

In the High Court of Judicature at Madras

Reserved on: 01.09.2015 and Pronounced on: 07.4.2016

Coram:

The Hon'ble Mr.Justice V.RAMASUBRAMANIAN
and

The Hon'ble Mr.Justice T.MATHIVANAN

W.P.Nos.15804 and 21556 of 2014, 127 to 129 of 2015 and
4515 to 4517 of 2015 and W.A.Nos.783 to 788 & 1496 of 2014 & all
connected pending MPs

M/s.M.Amurtham Petroleum Agency,
rep. by its Proprietor, M.Veerasingam,
Puducherry-Villupuram Main Road, Petitioner in W.P.No.
Madagadipet, Puducherry. ...15804 of 2014

Vs.

The Additional Deputy Commercial Tax
Officer-IW, Puducherry. ...Respondent in W.P.No.
15804/2014

Shri Maruthi Agencies,
Rep. by its Proprietor Mr.Thirumalai,
Puducherry.
Pin : 605 110. ...Petitioner in W.P.No.
21556 of 2014

Versus

The Commercial Tax Officer,
Commercial Tax Department,
Puducherry. ...Respondent in W.P.No.
21556 of 2014

M/s Bharat Petroleum Corporation Limited
rep. by its Senior Manager - Finance (SS)
South, Mrs.N.Lakshmi, Rangnathan Garden,
11th Main Road, Anna Nagar, Chennai-40. ...Petitioner in W.P.Nos.
127 to 129 of 2015

Versus

1. The Additional Deputy Commercial Tax Officer-IW, Commercial Tax Department, Office of the Commissioner (CT), Puducherry.
2. The Union Territory of Puducherry rep. by its Secretary (Finance), Puducherry.
3. The Deputy Commissioner (CT)-1, Large Taxpayers Unit, 34 (Old No.123), Dugar Towers, Marshall Road, Chennai-600 008.
4. Amurtham Petroleum Agency, rep. by its Proprietor, M.Veerasingam, Puducherry-Villupuram Main Road, Madagadipet, Puducherry.
5. The Commissioner of Commercial Taxes, Commercial Taxes Department, Government of Puducherry, Puducherry.

...Respondents in W.P.Nos
127 to 129 of 2015

M/s. Indian Oil Corporation Limited rep. by its Chief Finance Manager P.Radhakrishnan, "Indian Oil Bhavan", 139, Mahatma Gandhi Road, Nungambakkam High Road, Chennai-600 034.

...Petitioner in W.P.Nos.
4515 to 4517 of 2015

Versus

1. The Commercial Tax Officer, Karaikal, Government of Puducherry.
2. The Union Territory of Puducherry rep. by its Secretary (Finance), Puducherry.
3. The Deputy Commissioner (CT)-IV, Large Taxpayers Unit, "Dugar Towers", V Floor Marshall Road, Chennai-600 008.

4. S.V. & Co., rep. by its Proprietrix,
B.Sujatha, No.60, TVR Road,
Opp. TNEB Sub-Station,
Nagapattinam 611 001.
5. The Commissioner of Commercial Taxes,
Commercial Taxes Department,
Government of Puducherry, Puducherry...Respondents in W.P.Nos
4515 to 4517 of 2015

M/s Bharat Petroleum Corporation Limited
rep. by its Senior Manager - Finance (SS)
South, Mrs.N.Lakshmi, Rangnathan Garden,
11th Main Road, Anna Nagar,
Chennai-600 040. ...Appellant in W.A.Nos.
783 & 784 of 2014

Versus

1. The Commercial Tax Officer-1
Second Floor,
Commercial Taxes Complex,
100 Feet Road, Ellapillaichavadi,
Puducherry 605 005.
2. The Union Territory of Puducherry
rep. by its Secretary (Finance),
Puducherry.
3. The Deputy Commissioner (CT)-1,
Large Taxpayers Unit, Chennai.
4. The Joint Commissioner (CT) (Appeals)
Chennai.
5. Bharat Petroleum Agency, rep. by its
Proprietor, A Sreekanth,
RS No.32/2, Pondy-Cuddalore Main Road,
Kirumbakkam, Puducherry. ...Respondents in W.A.Nos
783 & 784 of 2014

Indian Oil Corporation Limited rep. by
its Chief Finance Manager,
P.Radhakrishnan, Indian Oil Bhavan,
139, Mahatma Gandhi Road,
(Nungambakkam High Road),
Chennai 600 034. ...Appellant in W.A.Nos.
785 to 788 of 2014

Versus

1. The Commercial Tax Officer-1
Second Floor,
Commercial Taxes Complex,
100 Feet Road, Ellapillaichavadi,
Puducherry 605 005.
 2. The Union Territory of Puducherry
rep. by its Secretary (Finance),
Puducherry.
 3. The Deputy Commissioner (CT)-IV,
Large Taxpayers Unit,
"Dugar Towers", V Floor
Marshall Road, Chennai-600 008.
 4. Shri Maruthi Agencies
Plot No.3, V.I.P. Nagar
Arumparthapuram
Villupuram Main Road,
Puducherry 605 110. ...Respondents 1 to 4 in W.A.Nos
785 to 787 of 2014
 5. Union of India rep. by the Secretary,
Ministry of Finance, Department of
Revenue, New Delhi. ...Respondent 3 in W.A.No.
788 of 2014
- M/s.Sri Rajeswari Agencies rep.
by its Proprietor Mr.Kathiresan
Puducherry-605004. ...Appellant in W.A.No.
1496 of 2014

Vs

The Additional Deputy Commercial
Tax Officer-II, Commercial Taxes
Department, Puducherry. ...Respondent in W.A.No.
1496 of 2014

Writ Petitions filed under Article 226 of the Constitution
of India:

Prayer in W.P.No.15804 of 2014:- is for the issue of a
Writ of Mandamus directing the respondent to issue statutory 'C'
Forms to the petitioner.

Prayer in W.P.No.21556 of 2014:- is for the issue of a Writ of Mandamus directing the respondent to issue 'C' Forms to the petitioner based on the representation dated 14.9.2012.

Prayer in W.P.No.127 of 2015:- is for the issue of a Writ of Certiorarified Mandamus to call for the records on the file of the third respondent in CST/619041/2012-13, dated 28.11.2014, quash the same and for a direction to the third respondent to restore the same pending the issue of Form 'C' declarations prescribed under Rule 12(1) of the Central Sales Tax (Registration & Turnover) Rules, 1957 read with Rule 14(1) of the Central Sales Tax (Pondicherry) Rules, 1967, by the First Respondent.

Prayer in W.P.No.128 of 2015:- is for the issue of a Writ of Declaration or declaring that the first and second respondents have no authority to rely upon Section 43 of the Puducherry Value Added Tax Act, 2007, to decline to issue Form 'C' declarations prescribed under Sections 8(1) and 8(4) of the Central Sales Tax Act, 1956 read with Rule 12(1) of the Central Sales Tax (Registration & Turnover) Rules, 1957 and Rule 14(1) of the Central Sales Tax (Pondicherry) Rules, 1967 and the online system of the second respondent in website <http://gst.puducherry.gov.in>, disabling the generation of Form 'C' declarations giving effect to Section 43 of the Puducherry Value Added Tax Act, 2007 is ultra vires Sub-Sections (1) and (4) of Section 8 and Section 13 of the Central Sales Tax Act, 1956 and Rules made thereunder.

Prayer in W.P.No.129 of 2015:- is for the issue of a Writ of Mandamus directing the first and second respondents to issue to issue Form 'C' declarations to the fourth respondent herein as prayed for under the Application dated 9.4.2014 in respect of the Inter-State sales of petroleum products effected by the petitioners during the period April 2012 to July 2012 from the State of Tamil Nadu to be presented against the central sales tax proceedings of the third respondent in CST/619041/2012-13 dated 28.11.2014, suitably modifying the online system in the website <http://gst.puducherry.gov.in>, of the second respondent contrary with the scheme of the Central Sales Act, 1956.

Prayer in W.P.No.4515 of 2015:-is for the issue of a Writ of Declaration declaring that the first and second respondents have no authority to rely upon Section 43 of the Puducherry Value Added Tax Act, 2007, to decline to issue Form 'C' declarations prescribed under Sections 8(1) and 8(4) of the Central Sales Tax Act, 1956 read with Rule 12(1) of the Central Sales Tax (Registration & Turnover) Rules, 1957 and Rule 14(1)

of the Central Sales Tax (Pondicherry) Rules, 1967 and the online system of the second respondent in website <http://gst.puducherry.gov.in>, as found installed and evidenced in the communication in No.3735/CTD/VAT/2010 dated 27.8.2010 of the fifth respondent, dated 27.8.2010 disabling the generation of Form 'C' declarations is ultra vires Sub-Sections (1) and (4) of Section 8 and Section 13 of the Central Sales Tax Act, 1956 and the Rules made thereunder.

Prayer in W.P.No.4516 of 2015:- is for the issue of a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent herein in Letter No.34750006113/2014-15/1520, dated 12.2.2015, quash the same and direct the first respondent to issue Form 'C' declarations in respect of the Inter-State sales of petroleum products effected by the petitioners to the fourth respondent during the period May 2012 to August 2012, as mandated by Sections 8(1) and 8(4) of the Central Sales Tax Act, 1956 and Rule 14(1) of the Central Sales Tax (Pondicherry) Rules, 1967.

Prayer in W.P.No.4517 of 2015:- is for the issue of a Writ of Certiorarified Mandamus to call for the records on the file of the third respondent herein in CST/25232/2012-13, dated 9.1.2015, quash the same and for a direction to the third respondent to keep pending the finalization of demand against the sales to the fourth respondent, pending the issue of Form 'C' declarations prescribed under Rule 12(1) of the Central Sales Tax (Registration & Turnover) Rules, 1957 read with Rule 14(1) of the Central Sales Tax (Pondicherry) Rules, 1967, by the first respondent.

