

Reportable

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **S.T. Appeal No. 4 of 2010 & CM No.11439 of 2010**

% Judgment Reserved On: 02nd August, 2010.
Judgment Pronounced On: 14th September, 2010.

ALPINE AGENCIES PVT. LTD. . . . Appellant

through : Mr. Rajesh Jain, Advocate

VERSUS

COMMISSIONER OF VALUE ADDED TAX & OTHERS
. . . Respondent

through: Mr. H.L. Taneja, Advocate

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. This second appeal has been filed by the appellant (hereinafter referred to as 'the assessee') under Section 45 of the Delhi Sales Act, 1975. The appellant feels aggrieved by the order dated 1st April, 2010 passed by the Appellate Tribunal, Value Added Tax, Delhi under Section 43 (6) of the Delhi Sales Act, 1975. Before we pin-point the substantial question of law which arises, it would be proper to traverse the facts under which the question of law has cropped up.

2. The assessee is a private limited company. It is trading in electric, electronic and refrigeration items. All these goods in which the appellant is trading were notified to be the first point items under Section 5 of the Delhi Sales Act (hereinafter referred to as 'the Local Act'). The implication thereof is that liability to pay the sales tax is of the first seller from whom the assessee was buying these goods, as the assessee was not the first seller of the goods. It was in the case of the assessee that it had been purchasing these goods from the registered dealers namely M/s Videocon International Ltd., M/s. Whirlpool India Ltd. and M/s. Expo Machinery Ltd., etc.
3. The assessment order in question, relating to the local Act is 1996-97. For this assessment year, the assessment orders which were framed by the Assessing officer were ex-parte and framed on 25th February, 2000. The assessment was made applying the best judgment assessment for want of requisite material given by the assessee who also did not participate in the proceedings and remained ex-parte. The assessment was done both under the local Act as well as Central Sales Tax Act (hereinafter would be referred to as 'the Central Act') raising a demand of Rs. 3679144 and Rs. 90172 respectively, under the aforesaid Acts. This order reads as under:

"The trader runs AC and Refrigeration work. The quarterly return were filed late, hence penalty of ₹1000 for the same is imposed on the trader. The penalty for the fourth quarterly return has already been imposed. The tax was also deposited late and interest thereon is charged. The trader has shown sale of ₹2,00,63,689 in the quarterly returns and in the absence of Account Books of the trader, I declare the total sale of the trader this year at ₹2,25,00,000 out of which tax at the rate of

12% in local is levied on ₹2,00,00,000 and interest is also levied on this due tax. On remaining amount, tax at the rate of 12% under Central Act is to be levied. The benefit of tax deposited by the trader is allowed to the trader.”

4. The assessee preferred an appeal against this order before the First Appellate Authority alongwith the stay application. In the said stay application, the First Appellate Authority passed the orders dated 29th March, 2000 directing the assessee to deposit entire amount of tax as a condition of hearing the appeal. In appeal, this order was modified by the Tribunal on 31st January, 2001 directing the assessee to deposit Rs. 10 lacs under the local Act and Rs. 19,000/- under the Central Act. Still not satisfied, the assessee challenged that order by filing Writ Petition No.7171 in this Court. This writ petition was decided on 17th January, 2002 whereby order of the Tribunal was further modified allowing the assessee to now deposit ₹1,00,000 under the Local and ₹50,000 Under the Central Act.
5. The appeal was ultimately heard by the First Appellate Authority (i.e. Additional commissioner) who vide orders dated 27th March, 2003 remanded the case back to the Assessing Authority for passing fresh orders after providing an opportunity to the assessee.
6. At this stage, we may state that the entire controversy relates to the payment of sales tax on the sales made by the assessee. As pointed out above, the items in which the assessee deals incurred sales tax at first point, thus, according to the assessee, the

registered dealers from whom it had purchased the goods had paid the sales tax. Therefore, it was not necessary for the assessee to charge the sales tax on those very items of goods when the assessee sold the same to the consumers. However, in order to claim exemption of sales tax liability, it was necessary for the assessee to produce the invoices vide which it had purchased the goods from the registered dealers reflecting sales tax having paid to those registered dealers. Since *ex-parte* assessment order was made on 25th February, 2000, naturally, the assessee had not produced those bills in the absence whereof tax liability was raised while framing the assessment order. The plea of the assessee in appeal filed by it and also in the proceedings arose out of interim orders passed by the First Appellate Authority and as noted above, was that since sales tax had already been paid at the point of first sale, there was no liability on the part of the assessee to pay this tax and the assessment of sales tax was without jurisdiction.

