

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.75 of 2016

1. M/s. Budhia Auto, T.P. Nagar, Korba, A registered partnership firm through its Partner Vijay Budhia, aged about 52 years, S/o Late Shyam Sunder Budhia, R/o Plot No.236/237, T.P. Nagar, Korba (C.G.)
2. Vijay Budhia, aged about 52 years, S/o Late Shyam Sunder Budhia, R/o Plot No.236/237, T.P. Nagar, Korba (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through Secretary, Department of Commercial Taxes, Mahanadi Bhavan, Naya Raipur (C.G.)
2. Commercial Tax Officer, Korba, Circle-1, Office of C.T.O., Behind Collectorate, Korba (C.G.)
3. Union of India, through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001.

---- Respondents

For Petitioners:	Mr. Siddharth Dubey, Advocate.
For Respondents No.1 & 2:	Mr. J.K. Gilda, Advocate General.
For Respondent No.3:	Mr. N.K. Vyas, ASG.

Hon'ble the Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal

ORDER (C.A.V.)

Sanjay K. Agrawal, J.

01/08/2016

1. The petitioner firm is registered with the Department of Commercial Tax in the State of Chhattisgarh as a dealer for the purpose of Central Sales Tax Act, 1956 (hereinafter called as

'the CST Act, 1956') and is engaged in the business of selling automobiles and spare parts.

2. The petitioner firm filled C-Form(s) on-line to furnish the same to Hero MotoCorp Ltd. for inter-state purchases made from the said company and filled up all particulars required for completion of C-Forms. The petitioner also filled four C-Forms for transaction with Hero MotoCorp Ltd., as purchases / transactions were made with five different TIN numbers held by Hero MotorCorp Ltd.. All the four C-Forms filled by the petitioner firm for transaction with Hero MotorCorp Ltd. were withheld and the applications were rejected due to non-payment of arrears of tax by the competent authority leading to institution of W.P.(T)No.134/2015 before this Court for directing the respondents herein not to withhold the issuance C-Forms by rejecting the duly filled-up on-line C-Forms filled by the petitioner on the ground of arrears of tax / dues remained to be paid under the Chhattisgarh Value Added Tax, 2005 stating inter alia that withholding to C-Forms for arrears of tax under the State Act is not contemplated by any of the provisions of the CST Act, 1956 read with the Central Sales Tax (Registration and Turnover) Rules, 1957. It was further pleaded in the said writ petition that under the CST Act, 1956 read with relevant rules framed thereunder, only the State Government has to act as an agent of the Central Government to carryout the assessment, reassessment, collection and enforcement of tax

and penalty payable by a dealer under the CST Act, 1956. It was also claimed that the phrase “in the prescribed manner” occurring in Section 8(4) of the CST Act, 1956 which provides for filing declaration form(s), C-Form being one of them is confined only to prescribing rules as regards “what particulars are to be mentioned in the form, the nature and value of the goods sold, the parties to whom they are sold and to which authority the form is to be furnished”, therefore, the act of withholding the C-Forms by the respondents in pursuance of Rule 8(1A)(f) of the Chhattisgarh Sales Tax (Central) Rules, 1957 is contrary to Section 8(4) of the CST Act, 1956, as it nowhere provides for rule making power which empowers the State to prescribe for condition or conditions to be fulfilled before issuance of C-Form(s), and it is a colourable device by the respondents herein for realisation of dues under the State Act, as the same is not capable of being related to any of the purposes of the CST Act, 1956. It was also claimed for issuance of C-Form(s) as per law. In the said writ petition, the State Government had filed their counter affidavit stating inter alia that by virtue of the provisions contained in Rule 8(1A)(f) of the Chhattisgarh Sales Tax (Central) Rules, 1957, the Commercial Tax Officer is entitled to withhold the issuance of C-Form to the dealer, if the Commercial Tax Officer is satisfied that the applicant at the time of making application has defaulted in furnishing the return under the Act or under the

Chhattisgarh Value Added Tax Act, 2005 or even in case of any arrears of tax under the said Act of 2005.

