

COMMISSIONER OF SALES TAX DELHI AND ORS.

v.

M/S. SHRI KRISHNA ENGG. CO. AND ORS.

JANUARY 25, 2005

[S.N. VARIAVA, DR. AR. LAKSHMANAN AND S.H. KAPADIA, JJ.]

*Sales Tax :*

*Delhi Sales Tax Act, 1975, Section 4(2)(a)(v)—Delhi Sales Tax Rules, 1975—Rule 8(4)(c)—Sale transaction—Purchasing dealer failing to submit ST-1 form—Liability of selling dealer to pay sales tax—Held, selling dealer is liable to pay sales tax—Object of the Act being to check evasion and collection of tax, State cannot lose its tax entitlement.*

**The question which arose in present appeals is whether selling dealer who is not issued ST-1 forms by their purchasing dealer is disentitled to claim benefit of Section 4(2)(a)(v) of Delhi Sales Tax Act, 1975 and liable to pay tax on such transaction.**

**Appellant-assessee contended that they were suffering due to failure and defaults on the part of purchasing dealers, in which they have played no part whatsoever and that under the scheme of the Act they are precluded from charging sales tax from other registered dealers since such a demand would invite prosecution under the Act; that as per Rule 8(4)(c) tax assessed must be paid as a condition for issuance of forms. The condition to deposit assessed amount of tax is a substantive provision of law going to the root of the right of the dealer to receive forms; that the impugned rule has been passed beyond the powers conferred under Section 71(2)(b) of the Act and therefore the rule is in excess of the jurisdiction and authority of law and as such is liable to be quashed; that the Administrator cannot take upon himself the power of the Parliament in making any substantive amendments in the Act or the Rules.**

**Revenue contended that a measure which is intended to check the evasion of tax is a valid measure and it is in public interest to see that in the guise of freedom of trade, they do not evade the payment of tax; that the power of Administrator to provide for further safeguards to prevent**

- A evasion of tax and to enable the Revenue to check such evasion and collect tax is liable to be upheld so long as it does not contravene any specific/express provision of the Act.

Disposing of the appeals, the Court

- B HELD: 1.1. The objective of Delhi Sales Tax Act, 1975 is to levy and collect tax on the sale of goods in the National Capital Territory of Delhi. Levy of tax is meaningless if the tax is not collected. It can never be the intention of lawmakers to keep on levying tax without any effort to collect the tax so levied. [838-F]

- C *Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh*, (1981) 47 STC 359; *State of Tamil Nadu v. M.K. Kandaswami and Ors.* (1975) 36 STC 191 and *N.V. Bagi v. commissioner of Commercial Taxes in Karnataka*, (1991) 83 STC 449, referred to.

- D 1.2. The entitlement to deduction under the Act, postulates two requirements, sale to a registered dealer and submission of a true declaration filled and signed by the registered dealer in the prescribed forms (ST-1). Selling/Purchasing dealers, are liable to pay sales tax on every sale, and would be entitled to deduct the value of only those transactions in respect of which they provide ST-1 Forms. In the event of  
E the said forms being unavailable to them for whatever reason, they are responsible for payment of the tax. The State cannot lose its tax entitlement, in the light of the purpose and object of the Sales Tax Act. The intent behind the devising of ST-1 forms/C Forms is to avoid multipoint taxation and enable a dealer passing on the burden of sales tax in such a way that it ultimately reaches the buyer-consumer.

- F [839-D-E, G]

*A..V. Fernandez v. The State of Kerala*, AIR (1957) SC 657, referred to.

- G *Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd.*, AIR (1961) SC 1047, cited.

- H 1.3. The scheme of the Act is that either ST-1 Form should be available or tax should be collected. If a dealer shows such indulgence as to delivery of ST-1 Forms for a particular period, he takes the risk. The Sales Tax Department is neither privy to nor is it concerned with any

assurances that might have been exchanged inter se between the selling and purchasing dealers in the matter of furnishing ST-1 Forms. There is no reason for the consequences of the dealers' acts of omission or commission to visit the Department. Even if a purchasing dealer has applied for ST-1 Forms but has not received them for any reason, the selling dealer is not automatically exonerated from liability. It is their statutory duty to collect tax, since the ST-1 Form is not forthcoming. [843-B; 846-C; 842-F]

2. A general power has been conferred upon the administrator to make appropriate rules to carry out the purposes of the Act. Thus, the impugned amendment in Rule 8(4)(c) was within the rule making power of the Lt. Governor of Delhi. [847-B, C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1717-1719 of 1999.

From the Judgment and Order dated 27.11.98 of the Delhi High Court in C.W.P. Nos. 3304, 3727 and 3859 of 1997.

WITH

C.A. Nos. 308, 313, 314, 315/2003 and S.L.P. (C) No. 1954 of 2003.

Ravi P. Mehrotra, Mrs. Kiran Bhardwaj, H.C. Bhatia, Raj K. Batra, Mrs. Anil Katiyar and Mrs. Sushma Suri, Rajesh Mahna Randhir Chawla, Ms. Renu Sahgal, Ms. Malvika Bhargava, Y.P. Mahajan, K.C. Dua and D.S. Mahra for the appearing parties.

