(1964) 05 P&H CK 0005

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 114 of 1964

Patel Cotton Company Private Ltd.		APPELLANT
	Vs	
The State of Punjab and Others		RESPONDENT

Date of Decision: May 14, 1964

Acts Referred:

- Constitution of India, 1950 - Article 226
- Punjab General Sales Tax Act, 1948 - Section 5

Citation: (1964) 15 STC 865

Hon'ble Judges: S.S. Dulat, J; Harbans Singh, J

Bench: Division Bench

Advocate: J.N. Kaushal, M.R. Agnihotri, Ved Parkash Garg and Ram Gopal Singla, for the Appellant; H.S. Doabia, A.A.G., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.S. Dulat, J.
These two petitions under Article 226 of the Constitution involve the same question of law. The controversy is not about the law which is applicable-not even very much about the meaning of that law-but mostly about the manner of its application in two cases. Each of the petitioners is a company registered as a dealer under the Punjab General Sales Tax Act, 1948. They both deal in cotton, purchase large quantities of unginned cotton, gin it and then dispose of the proceeds consisting of ginned cotton and cotton-seeds. The Punjab General Sales Tax Act imposes a purchase tax on goods specified in Schedule "C" of the Act and that Schedule mentions cotton, both ginned and unginned, and also oil-seeds which naturally include cotton-seeds. The Act provides-and quite properly if I may say so-that in respect of goods subjected to the purchase tax no sales tax will be levied. Further, the Act provides that if goods subjected to the purchase tax are sold to a registered dealer within a

certain time or exported out of India or sold in the course of inter-State trade then the purchase price of the goods sold will be excluded from the taxable turnover or, to quote the words of the statute, the "taxable turnover" of a dealer is arrived at "after deducting therefrom his turnover during that period on-

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.

2. Each of the petitioners claimed at the time of assessment (for the year 1960-61 in the case of Patel Cotton Company v. State of Punjab, and 1961-62 in the other case R. Mohta v. The State of Punjab and Ors.) that out of the unginned cotton which each had purchased and in respect of which each had become liable to pay purchase tax, certain quantities of ginned cotton as well as cotton-seeds obtained after ginning had been sold to registered dealers within the prescribed period or sold in the course of inter-State trade or exported out of India, and that the purchase price of those quantities of ginned cotton and cotton-seeds should be deducted from the turnover. The Assessing Authority did not accept that claim. In the case of Patel Cotton Co. the Assessing Authority permitted a deduction of the sale price (as against the purchase price) of the ginned cotton sold to registered dealers and also the sale price of the ginned cotton exported out of India or sold in the course of inter-State trade but wholly declined to make any allowance for similar sales of cotton seeds. In the case of Mohta, the assessing Authority deducted the purchase price of unginned cotton equal to the weight of the ginned cotton sold to registered dealers but refused to take notice of the sale of cotton seeds to registered dealers.

3. The petitioners'' main submission is that the sale of cotton-seeds was the sale of the goods purchased by them in respect of which purchase tax was payable and since the sales were made to registered dealers or in the course of inter-State trade the taxable turnover should have been determined after deducting the purchase price of the goods sold from the gross turnover. It is common ground, apart from being common knowledge, that unginned cotton, as it is sold in the market, contains in it not only pure cotton but also cotton-seeds, and by weight the proportion approximately is one-third pure cotton and two-thirds cotton-seeds. If, therefore, to take a convenient illustration, a person buys three maunds of unginned cotton and then puts it through the process of ginning, he has on his hands one maund of ginned cotton and two maunds of cotton-seeds. The question is that if he proceeds to sell the entire quantity of ginned cotton and cotton-seeds thus obtained, to a registered dealer, has he or has he not sold the entire goods purchased by him in the form of unginned cotton, to a registered dealer ? Viewed as a simple question of fact, the answer in my opinion should be "yes", for he has in such a case sold everything he had purchased and, of course, sold it to a registered dealer. Learned counsel before us have, however, argued this matter as a question

of law. To appreciate the argument, it is convenient to first dispose of two extreme positions adopted by the two sides. Mr. Kaushal for the petitioners says that unginned and ginned cotton are both cotton in terms of Schedule "C" and purchase tax is of course payable on cotton. He, therefore, contends that when the petitioners purchased unginned cotton, they became liable to pay purchase tax, but when they sold the entire quantity of ginned cotton taken out of the unginned cotton, they had sold the entire quantity of cotton purchased by them and consequantly the entire purchase price of the cotton (unginned) should be deducted from the gross turnover, irrespective of what may have happened to the cotton-seeds. This argument, it will be noticed, completely identifies unginned cotton with ginned cotton and takes no notice of the reality that unginned cotton contains a large quantity of cotton-seeds. The argument, therefore, is unreal, as it chooses to ignore the facts. Mr. Doabia, on the other hand, urges that unginned cotton and ginned cotton are two entirely different things and if, therefore, unginned cotton is purchased and purchase tax paid on it and later on the cotton is ginned and the resulting ginned cotton is sold, no part of the goods purchased has been sold, for in such a case not a shred of unginned cotton is sold and consequently he says that no deduction at all is permissible. He, therefore, maintains with some courage that the Assessing Authority was wrong in allowing a deduction even in respect of the sale of ginned cotton. This argument might have some force if it were possible to agree that ginned cotton is entirely different from unginned cotton and that the process of ginning brings into being an entirely new commodity. This, however, is not so, for all that ginning does is to separate pure cotton from cotton-seeds. Mr. Doabia says that ginning is a manufacturing process and when unginned cotton is subjected to it resulting in ginned cotton and cotton-seeds, it is very much like crushing oil-seeds to manufacture oil. I find myself unable to agree, as there is no real resemblance between crushing oil-seeds and ginning unginned cotton. Mr. Doabia largely relies on the observations of the Andhra High Court in Kotak and Company Vs. The State of Andhra Pradesh, The learned Judges in that case said-

* * * it is only by a manufacturing process that the cotton and the seed are separated, and it is not correct to say that the seed so separated is cotton itself, or part of the cotton.

4. This, however, had not been the view of this Court expressed quite clearly in Raghbir Chand Som Chand v. Excise and Taxation Officer, Bhatinda, and Ors. 1960 P.L.R. 175. The learned Chief Justice emphatically said in that case-

I am, therefore, of the view that unginned and ginned cotton are essentially the same thing, and buying unginned cotton and selling ginned cotton are two transactions dealing with the same commodity.

5. Tek Chand, J., agreeing with the learned Chief Justice, explained it thus-

It is well-understood, that manufacture implies a change, but every change is not manufacture, in spite of the fact that every change in an article may be the result of treatment, labour and manipulation. For purposes of manufacture something more is necessary and there must be a transformation ; a new and different article must emerge having a distinctive name, character or use.

6. It is true, of course, that unginned and ginned cotton are in a sense different, if only for the fact that there are no cotton seeds left in ginned cotton, but it is hard to see how ginning unginned cotton creates anything new, for all it does is to separate by mechanical means -and it could also be done by hand-the two parts of unginned cotton. I am, therefore, unable to agree that any manufacturing process is involved in ginning cotton or that the process of ginning creates anything new or distinctive, and Mr. Doabia''s extreme contention, therefore, has to be rejected.

7. The question then remains how such transactions should be viewed. As I have said earlier, when a dealer buys unginned cotton he is in fact buying pure cotton mixed with cotton seeds and is undoubtedly paying the price of both. When, therefore, he separates the two by the process of ginning and then proceeds to sell both the commodities, assuming that he sells the entire lot, he does in fact sell the entire goods which he had purchased. The deduction which has to be made under the Punjab General Sales Tax Act is of the turnover on " the purchase of goods which are sold " and if the goods sold are the same as purchased, then a full deduction has to be allowed. Mr. Doabia urges in this connection that apart from ginned cotton, which may possibly be considered the same thing as unginned cotton, the cotton-seeds obtained after ginning cannot be confused with either ginned cotton or unginned cotton and, therefore, the sale of cotton-seeds cannot entitle the dealer to deduct the purchase price of the cotton-seeds from the gross turnover. This contention, however, again ignores the fact that the cotton-seeds were in fact purchased when unginned cotton was bought. It seems to me, therefore, that when a dealer buys a certain quantity of unginned cotton and after ginning it he sells the entire quantity of ginned cotton and cotton-seeds, he must be held to have sold the entire un-ginned cotton which he had purchased and if the sale is to a registered dealer, full deduction of the purchase price of unginned cotton must be allowed. It follows that where only a part of the proceeds of ginning has been so disposed of, that is, either sold to a registered dealer within the specified time or exported out of India or sold in the course of inter-State trade, a corresponding deduction must be permitted. That, in my opinion, is the intention of the Punjab General Sales Tax Act. Mr. Doabia says in this connection that it would be extremely difficult to find out the purchase price of the ginned cotton which may have been sold after ginning or the purchase price of the cotton-seeds obtained after ginning, although of course their sale price is known, the difficulty being this that at the time of purchase the cotton and the seeds are not separately bought. Actually, however, there can be little difficulty in fixing the purchase price of either the cotton-seeds or the ginned cotton, for the proportion in which they occur in unginned cotton is known and the market

price of the three commodities-unginned cotton, ginned cotton and cotton-seeds-is also known. Nor can there be any difficulty in finding out the cost of ginning. All that the Assessing Authority has to do is to fix the purchase price of the ginned cotton or the cotton-seeds that have actually been disposed of according to Section 5(2)(vi) of the Punjab General Sales Tax Act and I can see no great difficulty in that connection, as the Assessing Authority can certainly call and consider evidence bearing on the matter.

8. It is admitted that the assessment orders in these two cases are not in accordance with the conclusion mentioned above. In one case the Assessing Authority has deducted the sale price of ginned cotton instead of the purchase price, while in both the cases the purchase price of cotton-seeds have been unlawfully ignored and since the error in each case is apparent, these assessments cannot stand. I would, therefore, allow these petitions with costs, quash the assessments made and direct that a fresh assessment in each case be made in accordance with the view expressed above.

Harbans Singh, J.

9. I agree.