"shall be executed on behalf of the Governor-General or Governor by such person and in such manner as he may direct or authorise". It therefore applies to consensual contracts which the Government *makes* and not to something which is also called a contract but which the law brings into existence by a fiction irrespective of the parties having agreed to it. Now, by its terms s. 70 of the Contract Act must be applied where its requisites exist, if it is necessary to imply a contract or to contemplate the existence of a quasi-contract for applying the section that must be done and we do not think that s. 175(3) of the Government of India Act prevents that, nor are we aware of any other impediment in this regard. This argument must also fail.

We, therefore, feel that s. 70 of the Contract Act applies to this case and the decree of the High Court should be confirmed.

Appeal dismissed.

M/S. MATHRA PRASHAD AND SONS.

v.

STATE OF PUNJAB

(B.P. SINHA, C.J., J. L. KAPUR, M. HIDAYATULLAH, J.C. SHAH AND J.R. MUDHOLKAR, JJ.)

Sales Tax—Exemptions—Notification issued after commencement of financial year—Whether effective from date of notification or from commencement of financial year—East Punjab General Sales Tax Act, 1948 (E. P. of 1948). ss. 4,5,6,10,11—Notification dated September 27, 1954.

Section 6(1) of the East Punjab General Sales Tax Act, 1948, provided that no tax shall be payable on the sale of goods specified in the Schedule to the Act and that no dealer shall charge sales tax on the sale of goods which were "declared tax-free from time to time". Sub-section (2) of s. 6 empowered the State Government by notification to add or to delete from the Schedule. On September 27, 1954, the State Government issued a notification under s. 6 (2)

1961

M/s. Mathra Prashad v. State of Punjab

adding item 51 relating to manufactured tobacco to the Schedule. The appellant contended that sales tax was a yearly tax and hence the exemption, whenever given during the financial year, became operative as from the beginning thereof.

Held, (per Sinha, C. J., Hidayatullah, Shah and Mudholkar JJ., Kapur, J., dissenting) that the exemption operated for the entire financial year. The tax was a yearly tax levied on the taxable turnover of a dealer every year though it was collected in some cases at the end of the year, in some cases quarterly and in other cases monthly. If the exemption operated for the period for which the tax was payable according as it was annually, quarterly or monthly the tax would be different for different persons; those paying annually would get exemption for the whole year but those paying quarterly or monthly would get the benefit in the quarter or month of the notification and not for earlier quarters or months. This could not have been intended. The exemption whenever it came in, in the year for which the tax was payable, exempted sales throughout the year, unless the notification fixed the date for the commencement of the exemption.

Commissioner of Sales Tax, U. P. v. *The Modi Sugar Mills Ltd.*, [1961] 2 S.C.R. 189, referred to.

Per Kapur, J.—The exemption became operative only from the date of the notification. The tax was not a yearly tax. The use of the words "tax-free from time to time" in s. 6 (1) showed that the exemption could be given at any time during the year and that it would operate from the date of the notification and not from the beginning of the financial year. Otherwise, an exemption given or an imposition made near the end of the year will both operate from the beginning of the year. This was never intended.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9 of 61.

Appeal from the judgment and order dated May 7, 1959, of the Punjab High Court in L.P.A. No. 86 of 1956.

M.C. Setalvad, Attorney-General of India, S.N. Andley, Rameshwar Nath and *P.L. Vohra*, for the appellants.

S. M. Sikri, Advocate-General, Punjab, B.K. Khanna and *P.D. Menon*, for the respondents.

1961. December, 5. The Judgment of Sinha C.J., Hidayatullah, Shah and Mudholkar JJ., was delivered by Hidayatullah, J. Kapur, J., delivered a separate judgment.