The Judgment of the Court was delivered by

**DR. AR. LAKSHMANAN, J.** The appellants in the above appeals, namely, C.A. Nos. 308, 313, 314, and 315 of 2003 and SLP No. 1954 of 2003 are selling dealers. The respondents in Civil Appeal Nos. 1717-1719 of 1999 are the purchasing dealers. This batch of appeals raises common question of law. The facts are essentially similar.

We shall now take Civil Appeal No. 314 of 2003 filed by one of the selling dealers, namely, Simran Engineering Works. They filed the writ petition in the High Court of Delhi seeking the following reliefs:-

“(a) issue a writ of certiorari or any other writ, order or direction

- A quashing Rule 8(4)(c) which is ultra vires to the provisions of Sec. 4(2)(a)(v) of the Delhi Sales Tax Act, 1975.
- (b) issue a writ of certiorari or any other writ, order or direction quashing Rule 8(4)(c) as the same is beyond the powers of the Administrator conferred under Section 71 of the Delhi Sales Tax Act, 1975 to the extent that prescribes a condition that the declaration will only be issued if he deposits the amount of tax.
- B (c) Issue a writ of mandamus or any other writ, order or direction quashing Rule 8(4)(c) which is ultra vires to the provisions of the Delhi Sales Tax Act.
- C (d) Issue a writ of mandamus or any other writ, order or direction directing respondent Nos. 1 to 3 to issue the forms withheld vide deficiency memo dated 29.9.1999 and rejection order dated 13.10.1999 (Annexure 'c' (colly), to respondent No. 4 without necessitating of deposit of arrears of Sales Tax who in turn will issue forms to the petitioners and/or also issue direction directing respondent No.5 to allow deduction on account of sales made to respondent No.4 by the petitioner.
- D (e) Issue any other appropriate writ, order or direction as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case."
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Our concern in this batch of matters is whether the selling dealers can canvass that the Department has no authority to refuse to issue sales tax forms to purchasing dealers or allow the deduction to the selling dealers and whether any of the provisions of Rule 8 of the Rules empowers it to do so, if there is such a power.

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In the present case the appellants had sold goods to registered dealers who are not being issued the declaration form on account that they being in arrears of some tax and thereby the selling dealers cannot claim the benefit of Section 4(2)(a)(v) and the figure of sales become liable to be included in the figure of his taxable turnover.

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These appeals also involve interpretation of Section 4(2)(a)(v) of the Delhi Sales Tax Act, 1975 and Rules 7 and 8(4) of the Delhi Sales Tax Rules, 1975.

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As already noted the appellants filed writ petitions in the High Court

praying for an order or direction be issued quashing Rule 8(4)(c) of the Delhi Sales Tax Rules, 1975 (herein after referred to as the "Rules") on the ground that it is ultra vires the provision of Section 4(2)(a)(v) of the Delhi Sales Tax Act, 1975 (hereinafter referred to as the "Act").

The grievance of the appellants (selling dealers) pertains to the non-issuance of Sales Tax Forms (ST-I). In the instant case, a legal question has arisen because the appellants as the selling dealers sold goods to the respondents-purchasing dealers on the latter's assurance that they will supply requisite ST-I forms to the former. Instead it had transpired that the Sales Tax Department has declined to issue ST-I forms to the purchasing dealers, in this batch of appeals either for the reason that they have relinquished their registration or because they have not complied with the provisions of the Act and the Rules. The consequence of Department's declining to issue ST-I form is that the appellant (Selling dealers) would become liable to deposit the sales tax in respect of transactions in which they are the selling dealers. The further consequence would be that unless the appellants deposit the sales tax payable on these transactions they would render themselves liable for non-issuance of ST-I forms in other transactions where they may wear mantle of purchasing dealers. They may also encounter the extreme penalty of facing derecognition under the Act.

Mr. Rajesh Mahna, learned counsel for the appellant contended that the appellants are being made to suffer the consequence of failure and defaults on the part of purchasing dealers in which they have played no part whatsoever and that under the scheme of the Act they are precluded from charging sales tax from other registered dealers since such a demand would invite prosecution under the Act.

Learned counsel also argued that they are in a helpless position and would be compelled to incur sales tax liability for events which are not within their control. Mr. Mahna submitted that as per Rule 8(4)(c) tax assessed must be paid as a condition for issuance of forms. The condition to deposit assessed amount of tax is a substantive provision of law going to the root of the right of the dealer to receive forms. The Rule laying down to deposit the assessed amount and therefore it affects the statutory right of the dealer to receive the forms. It was further contended that the impugned rule has been passed beyond the powers conferred under Section 71(2) (b) of the Act and therefore the rule is in excess of the jurisdiction and authority of law and as such is liable to be quashed. It was also urged that the Administrator cannot

- A take upon himself the power of the Parliament in making any substantive amendments in the Act or the Rules.

B This Rule directly affects the vested rights conferred upon the dealers to receive forms under Section 4. He further submitted that the legislature lays down the guidelines for issuance of forms in exercise of powers delegated to the Executive. Any Rule made depriving the dealers for obtaining the forms which is in excess of powers is violative of the constitutional rights, free trade and commerce. The power has to be exercised with the strict limits of authority conferred by the Statute.