7. When the matter was remanded back to the Assessing Officer, the assessee again failed to produce these invoices. According to the assessee, it lost its books of accounts in September, 2001 for which FIR was lodged on 9th September, 2001 and, therefore, it was not in possession of the books of accounts or original invoices. Again the assessee, though, attended the proceedings before the Assessing Officer in the beginning when it was given repeated opportunities to produce the books of accounts, the assessee did not turn up on 10th January, 2005 which was the final

opportunity given for this purpose. In these circumstances, again an *ex-parte* assessment order was passed confirming the original assessment order dated 25th February, 2000. The assessee again went in appeal and also filed stay application. It was again directed to pay the entire amount before the appeal could be heard. This controversy again reached this Court when the assessee filed Writ Petition (C) 4568/2007 challenging the order of pre-deposit. The order dated 24th September, 2007 was passed in that writ petition directing the assessee to deposit a sum of ₹ 1 lac and directing the First Appellate Authority to decide the appeal on merits.

8. The appeal was heard once again on merits by the First Appellate Authority i.e. Additional Commissioner and was disposed of vide orders dated 29th May, 2009. The assessee was given part relief. However, as the assessee again failed to produce the original invoices or books of accounts, which were purportedly lost, it was ready to produce the photocopy of those bills which he allegedly collected from the dealers. The First Appellate Authority observed that it was for the assessee to submit proof to the satisfaction of the Assessing Officer that the sale made by it was not liable to be taxed. The first Appellate Authority also observed that as far as enhancement of sale was made by the Assessing Officer, no reasons in support thereof are given. The First Appellate Authority again remanded the case back to the Assessing Officer with the direction to assess the turnover on the basis of available records and pass speaking order for any enhancement of sale.

9. Since the first appellate Authority had observed in the impugned order that the assessee was not entitled to get the relief in the absence of original invoices and on the basis of photocopy of the invoices, the assessee took the same as an order adverse to it as it was not in a position to produce the original books of accounts or the original invoices which were purportedly lost and could clearly foresee the outcome of the fresh assessment orders had it gone to the Assessing Officer back on the basis of direction given by the First Appellate Authority. Therefore, the assessee decided to challenge this order by filing appeal before the Tribunal. Along with this appeal, as usual, stay application was also moved. This application was heard on 16th December, 2009 and the Tribunal dispensed with the condition of pre-deposit of tax. The Tribunal heard the appeal also on merits finally there and then and reserved the orders. The orders were pronounced on 31st March, 2010 dismissing the appeal. This is how the assessee has approached this Court by way of present appeal challenging the said order of the Tribunal.
10. Though, many questions of law are proposed, according to us controversy highlighted above gives rise to the following two questions of law:
- (i) Whether the inference drawn by the Tribunal that the appellant was in possession of the books of accounts and, therefore, there is no reason for them not to produce them before the Assessing Authority is not contrary to the facts of the case, especially when an FIR regarding the loss of books of accounts had been lodged on 9.9.2001 and the remanded assessment order in this matter was passed on 13.1.2005 (and not 25.2.2000)?

- (ii) When the goods dealt in by the appellant were first point goods on which liability to tax is on first sale, then could the liability be fastened on the appellant when:-
 - (a) they were not the first seller of the said goods,
 - (b) in discharge of their onus in terms of notification dated 31.02.1988, they had produced photocopies of the purchase invoices before the Additional Commissioner and had also submitted the list of such purchases before the Tribunal, and
 - (c) There is a recording of admission of the respondent in the order dated 18.2.2002 passed by this Court in CWP No.7173/2001 that appellant has paid all the taxes?"