HIDAYATULLAH, J.—The appellants are a firm of general merchants which sells, among other goods manufactured tobacco as defined in the Punjab Tobacco Vend Fees Act, 1954 (12 of 1954), which came into force in the State of Punjab from April 1, 1954. The firm is also a registered dealer under s. 7 of the East Punjab General Sales Tax Act, 1948 and till the end of March, 1954, was paying sales tax on manufactured tobacco also. Indeed, the firm paid sales tax on manufactured tobacco, also for the next quarter ending on June 30, 1954, but did not pay in the succeeding quarter in view of certain events, to which a detailed reference will be made presently. On September 27, 1954, the State Government issued a Notification (No. 4556-E & T (Ch)-54/957) by which the schedule of exemptions under s. 6 of the Sales Tax Act was amended by the inclusion of item 51, which reads as follows :

> "51. Manufactured tobacco as defined in the Punjab Tobacco Vend Fees Act, 1954."

This Notification was preceded by a Notification of May 7, 1954 (No. 427-E & T (Ch)-54/369), by which the State Government had given notice, as required by law, of its intention to add the said item in the schedule of exemptions. In June, 1954, the State Government issued a Press Note by which it was intended to convey to the dealers that though the Tobacco Vend Fees Act had come into force from April 1, 1954, it was not intended to levy both the sales tax as well as the fee for any period. The Press Note reads as follows:

> "There is some misapprehension in the minds of dealers in manufactured tobacco as to whether sales tax is also chargeable in respect of manufactured tobacco after the

1961

M/s. Mathra Prashad v. State of Punjab

Hidayatullah J.

1st April, 1954, in addition to the license fees under the Tobacco Vend Fees Act. Government would like to make it clear that although the Tobacco Vend Fees Act has come into force with effect from 1st April, 1954, no license fees for dealers have yet been prescribed under the Act. Therefore, the levy of sales tax continues till the Vend Fee licences come into operation. It is to be clearly understood that the Vend Fee will be proportionately reduced for the current financial year to adjust the period for which sales tax will have been charged. Manufactured tobacco will be exempted from sales tax simultaneously with the enforcement of the Vend Fees."

On August 2, 1954, the State Government issued another Press Note, in which the decision was altered. The Press Note said:

> "Government recently announced through a press note that the levy of Sales Tax on manufactured tobacco would be continued till the Vend Fee Licences came into operation and that the Vend Fee would be proportionately reduced for the current financial year in respect of the period for which Sales Tax would have been charged. In order to avoid double taxation, Government have since reconsidered the matter and have, in supersession of the previous decision, decided that the Sales Tax, if any, recovered from the dealers would be refunded and that no Sales Tax would be charged during the current financial year in respect of sales of tobacco which fall under the Tobacco Vend Fees Act. Tobacco Vend Fees will be recovered at full rates for the whole year as and when rules under the Punjab Tobacco Vend Fees Act are finalised."

It appears that the Rules under the Tobacco Vend Fees Act were not promulgated; nor were the forms

and licences prescribed during the financial year ending on March 31, 1955. In the meantime, the appellants, as already stated, paid sales tax on sales of manufactured tobacco for the first quarter ending June 30, 1954, and the Notification exempting manufactured tobacco from sales tax was issued on September 27, 1954. The appellants had made enquiries from the Excise and Taxation Commissioner, Punjab, about the Press Note of August 2, 1954, and had been assured that the Notification as printed in the Newspapers was accurate, and that Government intended implementing the Press Note.

On January 23, 1956, the appellants received a notice from the Excise and Taxation Officer, Rohtak, calling upon them to produce their account books. The appellants as well as other dealers of manufactured tobacco similarly affected, made representations on the basis of the Press Note of August 2, 1954, but without success. The appellants then filed on February 8, 1956 a petition under Art. 226 of the Constitution for substantially three reliefs. They were: (a) a declaration that the levy of sales tax on manufactured tobacco upto September 26, 1954 was illegal; (b) refund of the sales tax paid by it for the quarter ending June 30, 1954; and (c) an order in the nature of a writ of Prohibition against the proposed levy of sales tax till September 26, 1954. It remains to mention that the sales tax authorities were acting in conformity with a Press Note issued in August, 1955, by which the State Government went back upon the policy declared in August, 1954 and reaffirmed the policy stated in the Press Note of June, 1954. The following extract from the Press Note of August, 1955 may be read here :