Writ Appeals filed under Clause 15 of the Letters Patent:

Prayer in W.A.Nos.783 and 784 of 2014:-is against the order of the learned Single Judge, dated 11.3.2014, in W.P.Nos.15799 and 15800 of 2013.

Prayer in W.A.Nos.785 to 787 of 2014:- is against the order of the learned Single Judge, dated 13.3.2014, in W.P.Nos.31015, 31016 and 31680 of 2012.

Prayer in W.A.No.788 of 2014:- is against the order of the learned Single Judge, dated 25.4.2014, in W.P.No.11739 of 2014 and

Prayer in W.A.No.1496 of 2014 :- is against the order of the learned Single Judge dated 11.3.2014 in W.P.No.9633 of 2010.

For Petitioners in W.P.Nos.15804
& 21556 of 2014 & Appellant in
W.A.No.1496 of 2014/Agencies : Mr.S.Raveekumar

For Petitioners in W.P.Nos.127 to
129 & 4515 to 4517 of 2015 &
For Appellants in W.A.Nos.783 to
788 of 2014/Corporations : Mr.C.Natarjan, SC for
Mr.N.Inbarajan

For State of Tamil Nadu : Mr.A.N.R.Jayapratap,
G.A.(Taxes)

For Union Territory of Puducherry : Mrs.N.Mala, AGP (P)

COMMON JUDGMENT

Bharat Petroleum Corporation Limited and Indian Oil Corporation Limited have appointed several dealers in the Union Territory of Puducherry. Two of those dealers by name M/s.Shri Maruthi Agencies and M/s.Amurtham Agencies, committed default in payment of the local value added tax under the Puducherry Value Added Tax Act, 2007 (hereinafter referred to as the Puducherry VAT Act, 2007). Therefore, the Appropriate Authority under the Central Sales Tax Act, 1956 (hereinafter referred to as the CST Act), (who naturally happens to be an Officer of the Union Territory of Puducherry), refused to issue 'C' Forms to the dealers. This resulted in the Assessing Officers in the State of Tamil Nadu, demanding a higher rate of tax under Section 8(2) of the CST Act, 1956 from the Bharat Petroleum Corporation Limited (hereinafter referred to as the BPCL) and the Indian Oil Corporation Limited (hereinafter referred to as the IOCL).

2. Challenging either the orders of assessment passed by the Assessing Officer or the orders passed by the Appellate Authority, demanding a higher rate of tax under the CST Act, 1956 due to the non production of 'C' Forms, the BPCL filed two writ petitions in W.P.Nos.15799 and 15800 of 2013 praying for quashing the orders of assessment as confirmed by the Appellate Authority under the Tamil Nadu Value Added Tax Act, 2006. The IOCL also filed four writ petitions in W.P.Nos.31015, 31016 and 31680 of 2012 and 11739 of 2014, either seeking a mere Mandamus to forbear the Assessing Officer in the State of Tamil Nadu from enforcing the demand or seeking a Mandamus directing the Assessing Officer in Puducherry to issue 'C' forms to their dealers.

3. The two writ petitions filed by the BPCL and the three writ petitions filed by the IOCL were dismissed by the learned Judge, forcing the BPCL to come up with two writ appeals in

W.A.Nos.783 and 784 of 2014 and the IOCL to come up with three writ appeals in W.A.Nos.785 to 787 of 2014. The fourth writ petition filed by the Indian Oil Corporation Limited in W.P.No. 11739 of 2014 was disposed of by the learned Judge directing them to avail the alternative remedy of appeal, as the challenge in the writ petition was to an order of assessment. Since the core issue may not get resolved by filing an appeal, the Indian Oil Corporation Limited has come up with one more writ appeal in W.A.No.788 of 2014 challenging the disposal of their writ petition in W.P.No.11739 of 2014.

4. During the pendency of the above writ appeals, M/s.Amurtham Agencies, Puducherry, which is an authorised dealer of the BPCL, came up with a writ petition in W.P.No.15804 of 2014 seeking a Mandamus to direct the Commercial Tax Officer, Puducherry, to issue 'C' Forms. Similarly, M/s.Shri Maruthi Agencies, Puducherry, which is an authorised dealer of the IOCL, filed a writ petition in W.P.No.21556 of 2014 seeking a Mandamus to direct the Commercial Tax Officer, Puducherry to issue 'C' Forms.

5. In the meantime, the BPCL and the IOCL suffered orders of assessment for the subsequent assessment years, whereby the higher rate of central sales tax was demanded due to non production of 'C' Forms. Therefore, the BPCL filed three writ petitions in W.P.Nos.127 to 129 of 2015, either challenging the order of assessment of the year 2012-13 or seeking a Declaration that 'C' forms cannot be withheld or seeking a Mandamus to direct the respondents to issue 'C' forms. Similarly, the IOCL came up with three writ petitions in W.P.Nos.4515 to 4517 of 2015 either seeking a Declaration that the Puducherry Authorities cannot withhold 'C' forms or challenging the orders of assessment for the assessment years 2012-13 and 2014-15.

6. In view of the fact that the issues raised in the writ appeals and the writ petitions are common, the writ petitions were directed to be tagged along with the writ appeals and they were taken up together for disposal.

7. We have heard Mr.C.Natarajan, learned Senior Counsel appearing for the two Oil Corporations, Mr.S.Raveekumar, learned counsel appearing for the authorised dealers, Mr.A.N.R.Jayaprathap learned Government Advocate (Taxes) appearing for the State of Tamil Nadu and Mrs.N.Mala, learned Additional Government Pleader (Pondicherry), appearing for the Union Territory of Puducherry.

8. For the purpose of easy appreciation, the details such as the case numbers, the names of the parties, the respondents

and the reliefs sought either in the original proceedings or in the appeal proceedings, are furnished in the form of a tabular statement as follows:-

WRIT APPEALS

S. No	WA No.	ARISING FROM WP	PETITIONER IN WP	RESPONDENTS IN WP	RESULT OF WP	PRAYER MADE IN WP
1	783 of 2014	15799 of 2013	Bharat Petroleum Corporation Ltd.	1.CTO, Pondicherry 2.UTP 3.Deputy Commissioner (CT) Chennai 4.Joint Commissioner (CT) Appeals 5.Bharat Petroleum Agency, Pondicherry	Dismissed	Writ of Certiorari calling for the files of R4 and quash the same
2	784 of 2014	15800 of 2013	Bharat Petroleum Corporation Ltd.	1.CTO, Pondicherry 2.UTP 3.Deputy Commissioner (CT) Chennai 4.Joint Commissioner (CT) Appeals 5.Bharat Petroleum Agency, Pondicherry	Dismissed	Writ of Certiorarified Mandamus calling for the files of R1 and quash the same and direct R1 to issue 'C' Form to R5.
3	785 of 2014	31015 of 2012	Indian Oil Corporation	1. CTO, Pondicherry 2.UTP 3.Deputy Commissioner (CT)-IV, Chennai 4.Shri Maruthi Agency, Pondicherry	Dismissed	Writ of Mandamus forbearing R3 from proceeding to enforce assessment to R4.
4	786 of 2014	31016 of 2012	Indian Oil Corporation	1. CTO, Pondicherry 2.UTP 3. Deputy Commissioner (CT)-IV, Chennai 4.Shri Maruthi Agency, Pondicherry	Dismissed	Writ of Mandamus directing R1 to issue Form 'C' to R4.
5	787 of 2014	31680 of 2012	Indian Oil Corporation	1.CTO, Pondicherry 2.UTP 3.Deputy Commissioner (CT)-IV, Chennai 4.Shri Maruthi Agency, Pondicherry	Dismissed	Writ of Mandamus calling for records of R1 and quashing the same as illegal.

6	788 of 2014	11739 of 2014	Indian Oil Corporation	1.CTO, Pondicherry 2.UTP 3.Deputy Commissioner (CT)-IV, Chennai 4.Shri Maruthi Agency, Pondicherry 5.Union of India	Disposed of, giving liberty to the Petitioner to approach appellate authority	Writ of Certiorarified Mandamus to call for records of R3 and quash the same and to direct R3 to forbear from CST assessment with respect to sales to R4 pending adjudication of proceedings of R1.
7	1496 of 2014	9633 of 2010	M/s.Sri Rajeswari Agencies	The Additional DCTO-II, Puducherry	Dismissed	Writ of Certiorarified Mandamus to call for & quash the records relating to the proceedings of the respondent in TIN : 34590004067/ 2009-10/23 dated 16 March 2010 and consequently forbear the respondent from denying to issue the statutory C-Forms to the petitioner

WRIT PETITIONS

S. No	WP NO.	PETITIONER	RESPONDENTS	PRAYER	DETAILS
1	21556 of 2014	M/s Shri Maruthi Agencies, Pondicherry	CTO, Pondicherry	Writ of Mandamus directing the Respondent to issue Form C to the Petitioner	Petitioner is a dealer of Indian Oil Corporation Ltd. Petitioner had made representations to the respondent for issue of Form 'C' on 14.09.2012, which has not been issued till date and hence this writ petition.

2	15804 of 2014	M/s Amurtham Agencies, Pondicherry	Additional DCTO--IW, Pondicherry	Writ of Mandamus directing the Respondent to issue form 'C' to the Petitioner	Petitioner is a dealer of Bharat Petroleum Corporation Ltd. Petitioner had made representations on 17.03.2014 to the Respondent to issue form 'C'.
3	127 of 2015	M/s Bharat Petroleum Corporation Ltd., Chennai	1. Additional DCTO-IW, Pondicherry 2. UTP 3. Deputy Commissioner (CT)-1, Chennai 4. Amurtham Petroleum Agency, Pondicherry 5. Commissioner of Commercial Taxes, Pondicherry	Writ of Certiorarified Mandamus calling for the records of R3 and quashing the same and to direct R1 to issue Form 'C' to the dealer, R4.	The Additional Deputy Commercial Tax officer (R1) has refused to issue form 'C' to the dealer (R4)
4	128 of 2015	M/s Bharat Petroleum Corporation Ltd., Chennai	1. Additional DCTO-IW, Pondicherry 2. UTP 3. Deputy Commissioner (CT)-1, Chennai 4. Amurtham Petroleum Agency, Pondicherry 5. Commissioner of Commercial Taxes, Pondicherry	Writ of Declaration declaring that R1 and R2 have no authority to rely upon Section 43 of the PVAT Act to decline form 'C' and to declare that Online website of R2 disabling form 'C' generation is ultra vires the CST act	
5	129 of 2015	M/s Bharat Petroleum Corporation Ltd., Chennai	1. Additional DCTO-IW, Pondicherry 2. UTP 3. Deputy Commissioner (CT)-1, Chennai 4. Amurtham Petroleum Agency, Pondicherry 5. Commissioner of Commercial Taxes, Pondicherry	Writ of Mandamus directing R1 and R2 to issue form 'C' to R4; and to suitably modify the website of R2 which is contrary to the scheme of the CST Act.	