C It was also contended that Rules whittle down the rights for the registered dealers to buy goods without tax on the strength of their registration certificate. The said Rule undo the substantive law for which the Administrator has no authority. The Rule 8(4)(c) overrides the provisions of the Act itself and undo the Act for the functioning for which the Rules have been framed.

D Learned counsel has also invited our attention to a similar case which came up before the Delhi High Court in the case of *M/s. Shri Krishna Engg. Co. v. Commissioner of Sales Tax Delhi and Ors.* in CWP No.3304 of 1997, whereby the High Court held that the Rules which are meant for carrying out the provisions of the Act cannot take away what is conferred by the Act or whittle down its effect. It is to be noted that against the above judgement, the State has preferred Civil Appeal Nos.1717-1719 of 1999. We shall deal with the correctness of the above judgment of the Delhi High Court while considering Civil Appeal Nos. 1717-1719 of 1999 in the later part of our judgment.

F Mr. Ravi P. Mehrotra, learned counsel for the Commr. Of Sales Tax while arguing the State's appeal in Civil Appeal No.1717-1719 of 1999 and also replying to the arguments of counsel for the appellants in the other bunch of appeals made the following submissions :

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- (a) Section 71(1) gives the Administrator the power to make Rules for carrying out the purposes of the Act.
  - (b) Mischief Rule is to be applied to appreciate the true scope of the amendment.
  - (c) Rule 8(4)(c) provides for ample safeguards.
  - (d) Section 72 of the Act is directory in nature since it provides for a negative procedure.
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(e) Equity has no role to play in tax matters.

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Mr. Ravi P. Mehrotra while arguing further submitted that the purpose of Act is not merely to levy but also to collect tax and in pursuance to that objective, to provide for safeguards to protect the interest of the Revenue. Recovery of tax is as much a purpose under any tax law as levy of tax is, since without an effective process for recovery of tax there is no purpose for levy of tax. According to learned counsel for the State a measure which is intended to check the evasion of tax is undoubtedly a valid measure and it is in public interest to see that in the guise of freedom of trade, they do not evade the payment of tax. Explaining the scope of the power of Administrator the learned counsel submitted that the power of the Administrator to provide for further safeguards to prevent evasion of tax and to enable the Revenue to check such evasion and collect tax is liable to be upheld so long as it does not contravene any specific/express provision of the Act. In the present case, so long as the impugned rule does not violate any provision of the Act, it should be upheld as having been framed for *carrying out the purposes* of the Act unless it is so remote to the purposes of the Act that no rational nexus exists between the two. According to the submissions of the learned counsel that is not the situation in the present case.

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He also made the following further submissions :

(a) *What was the law before the making of the Act? ?*

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- Unamended Rule 8(4)(c)(ii) provided that the appropriate assessing authority could withhold the issue of Form ST-1 if the applicant had, at the time of the application, defaulted in making the payment of the amount of tax assessed or the penalty imposed which the applicant admits to be due from him and which is not in dispute.

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(b) *What was the mischief or defect for which the law did not provide?*

- The defect came to be reflected in the Delhi High Court judgment in *Gee Gee Exports Pvt. Ltd. v. Commissioner of Sales Tax*, (reported in [1997] 105 STC 36 (Del) delivered on 08.11.1996) (Y.K. Sabharwal, J. (as he then was) and D.K. Jain, J.) in this case, the assessee had filed a revision petition and stay application against the assessment order which were pending. It was held that since the amount was in dispute and not admitted, therefore, it was directed that the forms be issued to the assessee. Therefore,

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A a dealer to avoid payment of tax and at the same requiring the issuance of Form ST-1, had to merely file a revision petition along with stay application and easily bypass the requirement of Rule 8(4)(c)(ii). The law therefore did not provide for any mechanism to check this kind of evasion of tax, which was the purpose of Rule 8(4)(c).

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(c) *What is the remedy that the Act has provided?*

- Rule 8(4)(c) (ii) was amended to provide that issuance of forms may be withheld if the applicant had defaulted in making the payment of the amount of tax assessed or the penalty imposed by the assessing authority in respect of which no orders for instalment/stay have been obtained from the competent authority under the provisions of law.

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(d) *What is the reason of the remedy?*

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- The judgement in the Gee Gee Exports amply demonstrated the possibility of a dealer to avoid payment of tax by merely filing a revision petition along with a stay application and at the same time, demanding from the authorities Form ST-1. To avoid this situation and to effectuate the purpose of the Act to collect tax and further, to prevent evasion of tax, the impugned amendment was brought in.

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Elaborating his submissions that Rule 8(4)(c) provides for ample safeguards, Mr. Ravi P Mehrotra, submitted :

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*Rule 8(4)(c) provides for ample safeguards*

- (a) That the requirements of Rule 8(4)(c) are not harsh or unreasonable. Rather, on the other hand, they comply with the rules of natural justice. The appropriate assessing authority has to afford the applicant an opportunity of being heard and only after recording his reasons in writing, can withhold the issue of declaration forms to the applicant and therefore, is required to make a report to the Commissions of such withholding within a period of three days from the date of its order.