"2. In conformity with the press note issued in June, 1954, and in view of the facts explained above, Government have now decided that sales tax on tobacco shall be levied for the year 1954-55 before the 27th September, 1954

1961

M/s. Mathra Prashad
v.
State of Punjab

Hidayatullah J.

only, the date on which tobacco was included in the schedule of exemptions appended to the General Sales Tax Act. This amounts to a handsome concession to the dealers and Government except that, in return, every co-operation shall be shown by the dealers of the assessing authorities in the matter of the assessment of the tax."

The petition under Art. 226 was heard by a learned Single Judge of the Punjab High Court, who held that the orders of Government were entirely in accordance with law, that the East Punjab Sales Tax Act, in so far as it related to the sale of manufactured tobacco was not repealed by the Tobacco Vend Fees Act, and that sales tax on manufactured tobacco was payable from April 1, 1954 to September 26, 1954, in view of the fact that the exemption was made on September 27, 1954, and would operate from the latter date. Against the decision of the learned Judge dismissing the writ petition, an appeal under Letters Patent was filed. The Divisional Bench, which heard the appeal, agreed with the judgment appealed from, and dismissed the appeal. A certificate was, however, granted to the appellants and the present appeal has been filed.

Two contentions were raised in the forefront before the High Court, by the appellants. The first was that the Punjab Tobacco Vend Fees Act had *pro tanto* repealed the East Punjab General Sales Tax Act, and that sales tax on manufactured tobacco could not be levied after April 1, 1954. The second was that the State Government by its assurance in the Press Note of August, 1954, had estopped itself from reversing its policy and claiming the sales tax up to the date of the Notification. These points were not seriously pressed upon us, because there can be two taxes on the same commodity or goods without the one law repealing the other. No repeal can be implied, unless there

is an express repeal of an earlier Act by the later Act, or unless the two Acts cannot stand together. The first argument was, therefore, rightly rejected in the High Court. The second argument is also without force. There can be no estoppel against a statute. If the law requires that a certain tax be collected, it cannot be given up, and any assurance that it would not be collected, would not bind the State Government, whenever it choose to collect it.

The question which is now raised, and of which there is but a trace in the High Court is the real one to decide, and it may be formulated thus ; Did the exemption in the Notification issued on September 27, 1954 have effect from that date, or from the beginning of the financial year ? We are not concerned with the question whether, in the absence of rules and forms, the Punjab Tobacco Vend Fees Act, 1954 could operate from April 1, 1954. Whether it did or did not, can make no difference to the sale tax, because the Punjab Tobacco Vend Fees Act, 1954 did not abrogate the Sales Tax Act. If sales tax was not payable, it would be because of the exemption, and the only question thus is when the exemption began to operate. The Notification does not say from what date the exemption operates. Taking the Notification by itself, it cannot be said that it comes into force from an earlier date. Both sides have thus called in aid provisions of the East Punjab General Sales Tax Act and the Rules to determine the date from which the exemption can be said to operate. Reference was made by the appellants to a decision of this Court in *The Commissioner of Sales Tax, U.P.* v. *The Modi Sugar Mills Ltd.* (1), where a notification increasing sales tax on edible oils issued in the middle of the year 1948 was held not to apply to the assessee in that year, inasmuch as its liability to tax had become fixed on April 1, earlier, as it had elected to pay tax on the turnover of the previous

(1) [1961] 2 S. C. R. p. 189.

1961

M/s. Mathra Prashad
v.
State of Punjab

Hidayatullah J.

year. The scheme of taxation under the U.P. Sales Tax Act, 1948 (15 of 1948) and the Rules under that Act is so vastly different from the East Punjab General Sales Tax Act and the Rules under it, that a detailed reference to that case may not be necessary.