6	4515 of 2015	Indian Oil Corporation Ltd., Chennai	1. CTO, Karaikal 2.UTP 3.Deputy Commissioner (CT) IV, Chennai 4.S.V.& Co., Karaikal 5.Commissioner of Commercial Taxes, Pondicherry	Writ of Declaration declaring that R1 and R2 have no authority to rely on Section 43 of the PVAT Act, to decline Form 'C' to R4; and to declare that the online system website of R5 disabling Form 'C' generation is ultravires CST Act and rules.
7	4516 of 2015	Indian Oil Corporation Ltd., Chennai	1.CTO, Karaikal 2.UTP 3.Deputy Commissioner (CT) IV, Chennai 4.S.V.& Co., Karaikal 5.Commissioner of Commercial Taxes, Pondicherry	Writ of Certiorarified Mandamus calling for records on the file of R1 and quash the same; and to direct R1 to issue form 'C' to R4.
8	4517 of 2015	Indian Oil Corporation Ltd., Chennai	1.CTO, Karaikal 2.UTP 3. Deputy Commissioner (CT) IV, Chennai 4. S.V.& Co., Karaikal 5.Commissioner of commercial taxes, Pondicherry	Writ of Certiorarified Mandamus calling for records on the file of R3 and quash the same; and directing R3 to keep pending the finalization of demand against sales to R4 pending issue of form 'C' declarations.

9. As we have indicated earlier, the BPCL and the IOCL, effected sales of petroleum products both within the State of Tamil Nadu as well as to dealers outside the State. The sales that they effected in the course of Inter-State trade and commerce, were to registered dealers and hence the sales are taxable under section 8(1) of the CST Act, 1956, provided the dealers furnish 'C' Forms. The CST Act, 1956 is a legislation enacted in terms of Entry 92A of the Union List in the 7th Schedule to The Constitution.

10. Under Section 6(1) of the CST Act, 1956, 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. In so far as the goods that do not satisfy the description contained in Section 8(3) are concerned, 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. In so far as the petroleum products are concerned, they fall within the description referred to in Section 8(3) and all sales effected by the BPCL and the IOCL are to their registered dealers in Puducherry. Therefore, these sales in the course of Inter-State trade and commerce, obviously attract only 2% as the rate of tax, by virtue of Section 8(1). But, in order to enable the BPCL and the IOCL (or any other dealer for that matter), to claim the benefit of Section 8(1), they should furnish to the Prescribed Authority, in the prescribed manner, a declaration duly filled and signed by the registered dealer in the other State (Pondicherry in this case). This declaration should be furnished within the prescribed time in the prescribed manner, in terms of Sub-section (4) and the Proviso thereto, of Section 8.

12. The normal rate of tax payable on petroleum products in terms of Section 8(2) is 30%. But if the sale is by a registered dealer in Tamil Nadu (i) to a registered dealer in Puducherry, and (ii) the same is supported by a declaration in terms of Section 8(4), the sale attracts only 2% as the rate of tax. Thus there is a difference of 28% in the rate of tax.

13. Admittedly, the registered dealers of the BPCL and the IOCL, namely Shri Maruthi Agencies and Amurtham Agencies failed to furnish Form 'C' Declarations under Section 8(4). These registered dealers were unable to get 'C' Form Declarations signed by the Prescribed Authority at Puducherry, not because they are not registered dealers, but in view of the fact that they have committed default in payment of value added tax as per the provisions of the Puducherry VAT Act, 2007. The Prescribed Authority at Puducherry namely the Commercial Tax Officer or the Additional Commercial Tax Officer refused to issue Form 'C' Declarations to Shri Maruthi Agencies and Amurtham Agencies, by placing reliance upon Section 43 of the Puducherry VAT Act, 2007 on the ground that these dealers are in default in payment of local value added tax.

14. As a consequence of non-furnishing of Form 'C' Declarations by the BPCL and the IOCL, the Assessing Officers of the BPCL and the IOCL in the State of Tamil Nadu, have started

demanding central sales tax at 30%, instead of 2%. Therefore, though the actual default in payment of tax was by Shri Maruthi Agencies and Amurtham Agencies and that too, in relation to the Puducherry Value Added Tax, it is the BPCL and the IOCL, which are affected by such default. Therefore, the BPCL and the IOCL have also joined issues with their registered dealers, though not actually supporting the default committed by them.

15. The sum and substance of the grievance of the BPCL and the IOCL is that for the default committed by Shri Maruthi Agencies and Amurtham Agencies in the payment of Puducherry Value Added Tax, these Corporations should not be deprived of the benefit statutorily conferred upon them under Section 8(1) of the CST Act, 1956.

16. Advancing the cause of the BPCL and the IOCL, it is contended by Mr.C.Natarajan, learned Senior Counsel -

(i) that once the twin requirements of Section 8(1) are satisfied by these Corporations, the Prescribed Authority in Puducherry should not deprive the benefit of a reduced rate of tax to the Corporations, especially when they are not in default;

(ii) that for a default committed by a registered dealer under a State Enactment, the Prescribed Authority under the State Enactment cannot refuse to issue a declaration under a Central Enactment;

(iii) that the mandate of a Parliamentary Enactment cannot be defeated by a State Enactment, since the States are empowered by the Central enactments only to prescribe the procedural provisions for the collection of the tax under the Central Enactment; and

(iv) that when there are other effective provisions available to the State Authorities for the recovery of the dues under the State Enactment and when the State Authorities are empowered even to cancel the certificate of registration, it is not open to the State Authorities to rely upon Section 43 of the Puducherry VAT Act, 2007 to withhold a 'C' Form Declaration under Section 8(4) of the CST Act, 1956.

17. Responding to the above submissions, Mrs.N.Mala, learned Additional Government Pleader (Pondicherry) contended -

(i) that the IOCL and the BPCL are not persons aggrieved, so as to question the refusal of the Prescribed Authority under the Puducherry VAT Act, 2007 to issue 'C' Form Declarations to dealers registered under the Puducherry VAT Act, 2007;

(ii) that there was not even a contractual relationship between these Oil Corporations and the Union Territory of Puducherry to issue 'C' Form Declarations;

(iii) that the obligation to obtain 'C' Form Declaration from the Prescribed Authority is upon the authorised dealers of

these Oil Corporations, as such obligation arises out of a contract between the Petroleum Corporations and the authorised dealers in Puducherry;

(iv) that the issue of 'C' Form Declaration is not a matter of right, but only a matter of concession; and

(v) that Section 43(1) of the Puducherry VAT Act, 2007, which is not under challenge, empowers the Assessing Officers to withhold the issue of statutory or other declaration forms and that the same would include Form 'C' Declaration.

18. We have carefully considered the above submissions.

19. Before we consider the contentions of the Oil Corporations, it may be necessary for us to first deal with the preliminary objections raised by the learned Additional Government Pleader (Puducherry) with regard to the entitlement of the assessee to seek a Mandamus to direct the Commercial Tax Officer, Puducherry to issue 'C' Form Declaration.

PRELIMINARY OBJECTIONS REGARDING LOCUS:

20. Mrs.N.Mala, learned Additional Government Pleader appearing for the Government of Puducherry contended that BPCL and the IOCL are not registered dealers under the Puducherry VAT Act, 2007 and that they are not the persons aggrieved in so far as the refusal of the Prescribed Authority of the Government of Puducherry to issue 'C' Form Declarations in favour of the registered dealers under the Act. According to the learned Additional Government Pleader, these Oil Corporations do not even have a contractual relationship with the Union Territory of Puducherry. If at all, the Oil Corporations should proceed against their authorised dealers, who are bound, as per the terms and conditions of the contract that they have mutually entered into, either for recovery of damages or for any other relief.

21. To test the above contentions, it is necessary to take note of the provisions of the CST Act, 1956 and two sets of Rules issued thereunder.

22. Section 6(1) of the CST Act, 1956 imposes an obligation upon every dealer, to pay tax under the Act, on all sales effected by him in the course of Inter-State trade or commerce. Even if no tax is payable under the Sales Tax Law of the appropriate State in respect of such sale, the obligation under Section 6(1) would still be there on account of Sub-Section (1A).

23. Under Section 7(1) of the Act, 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.

24. We have already indicated the scope of Sub-sections (1), (2) and (4) of Section 8. In short, Sub-section (2) of Section 8 obliges every dealer to pay tax on turnover, which relates to the sale of goods in the course of Inter-State trade or commerce, at the rate applicable to the sale or purchase of goods inside the appropriate State under the Sales Tax Law of the State. In other words, by virtue of Sub-Section (2) of Section 8, the tax payable on the sale in the course of Inter-State trade or commerce will be at the rate payable under the local Sales Tax Law of the State. While this is the rule, Sub-section (1) 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%.

25. To establish that the twin conditions stipulated in Sub-section (1) of Section 8 are satisfied, the dealer is obliged under Sub-section (4) to furnish to the Prescribed Authority, a declaration duly filled and signed by the registered dealer. Therefore, it can be concluded that what is stipulated in Sub-section (1) of Section 8 is substantive in nature and what is stipulated in Sub-section (4) is procedural in nature. Alternatively, what is stipulated in Sub-section (1) can be taken to be a fact in issue and what is prescribed in Sub-Section (4) is an evidence to establish such fact.

