Bhawani Cotton Mills Ltd vs State Of Punjab & Anr on 10 April, 1967

Equivalent citations: 1967 AIR 1616, 1967 SCR (3) 577, AIR 1967 SUPREME COURT 1616

Author: C.A. Vaidyialingam

Bench: C.A. Vaidyialingam, K. Subba Rao, J.C. Shah, S.M. Sikri, V. Ramaswami

PETITIONER:
BHAWANI COTTON MILLS LTD.

Vs.

RESPONDENT:
STATE OF PUNJAB & ANR.

DATE OF JUDGMENT:
10/04/1967

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
RAO, K. SUBBA (CJ)
SHAH, J.C.
SIKRI, S.M.
RAMASWAMI, V.

CITATION:
1967 AIR 1616 1967 SCR (3) 577
CITATOR INFO :
RF 1970 SC1742 (3)
F 1972 SC1458 (40,43)
RF 1972 SC1760 (8,10,16,17)
D 1974 SC1111 (7)
RF 1976 SC 769 (3)
R 1985 SC1041 (11)
R 1989 SC1931 (3)

ACT:
Punjab General Sales Tax Act (46 of 1948),ss. 2(ff), 5(1) second proviso and 5(2)(a)(vi) and Central Sales Tax Act (74 of 1956), s. 15(a)-Whether provisions of State Act in conflict with those of Central Act.
Notification in 1958 under s. 5(1) prescribing rate of

purchase tax-Amendment of word "purchase"-No fresh Notification-Legality of levy of purchase tax.

HEADNOTE:

The definition of the word "purchase" was first introduced in the Punjab General Sales Tax Act, 1948, in 1958. As the rate of tax to be levied was to be contained in a Notification to be issued under s. 5(1) of the, Act, a Notification was issued in April 1958 regarding the rate. of tax on the purchase of goods "for use in the manufacture of good,% for -.is per the then definition of "purchase". The definition of "purchase" was amended twice in 1959 and again by Punjab Act 19 of 1960. The definition after these amendments has reference to the goods specified in Schedule C to the Act an item of which relates to cotton, and, after the 1960 amendment the clause "for use in the manufacture of goods for sale" was omitted. After those amendments, no fresh Notification prescribing the rate of tax on the purchase of goods was issued till September 26, 1961.

The appellant was a cotton ginning factory and was a dealer registered tinder the Act. Under s. 10, it had to send quarterly returns within the time specified and when sending the returns had to pay the amount of tax, in accordance with the returns which should also show the gross turnover. Failure to do so was an offence and subjected the dealer to heavy penalties. The appellant filed returns for the assessment years 1960-61, 1961-62) and 1962-63 and paid certain amounts of tax which, according to it were due from it. The assessing authority passed order of assessment, including in the appellant's turnover the amounts repre-senting the purchases of cotton made by the appellant for each of the years. The appellant thereupon filed writ petitions challenging the three assessment orders on the ground that the -second proviso to s. 5(1) and s. 5(1)(a)(vi) of the Act, enabling the State to collect purchase tax in respect of cotton, were opposed to s. 15(a) of the Central Sales Tax Act, 1956 and that, in consequence, it was not liable to pay any purchase tax far the assessment years in respect of cotton. The High Court rejected the petitions.

In appeal to this Court,

HELD : (1) (By Full Court) As no fresh Notification was issued till September 26, 1961, the orders of' assessment for the two years 1960-61 and 1961-62 could not be sustained. [592 H; 593 B]

The levy of tax could not be sustained under the Notification of 1958 on the basis of s. 22 of the Punjab General Clauses Act. That section has no application, because the definition of "purchase" on the of Sup CI/67-7

578

which that Notification was issued is inconsistent with the

definition of "purchase" as it stood after its amendment in 1960. [592E-F]

Further, if the levy is to be sustained on the basis of the Notification of 1958, the State could levy tax only on the category of purchases "for use in the manufacture of goods for sale". But it was not open to the State to make such a choice. [592G]

(2) (Per Subba Rao, C.J., Shah and Vaidialingam, JJ.) Even though there was a notification fixing the rate of tax for the year 1962-63, the order of assessment for that year and also for the two years 1960-61 and 1961-62 should be quashed on the ground that the provisions of the State law under which they were made violated s. 15 of the Central Act. [591A]

Under s. 15(a) of the Central Act in respect of commodities like cotton which come under the category of "declared goods" is defined in s. 2(c) of the Central Act, the purchase tax can be levied only at one stage. The essence of one-stage taxation consists of fixation of a single point or stage, either by the State Act or the rules framed thereunder. A mere injunction by the Legislature, as contained in the second proviso to S. 5(1) of the State Act, that the rate should not be higher than the one fixed in the Central Act, and that the levy must be at one stage as mentioned in the Central Act, will he of no avail, unless the Act or the rules framed under it make it clear that them will be no levy or collection of lax, except from the persons who are bound to pay as per the Central Act. The proviso doe,-, not serve any material purpose. because, even if it did not exist the authorities cannot levy tax on declared goods at a rate higher than that laid down in the Central Act. [583H- 584G-H; 587F-H. 588]

Further, there can be no legal liability for payment of tax unless the Act or the rules prescribe a single point for taxation; but under s. 5(2)(a), in respect of the same item of declared goods, more than one person is made liable to pay tax. and the tax is levied at more than one stage. For example, if A sells declared goods to B and B to C, (B and C being registered dealers) and the sales are beyond the period of 6 months mentioned in s. 5(2) (a) (vi), both A and B will be liable to pay purchase tax. [588A-B, G-H]