The question thus must be viewed in the setting of the East Punjab Sales Tax Act and the Rules under it. We shall refer to them shortly as the Act and the Rules in the rest of this judgment. The Act was passed in 1948, and came into force on November 15, 1948. Previous to this, sometimes licence fee under an earlier Tobacco Vend Fees Act and sometimes sales tax also under an earlier Sales Tax Act had been levied but not side by side in the Province. The history of these earlier Acts was brought to our notice during the course of the argument, but nothing turns upon it.

The sales tax under the Act continued to be levied up to April 1, 1954, and none has disputed that it could be levied. On that date, the Punjab Tobacco Vend Fees Act came into force. We have already said that the latter Act did not repeal *pro tanto* the earlier. The liability for sales tax in this appeal is for two quarters ending June 30, 1954, and September 30, 1954. There is no dispute that after September 27, 1954 sales tax could not be levied, in view of the inclusion of item 51 in the schedule exempting manufactured tobacco from the operation of the Act. We must now examine those provisions of the Act which are claimed by the rival parties to indicate the moment of time from which the exemption granted by the Notification began to operate. "Turnover" has been defined in the Act to include the aggregate of the amounts of sales and parts of sales actually made by any dealer during the given period, less certain allowances, and "year" means the financial year. Sections 4 and 5 read together are the charging sections, the first dealing with the incidence of the tax, and the second, with its rate. Section 6 (1) provides for exemptions on the sale of

goods which are specified in schedule to the Act. Under s. 6 (2), the State Government has been given the power to add to or delete from that schedule. Section 10 deals with the making of returns and payment of the tax. Section 27 empowers the State Government to make rules for carrying out the purposes of the Act. This is the general scheme of the Act, in so far as we are concerned; but a somewhat detailed examination of these sections is necessary to understand the rival contentions.

Section 4 consists of five sub-sections. Sub-Section (1), which is a subject to the provisions of ss. 5 and 6, says that every dealer, except one dealing exclusively in goods declared tax-free under s. 6, whose gross turnover during the year immediately preceding the commencement of the Act exceeded the taxable quantum, shall be liable to pay tax under the Act on all sales effected after the coming into force of this Act. A proviso is added, which is not relevant. Sub-section (2) says that every dealer who is liable to pay tax under the first sub-section shall be liable to pay it on the expiry of 30 days after the date on which his gross turnover first exceeds the taxable quantum. Sub-sections (3) and (4) deal with the continuance of the liability of the dealer under certain circumstances, and are not relevant here. Sub-section (5) then defines "taxable quantum" in relation to different kinds of dealers, and fixes a certain amount as the lowest limit. Since, in the present case, the taxable quantum is above the limit applicable to the appellants and they are also admittedly dealers, a detailed reference to the provisions of sub-s. (5) is unnecessary. Section 5, which deals with the rate of tax, is made subject to the other provisions of the Act, and the first sub-section says that there shall be levied on the taxable turnover every year of a dealer a tax at such rates (not exceeding two pice in a rupee) as the State Government may by notification direct. "Taxable turnover"

1961

M/s. Mathra Prashad v. State of Punjab

Hidayatullah J.

is then defined by the second sub-section to mean that part of a dealer's gross turnover during any period which remains after deducting therefrom, *inter alia* his turnover during that period of tax-free sales, sales to registered dealers, sales to any undertaking supplying electrical energy, sales to dealers outside Punjab and other sales, as may be prescribed. With none of these deductions we are concerned in this case.