26. Though Sub-Section (4) of Section 8 speaks only about a declaration duly filled and signed by the registered dealer, to whom the goods are sold, containing the prescribed particulars in prescribed form obtained from the prescribed authority, the role of the Prescribed Authority goes hand in glove with that of the registered dealer. Unless the registered dealer and the Prescribed Authority come together, the declaration contemplated in Sub-Section (4) cannot be issued.

27. Section 13(4) of the Act 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. The rules so framed by the State Government may also

prescribe the manner in which, any such form may be used and any such certificate or declaration may be furnished.

28. Therefore, despite fulfilling the conditions stipulated in Sub-section (1) of Section 8, a dealer under the CST Act, 1956 has necessarily to rely upon his purchaser (if he is a registered dealer of the concerned State) and also upon the Prescribed Authority of the concerned State, to get a declaration under Sub-section (4) of Section 8. Since the State Government is empowered by Section 13(4) of CST Act, 1956, to prescribe the procedure for the issue of such forms, the Prescribed Authority becomes obliged to perform a statutory duty. The expression "Prescribed Authority" is defined in Rule 2 (cc) of the Central Sales Tax (Registration and Turnover) Rules, 1957 to mean the Authority prescribed by a State Government under Section 13(4) (e) of the CST Act. Though Rule 12(1) of the 1957 Rules stipulates that the declaration and the certificate referred to in Section 8(4) 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.

29. In exercise of the power conferred by Section 13(4) of the CST Act, 1956, the Government of Puducherry had issued a set of rules known as Central Sales Tax (Pondicherry) Rules, 1957. These Rules cast certain obligations upon the purchasing dealers.

30. Therefore, by virtue of the statutory prescription, it is the Prescribed Authority in the Union Territory of Puducherry, who holds the key to the question of entitlement of the Oil Corporations to pay a lesser rate of tax. In such circumstances, it is not open to the Government of Puducherry to contend that they have nothing to do with the Oil Corporations and that these Corporations have no locus to question the refusal of the Puducherry Authorities to issue 'C' Form Declarations. The refusal of the Puducherry Authorities has a direct financial impact only upon the Oil Corporations and hence, the refusal of the Puducherry Authorities to perform a statutory duty cast upon them, would certainly confer a right upon the Oil Corporations to question their act. The Oil Corporations cannot be non-suited on the ground that they are not the registered dealers under the Puducherry VAT Act, 2007.

31. As rightly contended by Mr.C.Natarajan, learned Senior Counsel for the Oil Corporations, the CST Act, 1956 operates at two levels. Though the law is enacted by the Centre, it is administered by the respective State Governments. Therefore, if a right arises under the Act, such a right is not confined only as against the Central Government, but also as against the concerned State Government. Hence, the preliminary objections of the learned Additional Government Pleader (Puducherry) are

overruled.

RIGHT OR CONCESSION:

32. The next contention of the learned Additional Government Pleader (Puducherry) is that what is conferred by Section 8(1), is a concession and not a right. Therefore, it is contended by the learned Additional Government Pleader that a Mandamus of the nature sought for cannot be issued.

33. But, we do not think so. A liability is imposed under Section 8(2) of the Act upon every dealer to pay tax at the rate stipulated by the local Sales Tax Law of the appropriate State, on his turnover, which relates to sale of goods in the course of Inter-State trade or commerce. But, if such sale happens to be (i) to a registered dealer and (ii) that too of goods described in Sub-Section (3), the rate of tax will only be 2%. Thus the rate of tax at least in respect of sales covered by Section 8(1) is statutorily fixed at 2% and hence, the same cannot be termed as a concession. If the statute fixes the rate of tax, the payment of the same is a statutory obligation. Every obligation shall correspond only to a right and not to a concession.

34. Moreover, the Explanation to Sub-section (2) of Section 8 is a direct answer to the contention of the learned Additional Government Pleader. Under the Explanation to Sub-section (2), a dealer will be deemed to be a dealer liable to pay tax under the Sales Tax Law of the appropriate State, even if he is not liable under the local Sales Tax Law of the appropriate State. If a dealer is liable, as per the CST Act, to pay tax under the local Sales Tax Law of the appropriate State at a rate higher than 2%, it may be possible to see Section 8(1) as conferring a benefit or concession. But, when Section 8(1) imposes an obligation to pay central sales tax at 2%, even if nothing is payable under the local Sales Tax Law of the appropriate State, we do not know how what is conferred by Section 8(1) can be called a concession. Therefore, the aforesaid contention of the learned Additional Government Pleader is rejected.

CONTENTIONS OF THE APPELLANTS :

35. Having disposed of the preliminary objections of the learned Additional Government Pleader, we shall now take up for consideration the contentions of the appellants/assesseees.

Contention-1 :

36. The first contention of the learned Senior Counsel for the Oil Corporations is that once the twin requirements of Section 8(1) are satisfied by these Corporations, the Prescribed Authority in Puducherry should not withhold the C-Forms thereby depriving the benefit of a reduced rate of tax to the Oil Corporations, especially, when they are not in default. To

buttress this contention, the learned counsel for the appellants/assesseees relied upon a few decisions, which we shall now deal with.

37. In Chanda Paints (Madras) Ltd. v. Commercial Tax Officer, [(1986) 61 STC 335 (Mad.)], the question that arose was whether the petitioner, which had registered itself under the provisions of the CST Act, was entitled to the supply of C-Forms and declarations, upon a request being made for the supply of such forms or whether the respondent is entitled to refuse to supply such forms either on the ground that the materials to be bought from other States by use of such C-Forms, would be utilised in works contracts or on the ground that a thorough investigation is to be made regarding the nature of the transaction carried on by the petitioner. Citing an earlier unreported decision of this court, it was held therein as follows:

"An identical question came up for consideration before a Bench of this Court in W.P. Nos.1379 and 1380 of 1967 and 840 of 1971 (T.V.P.Nambiar Vs. State of Madras) and by order dated 27th April, 1971, the Bench held as follows :

"We are of the view that the petition is well-founded. There is no provision in the Act which authorised the Commercial Tax Officer to refuse to provide the assessee with C forms. If the assessee misused the C form, that will be punishable under Section 10 of the Central Act. Beyond that, it has no effect, not even in tax. The Commercial Tax Officer was not constituted as a policeman to regulate and conduct the assessee along with virtuous path. If the assessee had registered himself under the provisions of the Central Act, he was, as a matter of right, entitled to get C forms from the officer, who had no authority to refuse the same. The petition is therefore allowed with costs."

38. In A.P.Gas Power Corporation Ltd. v. Assistant Commercial Tax Officer [(1998) 109 STC 625], the Andhra Pradesh High Court was concerned with a case as to whether the assessee entered into a contract with another company for the supply, erection and commissioning of gas/ steam turbines for generation of power. The contractor supplied certain equipments, parts and components, which were procured from suppliers outside the State and effected transit sales to the assessee. C-Forms were denied on the ground that the goods purchased by the assessee were entrusted to the seller under a bailment agreement for the

erection of the project and that therefore, the assessee had camouflaged the transactions of supply and transferred the goods to the contractor as one under the bailment agreement. However, the Andhra Pradesh High Court, after a combined reading of the provisions of Section 8 of the CST Act, 1956, Rule 3 of the Central Sales Tax (Registration and Turnover) Rules, 1957 and Rules 9, 9A and 10 of the Central Sales Tax (Andhra Pradesh) Rules, 1957, held that at the stage of issue of C-Form declarations, the Notified Authority is not required to conduct an enquiry into the nature of the transaction and as to whether the dealer needed the forms for use in the course of inter-State trade or for avoidance of payment of tax. The Court also held that the Authorities would, however, be at liberty to make such enquiry, as it is necessary to see whether C-Forms had been properly issued and if not, what was the liability of the parties under the Central or State Enactment. But, the Court also added that such an enquiry need not be made at the stage of issuance of C-Forms.

39. Adverting to Rule 9 of the Central Sales Tax (Andhra Pradesh) Rules, the Court indicated the scope of the enquiry on the following lines:

"What all is required under rules for issuance of Form C is to see:

(1) Whether the person applied for 'C' Form is a registered dealer;

(2) Whether the goods in respect of which 'C' Form is used are included in the certificate of registration Form 'A'; and

(3) Whether he has paid the amount for the 'C' Form and produced necessary challan in proof of the payment.

When these requirements are satisfied, 'C' Form has to be issued. From the above discussion, it follows that the petitioner is entitled to receive 'C' Form on the compliance of the above three conditions. This is without prejudice to the authorities making enquiry at the time of assessment as to the proper use of the 'C' Form."

40. Similarly, the Madras High Court also held in *Quality Enterprises, Kamaraj Salai, Chennai v. Additional Deputy Commercial Officer*, [(2002) 127 STC 504 (Mad.)] that once the requisite conditions for the issue of 'C' Forms were satisfied, the forms cannot be denied by the appropriate authority. In the above mentioned case, the writ petitioner was a dealer registered under the Pondicherry General Sales Tax as well as the CST Acts. In paragraph 8, it was further held as follows :

"It is clear that for issuance of "C" forms, the only conditions that are to be satisfied are that the person claiming "C" form is a registered dealer and that the charges for "C" form were paid and that he produced the challans in proof of having paid the amount for obtaining the "C" form. Once these conditions are satisfied, the authorities are bound to issue "C" form. Whether the "C" forms are properly used or misused, cannot be enquired into at the initial stage of issuance of "C" forms. If any person misused the "C" form, he is liable to the penalties as contemplated under the Act. Therefore, the authorities, which issue "C" forms have to issue the forms, once they satisfy the above conditions."