2.1) After receipt of counter affidavit, the petitioners herein have filed this writ petition questioning the constitutional validity of Rule 8(1A)(f) of the Chhattisgarh Sales Tax (Central) Rules, 1957, being ultra vires to Sections 8(4), 8(1), 13(3), 13(4) and 9(2) of the CST Act, 1956 to the extent it provides for withholding the issuance of C-Forms for non-payment of arrears of tax under the State Value Added Tax Act or failure to furnish return under the State Value Added Tax Act by the dealer/assessee stating inter alia that withholding of C-Forms for arrears of tax or return not furnished under the State Act is not contemplated by any of the provisions of the CST Act, 1956 or the rules made thereunder and that Rule 8(1A)(f) of the Chhattisgarh Sales Tax (Central) Rules, 1957 not only travels beyond the provisions of the CST Act, 1956 made therein to the extent it provides for withholding of issuance of C-Form for the arrears of tax or dues remained to be paid. It has also been stated that Rule 8(1A)(f) of the Madhya Pradesh Sales Tax (Central) Rules, 1957 was declared ultra vires by the Madhya Pradesh High Court in the matter of **Dawar Brothers v. State of Madhya Pradesh and others**¹ holding it to be ultra vires to Sections 8(4), 13 (3)and 13(4) of the CST Act, 1956. It was also pleaded that under the scheme and purpose of the CST

1 1979 MPLJ 524

Act, 1956 read with relevant rules framed therein, the State has been enabled to work as an agent of the Central Government to carryout assessment, reassessment, collection and enforcement of tax and penalty payable by the dealer under the CST Act, 1956 and the State Government is not entitled to travel beyond the provisions of the CST Act, 1956 to withhold the issuance of C-Forms by arrears of tax/dues remain to be paid under the State Act and/or failure to furnish return under the State Act by the dealer/assessee and it is contrary to Rule 8(1A)(f) of the Chhattisgarh Sales Tax (Central) Rules, 1957 and is a colourable exercise of power. Therefore, it deserves to be struck down being beyond the rule making authority of the State Government and contrary to the provisions of Section 8(4) of the CST Act, 1956.

3. No return has been filed on behalf of the State Government.
4. Mr. Siddharth Dubey, learned counsel appearing for the petitioners, would submit that Rule 8(1A)(f) of the Chhattisgarh Sales Tax (Central) Rules, 1957 (for short 'the Chhattisgarh Rules, 1957') is ultra vires to Section 8(1) read with Section 8(4) of the CST Act, 1956. He would further submit that the impugned Rule has been framed beyond the rule making power conferred to the State Government under Sections 13(3) and (4) of the CST Act, 1956 which is against the mandate of the CST Act, 1956 and such a mandate of the CST Act, 1956 cannot be defeated by the State enactment as the effective

provisions are available in the Chhattisgarh Value Added Tax Act, 2005 and therefore Rule 8(1A)(f) of the Chhattisgarh Rules, 1957 entitling the commercial tax officer to withhold the issuance of C-Form Declaration under Section 8(4) of the CST Act, 1956 for non-payment of tax deserves to be struck down as ultra vires to the CST Act, 1956.

5. Mr. J.K. Gilda, learned Advocate General appearing on behalf of the State Government, vehemently opposing the submission made on behalf of the petitioners, would submit that Sections 13(3) and (4) of the CST Act, 1956 gives power to the State Government to make rules for carrying-out the purposes of the Act. He would further submit that the object of the CST Act, 1956 is not to levy the tax only but also to collect the tax and such a procedure as prescribed in Rule 8(1A)(f) of the Chhattisgarh Rules, 1957 is a valid legislative measure which is intended to check the evasion of tax and it is in public interest to see that in trade they do not evade the payment of tax. He would also submit that the impugned Rule 8(1A)(f) of the Chhattisgarh Rules, 1957 does not violate any of the provisions of the CST Act, 1956, and it has been framed only for carrying-out the purposes of the Act and therefore Rule 8(1A)(f) of the Chhattisgarh Rules, 1957 is a valid piece of subordinate legislation and challenge to this Rule deserves to be rejected.
6. We have heard learned counsel for the parties and also considered their rival submissions made herein-above and

gone through the record with utmost circumspection.