Now, the appellants emphasise the words "gross turnover during the year" in s.4 (1) and the words "taxable turnover every year of a dealer" in s. 5 (1), and argue that the tax is computed year-wise, and the exemption must, therefore, operate for the whole of the year in which it is made, irrespective of the date on which the Notification is made. The respondents, on the other hand, emphasise the words "gross turnover during any period" and "his turnover during that period" occurring in s. 5, and contend that the tax is not year-wise but accrues, so to speak, from day to day or at least from period to period within a year, and the exemption thus operates not from the whole of the year, but for the period within which it is granted, and refer in aid of this argument, to ss. 6 and 10. Sections 4 (1) and 5 (1) are subject to s. 6, s. 5 (1), to other sections of the Act and so, s. 10, and we have to see what they provide. Section 6 (1) is brief, and may be quoted *in extenso*. It reads :

> "6 (1). No tax shall be payable under this Act on the sale of goods specified in the first column of the Schedule, subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge Sales Tax on the sale of goods which are declared tax-free from time to time under this section."

The respondents emphasise the words "from time to time" in the first sub-section, and say that

they also show that exemptions may be given, withdrawn, or given again and again several times during the year in respect of the same goods, and the exemptions, therefore, begin to operate when they are given and cease, when they are withdrawn. But, the appellants contend that these words merely indicate that the power may be exercised as often as needed, and do not indicate the time from which the operation of the exemption commences and the period during which it lasts. Section 10 (1) provides that the tax payable under the Act shall be paid in the manner provided at such intervals, as may be prescribed. Two Rules framed under s. 27 provide for such intervals. Rule 20 reads :

> "Every registered dealer other than those referred to in rules 17, 18 and 19, shall furnish returns in Form S.T.VIII or *S.T. XXIII, if so permitted* quarterly within thirty days from the expiry of each quarter." (words underlined were introduced on June 28, 1955).

Rule 23 :

> "Notwithstanding the provisions of rules 20 and 21, the appropriate Assessing Authority may, for reasons to be recorded in writing, fix monthly returns for a dealer, who would otherwise be required to furnish quarterly or annually under these rules."

Section 10 and Rules 20 and 23 clearly provide that returns may be made annually, quarterly or monthly. The forms, S. T. VIII and S.T. XXIII, also are forms of returns of sales tax payable for the year, quarterly or monthly. It is thus possible that some dealers pay tax annually some, quarterly, and some, monthly.

The contention of the appellants is that s.10 read whith Rules 20 and 23 merely provides for making of returns at prescribed intervals and the

1961

M/s. Mathra Prashad
v.
State of Punjab

Hidayatullah J.

collection of tax is for a period falling between those intervals, but the tax is the tax appropriate to the whole year's result. The respondents contend that the effect of the section and the two Rules is that the tax due for the period of the return is separate from any other tax for any other period. Each period, according to them, must be viewed separately and not as part of a year. Thus, if exemption is granted during the second quarter, according to the respondents it affects that quarter and subsequent quarters but not the first quarter, because tax is payable on the turnover of a period and at such intervals, as may be applicable to an assessee.

We cannot help saying that the Act and the Notification could have been framed to obviate such unnecessary questions by providing clearly in them the time from which such exemptions would begin to operate. Similarly, if the rules under the Punjab Tobacco Vend Fees Act had been framed in time and the Tobacco Vend Fees Act together with the Rules under it and the exemptions under the Sales Tax Act were brought into force together, a considerable amount of time to the Department and the the Courts would have been saved, as also trouble to the tax-payer. The Rules under the Punjab Tobacco Vend Fees Act were not framed during the whole of the financial year, 1954-55. Contradictory Press Notes were issued, which showed that the State Government itself was not sure of the true legal position, thus causing great confusion and distrust in the minds of the tax-payers.

There is no doubt that the tax is a yearly tax. It was payable, in the first instance, by a dealer whose gross turnover during the financial year immediately preceding May 1, 1949, was above the taxable quantum. The tax is to be levied on the taxable turnover of a dealer every year. The difference between gross turnover and taxable turnover is this, that to arrive at the taxable turnover of

any period some deductions have to be made for the same period. This clearly shows that the tax is for a year. The method of collection allows collection of tax at intervals; in some cases, the tax is collected at the end of the year; in some others, the tax is collected quarterly and in still other cases, even monthly. If the exemption can be said to operate for that period for which the tax is payable according as it is annually, quarterly or monthly, the tax would be different for different persons. Those who are paying the tax annually would get exemption for the whole year; but those who are paying it quarterly or monthly would get benefit in the quarter or the month of the Notification but not for earlier quarters or months. It could not have been intended that the exemption was to operate differently in the case of dealers with different intervals of assessment.