11. It was highlighted by Mr. Jain, learned counsel appearing for the assessee that the goods in question dealt with by the assessee attracted sales tax on first sale and admittedly first sale was by the registered dealers to the assessee and, therefore, that sale could not be without charging the sales tax. Thus, it could clearly be inferred and implied that due sale tax was paid by the assessee. In such circumstances, there was no question of any liability to pay sales tax again when the sales were made by the assessee to the ultimate consumers. Though, it was conceded that in order to avail this benefit, it was necessary for the assessee to produce the books of accounts and the purchase invoices showing sales tax charged by the dealers from the assessee at the time of making first sale to it, his grievance was that the authorities below failed to appreciate that when the books of accounts had been lost, the assessee had no alternative but to produce the photocopies of the purchase invoices which the assessee had collected from the dealers. He submitted that loss of books of

accounts etc. took place in September, 2001 and FIR was lodged in that behalf as these books of accounts were available earlier, he had shown the same to the Additional Commissioner (the First Appellate Authority) when in the first round of appeal before the said authority, the assessee had pressed its application for stay. This contention of the assessee is noted by the said Authority in its order dated 3th August, 2005 in the following terms:-

“Out of the total sales made for ₹1,76,30,139, sales worth ₹1,33,98,488 had been claimed as Tax paid sales. Since the tax had been paid at first point the same could not be subjected to tax again in the hands of the petitioner. The details of tax paid purchases worth ₹1,62,97,112 had been filed before the Ld. AA at the time of assessment as well as before the Hon’ble Appellate Tribunal, Sales Tax at the time of appeal and also the purchase vouchers were produced before the Hon’ble Sales Tax Appellate Tribunal at the time of hearing of appeal U/S 43(5). It amply proves that the appellant had the requisite purchase voucher/bills in respect of the tax paid purchases which were subsequently lost along with the books of accounts on 9.9.2001, however, copies of purchase bills are available.”

12. We may again clarify that this was the contention of the assessee before the said authority.
13. His further submission was that in order to get the benefit, there was no requirement of producing the original bills. The Assessing Officer had only to satisfy itself about the fact that tax had been paid which could be gathered from the fact that items in which the assessee was dealing were liable to tax on first sale whereas the sales made by the assessee to the consumers were second sale. Further, the assessee had

produced the photocopies of the bills duly verified by the registered dealers evidencing the payment of sales tax.

14. Mr. Jain referred to the following judgments in support of his plea that when the first seller of the goods is identifiable who alone is liable to tax, then subsequent tax is exempted from taxation:

- (1) ***B. Narasaiah & Co. Vs. State of Andhra Pradesh*** [2002 (127) STC 606 (AP)];
- (2) ***Shanmuga Traders Etc. Vs. State of Tamil Nadu*** [1999 (114) STC 1 (SC);
- (3) ***State of Tamil Nadu Vs. V. Balu Chettiar*** [1996 (100) STC 120 (Mad.);
- (4) ***Dy. Commissioner Vs. Saivakumar & Co.***[1980 (45) STC 436 (Mad.);
- (5) ***Govindan & Co. Vs. Raichael Chacko*** [1975 (35) STC 50 (SC) ;
- (6) ***State of Tamil Nadu Vs. Raman & Co. & Ors.*** [1994 (93) STC 185 (SC); and
- (7) ***State of Andhra Pradesh Vs. Tungbhadra Inds. Ltd.*** [1986 (62) STC 71 (AP).

15. He also relied upon the Notification dated 30.12.1988, which reads as under:

“... the only condition imposed upon a dealer for claiming exemption is to produce bill(s)/cash memo(s) in support of purchase of such goods in Delhi. Photocopies of such bills are available with the appellant which are produced before this Court. Such purchases stand confirmed from the sellers either by stamping the invoices or supported with their letters. These have been recorded in the books of account and payments too have been made by cheques.”

16. He further tried to distinguish the judgment of the Supreme Court in the case of **Indian Agencies (Regd.), Bangalore Vs. Additional Commissioner of Commercial Taxes, Bangalore** [139 STC 329] relied upon by the Tribunal. In support of his submission that when the original copies of the cash memos/books of accounts had been lost, non-production thereof would not attract denial of the benefit when the payment of taxes at first point or purchases from registered dealer had not been disputed and referred to the following judgment in support of this plea:

- (a) **CCE, Ludhiana Vs. Ralson India Ltd.**[2006 (202) ELT 759 (P & H);
- (b) **CCE Vs. Stelko Strips Ltd.** [2010 (255) ELT 397 (P&H)]; and
- (c) **Kothari General Foods Corpn. Ltd. Vs. CCE, Bangalore** [2002 (144) ELT 338 (T)].

17. Mr. Taneja, learned counsel appearing for the respondent/Revenue relied upon the reasons given by the Tribunal in its detailed judgment and the case law referred by the Tribunal in the impugned order was extensively read by Mr. Taneja in support of his plea that in a case like this, no indulgence could be given to the assessee who had been negligent throughout and had ultimately failed to produce the requisite evidence in support of its plea that sales tax had been paid. He placed strong reliance upon the judgment of the

Supreme Court in the Case of ***Indian Agencies (Regd.), Bangalore (supra)***.