Moreover, in the final return sent by the dealer, it will have to show in the taxable turnover all purchases of cotton effected by it during the accounting year and the tax payable will have to be paid. The dealer can get a declaration from the dealer to whom the goods are re-sold and claim exemption under s. 5(2) (a) (vi) and r. 27A of the rules made under the Act. But these provisions apply only to registered dealers, whereas s. 15 of the Central Act is not restricted to registered dealers. Also, if a non-registered dealer intervenes, there is no machinery by which the dealer can ascertain whether his vendor of the declared good,-,, has paid the tax already. [584B; 588B-D, G]

The orders of assessment could not be sustained on the basis of the provisions for refund in s. 12 and the rules. These provisions do not afford adequate relief. If the Central Act makes it mandatory that the tax can be collected only at one stage it is not enough for the State to say that a person who is not liable to pay tax, must nevertheless pay it in the first instance and then claim refund at a later stage. If a person is not liable for payment of tax at all, at any time, the collection of a tax from him with a possible contingency of refund at a later stage will not make the original levy valid. Besides. even in the matter of obtaining refunds the appellant will have to place before the officer concerned,
particulars of transactions connected with the commodity and the basis on which it claims relief, and it would be extremely difficult to collect the materials in this behalf, because, there is no provision in the Act or the rules on the basis of which it will be entitled to be supplied with such relevant materials. [589C-G]
Modi Mills v. C.I.T., Punjab, [1965] 1 S.C.R. 592 and A. V. Fernandez v. The State of Kerala, [1957] S.C.R. 837, followed.
(Per Sikri and Ramaswami, JJ. dissenting) :
The assessment for the year 1962-63 is valid.
The second proviso to s. 5 serves one useful purpose, namely, it gives immunity to the State Act from challenge on the ground that its provisions infringe s. 15 of the Central Act. The State Act is good and in -effect complies with the requirements of s. 15 of the Central Act, because, it is possible to find out the stage at which purchase tax become-leviable on goods mentioned in Schedule C, both in cases where the purchasers are registered dealers and in cases where unregistered dealers intervene. Under ss. 4 and 5 of the Act the stage is the first purchase which is not exempt from taxation or which is not deductible from the taxable turnover of a dealer under s. 5(2) of the State Act. For example, if A buys cotton and sells it to B and B sells to C, where all are registered dealers, if A is liable to pay purchase tax, B and C could say to the assessing authority that they are exempt from paying purchase tax. Since A would be interested in obtaining the declaration from B for claiming exemption under s. 5 (2) (a) (vi) and B would be interested in knowing whether A's was the first taxable purchase, they will behave like ordinary businessmen and know the true position is to whether A was liable or not. If A's sale was within and B's sale beyond, the period of 6 months mentioned in s. 5(2)(a)(vi), B will be liable to pay purchase tax and the purchaser from him would be exempt. If in the illustration C is an unregistered dealer, B will 'be liable to pay purchase tax because he cannot claim exemption under s. 5(2)(a)(vi). If B is also an unregistered dealer, B would be liable and C would be exempt. If B is an unregistered dealer, and C is a registered dealer, B will be

liable unless he obtains the prescribed declaration from C. But if there is double taxation due to mischance in the case of registered dealer,, or ignorance in the case of unregistered dealers, the Act cannot be treated and void for that reason especially when there is a suitable provision for refund.
[593C-G; 594A-C, E-G]
Modi Mills v. C.I.T. Punjab, [1965] 1 S.C.R. 592, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Apppeals Nos. 2386 2388 of 1966.

Appeals from the judgment and order dated November 23. 1965 of the Punjab High Court in Civil Writ Nos. 1591 of 1963 and 1913 and 1914 of 1962 respectively.

S. T. Desai, A. N. Sinha, C. D. Garg and B. P. Jha, for tile appellant (in C.A. No. 2386 of 1966).

H. L. Shibal, A. N. Sinha, C. D. Garg and B. P. Jha, for the appellant (in C. As. Nos. 2387 and 2388 of 1966). Bishan Narain, O. P. Malhotra and R. N. Sachthey, for the respondents (in all the appeals).

The Judgment of SUBBA RAo, C.J., SHAH and VAIDIALINGAM, JJ. was delivered by VAIDIALINGAM, J. SIKRI, J. on behalf of himself and RAMASWAMI, J. delivered a partially dissenting, Opinion.

Validialingam, J. In all these three appeals, on certificate, the common judgment of the High Court of Punjab, dismissing the three writ petitions filed by the appellant, is under attack, by Mr. S. T. Desai, learned counsel for the appellant.

The appellant, who is the same in all these appeals, is the Bhawani Cotton Mills Ltd., running a cotton ginning factory, and engaged in the business of manufacturing yarn from cotton. It is a dealer, registered under the Punjab General Sales Tax Act, 1948 (Punjab Act. No. XLVI of 1948), hereinafter called the Act. The appellant filed returns for the assessment years 1960-61, 1961-62 and 1962-63. It had- 'Paid a certain amount of tax which, according to it, was alone due from it. But, according to the appellant, it was not liable to pay Central sales tax on the purchase of cotton during the relevant accounting years. The appellant had taken various grounds of attack, before the assessing authority, but the most important contention raised, appears to have been that the material provisions in the Act, particularly the second proviso to s. 5(1) and cl. (vi) of s. 5 (2) (a), of the Act, enabling the State to collect purchase tax, in respect of cotton, are opposed to the material provisions of the Central Sales Tax Act, 1956 (Act LXXIV of 1956) (hereinafter called the Central Act). The appellant pleaded that it was not liable to pay, in consequence, any, purchase tax, for the assessment years in question, in respect of cotton.

The Excise & Taxation Officer, Ferozepore, did not accept the pica of the petitioner-appellant regarding its non- liability to the purchase tax on cotton. He, accordingly, passed orders of assessment, including the turnover representing the purchases of cotton made by the appellant. The assessment orders for the years 1960-61 and 1961-62, are 'dated November 15, 1962, and for the assessment year 1962- 63, is dated July 30, 1963.

The appellant, thereupon, filed Civil Writ Petitions, Nos. 1913 and 1914 of 1962 and 1591 of 1963, challenging the assessment orders for the years 1961-62 and 1960-61, and 1962-63 respectively. The High Court, by its common order, rejected the writ petitions filed by the appellant and confirmed the orders of assessment, passed by the assessing authority.

The common question, that arises for consideration in these three appeals, is as to whether the second proviso to s. 5(1) and cl. (vi) of s. 5 (2) (a) of the Act, are opposed to any of the relevant provisions of the Central Act. A further question arise,;

in Civil Appeals Nos. 2387 and 2388 of 1966, regarding the validity of a Notification, issued by the State Government, under s. 5 of the Act, on September 26, 1961. We shall consider this further question, after expressing our opinion, on the more important question, which is common to all the appeals.

In order to appreciate the contentions that have been taken before us, by Mr. S. 'F. Desai, learned counsel for the appellant, and Mr. Bislian Narain, learned counsel for the State, it is necesarily to refer to the relevant provisions in both the Acts. It is only necessary to refer to the provisions of the Act, as they stood on April 1, 1960. The, Act of 1948, has been amended from time to time, and it may not 'be necessary to refer to those amendments, excepting on one aspect, when we deal with the validity of the Notification, referred to earlier.

Corning to the Act, according, to its preamble, it is an Act to provide for the levy of a general tax on the sale or purchase of goods in Pun ab. The expressions "dealer", "goods", "prescribed", "purchase", " sale", "turnover" and "year" are defined in cls. (d), (e), (f), (ff), (h), (i) and

(j) of S. 2. Particularly, s. 2(ff), defining "purchase", is as follows "2.(ff) In this Act, unless there is anything repugnant in the subject or context-

purchase' with all its grammatical or cognate expressions, means the acquisition of goods specified in Schedule C for cash or deferred payment or other valuable consideration otherwise, than under a mortgage, hypothecation, charge or pledge."

In Schedule C to the Act, the item with which we are concerned, relates to, cotton, and it is as follows :-

> "Cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether _ginned or unpinned, baled, pressed or otherwise, but not including cotton waste."

Therefore, the definition of the expression "purchase", has reference to the goods specified in Schedule C. The expression "turnover", in s. 2(i), will include the aggregate of the amounts of sales and purchases and parts of sales and purchases actually made by any dealer, during the given period. No, doubt, certain deductions are also mentioned in the definition of that expression. In these appeals, since we ire concerned only with tax on purchases, it is not necessary for us to advert to the definition of "

> sale", in s. 2(h) except to note that it excludes goods specified in Schedule C. Section 4 deals with the incidence of taxation, and it makes a dealer, whose gross turnover, during the year, in question, exceeded the taxable quantum, being liable to pay tax on all sales and purchases, subject to the provisions of ss. 5 and
>
> 6. In fact, the purchases, for being made liable, should have been effected after the commencement of the Amendment Act of 1958, amending the original Act. Section 4(2-A) provides that no tax on the sale of any goods shall be levied, if a tax on their purchase is payable under the Act, and this is notwithstanding anything contained in sub-ss. (
>
> 1) and (2) of s. 4. The effect of this provision is that if a tax on purchase is payable, then, in respect of the same goods, no tax shall be levied on their sale. Sub-s. (5) of s. 4 defines the expression "taxable quantum". Section 5 deals with the rate of tax and it provides for levying a tax, on the taxable turnover of a dealer, at rates not exceeding six naye paise in a rupee, is the State Government may, by notification, direct, and the levy must be subject to the provisions of the Act. The second proviso to s. 5 (1) is, as follows :-
>
> "Provided further that the rate of tax shall not exceed two naye paise in a rupee in respect of any declared goods as defined in clause (e) of section 2 of the Central Sales Tax Act, 1956, and such tax shall not be levied on the purchase or sale of such goods at more than one stage."

The expression "taxable turnover" is defined in s. 5(2), but, in arriving at the taxable turnover, the various deductions, mentioned in the sub-clauses of s. 5 (2) (a) and s. 5 (2) (b), ire exempt. Sub-cl. (vi), of s. 5 (2) (a), which mentions one of the items which is deductible in arriving at the taxable turnover 'is as follows :-

> turnover during that period on the purchase of goods which ire 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 g oods ire sold, is furnished by the dealer claiming deduction.!' Section 7 deals with the registration of dealers. Section 10 relates to payment of tax and the filing of returns.

> Its sub-s. 1 provides that the tax payable, under the Act, shall be noticed in the manner provided, it such intervals as may be prescribed. It may be mentioned here that there is no dispute that the appellant is one of those types of dealers who his to send quarterly returns, within the time specified. Sub-s. (4) of s. 10 makes it obligatory on the registered dealer to pay the full amount of tax due from him, under the Act, according to his returns, before the returns are furnished, and it provides for the returns being accompanied by the Treasury or Bank receipts evidencing such payment. It is only necessary to note that the appellant, when sending its quarterly returns, during the middle of a year, has to pay the amount of tax, in accordance with that return, and that return should also show the gross turnover, in accordance with the Act. Sub-s.

(6) of s. 10 makes a dealer liable for penalty, in the circumstances mentioned therein.

Section 11 of the Act deals with assessment of tax. Section 12 deals with refunds and, in the circumstances mentioned therein, a registered dealer can claim refunds from and out of the :Amounts which he has already paid. Section 23 provides for offences and penalties; and, particularly, cl.

(b) of s. 2 3 (1.) makes failure, without sufficient cause, to submit a return, as required. by s.10(3), an offence. Section 27 enables the State Government to make rules under the Act.

Rules have been framed, by the State Government, and it is only necessary to refer to some of the rules. Rule 20 makes it obligatory on the dealers concerned, other than those referred to in rr. 17, 18 and 19, to furnish returns._ quarterly, within thirty days from the expiry of each quarter. We have already referred to the fact that the appellant is liable to send quarterly returns, Rule 27-A is as follows :-

> "A dealer who wishes to deduct from his gross turnover the amount in respect of a purchase on the ground that he is entitled to make such deduction under sub-clause (vi) of clause (a) of sub-section (2) of section 5 of the Act. shall append to his return in form STVIIIA, a list in form STXXVILB or form STXXVIIC as the case may be, and produce on demand by the Assessing Authority a declaration in writing in form..... by the de-,tier to whom such goods are sold or by his agent."

Rules 48 to 55 deal with the procedure to be adopted for obtain a refund of tax paid, under s. 12 of the Act. Coming to the Central Act, one of the purposes sought to be achieved by that Act is to specify the restrictions and conditions to which State laws, imposing taxes on the sale or purchase of certain goods, which ,ire declared to be of special importance, shall be subject. The expressions "dealer" and "declared goods" are defined in ss. 2(b) and 2(c). respectively. "Declared goods" means goods declared, under s.14, to be. of special importance in inter-State trade or commerce. Section 14 enumerates the various goods which are declared to be of special importance in inter-State trade or commerce. One of the items, so declared, is "cotton", under item (ii), which is described as follows :-

> "cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste. "

Section 15, imposing restrictions and conditions in regard to tax on sale or purchase of declared goods, within a State is as follows:-

> "15. Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or- purchase of declared goods, be subject to the following restrictions and conditions, namely :-
>
> (a) the tax payable under that law in respect of an), sale or purchase of such goods inside tile State shall not exceed three per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;
>
> (b) where, a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State."

Pausing here for a minutes it may be stated that the attack, regarding the validity of some of the provisions of the Act, by the appellant, is rested on s.15(a) of the Central Act, on the ground that such a levy of purchase tax, regarding cotton, is neither definite nor ascertainable in the Act and that, as the provisions now stand, there is a possibility of the tax being levied at more than one stage. According to the appellant, the State legislation, which deals with the imposition of tax in respect of a sale or purchase of declared goods, must conform to the provisions of s.15(a) of the Central Act. The ingredients of those provisions are :

> (i) In respect of "declared goods", a tax, either Oil sale or purchase, alone, can be levied; and it cannot be on both sale and purchase. (ii) The rate of tax should not exceed the maximum limit fixed by the Central Act, and (iii) The tax can be levied only at one -stage. The essence of a one-

stage taxation consists of fixation of a single point or stage, either by the State Act or the rules framed thereunder. In this case', according to the appellant, it has to send quarterly returns, even during the accounting year and, as per S. 10(4) of the Act, it has to pay also tax, in accordance with the returns submitted by it for every quarter. In the returns that are being sent, the dealer will have to include all purchases' of cotton, effected by him during the quarter for which the return is sent. There is no indication, either in the Act or in the rules or the forms prescribed, as to whether the persons, from whom the appellant purchased cotton, have paid tax or not. Section 15 of the Central Act is not restricted only to registered dealers. There will also be nothing to guide the appellant to know as to whether the goods, purchased by it, have been sold to it by its vendor within the period mentioned in cl. (vi) of s. 5 (2) (a) of the Act. Under those circumstances, there is always a

possibility, or even a certainty, of more persons than one having paid tax or being made liable to pay tax in respect of the same goods at different stages. That is quite opposed to the provisions of s.15(a) of the Central. Act. Even otherwise, it is pointed out that if a person has purchased cotton and sells it after the period provided for in S. 5 (2) (a) (vi), that party is liable to pay sales tax and would have also paid the same. Another purchaser from the said party will also be, liable to pay tax, on the same commodity, if he sells the goods, after the period mentioned in cl. (vi). That is, two, persons are made liable for payment of tax, in respect of the same commodity. In other works, the purchases of the same item of declared goods, by the persons indicated above, are made liable for tax, whereas under the Central Act, there can be only one levy and collection of tax at one stage, either on sale or on purchase. Further, it is argued that the second proviso to s. 5(1) of the Act, is contrary to s.15(a) of the Central Act, inasmuch as the main section, which levies the rate of tax viz., s. 5(1), as well as the Notification issued under it, Clearly show that the Act levies tax at a far higher rate than the maximum provided under S. 15 (a) of the Central Act. Under these circumstances, it is pointed out. that both the second proviso to s. 5 (1), and cl. (vi) of s. 5 (2) (a). of the Act, will have to be struck down.

Counsel has also drawn our attention, to the relevant pro- visions in the Sales-tax Acts in force 'in' the States of Madras, Mysore Andhra Pradesh and Uttar Pradesh, where the, stage. -,it which the tax is to be levied either on purchase or on sale, his been definitely and clearly indicated. Such a provision, it is pointed out, has not been made in the Act.

On behalf of the State, it is urged that the provisions of the Act are quite consistent with s. 15(a) of the Central Act. Counsel points out that the second proviso to s. 5 (1) of the Act, makes it very clear that the rate of tax, in respect of declared goods, ,-,hall not exceed the rate mentioned in s.15(a) of the Central Act, either on purchase or on sale. Counsel also points Out that the said proviso further reiterates that the levy of tax, either on purchase or on sale, shall not be at more thin one stage.

Counsel further developed his argument by stating that the, normal rule, under the Act, in respect of declared goods, is to levy the tax, on sale or purchase, it the very first stage, that is, when the first sale or first purchase takes place. Therefore, the stage is definitely fixed, but the Act itself gives, as will be seen by sub-s. (2) of s. 5, various types of transactions which are to be excluded, in arriving at the. dealer's taxable turnover. It is open to a dealer to claim exemption, in respect of any particular-transaction, under one or other of the various clauses in S. 5(2). When that is so, the stage at which the tax is levied, gets changed, able to claim any exemption. But, ultimately, it is only one transaction, of sale or purchase, that is made liable to tax. Counsel also points out that the first proviso to S. 5(1), of the Act, which is quite in conformity with s.15(a) of the Central Act, is perfectly valid. It is pointed out that in respect of persons claiming exemption, under cl.

(vi) of S. 5 (2) (a), the procedure to be adopted is indicated in r. 27A, of such a purchaser getting a declaration, in the form mentioned therein, from the dealer, to whom such goods are sold, or by his agent. Therefore, tinder those circumstances, if once a dealer gives a declaration to his vendor, -the former will clearly know that the latter is exempt from taxation, and the liability to pay tax is his, unless lie is able to pass it on to others. There is no uncertainty, in the matter of fixing the stage, regarding the levy of sale or purchase tax. Therefore, that provision also is not violative of the

Central Act. Counsel also urges that in case a party is eligible for refund, on the ground that he is not liable to pay, in respect of any particular purchase, ample provision is made for obtaining, refund, under s. 12 of the Act. Therefore, under those cirCumstances, the State presses for the decision of the Punjab High Court, being upheld. We are not impressed with the contentions of the counsel for the State. A perusal of the judgment, under attack, shows that tile learned Judges themselves were very much impressed by the various aspects presented before them, on behalf' (if the appellant. In fact, the learned Judges observe that the various difficulties, pointed out by the petitioner before them, did exist in the actual working of the Act, but the view of the The Court was that s.12 of the Act provided for obtaining a refund and, therefore, though the petitioner might have to deposit. initially, the tax in respect of the purchases, when the quarterly returns were being submitted, it was open to it to obtain refunds ,it the appropriate stage.

The provisions of the statutes, in question, have been referred to by us earlier. Section 15(a), of, the Central Act, makes it mandatory that the tax shall not be levied at more than one stage. In this case, the State does not levy any tax, both on the sale and purchase, of the same declared goods. The second proviso to s. 5 (1) is, no doubt, substantially in accordance with the provisions of s. 15(a), of the Central Act. That proviso was absolutely necessary, because. without it, it would have been prima facie open to the State to levy tax under s. 5, it a higher rate than that indicated in the, Central Act, in which case it would certainly have been illegal. The mere existence of the second proviso, to s. 5 (1) of the Act, does not materially advance the case of the State.

That same proviso, came up for consideration, before this Court, in Modi Mills v. C.I.T., Punjab(1). In dealing with the proviso, Hidayatullah, J., speaking for the Court, observed, at 600 "The meaning or the intention of cl.(3) of Art. 286 is not to destroy all charging sections in the Sales Tax Acts of the States which are discrepant with s.t5 (a) of the Central Sales Tax Act, but to modify them in accordance therewith. The law of the State is declared to be subject to the restrictions and conditions contained in the law made by Parliament and the rate in the State Act would pro tanto stand modified. The effect of Art. 286(3) is now brought out by the second proviso, to s. 5 (1). But this proviso is enacted out of abundant caution and even without it the result was tile same."