The exemption thus must operate either from the date of the Notification or from the commencement of the financial year. Here, the nature of the tax, as disclosed in ss. 4 and 5, is decisive. In s. (5), the tax is made leviable "on the taxable turnover every year of a dealer". The divisions of the year and the taxable turnover into different parts are to make easy the collection of tax, and form part of the machinery sections. If the tax is yearly and is to be paid on the taxable turnover of a dealer, then the exemption, whenever it comes in, in the year for which the tax is payable, would exempt sales of those goods throughout the year, unless the Act said that the Notification was not to have this effect, or the Notification fixed the date for the commencement of the exemption. In the present case, the Notification did not fix the date from which the exemption was to operate, probably because the Act omitted to make such provision, enabling the State to do so, and the exemption must, therefore, operate for the whole year, during which it was granted.

1961

M/s. Mathra Prashad v. State of Punjab

Hidayatullah J.

The case of this Court, to which we have referred earlier, dealt with an Act under which the taxpayer could elect to pay the tax on the turnover of either the previous year or the year of assessment. A notification in the middle of the assessment year was considered, and was held inapplicable in those cases where a dealer had elected to pay tax on the turnover of his previous year. The majority view on that occasion pointed out that it was not possible to divide the assessment year in two portions, in which the tax was levied at one rate in one part and another rate in another part. The case was confined to a dealer who had elected to pay the tax for a year different from that in which the exemption was granted. Those facts do not exist here; but if the case is considered at all relevant, it supports the appellants rather than the respondents.

In the result, the appeal succeeds, and is allowed with costs.

Kapur J.

KAPUR, J.—The facts of this case have been set out in the judgment of my learned brother Hidayatullah J., which I have had the advantage of reading and as I am unable to agree with the conclusion that the effect of the exemption given by Notification No. 4556-E & T. (CH)54/957 dated September 27, 1954, issued under s.6(2) of the Punjab General Sales Tax Act (Act 16 of 1948), hereinafter called the "Act", on unmanufactured tobacco becomes effective as from the beginning of the financial year, I proceed to give my reasons for the same.

The period in regard to which the disputed amount of sales tax is sought to be levied was from April 1, 1954 to September 27, 1954. Previous to the issuing of the notification of September 27, 1954, the Punjab Government issued a notification required under s.6(2) of the Act for the purpose of information of persons likely to be affected thereby

and to give them an opportunity to file any objections or suggestions in regard to the same. A press note was issued on August 4, 1954 stating that no sales tax will be leviable on manufactured tobacco for the financial year 1954-55.

In order to resolve the controversy as to whether the exemption is effective from the commencement of the financial year or from the date of the notification it is necessary to refer to the scheme of the Act and the rules made thereunder. The East Punjab General Sales Tax Act (Act 46 of 1948) as amended, made provision for the levy of general sales tax on the sale of goods in the Punjab and repealed the General Sales Tax Act of 1941. Section 2 of the Act gives definitions and cl.(d) defines a "dealer" as a person.....engaged in the business of selling or supplying goods. In cl.(i) "Turnover" was defined to include—

> "the aggregate of the amount of a sale and parts of the sale actually made by any dealer during the given period less any sum allowed as cash discount according to ordinary trade practice....."

Sections 4 and 5 are the charging sections, the former makes the tax leviable prospectively and the latter prescribes the rate of tax. The relevant portions of these sections when quoted are as follows:

S.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.

(2) Every dealer to whom sub-section (1) does not apply or who does not deal exclusively in

1961

M/s. Mathra Prashad
v.
State of Punjab

Kapur J.

goods declared to be tax-free under section 6 shall be liable to pay tax under this Act on the expiry of 30 days after the date which his gross turnover first exceeds the taxable quantum."