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- (b) Order passed by the appropriate assessing authority is appealable under Section 43 of the Act.

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Before considering the rival submissions made by the counsel appearing on either side, it is beneficial to reproduce the relevant provisions under the Delhi Sales Tax Act, 1975 and the Rules made thereunder : A

(i) That under the Delhi Sales Tax Act, 1975, Section 3 is the charging Section, it provides for the incidence of tax. It is laid down that every dealer whose turnover exceeds the taxable quantum shall be liable to pay tax on all sales effected by him. Sub clause 7 defines taxable quantum. Section 4 lays down the rate of tax. Sub-clause 2(a) defines taxable turnover. For ready reference the provisions are set out hereunder : B

*Section 4 - Rate of tax -* (1) The tax payable by a dealer under this Act shall be levied - C

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

(cc) \_\_\_\_\_

(d) \_\_\_\_\_ D

(2) For the purposes of this Act, "taxable turnover" means that part of a dealer's turnover during the prescribed period in any year which remains after deducting therefrom; E

(a) his turnover during that period on -

(i) sale of goods, the point of sale at which such goods shall be taxable is specified by the Administrator under section 5 and in respect of which due tax is shown to the satisfaction of the Commissioner to have been paid; F

(ii) sale of goods declared tax-free under Section 7;

(iii) sale of goods not liable to tax under Section 8:

(iv) sale of goods which are proved to the satisfaction of the Commissioner to have been purchased within a period of twelve months prior to the date of registration of the dealer and subjected to tax under the Bengal Finance (Sales Tax) Act, 1941, as it was then in force, or under this Act; G

(v) sale to a registered dealer - H

A (A) .....

(1) .....

(2) .....

(3) .....

B

(B) .....

(C) .....

(vi) .....

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Provided .....

Provided .....

(b) .....

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(ii) .....

*Rule 7* — Condition subject to which a dealer may claim deduction from his turnover on account of sales to registered dealers - (1)

A dealer who wishes to deduct from his turnover the amount in respect of sales on the ground that he is entitled to make such deduction under the provisions of sub-clause (v) of clause (a) of sub-section (2) of section 4 shall produce :

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(a) copies of the relevant cash memos or bills according as the sales are cash sales or sales on credit, and

(b) a declaration in form ST-I duly filled in and signed by the purchasing dealer or a person authorised by him in writing:

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Provided .....

Provided .....

(1(A) .....

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(2) .....

(3) .....

(4) .....

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*Rule 8* - provides as to from whom the declarations have to be obtained and the procedure for obtaining the same. The said rule

is set out hereunder :

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Rule 8 Authority from whom the declaration form may be obtained, and use, custody and maintenance of records of such forms and matters incidental thereto - (1) The declaration referred to in the second proviso to clause (a) of sub-section(2) of Section 4 shall be in form ST-I which shall be obtained from the appropriate assessing authority by the registered dealer intending to purchase goods on the strength of his certificate of registration.

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(2)

[Provided .....

C

Provided further .....

[(2)(A) .....

[(3) For obtaining declaration form ST-1, a registered dealer shall apply in writing to the appropriate assessing authority;]

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[Provided that the declaration shall be issued to a registered dealer only after he has rendered satisfactory account of the forms, if any, issued to him on previous occasions.]

(4)(a) [If, for reasons to be recorded in writing] the appropriate assessing authority is satisfied that the declaration forms have not been used *bona fide* by the applicant or that he does not require such Forms *bona fide*, the appropriate assessing authority may reject the application or it may issue such lesser number of forms as it may consider necessary.

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(b) if the applicant for declaration forms has, at the time of making the application, failed to comply with an order demanding security from him under sub-section (1) of section 18, the appropriate assessing authority shall reject the application.....

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(c) If the applicant for declaration forms has, at the time of making the application :

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(i) defaulted in furnishing any return or returns in accordance with the provisions of the Act or these Rules, or in payment of tax due according to such return or returns; or

(ii) defaulted in making the payment of the amount of tax assessed or the penalty imposed by an appropriate assessing authority,

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A which the applicant admits to be due from him and which is not in dispute; or

(iii) been found by an appropriate assessing authority having some adverse material against him, suggesting any concealment of sale or purchase or of furnishing inaccurate particulars in the returns;

B the appropriate assessing authority shall, after affording the applicant an opportunity of being heard, withhold, for reasons to be recorded in writing, the issue of declaration forms to him and the appropriate assessing authority shall make a report to the Commissioner about such withholding within a period of three days, from the date of its order:

C  
D Provided that the appropriate assessing authority may, instead of withholding declaration forms, issue to the applicant, with the previous approval of the Assistant Commissioner appointed under sub-section (2) of Section 9 of the Act, such forms in such numbers and subject to such conditions and restrictions as it may consider reasonable;

E Provided further that notwithstanding the provisions of any other rule, the issue of declaration forms to an applicant to whom a certificate of registration under the Act has been granted for the first time, shall be withheld by the appropriate assessing authority, until such time as all the returns for the return period commencing from the date of validity of this certificate of registration are furnished and tax due according to such returns is paid by him.