41. In the case of City Tower Hotels (P) Ltd. v. The Commercial Tax Officer [(2003) 131 STC 317 (Mad.)], the petitioner, a hotel group, had earlier filed a writ petition for a direction to the Commercial Tax Officer to issue 'C' Form as per the various letters of request. That writ petition was disposed of with a direction to the respondent - CTO to consider the representations of the petitioner and to take appropriate action, which was not complied with by the respondents. The petitioner thereupon filed the writ petition, upon which, the respondent submitted that since the petitioner was a proprietor of a hotel, 'C' Forms were not required to be given to the petitioner. The Madras High Court allowed the petition and held that mere apprehension that a person applying for 'C' Forms was likely to misuse such forms was not a ground for rejection of the application. The respondents were directed to deal with the request of the petitioner and pass necessary orders in accordance with law. The Court also emphasized that the Appropriate Authority shall not, at the stage of issue or supply of 'C' Forms, get into any enquiry as to any compliance or non-compliance or violation of terms of the registration certificate or as to any misuse of the 'C' Forms, as it was premature in nature. After quoting an earlier decision of the year 1992 in Larsen & Toubro Limited v. Commercial Tax Officer [(1992) 85 STC 422 (Mad.)], it was observed as follows :

"In my view, the petitioners are entitled to have themselves registered as dealers under section 7(2) and consequently are entitled to the supply of 'C' forms for use in their purchase of goods in the course of inter-State sale or trade or commerce at the concessional rate. The further

question whether the goods have been rightly purchased for any one of the approved and permitted purposes and whether there was sufficient compliance or non-compliance or violation of the terms of the registration certificate or as to whether the 'C' forms issued have been misused by the registered dealer shall be considered only at the subsequent and appropriate stage and in accordance with Section 10-A of the Central Sales Tax Act and it would be not only premature but inappropriate to enter into an enquiry postulated under Section 10-A even at the stage of issue or the supply of 'C' forms."

42. Therefore, based upon the aforesaid decisions, it is contended that the Prescribed Authority of the Union Territory of Puducherry was not entitled to refuse the issue of C-Forms.

43. But, we do not agree with the said contention. In all the decisions referred to above, the issuance of C-Declaration Forms, was not denied on the ground of non payment of local sales tax dues. The question of default under the local Sales Tax Act, was not the issue, with which, the Courts were concerned in Chanda Paints and AP Gas Power Corporation.

44. What distinguishes the case hand is the fact that persons, who are the registered dealers under the Puducherry VAT Act, 2007, have committed default in payment of the local VAT. Therefore, the Prescribed Authority of the Government of Puducherry has refused to issue C-Declaration Forms by taking refuge under Section 43 of the Puducherry VAT Act, 2007. Hence, the first contention, based upon the above decisions, cannot be sustained.

Contention-2 :

45. The second contention of the learned Senior Counsel for the Oil Corporations is that for a default committed by a registered dealer under a State Enactment, the Prescribed Authority cannot refuse to issue a declaration under a Central Enactment.

46. In order to understand the scope of the second contention raised by the learned Senior Counsel for the Oil Corporations, it is necessary to note that though the CST Act, 1956 formulates the principles for determining when a sale or purchase of goods takes place in the course of Inter-State trade or commerce or outside the State or in the course of imports into or export from India and also provides for the levy, collection or distribution of taxes on sale of goods in the

course of Inter-State trade or commerce, the enforcement of the provisions of the Act is entrusted only to the State Governments. This can be seen from some of the provisions of the Act.

47. For instance, Section 7(1) of the CST Act, 1956 obliges every dealer, who is liable to pay tax under the Act, to make an application for registration to such Authority in the appropriate State, as the Central Government may specify. Sub-section (1) of Section 13 empowers the Central Government to make rules, prescribing the manner, in which, and the Authority, to whom, the application for registration may be made. In exercise of the power conferred by Section 13(1), the Central Government had issued a set of rules known as the Central Sales Tax (Registration and Turnover) Rules, 1957. Under Rule 3(1) of those Rules, an application for registration under Section 7 shall be made to the Notified Authority in Form-A. The expression 'Notified Authority' is defined in Rule 2(c) to mean the Authority specified under Section 7(1).

48. Similarly, Section 9 of the Act deals with levy and collection of tax and penalties. Sub-section (1) of Section 9 stipulates that the tax payable under the Act, shall be levied by the Government of India. But, Sub-section (2) of Section 9 indicates that the Authorities empowered to assess, re-assess, collect and enforce the payment of any tax under the General Sales Tax Law of the appropriate State, shall also assess, re-assess, collect and enforce the payment of tax on behalf of the Government of India. Therefore, it is clear that though the levy is by the Government of India, everything else such as assessment, collection and enforcement of payment of any tax, is left to the concerned Authority under the General Sales Tax Law of the appropriate State.

49. This is why Sub-Section (3) of Section 13 also empowers the State Government to make rules under the Central Enactment. As a consequence, the expression 'Prescribed Authority' is defined in Rule 2(cc) of the Central Sales Tax (Registration and Turnover) Rules, 1957 to mean the Authority empowered by the Central Government under Section 9(2) of the Act.

50. Therefore, it is clear that the very same officers, who are entrusted with the assessment and enforcement of the provisions of the Local Sales Tax Law of the State, are also empowered to assess, re-assess and enforce the payment of tax under the Central Enactment.

51. In other words, an officer of the State Government empowered to assess and enforce the provisions of the Local Sales Tax Law of the State, performs a dual role, one under the

Local Sales Tax Law of the State and another under the CST Act, 1956. Therefore, it is not possible for him to compartmentalise his mindset and ignore the default committed under one Enactment, while dealing with the question of issuance of "C" declaration forms under another Enactment. Hence it is futile to contend that for a default committed under a State Enactment, the Prescribed Authority cannot refuse to issue a declaration under the Central Enactment.

Contention-3:

52. The third contention of the Senior Counsel is that the mandate of a Parliamentary Enactment cannot be defeated by a State Enactment and that the States are empowered by the Central enactments only to prescribe the procedural provisions for the collection of the tax under the Central Enactment and hence, the States cannot go beyond their competence.

53. This contention is actually a collateral attack on Section 43 of the Puducherry VAT Act, 2007, without challenging the vires of the provision. Therefore it is necessary now to take a look at Section 43, which reads as follows:-

"43. Withholding issue of statutory forms and seizure of goods -

(1) Notwithstanding that any recovery proceeding initiated under this Act, the Assessing Officers or any other Officers authorized in this regard, shall have power to withhold issue of statutory or other declaration forms to a dealer from whom any tax or penalty, interest or any other amount payable under this Act, is due.

(2) The Assessing Officer or any other Authorized Officer empowered in this regard shall also have the power to seize and confiscate goods being transported by a dealer from whom, tax, penalty, interest or any other amount payable under this Act, is due."

54. It is seen from the language employed in Section 43(1) that the power conferred upon the Assessing Officers is general in nature, to withhold the issue of statutory or other declaration forms, to a dealer, from whom, any tax, penalty, interest or any other amount is due. Since Section 43(1) uses the only expression 'statutory or other declaration forms', without particular reference to C-Declaration Forms issued under the CST Act, 1956, the assesseees have chosen not to take the arduous task of challenging the vires of Section 43. Instead, they have chosen the garden path to contend that the words 'statutory or other declaration forms' appearing in Section 43 (1) of the Puducherry VAT Act, 2007, could relate only to the forms issued under the State Enactment.

55. Once the obstacle posed by Section 43(1) of the State Enactment is cleared by arguing that the meaning of the expression 'statutory or other declaration forms' is confined only to the forms under the State Enactment, the assessee contends as a corollary that the role of the State Government, as contemplated by Section 13(3) and (4) of the CST Act, 1956, is limited only to prescribing the procedural provisions. The procedural provisions, as seen from Section 13(4) do not extend to the withholding of any declaration form under the CST Act, 1956. Therefore, the third contention of the learned Senior Counsel for the Oil Corporations is that withholding of the C-Forms go beyond the procedural provisions, for which, an officer of the State Government is nominated as the Prescribed Authority under the Central enactment.

56. In support of the above contention, Mr.S.Raveekumar, learned counsel for the authorised dealers - assessee placed strong reliance upon the decision of the Madhya Pradesh High court in *Dawar Brothers vs State Of Madhya Pradesh* [(1979) 44 STC 286 (MP)]. It is a case where the Sales Tax Authorities refused to issue C-Forms in the purported exercise of their power under Rule 8(1-A)(f) of the M.P. Sales Tax (Central) Rules, 1957. These rules had been issued by the State Government under the rule-making power conferred on it by the Central Act. The said Rule 8(1A)(f) of the M.P. Sales Tax (Central) Rules, 1957, was challenged by the petitioner to be ultra vires the rule-making power conferred on the State Government by the Central Act. The Madhya Pradesh High Court, emphasizing that the State Government was merely an agency of the Central Government to carry out the assessment under the Central enactment and that the rule-making power of the State cannot be used by the State Government as a device for the realization of its own dues under the State Act, laid down the following:

"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, 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."

57. The Court ruled in the above decision that the Sales Tax Officer (or any other authorized officer) shall not withhold the issuance of the declaration forms either on the ground that the petitioner had defaulted in furnishing the return under the M.P. General Sales Tax Act, 1958, or that he was in arrears of tax under the said State Act. Therefore, the appellants/ assessee contend that the ratio laid down in this decision would apply with all force to the cases on hand.

58. We have carefully considered the above submissions.

59. This contention of Mr.C.Natarajan, learned Senior Counsel for the Oil Corporations actually has two facets. The first revolves around Sub-Sections (3) and (4) of Section 13 of the CST Act, 1956 that deal with the rule making power of the State Government under the Central Enactment. The second facet is the scope of Section 43 of the Puducherry VAT Act, 2007 and the question as to how the same has to be interpreted in its application to a statutory requirement under the Central Enactment.

60. As we have pointed out earlier, the CST Act, 1956 does not create a hierarchy of Authorities for the administration and enforcement of the Act. While the power and jurisdiction to levy central sales tax is retained by the Government of India under the CST Act, 1956, all procedural aspects such as registration of dealers, assessment, re-assessment, collection and enforcement of payment of tax are all left to the Authorities nominated by the respective State Governments. Since these procedural aspects are left at the hands of the Authorities of the respective States, the CST Act, 1956 also confers rule making power upon the State Government.

61. The rule making power is again compartmentalized. Under Sub-Section (1) of Section 13, the Central Government is empowered to make 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 distribution of electricity and
- (viii) the terms and conditions of service of the Chairman and the Members of the Appellate Authority.

62. Sub-Section (3) of Section 13 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). In simple terms, the purposes covered by Sub-Section (4) are as follows :

- (i) the publication of the lists of registered dealer
- (ii) the manner, in which, security is to be furnished under various Sub-Sections of Section 7
- (iii) the form and manner, in which, accounts relating to Inter-State sales are to be kept by registered dealers
- (iv) the furnishing of information relating to stocks, etc.
- (v) inspection of books, accounts and documents and the power of entry and seizure
- (vi) the Authority, from whom and the conditions, subject to which, any form of certificate prescribed by Section 6(2) or declaration under Section 6A or Section 8(4) may be obtained
- (vii) the form and manner, in which, an appeal is to be preferred and the procedure for hearing such appeals and
- (viii) the procedure for intimating the change of ownership.

63. In particular, we may have to take note of Clause (d) of

Sub-Section (1) and Clause (e) of Sub-Section (4) of Section 13 for resolving the issue raised by the learned Senior Counsel for the appellants/assesseees. Section 13(1)(d) reads as follows :

"The Central Government may, by Notification in the Official Gazette, make rules providing for -

(d) the form in which and the particulars to be contained in any declaration or certificate to be given under this Act, the State of origin of such form or certificate and the time, within which, any such certificate or declaration shall be produced or furnished."

64. Section 13(4)(e) reads as follows :

"In particular and without prejudice to the powers conferred by Sub-Section (3), the State Government may make rules for all or any of the following purposes namely -

(e) the Authority, from whom, the conditions, subject to which and 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 6A or Sub-Section (4) of Section 8 may be obtained, the manner, in which, such forms shall be kept in custody and the records relating thereto maintained and the manner, in which, any such form may be used and any such certificate or declaration may be furnished."

65. A careful comparison of the language employed in Section 13(1)(d) with the language employed in Section 13(4)(e) would show that the former speaks generally about declarations and certificates to be given under the Act, without particular reference to any provision. On the contrary, the latter namely Section 13(4)(e) speaks about the form of certificate prescribed under Section 6(2). It also speaks of a declaration prescribed under Section 6A(1) and a declaration under Section 8(4).

66. Therefore, Section 13(1)(d) should be construed to refer only to the declarations and certificates not covered by Section 13(4)(e). In other words, the procedure for the issue of any declaration under Section 8(4), is left by the Central Enactment entirely to the rule making power of the State Government under Sub-Section (3) read with Sub-Section (4) of Section 13. We have already seen that a C-Form Declaration is one that is dealt with by Section 8(4). Therefore, it is crystal clear that in so far as C-Declaration Forms dealt with by Section 8(4) are concerned, 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.

67. In such circumstances, we are of the considered view that it is this distinction between the scope of Section 13(1) (d) and Section 13(4) (e) that clinches the issue on hand. If the State Government alone is competent, by virtue of Section 13(4) (e) and also by virtue of the maxim 'generalia specialibus non derogant', even to prescribe by rules, the conditions, subject to which, a declaration as contemplated under Section 8(4) could be obtained, it is futile on the part of the appellants/assesseees to contend that the procedural provisions cannot overreach a substantive right. As a matter of fact, Section 8(4) does not confer an absolute right. The right is circumscribed by the furnishing of a declaration subject to certain conditions such as (i) that it is in a prescribed form (ii) that it is obtained from the Prescribed Authority (iii) that it contains the prescribed particulars and (iv) that it is furnished within the prescribed time. The expression 'prescribed' is repeated thrice in the substantive part of Sub-Section (4) and once in the Proviso to Sub-Section (4) of Section 8. The power to prescribe is conferred upon the State Government under Section 13(4) (e). Therefore, it is not correct to state that the mandate of a Parliamentary Enactment is sought to be defeated by the State, which is authorized only to regulate the procedure for the administration of the Act.

68. Therefore, the first facet of the third contention that the mandate of a parliamentary enactment is now defeated by a State enactment cannot hold good in the light of the interplay between Section 13(1) (d) and 13(4) (e) of the CST Act, 1956. It is not just an empowerment to prescribe the procedural provisions for the collection of tax, but also a power conferred upon the State to prescribe the conditions, subject to which 'C' Form declarations can be given.

69. The second facet of the third contention of the learned Senior Counsel for the Oil Corporations is the one that revolves around Section 43 of the said Act. As we have seen earlier, Sub-Section (1) of Section 43 empowers the Assessing Officers and even any other officer authorized in this regard, to withhold the issue of statutory or other declaration forms. The contention that the reference in Section 43(1) to statutory or

other declaration forms should be construed to mean only those forms as contemplated by the Puducherry VAT Act, 2007, does not hold good. As a matter of fact, if the Government of Puducherry has framed a rule in exercise of the power conferred by Section 13(4)(e), prescribing as a condition precedent, the payment of arrears of tax, the same might have been within the rule making power of the Government. But then, the same would have been subject to a challenge as made in the case of Dawar Brothers in the State of Madhya Pradesh. Therefore, the Legislature itself has enacted a specific provision under Section 43 and we do not find any justification to limit the meaning of the expression 'statutory and other declaration forms' appearing in Section 43 (1) only to those, that are dealt with by the Pondicherry Enactment.

70. The above conclusion that there is no scope for giving a restricted meaning to the words 'statutory or other declaration forms' appearing in Section 43(1), can also be reached by a different logic and through a different route. A careful look at Section 43(1) would show that the words 'under this Act' are used at two places in Section 43(1). In the first place, the words 'under this Act' are used along with the words 'any recovery proceeding initiated'. In the second place, the expression 'under this Act' is used along with the words 'tax or penalty, interest or any other amount payable'. In other words, the power conferred by Section 43(1) to withhold the issue of statutory or other declaration forms, can be exercised (i) notwithstanding any recovery proceeding initiated under this Act and (ii) if any tax or penalty, interest or any other amount payable under this Act is found due from a dealer.

71. The Law Makers, who thought fit to use the words 'under this Act' in two places in Section 43(1), carefully omitted to use the very same words 'under this Act' along with the words 'statutory or other declaration forms'. Let us take a hypothetical situation where the middle portion of Section 43(1) reads as "shall have power to withhold issue of statutory or other declaration forms under this Act". Had it been so, the contention of the appellants/assesseees would have been perfectly valid and justified.

72. The law is well settled that Courts are not entitled to supply the casus omissus. Unless we supply the words 'under this Act', to follow the words 'statutory or other declaration forms', we cannot reach the same conclusion that the appellants want us to reach. Therefore, the second facet of the third contention of the learned Senior Counsel for the Oil Corporations cannot be sustained.

73. That takes us to the next part of the third contention, based upon the decision of the Madhya Pradesh High Court in Dawar Brothers. It is true that in Dawar Brothers, the vires of

Rule 8(1-A)(f) of the M.P. Sales Tax (Central) Rules, 1957 was under challenge. The said rule empowered the Sales Tax Officer to withhold the issue of the declaration forms, till such time the assessee paid the tax. A Division Bench of the Madhya Pradesh High Court declared the said rule to be ultra vires the provisions of Section 8(4) read with Section 13(3) and (4) of the CST Act, 1956.

74. But, a careful look at the decision of the Madhya Pradesh High Court would show that the Court arrived at the aforesaid conclusion based upon three reasonings. They are (i) that the phrase 'in the prescribed manner' appearing in Section 8(4) of the CST Act, 1956, has a restrictive meaning; (ii) that 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) that for the entitlement of a concessional rate of tax under Section 8(1), one cannot look beyond the Central Enactment.

75. But, with great respect, we are unable to accept all the above three reasonings given by the Madhya Pradesh High Court. This is due to certain fundamental issues that we shall now highlight.

76. The first reasoning given by the Madhya Pradesh High Court that the phrase 'in the prescribed manner' occurring in Section 8(4) of the Central Act, has to be understood in a restricted sense, was based upon the decision of the Supreme Court in *Sales Tax Officer, Ponkunnam Vs. K.I.Abraham* [AIR 1967 SC 1823]. In that case, the Supreme Court held a provision in the Central Sales Tax (Kerala) Rules, 1957, which prescribed a time limit, within which, a registered dealer was obliged to file the declaration under Section 8(4) of the Central Act, to be ultra vires Section 8(4) read with Section 13(3) and (4) of the Central Act.

77. But, the Madhya Pradesh High Court has omitted to take note of one important fact namely that when the Supreme Court considered the issue in *K.I.Abraham*, Section 8(4) of the Central Enactment did not contain a Proviso. It was only with effect from 1.4.1973, that a Proviso was inserted under Sub-Section (4) of Section 8, under Act 61 of 1972. The lacuna pointed out *K.I.Abraham* was removed by the amendment under Act 61 of 1972, by the insertion of a Proviso that read as follows :

"Provided that the declaration is furnished within the prescribed time or within such further time as that Authority may, for sufficient cause, permit."

78. Therefore, if any State, after the Amendment Act 61 of 1972, had issued a rule in exercise of the power conferred by Section 13(4), prescribing a time limit for the declaration

under Section 8(4) of the Central Act to be furnished, the said rule could not have been held to be ultra vires Section 8(4), as held in K.I.Abraham. The effect of the insertion of the Proviso under the Amendment Act 61 of 1972, upon the ratio laid down in K.I.Abraham was not taken note of by the Madhya Pradesh High Court in Dawar Brothers. This is why the Madhya Pradesh High Court came to the conclusion that the phrase 'in the prescribed manner' has to be understood in a restricted sense in the light of Section 8(4) of the Central Act. Therefore, the first reasoning given by the Madhya Pradesh High Court in Dawar Brothers, with utmost respect to the learned Judges, is flawed.

79. The second reasoning of the Madhya Pradesh High Court in Dawar Brothers is that 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. This conclusion was reached by the Madhya Pradesh High Court on the basis of another decision of the Supreme Court in Khemka and Co. Pvt. Ltd. Vs. State of Maharashtra [AIR 1975 SC 1549].

80. But, the decision of the Supreme Court in Khemka & Co. arose under peculiar circumstances. It was a case where the Assessing Officer invoked a provision in the State Enactment namely Section 16(4) of the Bombay Sales Tax Act, for imposing a penalty for non payment of central sales tax payable under the Central Act. The Central Act itself contained specific provisions for penalty. Therefore, the Supreme Court held that when there was a specific provision under the Central Act itself for the imposition of a penalty for non payment of dues under the Central Act, it was not open to the Assessing Officer to invoke the deeming fiction under Section 9(2) of the CST Act, 1956, to impose a penalty under Section 16(4) of the Bombay Sales Tax Act. For coming to the said conclusion, the Supreme Court pointed out that for the applicability of the doctrine of ejusdem generis, the genus in Section 9(2) of the Central Act is in the phrase 'for this purpose'. In other words, the purpose is merely the assessment, re-assessment, collection and enforcement of payment.

81. Therefore, there are two reasons as to why the Madhya Pradesh High Court was not correct in invoking the principle laid down by the Supreme Court in Khemka & Co. The first is that when the Central Enactment contained a provision for the imposition of penalty, it was not open to the Assessing Officer to invoke a provision in the State Enactment, as the provision in the State Enactment stood eclipsed by the provision in the Central Enactment. The second reason is that what applies to the case of penalty, cannot be applied to a case of issue of a declaration form, for the purpose of entitling the assessee to pay a reduced rate of tax.

82. As a matter of fact, Beg, J pointed out in his separate opinion in Khemka & Co. that a penal provision would stand in contrast to a provision for rebate. While rebate is a concession, penalty is an imposition. Therefore, the Court held that a rebate can form part of the procedural provision, but penalty cannot. A provision for the issue of C-Declaration Form is actually a facility that confers a benefit upon the assessee. Therefore, the provision relating to the grant of a concession or exemption, cannot be interpreted in the same manner as a provision relating to penalty is. Hence, the second reasoning of the Madhya Pradesh High Court, arrived at on the basis of a decision of the Supreme Court that related to the imposition of penalty, cannot be accepted.

83. The third reasoning given by the Madhya Pradesh High Court in Dawar Brothers is that for the entitlement of a concessional rate of tax under Section 8(1), one cannot look beyond the Central Enactment. This reasoning, in our considered view, is also not in tune with the scheme of the Act. As we have indicated earlier, Section 8(1) makes every dealer, who sells goods of the description referred to in Sub-Section (3) to a registered dealer, in the course of Inter-State trade and commerce, to pay tax at the rate of 2% of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the Sales Tax Laws of that State, whichever is lower. But, the entitlement or liability to pay tax at the rate stipulated in Section 8(1) is made subject to the fulfillment of the condition stipulated in Sub-Section (4). The condition stipulated in Sub-Section (4) of Section 8 is that a declaration should be furnished in the prescribed form. But, the very entitlement of a person to a declaration in Sub-Section (4) is made subject to certain other restrictions such as (i) that the declaration should be in the prescribed form (ii) that it should have been obtained from the Prescribed Authority (iii) that it should contain the prescribed particulars and (iv) that it is furnished within the prescribed time. These conditions are left to the rule making power of the Government under Section 13.

84. In any case, the Division Bench of the Madhya Pradesh High Court appears to have laid emphasis, only upon the phrase "in particular and without prejudice to the powers conferred by Sub-section (3)" appearing in Sub-section (4) of Section 13 of the CST Act, 1956. With great respect, the Madhya Pradesh High Court did not take note of the dichotomy made between the rule making power of the Central Government under Section 13(1)(d) and the rule making power of the Central Government under Section 13(4)(e).

85. Nothing turns out of the embargo created under Sub-section (3) of Section 13. This Sub-section prohibits the State Government not to make any rules inconsistent with the

provisions of the CST Act, 1956 and the rules made under Section 13(1). If the Parliament was so touchy about the matter and decided to keep away the State Governments from having any role in the matter of issue of declaration forms, Clause (e) should not have found a place in Sub-section (4) of Section 13.

86. Once it is found that the Prescribed Authority is the Authority of the State Government and once it is found that under Section 13(4)(e), a power is conferred upon the State Government to make rules prescribing the conditions, subject to which, a declaration under Section 8(4) could be obtained, it is futile to contend that one cannot look beyond Section 8(1) of the Act. The entitlement of a person to a C-Declaration Form cannot be determined solely on the basis of the provisions of Sub-Sections (1) and (4) of Section 8. The entire scheme of the Act, including the provisions of Section 9(2) and Section 13(4)(e) have to be looked into. Therefore, we are unable to accept the third reasoning given by the Madhya Pradesh High Court for taking the view that it did in Dawar Brothers.

Contention-4 :

87. The fourth contention of the learned Senior Counsel for the Oil Corporations is that when there are effective provisions available to the State Authorities for the recovery of the dues under the State Enactment and when the State Authorities are empowered even to cancel the certificate of registration, it is not open to the State authorities to rely upon Section 43 of the Puducherry VAT Act, 2007 to withhold a 'C' form declaration under Section 8(4) of the CST Act, 1956. In support of this contention, Mr.S. Raveekumar, learned counsel for the authorized agencies/assesseees relies upon a few decisions, which we shall now take up.

88. In Salvicate Bangalore Pvt. Ltd Vs. Sales Tax Officer, 4th Circle, Kochi [(1998) 109 STC 543 (Kerala)], the Authorities refused to issue C-Forms under the CST Act and delivery notes in Form 26 under the Kerala General Sales Tax Act to the petitioner, a registered dealer under both Acts, on the ground that the petitioner company was engaged in execution of works contract and that it had not paid tax for the previous years. Granting relief to the assessee, a learned Judge of the Kerala High Court held that the delivery notes, C-Forms etc., are required by every dealer in the regular course of his day to day business transactions either Intra-State or Inter-State and that the right of every citizen to carry on business or trade is a well-recognized fundamental right under the provisions of The Constitution.

89. Though the Kerala High Court recognized that it was not an absolute or unqualified right, the Court held that the issue of delivery notes and C-Forms is intended to regulate the conduct of trade and business and that the withholding of these documents may sometimes result in complete destruction of trade

or business, in which event, it may amount to total restriction, which is impermissible under the law. Therefore, the Kerala High Court held that the non-payment of tax for any year is not a ground for withholding or not issuing the delivery notes and C-Forms under the provisions of the relative Acts and Rules. The payment of tax and issue of delivery notes and C-Forms are different processes in the business adventure and the former is a duty of the dealer and the latter is the duty of the Assessing Authority. The Court held that one is not dependent the other, though both operate in the field of business and trade and that the Assessing Authority shall not adopt a posture of saber-rattling and intimidate the dealer by telling that it would withhold the issue of delivery notes and C-Forms unless he wipes off the arrears of tax for the previous years.

90. But, we are unable to subscribe to the above view. Every right carries along with it, a corresponding obligation. A dealer, who seeks to enforce his right for the issue of a declaration form, should not be a defaulter. In any case, a defaulter cannot come to court and seek the issue of a Writ of Mandamus, to compel the Statutory Authorities to perform a statutory obligation. It is well settled that the jurisdiction to issue a Writ, is a discretionary jurisdiction. Therefore, the Court would certainly ensure, before issuing a Writ, that the person, who seeks such a relief, is not a defaulter. We are conscious of the fact that the Oil Corporations, which are before us, are not, by themselves, the defaulters. But, when their own authorised dealers have committed default, which is also not recoverable from these oil corporations, they cannot seek the issue of a Writ of Mandamus to compel the issue of C-Declaration Forms.

91. The next decision relied upon by the learned counsel for the authorised agencies is that of this Court in Sri Rajeswari Agencies Vs. Additional Deputy Commercial Tax Officer II Puducherry [(2011) 40 VST 249 (Mad.)]. The petitioner in that case was also a dealer of petroleum products and the dealership was granted by the Indian Oil Corporation. The petitioner was denied C-Forms on the ground that it had arrears of tax. The short question that arose for consideration was whether non-payment of arrears of tax and penalty would dis-entitle the petitioner from getting C-Form license. This Court held that when the respondent could proceed against the petitioner for non-payment of tax or the penalty by attaching the sale proceeds from the properties or even the bank account of the petitioner, the respondent had no power to deny C-Form license to the petitioners. This Court further held that Section 9(2) of the CST Act, 1956 does not contemplate refusal of C-Form license for non-payment of tax or penalty and that where there is no prohibition to issue C-Form license to the petitioner on the ground that the petitioner has not paid the tax due and penalty,

the respondent cannot deny the issuance of C-Form license to the petitioner.

92. But, unfortunately, the decision in Sri Rajeswari Agencies, has not taken note of the entire scheme of the CST Act, 1956. Though the learned Judge took note of Section 43 of the Puducherry VAT Act, 2007, the learned Judge held that Section 9(2) of the CST Act, 1956 does not contemplate the withholding of C- Form Declaration. As a matter of fact, the learned Judge did not even go into the question whether the phrase 'statutory or other declaration forms' appearing in Section 43(1) would cover the forms contemplated by the CST Act or not. Therefore, we are unable to accept the opinion expressed by the learned Judge in Sri Rajeswari Agencies as correct.

93. The last decision relied upon by Mr.S.Raveekumar, learned counsel for the Puducherry dealers - assesseees is the one in Chowhan Machinery Mart Vs. State of Orissa [(2009) 19 VST 178 (Orissa)]. In that case, the Orissa High Court was concerned with the case of a registered dealer under the Orissa Value Added Tax Act, 2004 and the Central Sales Tax Act. When the dealer applied for supply of C-Forms, the Sales Tax Officer called for an explanation as to why C-Forms shall not be refused on the ground of non-payment of entry tax on the goods purchased from outside the State. The petitioner submitted that they were not liable to pay entry tax on purchase of goods from outside the State, as they were not producers or manufacturers inside the State in view of an earlier decision of the Orissa High Court in Reliance Industries Ltd. V. State of Orissa [(2008) 16 VST 85 (Orissa)]. The assessee contended that the issue relating to payment of entry tax was pending with the Supreme Court and that in case the said issue was decided against the assessee, they would pay the entry tax. In the light of such an undertaking, the Commercial Tax Officer directed the concerned Authority to suspend the registration for non payment of entry tax and also directed the issue of two sheets of C-Form.

94. When the matter landed up before the High Court of Orissa, the Court held that once a dealer satisfies the condition that he is a registered dealer, authorized to purchase goods mentioned in the certificate of registration, charges for obtaining C-Forms were paid and a true copy of the accounts of the forms last supplied were furnished, the Authorities are bound to issue C-Form and could not refuse to do so on any ground other than those stipulated in Rule 6 of the Central Sales Tax (Orissa) Rules, 1957 so long as his certificate of registration remains valid.

95. But, the difference between the case before the Orissa High Court and the cases on hand is that the Government of Puducherry has incorporated a specific provision in Section 43 (1). The validity of the said provision is not under challenge. On the contrary, it is contended that Section 43(1) is confined

only to the forms contemplated under the local Enactment. We have found such a contention to be not borne out of Section 43 (1). Therefore, the decision in Chowhan Machinery Mart cannot be followed.

96. The availability of different modes for the recovery of a tax due, is actually for the benefit of the State and not intended to benefit the assessee. Neither the assessee, nor the person to whom the assessee owes an obligation, can dictate to the State, the mode of recovery to be chosen by them. The power available to the State for the cancellation of the registration of a defaulting dealer, is actually in addition to the several modes of recovery available to the State. After all, the cancellation of registration does not result in the automatic recovery of tax due. The recourse to the revenue recovery proceedings may or may not yield the desired result, since it would depend upon whether the dealer has sufficient resources or not. There is also no impediment in law for the simultaneous adoption of more than one method of recovery.

97. Though, strictly speaking, Section 43 of the Pondicherry VAT Act does not prescribe a mode of recovery of the tax due, it is certainly an effective provision that would hit the dealer where it hurts. The power available under Section 43 is akin to the power available to the Electricity Boards to disconnect power supply, whenever a default is committed by the subscriber. As a matter of fact, the Courts have affixed the seal of approval on the power of the State Electricity Boards to disconnect power supply, even in respect of consumers whose dues have become time barred. The provision may appear to be one empowering the State to indulge in arm twisting tactics. But, so long as there is power and so long as the vires of Section 43 is not under challenge, the petitioners cannot dictate to the State that they could adopt any other mode of recovery.

98. In Commissioner of Sales Tax v. Shri Krishna Engineering Co. [(2005) 139 STC 457], the Supreme Court was concerned with the validity of Rule 8(4)(c) of the Delhi Sales Tax Rules, 1975. This Rule empowered the appropriate Assessing Authority to withhold, after affording an opportunity and for reasons to be recorded in writing, the declaration forms, if the applicant for the declaration forms had defaulted in furnishing any return or defaulted in payment of tax or penalty or he had been found to have some adverse material suggesting any concealment of sale or purchase or of furnishing inaccurate particulars. One of the main grounds of challenge to the said Rule was that the selling dealers are made to incur a higher tax liability, for the default committed by those who purchase material from them and over which event, they have no control. While rejecting the said ground of challenge, the Supreme Court pointed out in paragraph 33 of the report that the Sales Tax Department is neither privy to, nor is it concerned with the inter-se rights and obligations

of the seller and purchaser. There are also cases where the purchasers do not forward the statutory forms to the sellers, for extraneous reasons. The only legal recourse available in such cases to the selling dealers, is to file civil suits for recovery of the tax that they are made to pay on account of the default committed by their purchasers. The Supreme Court pointed out that there is no reason to deviate from this position. The argument based on equity was also rejected by the Supreme Court in paragraph 35 on the ground that equity plays a miniscule role in fiscal matters.

99. Interestingly, the last contention of the petitioners that the Government of Puducherry could have invoked revenue recovery proceedings against the defaulting dealers rather than withholding the C Form declarations, was raised before the Supreme Court even in Shri Krishna Engineering Co. But, the said argument was rejected in paragraph 38. Therefore, we are of the considered view that none of the grounds of challenge could be sustained.

CONCLUSION:

100. As we have stated earlier, there are 7 writ appeals and 8 writ petitions on hand. A majority of them are by 2 oil majors and a few of them are by the dealers appointed by these Oil Corporations. While a couple of them are for a declaration that the Assessing Officers in the Union Territory of Puducherry are not entitled to rely upon Section 43 to deny C Form declarations, a few of them are for a Mandamus to direct the authorities to issue C Form declarations and some others challenge the consequential orders passed by the Assessing Officers in the State of Tamil Nadu. But, in view of the foregoing discussion, the appellants and petitioners are not entitled to the reliefs prayed for. Hence, the writ appeals and writ petitions are dismissed. There will be no order as to costs. Consequently, connected M.Ps. are also dismissed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

GR/RS/kpl

To

1. The Additional Deputy Commercial Tax Officer-IW, Puducherry.

- 2.The Commercial Tax Officer,
Commercial Tax Department,
Puducherry.
- 3.The Additional Deputy Commercial
Tax Officer-IW, Commercial Tax Department,
Office of the Commissioner (CT),
Puducherry.
- 4.The Secretary (Finance),
Union Territory of Puducherry
Puducherry.
5. The Deputy Commissioner (CT)-1,
Large Taxpayers Unit,
34 (Old No.123), Dugar Towers,
Marshall Road, Chennai-600 008.
- 6.The Commissioner of Commercial Taxes,
Commercial Taxes Department,
Government of Puducherry, Puducherry.
- 7.The Commercial Tax Officer,
Karaikal, Government of Puducherry.
- 8.The Commercial Tax Officer-1
Second Floor,
Commercial Taxes Complex,
100 Feet Road, Ellapillaichavadi,
Puducherry 605 005.
- 9.The Deputy Commissioner (CT)-1,
Large Taxpayers Unit,
Chennai.
- 10.The Joint Commissioner (CT) Appeals,
Chennai.
- 11.The Secretary,
Ministry of Finance,
Department of Revenue, New Delhi.
- 12.The Deputy Commissioner (CT)-IV,
Large Taxpayers Unit,
"Dugar Towers", V Floor
Marshall Road, Chennai-600 008.

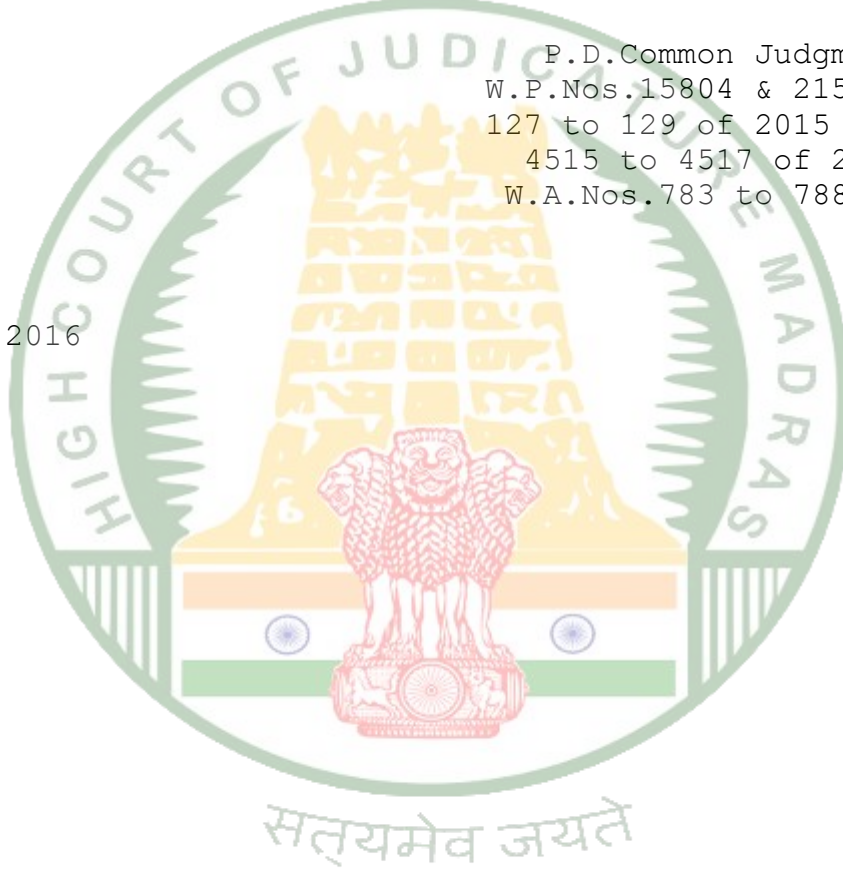
13.The Additional Deputy Commercial
Tax Officer-II, Commercial Taxes
Department, Puducherry.

3 ccs Special Government Pleader (Taxes), sr.22821, 22818, 22820
1 cc to M/s.T.M.Hariharan, Advocate, 22250
2 ccs to M/s.N.Inbarajan, sr.22015
1 cc to The Government Pleader (Puducherry), sr. Nos.22450,
22451, 22441, 22444, 22440, 22439, 22446, 22445, 22442,
22443.

2 ccs to Mr.S.Raveekumar, Advocate, sr.22403, 22404

P.D.Common Judgment in
W.P.Nos.15804 & 21556 of 2014,
127 to 129 of 2015 & 4515 to
4515 to 4517 of 2015 &
W.A.Nos.783 to 788 & 1496 of
2014

ad co
kra 07.06.2016



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