7. The short question for consideration would be whether Rule 8(1A)(f) of the Chhattisgarh Rules, 1957 enacted by the State Government in exercise of powers conferred under sub-sections (3), (4) and (5) of Section 13 of the CST Act, 1956 is a valid piece of legislation (subordinate) or it is beyond the rule making power of the State Government conferred by the CST Act, 1956.
8. In order to judge the correctness of the plea raised at the Bar, it would be appropriate to notice the broad features of the CST Act, 1956 before entering into the merits of the matter.
9. The CST Act, 1956 has been enacted to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject.
10. Section 6(1) of the CST Act, 1956 stipulates that every dealer shall be liable to pay tax under the Act on all sales effected in the course of inter-State trade and commerce. The rate of tax

payable by a dealer, who sells goods in the course of inter-State trade or commerce, to another registered dealer, is stipulated at the concessional rate of 2% under Section 8(1) of the Act, if the goods are of the description contained in sub-section (3) of Section 8. As regards the goods that do not satisfy the description contained in Section 8(3), the rate of tax payable by a dealer on the turnover of inter-State sales, is as per the rate applicable to the sale or purchase of such goods inside the appropriate State under the Sales Tax Law of that State.

11. Under Section 7(1) of the CST Act, 1956, every dealer, who is liable to pay tax under the CST Act, 1956, should make an application for registration under the Act, to such authority in the appropriate State, as the Central Government may specify. The certificate of registration so issued is liable to be cancelled under sub-section (4)(b) of Section 7, if the dealer fails to pay any tax or penalty payable under the CST Act, 1956.
12. Sub-section (1) of Section 8 of the CST Act, 1956 carves out an exception. If the sale is to a registered dealer and if the sale is of the goods described in sub-section (3), the dealer need not pay tax at the rate prescribed by the local Sales Tax Law of the State in terms of sub-section (2). It is enough if such a person pays only 2%. Under sub-section (4) of Section 8, the dealer is obliged to furnish to the prescribed authority, 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. Thus, sub-section (1) of Section 8 of the CST Act, 1956 is substantive in nature and sub-section (4) of Section 8 is procedural in nature.

13. Sections 13(1)(a), (aa), (b) and (3) of the CST Act, 1956 read as under: -

“13. Power to make rules.-(l) The Central Government may, by notification in the Official Gazette, make rules providing for-

(a) the manner in which applications for registration may be made under this Act, the particulars to be contained therein, the procedure for the grant of such registration, the circumstances in which registration may be refused and the form in which the certificate of registration may be given;

(aa) the manner of determination of the sale price and the deductions from the total consideration for a works contract under the proviso to clause (h) of section 2;

(b) the period of turnover, the manner in which the turnover in relation to the sale of any goods under this Act shall be determined, and the deductions, which may be made under clause (c) of sub-section (1) of Section 8-A in the process of such determination;

(3) The State Government may make rules, not inconsistent with the provisions of this Act and the rules made under sub-section (1), to carry out the purposes of this Act.”

14. In exercise of powers conferred by sub-section (1) of Section 13 of the CST Act, 1956, the Central Government has framed Rules known as the Central Sales Tax (Registration and Turnover) Rules, 1957. Rule 12 of the said Rules provides as under:—

“12. (1) The declaration and the certificate referred

to in sub-section (4) of Section 8 shall be in Forms 'C' and 'D' respectively:

Provided that Form 'C' in force before the commencement of the Central Sales Tax (Registration and Turnover) (Amendment) Rules, 1974, or before the commencement of the Central Sales Tax (Registration & Turnover) (Amendment) Rules, 1976, may also be used up to the 31st December, 1979 with suitable modifications:

Provided further that a single declaration may cover all transactions of sale which take place in one financial year between the same two dealers:

Provided also that where, in the case of any transaction of sale, the delivery of goods is spread over to different quarters in a financial year or of different financial years, it shall be necessary to furnish a separate declaration or certificate in respect of goods delivered in each financial year.

