unginned cotton. The assessee claimed that it had sold the entire ginned cotton and cotton seeds produced out of the unginned cotton to registered dealers and in course of inter-State trade and commerce. It, therefore, claimed deduction of the entire amount of the price of unginned cotton from its gross turn-over under Section 5(2)(a)(vi) of the Act. The assessing authority, Ludhiana by its assessment order dated the 16th March, 1964 allowed deduction to the extent of 1/3rd only that is to say in respect of the price of ginned cotton. The company filed a writ petition in the Punjab & Haryana High Court and challenged the order of the assessing authority as being without jurisdiction and illegal. The learned single Judge of the High Court disposed of the writ petition by his order dated January 29, 1965 passed in the following terms:

The point involved in this petition under Article 226 of the Constitution stands concluded by a Bench decision of this Court in *Patel Cotton Co. Private Ltd. v. the State of Punjab 1964 Sales Tax Cases 865*. The petition is consequently allowed and the Assessing Authority is directed to modify the order and give such relief as may be permissible in accordance with the law laid down by the Division Bench.

Letters Patent appeal filed by the appellants was dismissed in limine by a Division Bench of the High Court. The facts of the other appeals are identical. All the appeals were filed by certificate of the High Court.

3. The entire history of the law involved in these appeals, its implications and effect have been very elaborately considered by this Court in the case of *Shakti Cotton Company (supra)*. The said Company had filed a writ application in the year 1964 in the High Court to challenge the assessment order passed on September 26, 1963. The assessee had claimed the entire amount of the purchase price of unginned cotton as deductible under Section 5(2)(a)(vi) of the Act and had also challenged the legality of the assessment. (A question, simpliciter, as to whether the price of cotton seeds was deductible from the purchase turn-over of unginned cotton was fully covered by the decision of this Court in *State of Punjab and Ors. v. Chandu Lal Kishori Lal Ors. etc. (2)*). But the legality of the assessment under the Act as it stood at the time of the passing of the assessment orders was challenged with success in the case of *Bhawani Cotton Mills Ltd. v. State of Punjab and Anr. (3)*. The defect in the said law, as pointed out by this Court in the said case, rectified by issuance of two Ordinances followed by Punjab General Sales Tax (Amendment and Validation) Act, 1967 (Act VII of 1967). The validity of the amending law was upheld by this Court in *Rattan Lal and Co. and Anr. v. The Assessing Authority and Anr. (4)*. After tracing the entire history of the law, Vaidialingam J. delivering the judgment of this Court in the case of *Shakti Cotton Company (supra)* pointed out at page 302:

It will be seen from the amendments, referred to above, that an entirely new scheme, so as to say, has been evolved in the matter of assessment to sales tax of declared goods. In the case before us, we are concerned with "cotton" which is an item of "declared good" under the Central Act. There is no controversy that purchase tax is to be levied in respect of the said commodity. Under the new Sub-section (3) Clause (a) Sub-clause (2) of Section 5 of the Act, in the case of purchase tax, the levy is to be at the stage of purchase of such goods by the last dealer. Therefore, the question whether the assessee comes under this clause, for levy of purchase tax, which is a question of fact, will have to be investigated.

4. The orders made in the case of *Shakti Cotton Company (supra)* wherein these terms.

We have already pointed out that in all the appeals, except in Civil Appeal No, 1466 of 1969, the learned Single Judge has directed the assessing authority to reconsider and vary the order of assessment. That direction has been confirmed by the Letters Patent Bench in the said appeals. Those directions, in our opinion, do not require any interference by this Court, except to make it clear that the fresh assessment will have to be made under Section 11AA of the amendment Act, and

subject to the directions contained in this judgment.

5. In our opinion all the present appeals shave also got to be disposed of in identical terms. The directions given by the learned single Judge are to be modified only to this extent that in all these cases fresh assessments will have to be made under Section 11AA as introduced in the Act by the Amendment Act in the light of the judgment of this Court in the case of Shakti Cotton Company (supra). The appeals are accordingly disposed of in the manner stated above. There will be no order as to costs in any of the appeals.