18. We have considered the rival submissions. We find from the order of the Tribunal that it has drawn its conclusion, based upon the judgment of the Supreme Court in the case of ***Indian Agencies (Regd.), Bangalore (supra)***. The attempt made by the learned counsel for the appellant is to distinguish that judgment. Therefore, it would be appropriate to start discussion from that judgment and to find out as to what that case actually decides.
19. That case arose out of Central Sales Tax Act, 1956. Section 8 of the said Act provides for rates of tax on sales in the course of inter-state trade and commerce. Sub-section (4) thereof lays down the circumstances under which the sales tax to any sale in the course of inter-state trade and commerce would not be leviable. Clause (a) thereof provides that the dealer selling the goods shall not be liable to pay this tax if he furnishes to the prescribed authority in the prescribed manner, a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority. These prescribed forms are known as 'Form-C'. The appellant/dealer in the said case had claimed exemption from payment of tax at the prescribed rate, but wanted the same at concessional rate. This was, however, disallowed by the Additional Commissioner of Commerce Taxes,

as the appellant had not produced original 'Form-C' and instead wanted the benefit of concessional rate of tax on the basis of 'Form-C' marked as duplicate. He had pleaded that since 'Form-C' marked as original had been lost, he was producing duplicate 'Form-C', which contention was not accepted by the Assessing Officer. The appeal was preferred before the Joint Commissioner of Commerce Taxes (Appeals), Bangalore, which was allowed holding that the Assessing Authorities should not have rejected the duplicate of the 'C-Forms' and the indemnity bonds filed by the appellant and should not have denied the benefit of concessional rate of tax on such turnover covered by duplicate 'C-Forms'. The Revenue preferred appeal thereagainst before the Additional Commissioner Commercial Taxes, who allowed the appeal by setting aside the order of the Joint Commissioner of Commerce Taxes (Appeals) to the extent that it allowed concessional rate of tax on the inter-state sales effected by the controller on the basis of the 'C-Forms' marked as duplicate and the indemnity bonds furnished by the dealer for the loss of the 'C-Forms' marked as original. The appellant/assessee approached the High Court of Karnataka by filing the Sales Tax Appeal No.75 of 1998, which was dismissed. In these circumstances, the appellant knocked the door of the Supreme Court. It was the contention of the appellant before the Supreme Court that as 'original' C-Form had been lost, it was permissible for the appellant to produce 'duplicate' C-Forms, which was also primary evidence of the said document by virtue of the principles enshrined in Section 62 of the Evidence Act, 1872. It was also

argued that in any event, filing of the 'original' C-Form was not mandatory, but directory and filing 'duplicate' C-Form was sufficient compliance for levy of lower rate of tax under Rule 12(1) of Central Rules read with Rule 6(b)(ii) of the State Rules and Section 8 of the Central Act. It was also argued that when the original document is lost, duplicate, in any case, would be the best secondary evidence admissible under Section 65/66 of the Evidence Act. Many other submissions were made, which are not relevant for our purposes.

20. The Supreme Court referred to the provision of Section 8 of the Central Act as well as Rule 12 of the Central Sales Tax (Registration and Turnover) Rule, 1957 made by the Central Government in exercise of its power conferred under Section 13 of the Central Act. Proviso (2) and (3) to this Rule deal with the situation where original Forms are lost and reads as under:

“Provided also...

(2) Where a blank or duly completed form of declaration is lost, whether such loss occurs while it is in the custody of the purchasing dealer or in transit to the selling dealer, the purchasing dealer shall furnish in respect of every such form so lost an indemnity bond in Form G to the notified authority from whom the said form was obtained, for such sum as the said authority may having regard to the circumstances of the case, fix. Such indemnity bond shall be furnished by the selling dealer to the notified authority of his State if a duly completed form of declaration received by him is lost, whether such loss occurs while it is in his custody or while it is in transit to the notified authority of his State.

Provided that where more than one form of declaration is lost, the purchasing dealer or the selling dealer, as the case may be, may furnish one such indemnity bond to cover all the forms of declaration so lost.