(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 declarations 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 authorised officer or the Government, as the case may be, on all the three portions of such form or certificate,-

“I hereby declare that this is the duplicate of the declaration form/certificate No.....signed on.....and issued to.....who is a registered dealer of.....(State) and whose registration certificate number is.....”

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15. Section 8(4) of the CST Act, 1956 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 a declaration duly filled and signed.

16. The purpose of prescribing the filing of C Form has been highlighted by the Supreme Court in the matter of India Agencies (Regd.), Bangalore v. Additional Commissioner of Commercial Taxes, Bangalore² by observing as under: -

“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, he has to maintain a detailed account of such C Forms obtained from the department prescribed under the State's taxation law. The C Form is a declaration to be issued only by the Sales Tax Authorities of the States concerned. By issuing declaration in C Form the purchasing dealer would be benefited as he is entitled to purchase goods by

2 (2005) 2 SCC 129

paying only concessional rate of tax of 4% as prescribed by the State concerned of the 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 the selling dealer is situated.”

17. Though Rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957 stipulates that the declaration and the certificate referred to in sub-section (4) of Section 8 of the CST Act, 1956 shall be in Forms 'C' and 'D', as provided in the Rules, the prescribed authority is nevertheless the authority named by the State Government concerned.

18. Section 13(4) of the CST Act, 1956 empowers the State Government to make rules, prescribing (i) the authority from whom; (ii) the conditions subject to which; and (iii) the fees, subject to payment of which, any form prescribed under sub-section (4) of Section 8 may be obtained. Clause (e) of sub-section (4) of Section 13 of the CST Act, 1956 provides as under: —

“(e) the authority from whom, the conditions subject to which and the fees subject to payment of which any form of certificate prescribed under clause (a) of the first proviso to sub-section (2) of Section 6 or of declaration prescribed under sub-section (1) of Section 6-A or sub-section (4) of Section 8 may be obtained, the manner in which such forms shall be kept in custody and records relating thereto maintained and the manner in which any such form may be used and any such certificate or declaration may be furnished;”

19. In exercise of power conferred by Section 13(4)(e) of the CST Act, 1956, the Government of Chhattisgarh has framed the

rules known as the Chhattisgarh Sales Tax (Central) Rules, 1957. It is pertinent to mention here that the State of Chhattisgarh was carved out with effect from 1-11-2000. In the undivided State of Madhya Pradesh, the Madhya Pradesh Sales Tax (Central) Rules, 1957 was in vogue which was adopted by the Government of Chhattisgarh vide notification dated 3-11-2000 and it was amended from time to time. Rule 8(1A)(f) of the Chhattisgarh Rules, 1957, as on date stands, provides as under: -

“8. Authority from which Declaration Forms may be obtained, use, custody and maintenance of records of such Forms and matters incidental thereto

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(1A) (f) If the Commercial Tax Officer is satisfied that the applicant at the time of making application has defaulted in furnishing the return under the Act or under the Chhattisgarh Value Added Tax Act, 2005 (No.2 of 2005), for any quarter of the year during which such application is made or is in arrears of tax under the Act or under the Chhattisgarh Value Added Tax Act, 2005 (No.2 of 2005) in respect of any period for which he has been assessed to tax he may withhold the issue of the declaration forms to the applicant till such time as the applicant pays the tax and furnishes the return for the relevant quarter or pays the arrears for the relevant period :

Provided that where the applicant has been permitted to pay the arrears of tax for any period in instalments, the Commercial Tax Officer may instead of withholding the declaration forms, issue to him such forms in such numbers and subject to such conditions and restrictions as he may deem fit to impose after charging a fee of forty-eight paise per form;”

20. The constitutional validity of the aforesaid rule is the subject matter of challenge in this writ petition. Before dealing with the challenge made to the above-stated rule, we deem it appropriate to notice the jurisdiction of the State Government to exercise the rule making power as has been delegated by the CST Act, 1956 and such a rule must be inconsistent with the provisions of the Act and if it goes beyond the statute i.e. the CST Act, 1956, the same has to be declared ultra vires. Therefore, the rule must be in-consonance with the parent statute—CST Act, 1956 under which the power has been conferred to frame rules and it cannot go beyond it. At this stage, it would be advantageous to notice some of the judgments of the Supreme Court defining the scope and jurisdiction of rule making authority to frame rule, profitably and gainfully.