F (d) Where the appropriate assessing authority does not proceed under clause (a), clause (b), or clause (c), it shall issue the requisite number of declaration forms to the applicant.

(5) .....

G (6) .....

(7) .....

(8) .....

(9) .....

H (10) .....

(11) .....

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(12) .....

Provided .....

Rule 9 .....

The Delhi Sales Tax Act, 1975 confers power under Section 71 of the Act on administrator to make the rules. Section 71 provides for power to make rules and the same reads as follows :

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*“Section 71 - Power to make rules - (1) The Administrator may make rules for carrying out the purposes of this Act.*

C

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for -

(a) the further period after the date of expiry of three consecutive years referred to in sub-section (3) of Section 3 for which liability to pay tax of a dealer shall continue;

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(b) the particulars to be contained in a declaration under sub-clause (v) of clause (a) of sub-section (2) of section 4, or under section 5, as the case may be the form of such declaration, the authority from whom such forms shall be obtainable and the manner in which and the time within which such declaration is to be furnished;

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(c) .....

(d) .....

(e) .....

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(f) .....

(g) the intervals at which, and the manner in which, the tax under this Act shall be payable under Section 21;

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(s) Any other matter which is required to be, or may be prescribed;

That from the above provisions of law, it emerges that powers have been conferred upon the Administrator to make such, rules as may provide for carrying out the purposes of the Act. Sub-rule (2) provides for

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- A (i) the particulars to be contained in a declaration under sub-clause (v) of clause (a) of sub-section (2) of Section 4 or under Section 5;
- (ii) the form of such declaration;
- B (iii) the authority from whom such forms shall be obtainable; and
- (iv) the manner and the time within which such declaration is to be furnished."

*Scheme of the Delhi Sales Tax Act, 1975*

- C The avowed objective of the Act is to levy a tax on the sale of goods in the National Capital Territory of Delhi, which is evident from a reading of its preamble. This objective is achieved by the charging section Section 3 of the Act, which stipulates that every dealer whose turnover exceeds the taxable quantum shall be liable to pay tax on all sales effected by him. Section 4(2)
- D of the Act refers to 'taxable turnover' which means that part of a dealer's turnover which remains after deduction therefrom the sundry transactions mentioned in sub-section (a) thereof. None of the said transactions, however, postulate that all sales to registered dealers per se qualify as deductions. There are three provisos to section 4(2)(a) of the Act, the second proviso of which declares that no deduction in respect of any sale referred to in sub-
- E clause (v) shall be allowed unless a true declaration in the prescribed form, duly filled and signed by a dealer, is furnished to the selling dealer.

The preamble of the Delhi Sales Tax Act, 1975 reads as under:

- F An Act to consolidate and amend the law relating to the levy of tax on sale of goods in the National Capital Territory of Delhi.

The undisputed objective of the Act is to *levy and collect* tax on the sale of goods in the National Capital Territory of Delhi. *Levy to tax* is meaningless *if the tax is not collected*. It can never be the intention of the lawmakers to keep on levying tax without any effort to collect the tax so

G levied. This Court in *Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh*, [1981] 47 STC 359 held that

"It is well settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, *whose primary stipulated object is to raise revenue.....*"

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Needless to stress that the object of every taxing statute is to raise revenue. A

In *The State of Tamil Nadu v. M.K. Kandaswami and Ors*, [1975] 36 STC 191, this Court held that *where the object of a provision is to plug leakage and prevent evasion of tax. In interpreting such provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book should be eschewed.* If more than one construction is possible, that which *preserves its workability and efficacy* is to be preferred to the one which would render it otiose or sterile. B

Further a Division Bench of the Karnataka High Court in *N.V. Bagi v. Commissioner of Commercial Taxes in Karnataka*, [1991] 83 STC 449 has held “in matters which deal with *provisions to prevent evasion of tax which is due to the State the construction of the provision must be strict and in favour of the enforcement of the provision*”. C

Thus, in our view, the entitlement to deduction under the Act, for purposes of the present controversy, postulates two requirements 1. Sale to a registered dealer and 2. a true declaration filled and signed by the registered dealer in the prescribed forms (ST-1) is submitted by the dealer who sells the goods. Selling/Purchasing dealers, as the case may be, are liable to pay sales tax on every sale, and would be entitled to deduct the value of only those transactions in respect of which they are in a position to provide ST-1 Forms. In the event of the said forms being unavailable to them for whatever reason, they are responsible for payment of the tax. The State cannot lose its tax entitlement, in the light of the purpose and object of the Sales Tax Act. D E

Section 71 stipulates that rules may be made for carrying out the purposes of the Act. The modalities for claiming deduction and obtaining declaration forms and withholding of the same, are contained in Rules 7 and 8 of the Delhi Sales Tax Rules. F

The intent behind the devising of ST-1 Forms/C Forms is to avoid multipoint taxation and enable a dealer passing on the burden of sales tax in such a way that it ultimately reaches the buyer-consumer. G

Section 2(e) defines a ‘dealer’ to mean any person who carries on the business of selling goods in Delhi. Thereafter sub-section (k) of Section 2 defines ‘registered’ to mean registered under the Act. Significantly, although the nomenclature ‘registered dealer’ has been used in the Act, this term has H

A not been defined in Section 2. However, it does not create any controversy in assuming it to mean any dealer who has been accorded registration under the Act. Section 2(e) define 'turnover' as the aggregate of the amounts of sale price receivable or actually received by any dealer in respect of any sale of goods. As in the case of the term 'registered dealer', the definition of 'taxable turnover' is not contained in Section 2 of the Act. For the meaning of 'taxable turnover', we must travel to Section 4(2) of the Act which clarifies that for the purposes of the Act, taxable turnover means that part of a dealers turnover which remains after deducting therefrom the sundry transactions mentioned in sub-section (a) thereof. None of these, however, postulates that all sales to registered dealers per se qualify as deductions.

C There are three provisos to Section 4(2)(a) of the Act, the penultimate declares that no deduction in respect of any sale referred to in sub-clause (v) shall be allowed unless a true declaration in the prescribed form duly filled and signed by a dealer is furnished to the selling dealer. The last proviso is also of immense import as it specifies that where goods are not utilised by the purchasing dealer for the purposes mentioned in sub-clause (v), the price of such goods shall nonetheless be deductible from the turnover of the selling dealer and instead, shall be included in the taxable turnover of the purchasing dealer.

E *Benefits of registration* : Registration confers certain benefits, privileges and concessions.

(1) it gives the registered dealer a right to collect tax. (Section 22).  
An unregistered dealer cannot collect or charge tax. But;

F (a) liability to pay is not dependent upon whether you have collected or not;

(2) a registered dealer can purchase goods specified in his registration certificate on the strength of such registration without payment of tax by furnishing the prescribed declaration.

G It is not a vested right but in the nature of concession or privilege or at best a statutory right. Being a statutory right, it is not an absolute right but conditional one.

H Considering the full effect of the provisions, we are fortified in our conclusion that exemption from including the total turnover of the selling dealer is possible only where the requisite ST-1 form is produced. The embargo



on charging tax under the Act is only in those instances where the purchasing dealer contemporaneously offers ST-1 Form to the selling dealer. The Sales Tax Department neither privy to nor is it concerned with any assurances that might have been exchanged inter se these parties. As observed by the High Court quite frequently ST-1 Forms are obtained from Sales Tax Department by the purchasing dealer, but for sundry reasons are not forwarded to the selling dealer. The only legal recourse is for the selling dealer to file a suit for the recovery of the sales tax from the purchasing dealer. There is no reason to deviate from this position. It should be recalled that, for the benefit of the assessee, the Rules permit the filing of exemption Forms till the time of assessment, this is probably the reason why dealers postpone their obtainment. There is no reason for the consequences of the dealers acts of omission or commission to visit the Department. The Act and the Rules do not prohibit the simultaneous furnishing of ST-1 Forms. They, in fact, envisage it.

The Sales Tax department has adopted the following Application Form for issue of declaration in Form ST-1. We are reproducing the application form herein below:

“Application Form for Issue of Declarations in Forms ST-1.

To

The Assessing Authority,

Ward No.....

1. Name and style of the business:
2. Full address:
3. Local R.C.No.:
4. No. of unutilised forms in hand:
5. No. of forms now required:
6. Return period quarterly/monthly:
7. The period/year upto which the assessment has been last made:
8. Whether all returns due till date since the last assessment have been furnished and the tax due according to them paid? If not, state the defaults and reasons thereof.

- A 9. Whether the amount of arrears of tax still remains payable. If so, state the year and the amount of arrears and reasons for non-payment.

I do hereby solemnly affirm and declare that the above information is true and correct to the best of my knowledge and belief.

B Signature of the dealer

Status.....

Please deliver.....Forms to Shri.....an employee of my firm.  
His signatures are as attested below:

C Signature of dealer

Signature of Shri.....

Signature attested

D Signature”

E As already noticed in this batch of writ petitions filed by the selling dealers, the challenge is directed to the vires of Rule 8(4)(c) of the Rules, on the ground that they traverse beyond the ambit of Section 4(2)(a)(v) of the Act. The grievance of the appellant is not that they have requested the Sales Tax Department for issuance of the Forms in advance and this has been turned down, but that their purchasing dealers should be supplied with ST-1 Forms regardless of whether such dealers have relinquished their registered status, or have committed other infractions of the Act and the Rules. Even if a purchasing dealer has applied for ST-1 Forms but has not received them for any reason, the selling dealer is not automatically exonerated from liability.

F It is their statutory duty to collect tax, since the ST-1 Form is not forthcoming. Likewise, no reason for the State to lose its revenue merely because the purchasing dealer is unable to obtain such forms because of its falling in arrears. It is the dealer, because of its own acts of omission, who has broken the chain whereby tax is arranged and devised by the Department to be

G collected at a single point only.

H It is settled law that equity plays only a minuscule role in fiscal matters, even if such considerations were to be applied, there would still be no justification for an application adverse to the interest of the State. The dealer who has chosen to trust the other dealer must suffer for his mercantile

recklessness. This is the risk they run and if for any reason, including a subsequent decision of the Sales Tax Department to withhold the supply of ST-1 forms to a purchasing dealer they are put in an uncomfortable position of having to pay the tax and initiate appropriate legal action for recovering it from the purchasing dealer. The state is entitled to its tax, where the requisite ST-1 Form is unavailable for any reason.

The scheme of the Act is that either ST-1 Form should be available or tax should be collected. If a dealer shows such indulgence as to delivery of ST-1 Forms for a particular period, he takes the risk. It would have been further the best advised to insist on their supply even for the transaction intended to be completed by them.

This Court in *A.V. Fernandez v. The State of Kerala*, AIR (1957) SC 657 opined that, however great the hardship may appear to the judicial mind, "In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substances of the law. If the revenue satisfies the Court that the case falls strictly within the law, the subject can be Taxed." A few years later another Constitution Bench in the case of *Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd.*, AIR (1961) SC 1047 observed thus - "In interpreting a taxing statute, equitable consideration are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of which is clearly expressed; it cannot imply anything which is not expressed it cannot import provisions in the statute so as to supply any assumed deficiency."

It was urged by learned counsel for the appellant that dues are recoverable as arrears of land revenue, the department should proceed against the purchasing dealers and not penalise the selling dealers. We find no substance in this argument as the said sub-section does not obliterate the selling dealers duties under the Act, namely, to collect tax where the purchasing dealer fails to furnish the requisite form. It should also be noted that the right to file an appeal bestowed by Section 43 stipulates in sub-section (v) that it shall be entertained only if it is accompanied by satisfactory proof of the payment of tax with or without penalty. These provisions appear not to have been highlighted before the Bench of the High Court which decided *Shri Krishna Engineering Co.* case in C.W.P. 3304 of 1997 dated 30.11.1998. Learned counsel for the appellant heavily relied upon the judgment of the

A Division Bench in *Shri Krishna Engineering Co.* case. In that case, sub-clause (ii) inserted in clause (c) of sub-rule (4) of Rule 8 of the Delhi Sales Tax Rules, 1975 by Notification dated 11.02.1997 was declared ultra vires the authority of the Lt. Governor of the NCT of Delhi and was consequently struck down. In our view, the said judgment does not cover the present controversy on all fours and, therefore, the contention of the learned counsel

B for the appellant is misplaced. The only similarity is that the appellants in those batch matters had assailed the said provisions because of refusal by the respondent Department to issue Sales Tax Forms on the grounds that arrears of Sales Tax existed against the applicants therein. The applicants, in the above case, were the purchasing dealers themselves and arrears of Sales Tax

C were assignable to their account. As has already been pointed out, in the present bunch of cases, it is the selling dealers who have approached the High Court because of the department's refusal to issue Forms to their purchasing dealers, for the reason that the latter had large outstandings of sales tax.

D In the *Shri Krishna Engineering Co.* case (CWP 3304 of 1997 dated 30.11.1998 Civil Appeal Nos. 1717-19 of 1999) as already noticed, the purchasing dealers had challenged the 1997 amendment in the Delhi Sales Tax Act Rules, 1975 in exercise of powers under Section 71 of Delhi Sales Tax Act, 1975 whereby Rule 8(4)(c)(ii) of the said Rules was substituted.

E *Existing Rule 8(4)(c)(ii)*

defaulted in making the payment of amount of tax assessed or the penalty imposed by an appropriate Assessing Authority, which the application admits to be due from him and which is not in dispute.

F *Substituted Rule 8(4)(c)(ii)*

defaulted in making the payment of the amount of tax assessed or penalty imposed by the Assessing Authority in respect of which no orders for instalment or stay have been obtained from the competent authority under the provisions of the law.

G According to the purchasing dealers the amended rule is in excess of the rule making power under Section 71 of the Act. The Division Bench allowed the writ petitions and held substituted Rule 8(4)(c)(ii) ultra vires the rule making power of the Lt. Governor of Delhi under Section 71 of the Act.

H The reasoning by the Division Bench is that the Act nowhere provides

for withholding of the issuance of form in the eventuality of the applicant dealer being a defaulter or in arrears of tax. A denial on the part of the Sales Tax Authorities to issue the requisite declaration form takes away the substantive right conferred by the Act on the dealer for which act itself does not provide. In the instant batch of Civil Appeal Nos. 308, 313, 314 and 315 of 2003 both the selling and purchasing dealers had challenged the 2001 amendments in the second proviso to Section 4 (2)(a)(v) of the Act and the Rules to insert sub-clause (ii) in Rule 8(4)(c). We have already extracted the prayer in the writ petition in paragraphs supra. A B

We shall now reproduce the existing second proviso to Section 4(2)(a)(v) and the amended second proviso to the said section. C

*Existing second proviso to Section 4(2)(a)(v)*

Provided further that no deduction in respect of any sale referred to in sub-clause (v) shall be allowed unless a true declaration duly filled and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars in the prescribed form obtainable from the prescribed authority is furnished in the prescribed manner and within the prescribed time, by the dealer who sells the goods. D

*Amended second proviso to Section 4(2)(a)(v)*

Provided further that no deduction in respect of any sale referred to in sub-clause (v) shall be allowed unless a true declaration duly filled and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars in the prescribed form obtainable from the prescribed authority *in the manner and subject to such conditions as may be prescribed* is furnished in the prescribed manner and within the prescribed time, by the dealer who sells the goods. E F

*Inserted Rule 8(4)(c)(ii)*

Defaulted in making the payment of the amount of tax assessed or penalty imposed by the Assessing Authority in respect of which no orders for instalment or stay have been obtained from the competent authority under the provisions of law. G

It is the contention of the selling/purchasing dealers that selling dealers are made to suffer the consequences of failures and defaults on the part of the purchasing dealers in which they have played no part whatsoever they are H

A in hapless position and would be compelled to incur Sales Tax liability for events which are not within their control and that Rule 8(4)(c) travels beyond the ambit of Section 4 - (2)(a)(v) of the Act. A Division Bench of the Delhi High Court, by their judgment dated 12.07.2002, which is impugned in these civil appeals dismissed the challenge in regard to the vires of Rule 8(4)(c).

B We have carefully gone through the judgment of the Division Bench in Simran Engineering Works etc. The reasoning given by the Bench in rejecting the challenge in regard to the vires of Rule 8(4)(c) are very sound. As rightly pointed out by the Division Bench, the Sales Tax Department is neither privy to nor is it concerned with any assurances that might have been exchanged inter se between the selling and purchasing dealers in the matter of furnishing ST-1 Forms. There is no reason for the consequences of the dealers acts of omission or commission to visit the Department. The Act and the Rules do not prohibit the simultaneous furnishing of ST-1 Forms, they, in fact, envisage it. Supply of ST-1 Forms by the Department under the Rules is an advance, however, the actual practice may be different (para 7 onwards of page 36 of the judgment).

In our opinion, the generality of the provision of Section 71 (1) should be given its full effect so as to enable the making of Rules for the full implementation of any provisions of the Act. The impugned rule also gives effect to Section 43(5) of the Act which deals with appeals and contains the requirement of pre-deposit of tax and penalty. Other situations where the Commissioner has the discretion to cancel the dealers registration for failure to pay tax including penalty, furnishing a false declaration etc. which must be borne in mind while considering the sweep of Section 71 (1) of the Act. Thus, the primary intendment of the Act is to levy and collect tax and every devise, including of stipulations pertaining to the dealer friendly declaration forms are incorporated to implement the objective of the Act itself as pointed out by the High Court they cannot be conceived as ultra vires the statute (pages 63-64 of the judgment).

In *Shri Krishna Co.* case, the Court had to investigate firstly whether there was any provision in the Act which authorise the withholding of forms on the grounds of the applicant being in arrears of tax. The Court perused sub-section (2) of Section 71 of the Act but could not locate any power contained therein. It was in those circumstances that it arrived at the conclusion that the newly added clause (2) in clause (c) of sub-rule (4) of Rule 8 of the Rules was ultra vires the powers of Lt. Governor.

H

We are of the opinion that the judgment and order of the High Court in *Shri Krishna Engineering Co. case* (CWP 3304 of 1997) is passed on a mis-construction of the clear statutory provisions contained in Section 4, 71(1), 71 (2)(b) and (s) of the Delhi Sales Tax Act, 1975 and that the High Court has also not appreciated the true scope of the rule making power which has been conferred on the Lt. Governor of Delhi by Section 71 (1) of the Act which lays down that the administrator may make rules for carrying out the purposes of the Act. A general power has thus been conferred upon the administrator to make appropriate rules to carry out the purposes of the Act. The purpose of the Act is not just to fix liability but also to recover the liabilities which are so fixed. The High Court also has not noticed that Section 71 (2)(s) of the Act which confers a residual power on the administrator to make rules in respect of any other matter which is required to be or may be prescribed. We are, therefore, of the opinion that the impugned amendment was within the rule making power of the Lt. Governor of Delhi under Section 71 (2)(b) read in conjunction and harmoniously with Section 71 (2)(s).

We, therefore, hold that the Civil Appeal Nos. 308, 313, 314 and 315 of 2003 and SLP No. 1954 of 2003 are without merit and are dismissed and the common judgment and order passed by the High Court in the writ petitions dated 12.07.2002 is confirmed.

In view of the judgment now passed by this Court in Civil Appeal No. 314 of 2003 batch, we hold that the judgment and order passed by the High Court in CWP NO. 3304 of 1997 *M/s Shri Krishna Engineering Co. case* is no longer good law. Consequently, Civil Appeal Nos. 1717-1719 of 1999 stands allowed. Other consequences will follow. Before parting with this case, we also place on record the statement made by Shri Ravi P. Mehrotra, learned counsel appearing for the Department that if a purchasing dealer applies for Form ST-1 in advance he will be supplied with the forms within one week subject to the rules and regulations and if it is in order under the Act and Rules. The same shall be furnished by the Department to the applicant not later than one week.

However, in view of the understandable mis-construction by the parties to these appeals of the decision of *Shri Krishna Engineering Co. case*, we desist from awarding costs.

D.G.

C.A.Nos. 1717-1719/99 allowed.

C.A. Nos. 308, 313, 314, 315/2003  
and SLP No. 1954/2003 dismissed.