(3) Where a declaration form furnished by the dealer purchasing the goods or the certificate furnished by the Government has been lost, the dealer selling the goods, may demand from the dealer who purchased the goods or, as the case may be, from the Government, which purchased the goods, a duplicate of such form or certificate, and the same

shall be furnished with the following declaration recorded in red ink and signed by the dealer or authorized officer or the Government, as the case may be, on all the there portions of such form or certificate.”

21. The Court also took note of Rule 6 of Central Sales Tax (Karnataka) Rules, 1957. Clause (ii) of sub-Rule (ii) thereof is relevant and reads as under:

“(ii) A registered dealer who claims to have made a sale to another registered dealer or to Government shall, in respect of such claim, attach to his return to be filled in Form IV the portion marked ‘original’ of the declaration or the certificate in Form D, received by him from the purchasing dealer or Government, as the case may. The assessing authority may, in his discretion, also direct the selling dealer to produce for inspection the portion marked ‘duplicate’ or the declaration or certificate in Form D, as the case may be.”

22. On the basis of the aforesaid provisions, the Apex Court came to the conclusion that merely by producing ‘duplicate’ C-Form instead of ‘original’ forms, the appellant had not complied with the provision of Section 8 (4) to enable it to claim the benefit of concessional rates. It observed:

“12... .. In our view, the Rule has to be strictly construed. Admittedly, the appellant has not complied with the said provisions and, therefore, he is not entitled to the concessional rate of tax under Section 8 of the Central Sales Tax. Section 8(4) specifically provides that the provisions of sub-section (1) shall not apply to any sale in the course of inter-state trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner. Rule 8(4)(a) also provides that a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority. On the above provision, a registered dealer will not be entitled to the concessional rate of tax in respect of inter-state sales made by him without the production of the declaration referred under clause (a) of sub-section (4) noted above.

13. Under the Central Sales Tax (Karnataka) Rules, 1957, the dealer is required to submit along with his return the original of the prescribed forms. As could be seen from the rule extracted above a registered dealer who claims that he has made a sale to another registered dealer is required to attach the original of the declaration forms on the certificate in the prescribed form

received by him from the prescribed dealer along with his return filed by him...

... .. Thus, the dealer has to strictly follow the procedure and the Rule 6(b)(ii) and produce the relevant materials required under the said rule. Without producing the specified documents as prescribed thereunder a dealer cannot claim the benefits provided under Section 8 of the Act. Therefore, we are of the opinion that the requirements contained in Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 are mandatory... ..
..."

23. The Court gave the following rationale justifying strict compliance of the aforesaid provision:

"15. The very purpose of prescribing the filing of C-Forms is that there should not be suppression of any inter-state sales by a selling dealer and evasion of tax to the State from where the actual sales are affected. Secondly, the purchasing dealer also cannot suppress such purchases once he issues C-Form to the selling dealer. Since the dealer should issue C-Form has to maintain a detailed account of such C-Forms obtained from the department prescribed under the States Taxation law. The C-Form is a declaration to be issued only by the sales tax authorities of concerned States. By issuing declaration in C-Form the purchasing dealer would be benefited as he is entitled to purchase goods by paying only concessional rate of tax of 4% as prescribed by the concerned State of purchasing dealer otherwise the purchasing dealer has to pay tax at a higher rate besides additional taxes on such sales effected within the State where selling dealer is situated."

24. The Supreme Court also discussed various precedents and entire discussion thereon would be relevant for us. Therefore, we reproduce the same:

"18. In **Kedarnath Jute Manufacturing Co. v. Commercial Tax Officer, Calcutta and Ors.** [1965]3SCR626 , the question that arose in this case was whether under Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, the furnishing of declaration forms issued by the purchasing dealers was a condition for claiming the exemption thereunder. This Court held as under:

"Section 5(2)(a)(ii) of the Act in effect exempts a specified turn-over of a dealer from sales tax. The provision prescribing the exemption shall, therefore, be strictly construed. The substantive clause gives the exemption and the proviso qualifies the substantive clause. In effect the proviso says that part of the turnover of the selling dealer covered by the terms of sub- clause (ii) will be exempted provided a declaration

in the form prescribed is furnished. To put it in other words, a dealer cannot get the exemption unless he furnishes the declaration in the prescribed form. It is well settled that 'the effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it.

There is an understandable reason for the stringency of the provisions. The object of s. 5(2)(a)(ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will wellnigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the twofold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of the said clause seek to avoid."

16. In **State of Madras v. R. Nandlal and Co.,** : [1967]3SCR645 , this Court while construing the rule making power of Central Government has observed as under:-

"The Central Government has, in exercise of the power under S. 13(1)(d) prescribed the form of declaration and the particulars to be contained in the declaration. A direction that there shall be a separate declaration in respect of each individual transaction may appropriately be made in exercise of the power conferred under S. 13(1)(d). The State Government is undoubtedly empowered to make rules under sub-ss.(3) and (4) of S. 13; but the rules made by the State Government must not be inconsistent with the provisions of the Act and the rules made under sub-s.(1) of S. 13 to carry out the purposes of the Act."

17. In a similar matter - **Commissioner of Sales Tax, Delhi v. Delhi Automobiles (P.) Ltd.,** STC Vol. 48 1981, the Delhi High Court held that the production of a declaration form is a condition precedent for the availability of the concession. The Bench also has observed that these detailed provisions are intended as a measure of safeguard against possible mis-utilization of the forms and also to ensure that relief is not obtained by more than one selling dealer in respect of the same declaration form by using the various parts of it differently.

18. This Court has further held that the essence of these rules and regulations is that before a selling dealer is able to claim the benefit of concessional tax he should be able to produce the original and duplicate issued by him by the purchasing dealer in the first instance or the duplicate which will also contain these two portions of the forms issued along with a

declaration subscribed to by the purchasing dealer subsequently on the strength of his earlier records and his personal knowledge and for which he will have to count in due course to the Sales Tax Authorities from whom he obtained these declarations. The bench was of the opinion that the production of the Photostat copy of the counter foil cannot be said to be strict or even substantial compliance of Rule 12(3) and that by merely producing the photostat copy of the counter foil, it cannot be said that the Act and the Rules have been complied with.

19. The case of **Manganese Ore (India) Ltd. v. Commissioner of Sales Tax, Madhya Pradesh** STC Vol.83 1991 was relied on by learned counsel for the appellant. In the above case, in order to obtain the benefit of Section 8(1) of the Central Sales Tax Act, it was argued before the High Court that Form-C consists of three parts - original, duplicate and counter foil and all the three parts are identical in terms of them and form part of form-C and that Section 8(5) or Rule 12(1) does not say which part of the form is required to be filed before the Assessing Authority. In that case, the dealer filed the duplicate part of form-C instead of the original, the High Court held that there was sufficient compliance with the provisions of Section 8(4) of the Central Sales Tax Act and those of Rule 12(1) of the Central Sales Tax (R&T) rules so as to entitle the dealer to get the benefit of concessional rate of tax under Section 8(1) of the Central Sales Tax Act. The High Court as a result of their discussion held that the filing of original parts of declaration in C-Form is not mandatory but directory under the Central Sales Tax Act, 1956 read with rules thereunder and in the facts and circumstances of the case, the assessee was entitled to the concessional rate of tax as if it had filed the original parts of the declaration in C-Form as it had filed the original parts in Maharashtra. The Assessing Authority which was also sought to be summoned by an application for their production and further the duplicate parts thereof were filed before the Assessing Authority in Madhya Pradesh.

20. The above judgment does not help the appellant in the present case. The facts in the above case and the case on hand are different. This apart, there is no similar rule in this case to the one found in the case on hand, namely, Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 that makes of the difference for it is the rule 6(b)(ii) imposes the condition in the instant case.

21. Against the decision in **Commissioner of Sales Tax, Delhi v. Delhi Automobiles (P.) Ltd.**, (supra) of the High Court of Delhi, the Delhi Automobiles (P) Ltd. preferred an Appeal in this Court - **Delhi Automobiles (P) Ltd. v. Commissioner of Sales Tax, Delhi**: (1997)10SCC486, which was dismissed by this Court. The learned judges of this Court has observed in para 7 as under:

In our view, in the first place, the assessee had not done all that it could; it could, and should, have preferred an appeal against the order of the learned Single Judge and persisted in his application for obtaining from the Official Liquidator duplicates of the 'C' Form declarations, as required by Rule 12(3). Since it did not, in the face of the clear language of the rule, its case can hardly be said to be a hard case. The judgment cited by the learned counsel has no application because that was a case where the language of the statute

was found to be ambiguous The language of the provision here is clear and was rightly applied by the High Court.”