21. In the matter of [General Officer Commanding-in-Chief v. Subhash Chandra Yadav](#)³ Their Lordships of the Supreme Court held as follows: (SCC p.357, para 14)

“14. before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule-making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void.”

22. In the matter of [Delhi Admn. v. Siri Ram](#)⁴ it has been ruled that

3 (1988) 2 SCC 351 : 1988 SCC (L&S) 542 : (1988) 7 ATC 296 : AIR 1988 SC 876

4 (2000) 5 SCC 451 : AIR 2000 SC 2143

it is a well-recognised principle that the conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.

23. In the matter of Sukhdev Singh v. Bhagatram Sardar Singh

Raghuvanshi⁵, the Constitution Bench of the Supreme Court has held that: (SCC p. 433, para 18)

“18. ... statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the legislature. Rules and regulations made by reason of the specific power conferred by the statute to make rules and regulations establish the pattern of conduct to be followed.”

24. In the matter of State of Karnataka and another v. H. Ganesh

Kamath⁶, it has been stated that: (SCC p. 410, para 7)

“7. ... It is a well-settled principle of interpretation of statutes that the conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.

25. In the matter of Kunj Behari Lal Butail v. State of H.P. and

others⁷, it has been ruled thus: (SCC p. 46, para 13)

“13. It is very common for the legislature to provide for a general rule making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power conferred. If the rule making power is not expressed in such a usual

5 (1975) 1 SCC 421 : 1975 SCC (L&S) 101 : AIR 1975 SC 1331

6 (1983) 2 SCC 402 : 1983 SCC (Cri) 514 : AIR 1983 SC 550

7 (2000) 3 SCC 40 : AIR 2000 SC 1069

general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act.”

26. In the matter of St. Johns Teachers Training Institute v. National Council for Teacher Education⁸, it has been observed that: (SCC p. 331, para 10)

“10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislation. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details.”

27. In the matter of Global Energy Ltd. v. Central Electricity Regulatory Commission⁹, the Supreme Court was dealing with the validity of clauses (b) and (f) of Regulation 6-A of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Trading Licence and other Related Matters) Regulations, 2004. In that context, the Supreme Court expressed thus: (SCC p. 579, para 25)

“25. It is now a well-settled principle of law that the rule-making power 'for carrying out the purpose of the Act' is a general delegation. Such a general delegation may not be held to be laying down any guidelines. Thus, by reason of such a provision alone, the regulation-making power cannot be exercised so as to bring into existence substantive rights or obligations or disabilities which are not contemplated in terms of the provisions of the said

8 (2003) 3 SCC 321 : AIR 2003 SC 1533

9 (2009) 15 SCC 570

Act.”

28. In this context, it would be apposite to refer to a passage from

State of T.N. v. P. Krishnamurthy¹⁰ wherein it has been held

thus: (SCC p. 529, para 16)

“16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.”

29. Their Lordships of the Supreme Court in the matter of **Mahim**

Patram (P) Ltd. v. Union of India and others¹¹ while

considering the scheme of the CST Act, 1956 and rule-making power of the State Governments and the Central Government, have held that the State Rules should not be inconsistent with the provisions of the Central Rules or the Act. Paragraph 31 of the report states as under: -

“31. **Section 13(1)** provides that the Central Government “may” by notification make Rules for computation of turnover. It is an enabling provision. It is not obligatory for the Central Government to do so. When one looks at the language of **Section 13(3)** of the 1956 Act, it becomes clear that the State Government has also been given a power to make Rules, which are not inconsistent with the provisions of the Act and any Rules which may have

10 (2006) 4 SCC 517

11 (2007) 3 SCC 668

been made under sub-section (1) of [Section 13](#) by the Central Government to carry out the purposes of the 1956 Act. So long as there exists no inconsistency between the Rules made by the State Government and the Rules framed by the Central Government, the Rules of the State Government may be made applicable. The statute does not impose any fetter on the part of the State Government to make Rules. The State Rules would be independent of the Central Government rules. The only fetter is that the State Rules should not be inconsistent with the provisions of the Central Rules or the Act. (See *Hanuman Prosad Singhania v. CTO*¹², STC at p. 301.)”