"Taxable quantum" mentioned in sub-section (2) is defined in sub-section (5) of s. 4.

Thus a dealer is liable to sales tax if his sales in the year preceding the commencement of the Act are more than the taxable quantum (s. 4.(1)) or subsequently becomes so during any year.

S. 5.(1) "Subject to the provisions of this Act, there shall be levied on the taxable turnover every year of a dealer a tax at such rates not exceeding two pice in a rupee as the State Government may by notification direct:

Provided that Government may by notification in the Official Gazette declare that in respect of any goods or class of goods the dealer may pay such lump-sum by way of composition of the tax payable under this Act as the Government may notify from time to time.

(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).....

(iii)....."

Section 6 which makes provision for giving exemption is as follows:—

S.6(1) "No tax shall be payable under this act on the sale of goods specified in the first column

of the Schedule subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof, and no dealer shall charge Sales Tax on the sale of goods which are declared tax-free from time to time under this section.

(2) The State Government, after giving by notification not less than three months' notice of its intention so to do, may by like notification add to or delete from the Schedule and thereupon the Schedule shall be deemed to be amended accordingly."

Section 10 deals with payment of taxes and returns. Clause (1) of s. 10 provides:—

S.10 (1) "Tax payable under this Act shall be paid in the manner hereinafter provided at such intervals as may be prescribed."

Section 11 is the section dealing with assessments. It provides that if the Assessing Authority is satisfied that the returns furnished are correct and complete he shall assess the amount of tax due and if he is not so satisfied he can require the production of evidence which may be necessary and provision is also made for default in carrying out the notice issued. Section 27 gives the Government the power to make rules. The relevant portions of this section are clauses (h) and (i) which were as follows:—

(h) "the return to be furnished under sub-section (3) of section 10, and dates by which and the authority to which, such returns shall be furnished;

(i) the date by which returns for any period are to be furnished and the procedure to be followed for assessment under section 11."

Under the rule making power rules have been framed by the Punjab Government and reference may be made to Rules 20 and 23. Under the

1961

M/s. Mathra Prashad v. State of Punjab

Kapur J.

former rule every registered dealer is required to furnish returns in Form ST-VIII or ST-XXIII if so permitted quarterly within thirty days from the expiry of each quarter. Under the latter the Assessing Authority is given the power to tax the returns to be made monthly in the case of a dealer who would otherwise be required to furnish them quarterly or annually.

It was argued that the tax under s.5 was a yearly tax and therefore whenever the exemption may be given during a financial year the effect of the exemption will become operative as from the beginning of the financial year and emphasis was laid on the words "there shall be levied on the taxable turnover every year of a dealer a tax....." The argument was that it was a yearly tax on the turnover and not that every year a tax was to be levied on the taxable turnover i. e. aggregate of the sales made during a given period. It was also argued that if the exemption of the turnover was to operate for the quarter in which the exemption was notified, the consequence will be absurd as those who pay the tax on quarterly returns or monthly returns will not be able to get the advantage of the exemption whereas those who pay on yearly returns will be so entitled.

I am unable to agree that the effect of the collection of the words in s. 5 and particularly of the words "shall be levied on the taxable turnover every year.....a tax" is what was argued by the appellants i.e. it was a yearly tax like the income tax. Section 6 which provides for exemption specifically envisages the declaration from time to time of exemption of goods which are to be tax-free. The use of the words "tax-free from time to time", in my opinion, means that the exemption may be given at any time during the year but it does not suggest that the exemption will operate from the beginning of the year and not from the time that the exemption is given. If this were not so then the imposition of sales tax by excluding an