25. It is, thus, clear that in view of the provisions contained in the Central Sales Tax Act and Rules framed thereunder as well as Karnataka Sales Tax Act, the Court opined that those provisions were mandatory in nature which required furnishing of ‘original’ C-Form and it was necessary to construe them strictly, in order to avoid misuse.
26. Keeping this rationale in mind, let us scan through the provisions of law with which we are concerned. As per Section 5 of Local Act, once the point of sale at which the classes of goods taxed, notified by the first sale, all subsequent sales of such goods shall be exempt from payment of tax. For claiming this deduction, procedure is laid down in Section 4 of the Local Act as well as Rule 9 of Delhi Sales Tax Rule and Notification dated 30.12.1988. We, thus, reproduce these provisions, i.e., Section 4, Section 5 of the Local Act, Rule 9 of Delhi Sales Tax Rule and Notification dated 30.12.1988:

“4. WHEN IS A SALE OR PURCHASE OF GOODS SAID TO TAKE PLACE OUTSIDE A STATE. - (1) Subject to the provisions contained in section 3, when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States.

(2) A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State, - (a) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

Explanation : Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of this sub-section shall apply as if there were separate contracts in respect of the goods at each of such places.

“5. WHEN IS A SALE OR PURCHASE OF GOODS SAID TO TAKE PLACE IN THE COURSE OF IMPORT OR EXPORT. - (1)

A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India,

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.”

Rule 9 of Delhi Sales Tax Rules, 1975

“9. Conditions subject to which a dealer may claim deduction from his turnover on account of sales of goods at a point other than the last point in the series of sales

1. A dealer who wishes to deduct from his turnover the amount in respect of any sale on the ground that he is entitled to make such deduction under the provisions of sub-clause (i) of clause (a) of sub-section (2) of section 5 shall, unless otherwise exempted under the provisions of the second proviso to section 5, produce a declaration in Form ST-3 duly filled in and signed by the dealer selling the goods:

Provided that a single declaration in Form ST-3 may cover any number of transactions of sales by a dealer, effected during a quarter.

2. The declaration in Form ST-3 shall be furnished by the dealer claiming the deduction to the appropriate assessing authority up to the time of assessment by it.

3. The provisions of sub-rule (3) of rule 7 shall mutatis mutandis apply to furnishing of declaration in Form ST-3.”

Sub-rule (3) of Rule 7, which is made applicable here also deals with the situation where the dealer is not in a position to furnish all

or any of the declarations on account of loss, etc. thereof. This would, therefore, be relevant for us and we take note of this provision as well:

“3. Notwithstanding anything contained in sub-rule (1) if the Commissioner on an application made by a dealer and after making such enquiries as he may consider necessary, is satisfied that the dealer is not in a position to furnish all or any of the declarations referred to in sub-rule (1) above on account of loss of such declaration or declarations due to the fire or flood or riots beyond the control of the dealer, and that the application of sub-rule (1) will cause undue hardship to the dealer, he may by an order in writing exempt such dealer from furnishing such declaration or declarations, subject to the conditions as are hereinbelow mentioned and to such further conditions as may be specified by the Commissioner in the order.

CONDITIONS

(1) That the application is made within 30 days of the event, i.e., fire or flood or riots, as the case may be, stating the fact and circumstances in which the loss took place and also shall state the evidence on which he relies in support of such facts. The application shall be duly signed and verified by the dealer in the manner as is provided in respect of returns.

(2) That the loss had taken place at the place of business of the dealer.

(3) The provisions of sub-rule (3) of rule 7, shall mutatis mutandis apply to the furnishing of exemption certificates from the diplomatic missions, their personnel and specialized agencies as specified under rule 11.”

Notification dated 30th December, 1988

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NOTIFICATION

Dated the 30th December, 1988

No.F..4(57)/86-Fin.(G): - Whereas the Administrator is of the opinion that it is not necessary to do so:

Now, therefore, in exercise of the powers conferred by second proviso to section 5 of the Delhi Sales Tax Act, 1975 (43 of 1975), the Administrator is pleased to **exempt all dealers selling goods or the class of goods notified to be taxable at first point goods in this** Administration's Notification No.F.4(1)/78-Fin.(G)(i) dated the 31st January, 1978 and further notified from time to time from furnishing under the first proviso to the said section 5 declaration in form ST-3 in respect of a sale of first point goods purchased **on or after the first day of February, 1978** subject to the condition that the dealer claiming exemption shall produce bill(s)/cash memo(s) in support of purchase of such goods in Delhi.

This notification shall be enforced w.e.f. 1st February, 1978.

By order and in the name of
Administrator of the Union
Territory of Delhi

Sd/-
(T.C. Nakh)
Deputy Secretary (Finance)
Dated: 3.1.89

No.F.2(18)/77-PPR/PF/9426-9777"

27. Having regard to the ratio of the judgment of the Supreme Court in ***Indian Agencies (Regd.), Bangalore (supra)***, we need to give strict interpretation to the aforesaid provisions. It would mean that there has to be strict compliance by the dealer, in order to avail the benefit under these provisions. Rule 9 of Delhi Sales Tax Rules requires the dealer to produce a declaration in Form ST-3 duly filled in and signed by the dealer selling the goods. This would clearly signify that Form ST-3 has to be produced in original. No doubt, when these original Forms ST-3 are lost or destroyed because of the circumstances beyond the control of the assessee, he should not be punished and denied the benefit. The rule making authority has taken care of such a situation, so that no unnecessary hardship is caused. Sub-Rule (3) is specifically added to take care of these circumstances. Sub-rule (3) is an exception and if the circumstances contained therein exist, the Commissioner can exempt a dealer from furnishing original ST 3 Form. However, for doing so the conditions laid down therein are to be satisfied, which are specifically incorporated in the provision. To avail the benefit, the dealer has to necessarily seek exemption

in the manner provided therein. It has to be in the following manner:

- 1) The application is to be made by the dealer within 30 days of the occurrence of any event specified in the sub-rule.
- 2) In this application, the dealer is to state the facts and circumstances in which the loss took place.
- 3) The dealer has also to state in the application the evidence on which he would rely in the absence of original documents.
- 4) On making this application, the Commissioner shall make appropriate inquiry to satisfy himself that the dealer is not in a position to furnish all or any of the declarations referred to in sub-rule(1).
- 5) He shall also be convinced that cause of non-supply of those documents shall cause undue hardship to the dealer.

It would be one of the exercises, exercise in the process, that the other evidence, which is relied upon by the dealer in the absence of original evidence, is sufficient to show that the tax has been paid at the first point and the dealer is entitled to adjustment thereof.

28. In the present case, no application was made by the dealer at all, what to talk of moving an application within 30 days. The appellant herein did not request the Commissioner to make an inquiry and satisfy himself to the effect that the appellant was not

in a position to furnish these ST 3 Forms. This itself is a moot question whether the appellant could avail this benefit on the ground that there was a theft, as such a contingency is not provided to enable a dealer to seek exemption under this provision. Be that as it may, when the appellant did not even move the Commissioner for exemption from filing the original ST-3 form, the conditions specified in Rule 9 of Delhi Sales Tax Rules were not satisfied by the dealer. In the absence thereof, the appellant could not claim deduction without producing the original ST-3 Forms. The appellant merely wanted to rely upon the photocopies of such forms. That would not amount to fulfilling the conditions to enable the appellant to claim deduction from his turn over on account of sale of goods at first point. The purpose of furnishing ST-3 Form is to prove that sales tax has already been collected. In the absence of such forms, the appellant has not been able to demonstrate this.

29. The authorities cited by the learned counsel for the appellant to the effect that when the first seller of the goods is identified who alone is liable to tax, then subsequent tax is exempted from taxation, is not applicable to the present situation. It is not a case of fixing the responsibility. Here, the appellant wants the benefit of tax, which allegedly is already paid. However, the appellant has to file satisfactory proof thereof, in the manner provided under the Act and Rules.

30. The learned counsel for the appellant had also cited certain judgments to show that when the original copies of the cash memos/books of accounts had been lost, non-production thereof would not attract denial of the benefit, moreso when the payment of taxes at first point or purchases from registered dealer had not been disputed. Those judgments are mentioned at Para 14 above. However, these judgments are based on the interpretation of specific Rules, which govern the issue in those cases. It is stated at the cost of repetition that in the present case, if the cash memos/books of accounts had been lost, the appellant should have been taken recourse of sub-rule (3) of Rule 7 of Delhi Sales Tax Rules by moving appropriate application before the Commissioner. It is through this channel that he could seek the exemption from filing the original form ST-3. Having not done so in the manner prescribed, it is difficult to give benefit to the appellant.
31. Keeping in view the ratio of Supreme Court judgment in ***Indian Agencies (Regd.), Bangalore (supra)***, we have no option but to dismiss the appeal.
32. However, there shall be no order as to costs.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

SEPTEMBER 14, 2010.
pmc