30. Under the CST Act, 1956, power and jurisdiction to levy central sales tax is retained by the Government of India by the CST Act, 1956, whereas all procedural aspects such as registration of dealers, assessment, re-assessment, collection and enforcement of payment of tax are left to the authorities nominated by the respective State Governments. Since procedural aspects are left with the State Government, rule making power has been conferred to the State Government. Under Section 13(1) of the CST Act, 1956, the Central Government is empowered to frame rules providing for certain matters such as (i) procedure for grant of registration; (ii) the manner of determination of sale price in respect of works contracts; (iii) the manner of furnishing declarations under Section 8(8); (iv) the manner of determination of turnover; (v) the procedure for cancellation of registration; (vi) the issuance of declarations and certificates to be given under the Act; (vii) the enumeration of goods, etc., used in the generation and

¹² (1971) 27 STC 289 (Cal)

distribution of electricity; and (viii) the terms and conditions of service of the Chairman and the Members of the Appellate Authority.

31. Whereas, sub-section (3) of Section 13 of the CST Act, 1956 empowers the State Government to make rules not inconsistent with the provisions of the Act and the provisions of the rules issued by the Central Government. The purposes, for which, the State Government may make rules under sub-section (3) are enumerated in sub-section (4) and in particular, we may take note of clause (e) of sub-section (4) of Section 13 of the CST Act, 1956. Thus, in sum and substance, Section 13(4)(e) of the CST Act, 1956 speaks about the form of certificate prescribed under Section 6(2). It also speaks of a declaration prescribed under Section 6-A(1) and a declaration under Section 8(4). In other words, the procedure for issuance of any declaration under Section 8(4), is left by the Central Government fully to the rule making power of the State Government under sub-section (3) read with sub-section (4) of Section 13. Thus, the C-Form declaration is one that is dealt with by Section 8(4). It is only the State Government that is entitled to frame a rule prescribing, (i) the authority, from whom such declaration is to be obtained; (ii) the conditions, subject to which, such declarations can be obtained; (iii) the fees, subject to payment of which, such declarations may be obtained; (iv) the manner in which, such declarations shall be kept in custody

and the records relating thereto to be maintained; and (v) the manner in which, any such declaration may be furnished or used. Thus, the Central Government has not only empowered the State Government to prescribe the procedural provisions for collection of tax, but has also conferred power upon the State Government to prescribe the conditions, subject to which C-Form declarations can be given.

32. In light of the above-stated provisions of law, we proceed to consider the submissions of learned counsel for the parties and to find out as to whether Rule 8(1A)(f) of the Chhattisgarh Rules, 1957 travels beyond the parent statute i.e. the CST Act, 1956.

33. The petitioners have mainly relied upon the decision rendered by the Madhya Pradesh High Court in the matter of **Dawar Brothers** (supra) in which a Division Bench of the Madhya Pradesh High Court has declared Rule 8(1-A)(f) of the M.P. Sales Tax (Central) Rules 1957, ultra vires the provisions of Section 8(4) read with Section 13(3) and (4) of the CST Act, 1956. It has been further held that the rule making power of the State Government under Section 13(3) and (4) of the Central Act cannot be used by the State Government as a device for the realisation of its own dues under the State Act. Paragraph 12 of the report states as under: -