From the observations, noted above, it will be clearly seen that the proviso, in question, does not serve any material purpose, because, even, if that proviso did not exist in the State Act, the authorities cannot levy tax, on declared goods, at a rate higher than that laid down in the Central Act. Therefore, the mere injunction, by the Legslature, is contained in the second proviso to S. 5(1), that the rate should not be higher than the one fixed in the Central Act, and that the levy must be ,it one stage, as again mentioned in the Central Act, will be of, no avail, unless the Act, or the rules framed under it, make 'it very clear that there will be no levy or collection of tax, except from the persons who are bound to pay, is per the Central Act. It is here that there considerable difficulty caused by the absence, of any provision, either in the Act or in the rules or the forms, indicating the stage at which the tax is to be levied. In the case or commodities (1) [1965] 1 S.C.R. 591.

like cotton, which come under the category of "declared goods", tax can be levied only at a single point, as is made clear by s. 15 (a) of the Central Act, and, in our opinion, there can be no legal liability for payment of tax accruing, until and unless the Act, or the rules framed thereunder,

prescribe a single point for taxation. For the matter of that, even in the final return to be sent by a dealer, under the Act, the dealer will have to show, in the taxable turnover, all purchases of cotton effected by him during the accounting year. We have already referred to the fact that, along with the returns, the tax payable on the basis of those returns, will have to be paid. At that stage the question naturally arises, as to whether there is anywhere in the Act or the rules any provision, by which the person, sending the return, 'will be able to know that the tax, in respect of the declared ,goods purchased by him, has already been paid by another dealer and that the value of the Purchases, effected by him, need not be shown in his return. He cannot take, an off hand chance, in this matter, because there are very heavy penalties imposed on a dealer, for failure to include, in the returns sent by him. .any transactions in respect of which he is liable to pay tax. If that is the position a,, the end of a year, when the final return is sent, the position becomes still worse when the quarterly returns accompanied by payment of taxes, are 'to be sent during the course of the accounting year itself. Counsel, for the respondent, has pointed out that, if a dealer wants to claim exemption, under sub-cl. (vi) of s. 5 (2) (1), r. 27A provides for his getting a declaration from the dealer, to whom the goods are resold, in which case, the dealer is absolved from the liability to pay tax. We have gone through the various statements contained in the said Rule, as well as the Forms, to which it refers, but they are not decisive, either way. There also be cases where a non- registered dealer may have intervened and, even if such dealers intervene, it is clear that tinder s. 15(a) of the Central Act, the tax cannot be levied at more than one stage. There is no machinery by which a dealer can ascertain whether his vendor, of the declared goods, has paid the tax already. Even otherwise, it will be seen, that if a dealer, A, the declared goods, to B, six months after the close of the (B being a registered dealer), A becomes liable to purchase tax. But, if B sells the identical declared goods, again, after the period, mentioned in sub- cl. (vi), he will also be liable to pay purchase tax. That means, inspect of the, same item of declared goods more than one person is made liable to pay tax and the tax is also levied at more than one stage. That is not permissible, under s. 15(a) of the Central Act. If goods are resold to a nonregistered dealer, within the period, sub-cl. (vi), will not help tile original purchaser. We may also point out, it this stage, that sub-cl. (vi), of s. 5 (2) (a), negatives the assumption that the normal rule, under the Act, in respect of declared goods, is to levy the tax on the first purchaser. Mr. Bishan Narain, counsel for the State, faced with these difficulties, no doubt referred us to the provisions contained in s. 12 of the Act, relating to refunds. Counsel pointed out that the manner in which a purchaser can claim refunds, is also elaborately indicated in rr. 48 to 55 of the Rules. If persons, like the appellants, satisfied the authorities concerned that they had paid amounts, by way of tax, which they were not legally bound to pay, it was open to them to ask for refunds of such excess amounts paid. Therefore, even assuming that, in the first instance, the appellant has paid the purchase tax and, later on, it is found that it is not liable for the same, S. 12 of the Act would afford adequate relief. We are not impressed with this argument. The position is not so simple. Even in the matter of obtaining refunds, there can be no controversy, that the appellant will have to place, before the officer concerned, particulars of transactions connected with the commodity, in question and also the basis on which it claims the relief. It will be absolutely difficult, if not impossible, for persons like the appellant, to collect materials in this behalf, because, there is no provision, contained either in the Act or the rules, on the basis of which it will be, entitled to be, supplied with all the material information, relevant, for sustaining a request for refund. If the Central Act makes it mandatory that the tax can be collected only at one stage, in our opinion,it is not enough for the State to say that a person, who is not liable to pay tax, must, nevertheless, pay it in the first

instance,and then claim refund, at a later stage. We may state that the,questionas to how far a party can ask for refund, without the order of assessment being set aside, by appropriate proceedings, is highly doubtful; because, at the time when the actual order of assessment is passed, in certain cases, it may not be possible for a party to say whether he is entitled to exemption, or not, under Sub-cl.

(vi) of s. 5(2)(a) of the Act. If a person is not liable for payment of tax at all, at any time, the collection of a tax front bim. with a possible contingency of refund at a later stage, will not make the original levy valid; because, if particular sales or purchase are exempt from taxation altogether, they can never be taken into account, at any stage, for the purpose of calculating or arriving at the taxable turnover and for levying tax.

In this connection, we may refer to the observations of this Court in A. V. Fernandez v. The State of Kerala(1). This Court. after reffering to the observations-made earlier in Messrs. Chatturam. Horilram Ltd. v. Commissioner of Income- tax, Bihar & (1) [1957] S.C.R. 837.

Orissa(1), regarding the three stages in the imposition of tax, being the declaration of liability, assessment, and recovery, said, at p. 852 :

> "If there is a liability to tax, imposed under the terms of the taxing statute, then follow the provisions in regard to the assessment of such liability. If there is no liability to tax there cannot be any assessment either. Sales or purchases in respect of which there is no liability to tax imposed by the statute cannot at all be included in the calculation of turnover for the purpose of assessment and the exact sum which the dealer is liable to pay must be ascertained without any reference whatever to the same.
>
> There is a broad distinction between the provisions contained in the statute in regard to the exemptions of tax or refund or rebate of tax on the one hand and in regard to the non-liability to tax or non-imposition of tax on the other. In the former case, but for the provisions as regards the exemptions or refund or rebate of tax, the sales or purchases would have to be included in the gross turnover of the dealer because they are prima facie liable to tax and the only thing which the dealer is entitled to in respect thereof is the deduction from the gross turnover in order to arrive at the net turnover on which the tax can be imposed. In the latter case, the sales or purchases are exempted from taxation altogether. The Legislature cannot enact a law imposing or authorising the imposition of a tax thereupon as they are not liable to any such imposition of tax. If they are thus not liable to tax, no tax can be levied or imposed on them and they do not come within the pur- view of the Act at all. The very fact of their nonliability to tax is sufficient to exclude them from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed."

The above observations clearly lay down that the provisions contained in a statute, with respect to exemptions of tax or refund or rebate, on the one hand, must be distinguished from the total non-liability or non-imposition of tax, on the other. These observations, also, in our opinion,

effectively provide In answer to the stand taken by the State, in this case that s. 12 of the Act provides -,in adequate relief, by way of refund, even if tax is collected at an earlier stage.

Having due regard to the various matters mentioned above. we are satisfied that the decision of the High Court. upholding (1) [1955] 2 S. C.R. 290, 297.

the orders of assessment passed by the Officer, in question, cannot be sustained.

We have already indicated that there is one other point, arising for decision, in Civil Appeals Nos. 2387 and 2388 of 1966. That relates to the validity of the Notification, issued by the State Government, under s. 5 of the Act, on September 26, 1961. The assessment periods, covered by these two appeals, relate to 1960-61 and 1961-62. At the material time, the definition of the expression "purchase,"

> as contained in s. 2(ff), has been already referred to by us. The definition of the word "purchase" was first introduced in the Act, by Punjab Act VII of 1958. According to that definition, it was as follows :-
>
> " 'Purchase', with all its grammatical or cognate expressions, means the acquisition of goods other than sugarcane, foodgrains, and pulses for use in the manufacture of goods for sale, for cash or deferred payment or other valuable consideration, otherwise than under a mortgage, hypothecation, charge or pledge."

By Punjab Act XIII of 1959, the words "other than sugarcane, foodgrains and pulses", were omitted. Then there was a further amendment, by -Punjab Act XXIV of 1959 and, after the said amendment, cl. (ff) stood as follows :-

> " 'Purchase', with all its grammatical or cognate expressions, means the acquisition of goods specified in Schedule C for use in the manufacture of goods for sale, for cash or deferred payment or other valuable consi- deration, otherwise than under a mortgage, hypothecation, charge or pledge."

This definition was again amended by Punjab Act XVIII of 1960. The rate of tax, provided by the Act, was 4% and, we have already indicated that the Central Act was enacted in 1956; and we have also adverted to the material provisions therein.

We have adverted to the fact that, under 5 of the Act, the rate of tax that is to be levied,, is to be contained in the notification that is to be issued under S. 5 (1). Accordingly, on April 19, 1958, the State Government issued, under s. 5(1), a.,; amended by the Punjab Act VII of 1958, a Notification regarding the rate of tax. in that Notification, the rate of tax on the purchase of goods, by a dealer, for use in the manufacture of goods for sale was fixed at 2 naye paise in the rupee. Section 2(ff) was, later on amended in 1960, by Punjab Act XVIII of 1960, and the definition of "Purchase", as contained in this provision, has already been referred to by us. The State Government issued a Notification under S. 5(1) of the Act, on September 26, 1961.

Under this Notification, it was provided that the rate of tax on the purchase of goods specified in Schedule C, appended to the Act, would be 2 naye paise in the rupee. The contention that was taken by the appellant was that, notwithstanding the fact that the definition of the expression "purchase", was changed with effect from April 1, 1960, the Notification fixing the rate of tax, under that amended definition, was not issued until September 26, 1961, and it was further urged that, in consequence, no assessment could be made of any tax on declared goods, mentioned in Schedule C, prior to September 26, 1961.

It was not disputed by the State that no fresh notification was issued, after the expression "purchase" was amended in 1960, till September 26, 1961. But the State attempted to sustain the levy on the ground that the original notification, of April 19, 1958, would be valid even after the amended definition in S. 2(ff), ,is it now stands. It is open to the State to tax all purchases which conic within the definition of s. 2(ff) as it now stands, but the State, it is pointed out, must be considered to have chosen to levy tax only if the purchases have been made for use in the manufacture of goods for sale. Alternatively, it was also pointed out that the notification, issued in 1958, must be considered to have validity, even after the amendment, by virtue of S. 22 of the Punjab General Clauses Act. We are not impressed by these contentions, advanced on behalf of the, State.

Section 22 of the Punjab General Clauses Act has no applica- tion, whatsoever, to these cases. Apart from the fact that there is no question of the 1958 Act being repealed, or re- enacted, it is also clear that the definition of the expression, under S. 2(ff), as it stood in 1958, on the basis of which the notification of 1958 was issued, is quite inconsistent with the amended definition of the expression "purchase", in S. 2(ff), in 1960. The High Court has sustained the levy of tax under the original 'notification of 1958, on the basis of S. 22 of the Punjab General Clauses Act, which, in our opinion, does not assist the State. It is not open to the State to urge that it is entitled, in the matter of levying tax, on transactions by way of purchase, to tax only the category of purchases for use in the manufacture of goods for sale. Further, the State has not been able to satisfy us that there is any reasonable classification made, which will enable this Court to sustain the Notification. Inasmuch as no fresh notification had been issued, under s. 5(1), till September 26, 1961, the assessment for the years 1960-61 and 1961-62, on the basis of the Notification issued in 1958, cannot be sustained, on' this additional ground also We therefore allow the appeals, in the manner indicated above. The State will pay costs to the appellant in Civil Appeal No. 2386 of 1966.

Sikri, J. I have read the judgment prepared by my brother, Vaidialingam, J. I agree with him that assessments for the years 1960-61 and 1961-62 on the basis of notification issued cannot be sustained and Civil Apeals Nos. 2387 and 2388 of 1966 have to be allowed. But, with respect, I regret I cannot agree with him that the assessments in question have to be quashed on the ground that they violate s. 15 of the Central Sales Tax Act. My brother has set out the relevant statutory provisions and it is not necessary to extract them here. In my opinion the Punjab Act does in effect comply with the requirements of s. 15 of the Central Sales Tax Act because it is possible to find out the stage at which purchase tax becomes leviable on goods mentioned in Schedule C. This stage is the first purchase by a dealer, which is not exempted from taxation or which is not deductible from the taxable turnover of a dealer under s. 5 (2) of the Punjab Act. In my view, this follows. from ss. 4

and 5 of the Punjab Act. Subject to the provisions of ss. 5 and 6, s. 4 makes a dealer liable in respect of all purchases, first purchases, second purchases and last purchases, but the second proviso to s. 5 provides, in effect, that the purchase tax shall not be levied at more than one stage. Which stage does the proviso cut out? It seems to me that every purchase except the first purchase has been eliminated. Take the following illustration:

> Dealer A buys cotton, A sells it to dealer B, and B sells it to dealer C. If dealer A is liable to pay purchase tax under s. 4, by virtue of the proviso no other dealer is liable, because otherwise this would amount to imposing tax at more than one stage. Could not dealer B or C say to the assessing authority that it is A who is liable, and if he is liable, the proviso exempts them from paying purchase tax ? But it is said that B and C may not know that A is liable. While buying goods, B has only to enquire from A whether his is the first taxable purchase. Indeed A, in order to claim exemption under s. 5 (2) (a) (vi) will ask B to give him a declaration form. Therefore, both A and B will know the true position, and A will claim the exemption and B will pay purchase tax unless he sells to another dealer. If B sells to another dealer D after the expiry of six months after the close of the year, the period mentioned in s. 5 (2) (a) (vi), B will be liable to purchase tax. B may not asked for the prescribed declaration form for it may be useless for him, but D will find out whether he is buying goods liable to purchase tax or not. B will tell D that he has not to pay purchase tax and will perhaps include purchase tax in the price. It seems to me that if dealers behave like businessmen, which they will ordinarily do, there will be no difficulty in working the provisions.

L7Sup.Cl/67-8 of the Punjab Act. But if by mischance there is double taxation the State can only make a suitable provision for refunds.

In my view, the Punjab Act is in consonance with S. 15 of the Central Act, and if there is a possibility of taxation at more than one stage, the Punjab Act cannot for this reason be treated as void. My brother does not say that the Punjab Act is void but in effect he implies it. Let me now deal with the case when an unregistered dealer intervenes. In the illustration I have given above let us deem C to be an unregistered dealer. A sells to B, and B sells to C. B will be liable to pay purchase tax because he cannot claim exemption under s. 5 (2) (a) (vi). Suppose B in the above illustration is an unregistered dealer. Here B is liable to purchase tax unless he sells to C, a registered dealer and obtains the prescribed declaration. If C is an unregistered dealer, then B would be liable and not C. If an unregistered dealer wants to escape taxation and his transactions are not known to the Sales Tax authorities till he is assessed under s. 11 (6) of the Punjab Act, the only way of complying with the second proviso to S. 5 and S. 15 of the Central Act is to give refund to a dealer who has been taxed in the meantime. The same thing would happen as far as I can see, under the State Acts which fix in terms a specific stage.

I may here mention that according to me the second proviso to s. 5 serves one useful purpose. It makes the Punjab Act immune from challenge on the ground that its provisions

-infringe s. 15 of the Central Act. The Punjab Act being good, it is only the assessments that can be challenged on the ground that they violate the second proviso to S. 5 of the Punjab Act. This aspect was not apparently brought to the notice of this Court in Modi Mills v. C.I.T. Punjab(1). Accordingly I would dismiss Civil Appeal No. 2386 of 1966 with costs, and allow Civil Appeals Nos. 2387 of 1966 and 2388 -of 1966, with costs.

ORDER In accordance with the opinion of the majority the appeals are allowed in the manner indicated in the judgment. The State will pay costs to the appellant in Civil Appeal No. 2386 of 1966.

V.P.S. (1) [1965] S.C.R. 592.