article exempt from tax from the schedule say about the end of the financial year would render the dealer liable to sales tax for the whole year even though he may not have collected any sales tax from his customers which under the law he would be entitled to do if the article is not in the schedule. It will be an imposition which is not envisaged by the general scheme of the Sales Tax Act because the tax is exigible on taxable turnover in every return made monthly or quarterly or yearly as the case may be. It appears that it is for that reason that in the definition of the word "turnover" the legislature has chosen the word "during the given period" i.e. the period for which the tax is leviable and is levied. Similarly in sub-section (2) of s. 5 where sales tax is levied on the taxable turnover of a dealer the use of the word "during any period" is again repeated and in cl.(a) of that section reference is made to deduction from his turnover during that period of the sale of goods declared tax-free under s. 6 and that is for a good reason because s. 6 itself mentions the declaration of tax-free goods from time to time indicating that whenever during the year or at any time during the year when goods are notified to be tax-free.

That the intention of the legislature was to give exemption from the date of the notification or such date as is mentioned in the notification is further supported by the provisions of ss. 10 and 11 of the Act. Under s. 10 a dealer may be required to furnish his return at such intervals as may be prescribed and when he makes a return it must necessarily be of the goods on which during that period sales tax was exigible. Under sub-s.(4) of s.10 the dealer is required to pay into the Government treasury the full amount of tax according to his return. Under s. 11 the assessment of the tax either on the acceptance of the return or after production of such evidence as may be required is to be made. From the provisions of s. 11, it does

1961

M/s. Mathra Prashad v. State of Punjab

Kapur J.

not appear that returns are to be scrutinised at the end of the year like in income tax cases and assessment made on the income of the year preceding the assessment year. It is to be made in regard to each return whenever according to the rules the return has to be and is made. The tax is also paid for that period i.e. on the taxable turnover for the period for which the return is made and which becomes the subject matter of assessment. When the assessment has been made and the tax assessed is paid the assessment for that period is completed and all proceedings and liabilities and subjected to what is stated as to escaped periods.

This is further clear from the rules which have been made in regard to registration and furnishing of returns. In the registration certificate it has to be mentioned as to what goods are free of tax. Returns are required to be made in the Forms which are given i.e. Form VIII or Form XXIII. A return under Form VIII may be monthly, quarterly or yearly. A return to be made also provides for mentioning the turnover of tax-free goods and goods which are exempted from sales tax. If the contention of the appellants is correct, then after all the returns have been filed, the amount of sales tax according to the returns assessed and payments made, there will have to be proceedings for reassessment, remission or refund as the case may be in regard to those periods, if any goods are added to the schedule exempting them from sales tax after the assessment or any goods are deleted from the schedule thus making them liable for sales tax and that will be for the periods of which the assessment had already been completed and finished. That does not seem to be the scheme of the Act. It does not envisage reassessment for the purpose of refunding the tax assessed and paid on articles which were assessable at the time the assessment was made but became exempt later nor is it envisaged in the case of

articles excluded from the schedule. Section 11(6) which deals with reassessments at the relevant time provided :

> "If upon information which has come into his possession the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period has failed to apply for registration, the Assessing Authority shall.....assess to the best of his judgment the amount of tax .....due from the dealer."

The scheme of the Act and the rules made thereunder do not, in my opinion, show that the exemption becomes operative for the whole year whenever during the year the notification of exemption is issued even though it may be on the last day of the financial year.

I would therefore dismiss this appeal with costs.

BY COURT. In accordance with the judgment of the majority, the appeal stands allowed with costs.

HARI SHANKAR

v.

RAO GIRDHARI LAL CHOWDHURY

(B.P. SINHA, C. J., J.L. KAPUR, M.HIDAYATULLAH and J.C. SHAH, JJ.)

Revision Application—Concurrent findings of the courts below—No provision in statute for second appeal—High court, if dould re-assess the value of evidence—Distinction between appeal and revision—Delhi & Ajmer Rent Control Act, 1952—(38 of 1952), ss. 34, 35 (1).

In an ejectment suit under the Delhi & Ajmer Rent Control Act, 1952, the trial Judge decreed the suit and on appeal under s.34 of the Act the Additional District Judge confirmed