“12. From the above discussion as regards the scheme and purpose of section 8(1) of the Central Act, read with the relevant rules framed thereunder,

and as regards the role of the State Government as merely an agency of the Central Government to carry out the assessment, reassessment, collection and enforcement of tax and penalty payable by a dealer under the Central Act, and as regards the phrase “in the prescribed manner” occurring in section 8(4), being confined only to prescribing rules as regards “what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold and to which authority the form is to be furnished”, it follows very clearly that the provisions in question in the impugned rule, i.e., rule 8(1-A)(f) of the M.P. Sales Tax (Central) Rules, 1957, empowering the Sales Tax Officer to withhold the issuance of the blank declaration forms in form C to the purchasing dealer on the grounds either that the purchasing dealer has defaulted in furnishing the return under the State Act or that he is in arrears of tax under the State Act are ultra vires the rule-making authority of the State Government under section 13(3) and (4) of the Central Act. The said rule-making power cannot be used by the State Government as a device for the realisation of its own dues under the State Act. The provisions in question of the impugned rule are not capable of being related to any of the purposes of the Central Act. The said provisions are inconsistent with the role as mere agents of the Government of India conferred by the Central Act on the State Government for the purposes of the said Act. In fact, the said provisions have the effect of making the enforcement of the provisions contained in section 8(1) of the Central Act, as regards the grant of the advantage of the concessional rate of tax, unduly difficult by prescribing conditions, which are not warranted by the provisions of the Central Act.”

34. The conclusion in **Dawar Brothers** (supra) is based on three reasonings viz., (i) the phrase 'in the prescribed manner' appearing in Section 8(4) of the CST Act, 1956, has a restrictive meaning; (ii) by virtue of Section 9(2) of the CST Act, 1956, the role of the State Government is merely that of an agency of the Central Government to carry out the assessment,

re-assessment, collection and enforcement of payment of tax and nothing more; and (iii) for the entitlement of a concessional rate of tax under Section 8(1), one cannot look beyond the Central Enactment.

35. After the judgment in **Dawar Brothers** (supra), the Supreme Court in the matter of **Commissioner of Sales Tax, Delhi and others v. Shri Krishna Engg. Co. and others**¹³ has considered the challenge to the constitutional validity of Rule 8(4)(c) of the Delhi Sales Tax Rules, 1975, which provides for withholding the issuance of Declaration Form ST 1 to a dealer if the dealer at the time of making application has defaulted in payment of the tax assessed or penalty imposed by the appropriate assessing authority. Considering the scheme of the Delhi Sales Tax Act, 1975 it has been held that the Registration confers certain benefits, privileges and concessions. 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 a conditional one. It has been further held that the purpose of the Act is not just to fix liability but also to recover the liabilities which are so fixed. The Supreme Court has finally held, the provision in Rule 8(4)(c)(ii) of the Delhi Sales Tax Rules, 1975 for withholding the issuance of Declaration Form ST 1 to a dealer who had defaulted in payment of the tax assessed or penalty imposed to

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be intra vires to Sections 4(2)(a)(v) and 71 of the Delhi Sales Tax Act, 1975. Their Lordships while considering the benefits of registration under the Delhi Sales Tax Act, 1975, held as under: -

“29. 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 a conditional one.”

Their Lordships further, while considering the objective of the Delhi Sales Tax Act, 1975, and the rule making power of the Administrator held that the purpose of the Act is not just to fix liability but also to recover the liabilities which are so fixed, and observed as under: -

“45. 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.”

36. Thus, in light of the subsequent decision rendered by Their Lordships of the Supreme Court in **Commissioner of Sales Tax** (supra) and in light of above-stated analysis, it cannot be held that Rule 8(1A)(f) of the Chhattisgarh Rules, 1957 travels beyond the rule-making power of the State Government and it is not inconsistent with the provisions of the CST Act, 1956. The power conferred upon the State Government to prescribe the conditions subject to which C-Forms can be issued, is well within the rule-making authority conferred by the CST Act, 1956 to the State Government under Section 13(4)(e) of the CST Act,

1956 and as such, challenge in this behalf is liable to be rejected.

37. As an upshot of the aforesaid discussion, we hold that Rule 8(1A)(f) of the Chhattisgarh Rules, 1957 is a valid piece of subordinate legislation and challenge to its constitutional validity fails. Accordingly, the writ petition deserves to be and is hereby dismissed. There will be no order as to costs.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge